Protecting Historic Places
In New Zealand

HARRY ALLEN
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SUMMARY

The government should create a new heritage agency to purchase Crown heritage services, provide policy advice to the Crown, take responsibility for national heritage strategies, policies, methodologies and standards, identify nationally significant heritage through a Register and finally, protect and manage nationally significant heritage through a balance of voluntary incentives (national heritage fund) and regulation.

Given the totality of Acts administered by local and central government which have a direct impact on Maori heritage, a new stand alone Maori heritage body is needed, one that is charged with the advancement of Maori heritage interests both within and outside of government.

The New Zealand Historic Places Trust should return to its status as a national trust organisation and relinquish its regulatory functions. On the other hand through a revised HP Act, it should retain statutory functions similar to those of the QE II National Trust for the conservation of the natural environment (advice, research, advocacy, education, voluntary conservation measures, heritage funding and property management). It should form a working partnership with the QE II National Trust with both organisations being administered by the Minister for Conservation. Such changes would allow the Trust to concentrate on advocacy and voluntary measures and to give attention to its membership.

The Register of nationally significant heritage places should be administered by the new central government agency while regional and local heritage should remain the responsibility of the territorial authorities. The question of the appropriateness for Maori heritage of a national Register, and of local government heritage protection measures such as zoning or listing, should be debated by Maori as part of the Review of Historic Heritage Management. Similar questions surround the archaeological provisions of the Historic Places Act 1993. Devolution of these provisions should be to Maori authorities through the RM Act.

The selection of nationally significant heritage places should be based on a comprehensive procedure to identify the historic resource. The concept of national should be uncoupled from that of ‘importance’ through non statutory criteria that emphasise the variety of places that have contributed to the national consciousness.

Special measures should be created to assist in the conservation of representative historic areas. The protection of the social and community values of heritage also requires attention. In areas where there is a multiplicity of land uses and tenures, the National Landcare Programme should be extended to protect historic and cultural landscapes through voluntary means.

Legislation should state that the protection of historic and cultural heritage is on behalf of all sections of the community on the basis that conserving cultural heritage represents a public good, one that reinforces the democratic process. The relationship between the historical interests of the population and the activities of heritage protection agencies at both the national and territorial level should be made explicit. Such relationships range from the creation of a national identity, through commercial uses of history, to the servicing of the needs of academic disciplines, and finally, to assisting the legitimate historical aims of ethnic and social minorities.
PREFACE

The impetus for this work came from teaching 'Archaeological Resource Management' at the University of Auckland. It became apparent that a handbook describing the legal and practical applications of heritage protection in New Zealand would be useful for students and other interested people. Few subjects have the potential to be more dreary than a review of laws and administrative procedures. However, in teaching these matters, I have found that a course on heritage raises questions of concern to New Zealand society in general.

I joined the Board of the New Zealand Historic Places Trust in 1988, during a period of change. The Department of Conservation had recently emerged from the restructured public service. A maze of planning laws were being drawn together into a new resource management framework. Finally, a new Historic Places Bill was being prepared. Unfortunately, the legislative uncertainties of 1988 have not settled into an era of effective heritage management. The Parliamentary Commissioner for the Environment recently concluded, 'Some positive achievements are occurring at the local level, principally through planning procedures under the Resource Management Act (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' (PCE 1996a:91).

A considerable portion of my time over the past decade has been spent making submissions and writing articles on these issues in the hope that an effective administrative system for the protection of historic places might emerge. Others, within and without the Historic Places Trust and the Department of Conservation, have made a much greater contribution. On the Maori side, there has been a consistent voice that the current system works to their detriment.

The outcome of the Parliamentary Commissioner for the Environment's investigation, held in 1996, has been the setting up of a Historic Heritage Review to consider the system of management for land-based historic and cultural heritage (DoC 1998). This review will take place between January and June 1998. The review concentrates on technical and institutional questions.

This work aims to broaden the discussion to include the principles that form the foundations of heritage conservation. My conclusion is that problems associated with the conservation of historic and cultural heritage will be solved when we give more attention to the people, both Maori and Pakeha, for whom these places have meaning.

Despite clear evidence of public support for heritage protection, there is a gap in policy at national and regional levels and a lack of political will to adequately provide for historic and cultural heritage protection (PCE 1996a:91). There are a number of reasons for the contemporary lack of government commitment to heritage protection. The most important of these is the complexity of a system that involves many laws and agencies. Few people have a grasp of what the system attempts to achieve and why. Most practitioners, in government or in councils, have an understanding of their own administrative procedures. Beyond this, however, knowledge drops off rapidly. A second reason is the lack of informed debate about these issues. The number of heritage professionals who are directly concerned with protecting historic places in New Zealand is small. The majority are employed by a few organisations or earn their living as independent consultants. This is in contrast to Australia, for instance, where the interaction between independent National Trusts and State and Commonwealth organisations ensures debate. In order to keep up to date, a knowledge of developments overseas and a lively critical debate at home is necessary. At present, in New Zealand, dissemination of such knowledge happens only rarely. The consequence is that advice to Parliament has been selective. This has affected the drafting of new laws, amendments to existing ones, and has also reduced knowledge of what is required to keep the system of heritage management functioning effectively. It is hoped that this work will allow more people access to the arcane world of heritage protection.

This work begins with a discussion of the relationship between heritage conservation and a sense of the past. It moves from there, in Chapters 1 and 2, to a description of the technical aspects of heritage conservation and the administrative framework set up to achieve the protection of historic places in New Zealand. A brief comparison is made with the situation in England. Maori heritage issues are discussed in Chapters 3 and 6, including whether the protection of Maori community values might require a different approach to other aspects of heritage management. Chapters 4 and 5 attempt a critical assessment of existing heritage protection measures, particularly the Historic Places Act 1993. The extension of heritage conservation to include
DEFINITIONS

Unless otherwise stated, definitions follow those of the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value.

cultural heritage value means possessing historical, archaeological, architectural, technological, aesthetic, scientific, spiritual, social, traditional or other special cultural significance, associated with human activity.

preservation means maintaining a place with as little change as possible.

conservation means the process of caring for a place so as to safeguard its cultural heritage value.

historic place means any land (including an archaeological site) that forms part of the historical and cultural heritage of New Zealand (HP Act 1993).

archaeological site means any place in New Zealand that was associated with human activity that occurred before 1900 (including shipwrecks) that is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand (HP Act 1993).

representativeness is the extent to which a historic place or a group of historic places represents, symbolically or typically, defined themes, aspects or periods of New Zealand history or the history of an area or region (DoC 1995).

mana whenua means customary authority exercised by an iwi or hapu in an identified area (RM Act 1991).

tangata whenua, in relation to a particular area, means the iwi or hapu that holds the mana whenua over that area (RM Act 1991).

tikanga Maori means Maori customary values and practices (RM Act 1991).

kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship (RM Act as amended 1997).

iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so (RM Act 1991).

A runanga is a body of people appointed for the purpose of administering the affairs of a tribe (Barlow 1991:117).
CHAPTER 1
APPROACHES TO HERITAGE PROTECTION

1.1 Introduction

The term heritage is difficult to define. It includes wilderness preservation, national parks, species conservation, the protection of indigenous artefacts and cultural activities, and, finally, the conservation of buildings, historic sites and townscapes (Hall and McArthur 1996:2). Article 4 of the World Heritage Convention (UNESCO) recognises the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the world's cultural and natural heritage. The conservation of our heritage represents the working out of deeply-held cultural and natural heritage. The conservation of our heritage represents the working out of deeply-held cultural and ethical concerns that stem from our power to alter and deplete the environment we depend upon.

Some laws in New Zealand, such as the Resource Management Act 1987 and the Conservation Act 1991 and the Resource Management Act (UNESCO) recognise the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the world's cultural and natural heritage. The conservation of our heritage represents the working out of deeply-held cultural and ethical concerns that stem from our power to alter and deplete the environment we depend upon.

Despite some discomfort with the separation of the cultural from the realm of natural resources, this division represents the reality of heritage management in New Zealand today. Consequently, heritage management within this work is concerned with the management of historic and cultural places. While Cleere (1993:400) defines heritage management as that field of human endeavour concerned with the identification, protection, preservation and presentation to the public of the material remains of the past, the management of portable artefacts will only be discussed within this work where such concerns intersect with the protection of places.

The Parliamentary Commissioner for the Environment has identified the lack of commitment to cultural heritage on the part of government as representing a major difficulty. The higher priority given to the natural heritage in terms of finance, staffing and strategic planning was also noted (PCE 1996a:34-5). Part of the reason for this is that government and the public have a better understanding of the principles of nature conservation and its benefits to the country. By contrast, legislators, the public and many heritage professionals are unclear about just what the ultimate objectives of heritage conservation might be. Instead, almost all attention is devoted to statutory processes, appeals for additional funding and last-ditch attempts to prevent the destruction of heritage buildings such as Broadcasting House.

1.2 Heritage and identity

Heritage management in New Zealand represents a huge investment in terms of legislation, the government and the public. The question of why should we attempt to preserve aspects of the past in the form of buildings, shipwrecks, archaeological sites and landscapes, however, is not commonly asked and convincing answers are even rarer (Lowenthal and Binney 1981). Heritage professionals tend to concentrate on the technical aspects of heritage management, i.e., the qualities of particular buildings or the legislation and its limitations, rather than justifying why we should preserve anything (Hamer 1997:253). A recent Trust flyer exhorts us to 'Save Our Past For Our Future' and on the reverse side warns... "ACT NOW To Save Our HISTORIC PLACES, Or They Will Just DISAPPEAR...and, along with them, part of our vital New Zealand identity' (Historic Places No 65, 1997). Exactly how historic places are involved in the relationship between our past and our future remains unstated, as does the role historic places play in the maintenance of a New Zealand identity.

It has become accepted that identities are constructed rather than given and that perceptions of the past can play a role in such constructions. Fung and Allen (1984:209-220) differentiate between the memories of individuals and the perceptions of corporate groups, whose charter might be expressed in terms of a common history even where none actually exists. It was further noted that the perception of a common past represents one of the strongest unifying factors for any group, a consideration which is not lost upon governments. Such ideological uses might be contrasted with the academic study of the past through archaeology or history, where there is a commitment to analysis along formal lines. As with everyone else, however, academic practitioners are caught up in a web of social and institutional relationships which have their own ideological character. It is clear that the creation of cultural and national identities can be intimately connected with a sense of history. How the conservation of particular historic places works to create or maintain such identities is less clear (Merriman 1996, Smith 1993:56).
In a wide ranging discussion, Hobsbawm (1983a,b) points to anthems, flags and national monuments, such as war memorials, as symbols of social cohesion. Institutions, value systems and hierarchical relations within the state are legitimised and bolstered by such symbols. In the 19th century, this was also achieved through the separation of high culture, through museums, art galleries, and classical art forms, from mass culture. Miller (1974) reveals that the British Museum in the 1870's had a larger budget and staff than did the Colonial Office. On the other hand, Hobsbawm (1983b:298) notes that the use of mass sporting activities to promote national consciousness also dates from the last century.

States have always been interested in historic places particularly those associated with their foundation. The Ancient Monuments Protection Act was first passed in the UK in 1882. Despite this, however, formal arrangements for the preservation of historic places have been rare until recently. The Treaty House and the Waitangi National Reserve, where the Treaty of Waitangi was signed in 1840, came into public hands through the private benefaction of Lord Bledisloe rather than through any government initiative. Lord Bledisloe's feeling for national consciousness was also revealed in the cup he presented for the annual rugby competition between New Zealand and Australia, always a moment of intense national rivalry.

Dowling (1997:24-9) suggests that governments utilise an artistic definition of the national culture to further privilege the highest strata of society. The utility of such a notion dates back to Herbert Spencer's organic/functional view of society, which justified the class structure as a necessary division of labour (Carneiro 1973:84). Dowling (1997:24-6) further argues that conceptions which favour high culture have found their way into public policy with the result that an aesthetic definition of culture has dominated planning. This privileges public sculptures, artist-designed parks and main streets painted in heritage colours over the modern urban environment. Hence the emphasis on the preservation of buildings of fine architectural quality to overcome the dreariness of the suburbs, which are conceived as being devoid of any symbolic or aesthetic significance.

In a similar fashion, it has been argued that a commercial view of Australian culture, as advanced by the Australian Tourist Commission, privileges Anglo-Australian traditions of democracy, mateship and 'bushiness' but excludes people living and working in the cities. This is especially the case if they are women, indigenous people or are from a non-English speaking background (McLeay 1997:43, Waitt 1997:49). The selection of historic places for preservation under these circumstances is likely to be distinguished by their commercial orientation, their use of pastiche and a lack of concern with historical accuracy.

During the 1960's a change in conservation consciousness took place at both the national and international level, which coincided with a rise in prosperity and urbanisation. As a result, a raft of heritage protection measures were introduced that reflected the need for states to redefine themselves as good heritage managers. Such statutes in the US included the National Environment Policy Act 1967 and the Archaeological and Historical Preservation Act 1974; the Council of National Trusts Act 1967, the Australian Heritage Act 1974 and more recently, the Museum of Australia Act 1980 in Australia; and finally in New Zealand, the Antiquities Act 1976, the Historic Places Amendment Act 1975, the Town and Country Planning Act 1973, the QE II National Trust Act 1977 and the Museum of New Zealand: Te Papa Tongarewa Act 1992.

At the same time, the elitist view of history and the national culture became the subject of criticism. The historian Michael Roe (1978), following Butterfield's The Whig Interpretation of History (1931), criticised Australian historians for their emphasis on great individuals and elites and their neglect of social history. Part of the movement for a wider understanding of the national history has come as a result of the struggle for recognition of self defined 'minority' groupings. Dunn (1997:5) and McLeay (1997:41) argue that groups have mobilised under banners of nationality, ethnicity, race, gender and sexuality. Such groups contest official constructions of the national identity in order to gain cultural recognition and to rectify injustices. Perception of such differences is likely to be rooted in social and economic relationships that prevail in the present rather than in the past (Fung and Allen 1984:211, see also Lowenthal 1996). Under these circumstances, it might be expected that men, women, urbanites, rural people, ethnic, economic and social groupings will each have a distinctive view of history and present a different list of significant places associated with it. Given the potential for acrimonious debate, Smith (1993:63) suggests that heritage legislation is intended to intervene between different interest groups who might wish to advance alternate meanings to heritage objects, sites and places as an expression of their separate cultural and historical identity.

In 1994, the Labor government in Australia released a policy document entitled Creative Nation which aimed at encouraging a cultural pluralism which would integrate the nation's cultural and economic life. Labor argued that culture was created by Australians in their everyday activities. McLeay (1997:42) comments 'Labor aimed to construct a
national identity that positioned ethnic and cultural diversity within a framework that recognised the existence of a shared sense of belonging'.

A similar cultural pluralism is written into the Museum of New Zealand: Te Papa Tongarewa Act 1992 which has as one of its purposes, to,

(b) Endeavour to ensure both that the Museum expresses and recognises the mana and significance of Maori, European, and other major traditions and cultural heritages, and that the Museum provides the means for every such culture to contribute effectively to the Museum as a statement of New Zealand's identity.

Historic places can be used to create a pedigree for the nation state and define the various ethnic and cultural groupings located within it. The academic disciplines of history, archaeology and the museums, through their recording of the progress of peoples towards the present, also serve to locate them as citizens of the state (Atwood and Arnold 1992:ix).

The use of national and local 'icons' to create a sense of corporate identity for nation states is legitimate even if this runs the risk of bolstering national mythologies (Merriman 1996:381). Such mythologies represent three dangers. The first is that a 'one people' myth can be used to negate the claims of minorities to a share in the national wealth (Hohepa 1978). The second is that the values of a particular strata of society might be given undue weight as the only expression of the national ethos. Finally, civic and commercial uses of the past, through their preference for good news over bad, have a tendency to sanitise or falsify the national history.

The only safeguard that heritage conservation has against being drawn into purely ideological uses of the past is through maintaining a close relationship with historical research and with an understanding of the national history as it unfolds. A difficulty here is that the links between heritage preservation and the academic study of history (whether by amateurs or professionals) remain poorly developed (Hamer 1997:253) though, as will be seen in Chapters 5 and 7, this is not the case for archaeology. Historians have seen their conservation needs as being better served by the conservation of records than of places. A concern for a wider social history, one that documents the lives of women, working people and minority groups, however, requires the use of oral and material sources beyond official documents. In such cases, places will prove to be of great historical value.

As a nation, New Zealand has a creditable record of struggling with problems bequeathed to us by our history and geographic location. The Treaty of Waitangi and the bicultural nature of our society has forced us to draw Maori customary tenure and parliamentary democracy into a unique cultural mix. The Government, the courts and New Zealand society continue to be preoccupied by questions of justice and fairness in the relationship between Maori and Pakeha. The conservation of historic and cultural places is an important part of this process. As Russell (1993:12) notes, the conservation of historic places has less to do with nostalgic romanticism than with the understanding of ongoing social relationships which find their expression in land.

The relationships between the preservation of historic places and the creation of a New Zealand 'identity' are as complex as is New Zealand society itself. At the highest level, the nation has been redefined in bicultural terms as a unity composed of Maori and a predominantly British immigrant culture. Below this multiple groups emerge which are defined in terms of their tribal, ethnic, gender, class, occupation and commercial allegiances. In subsequent chapters, it will be argued that the legislation, mechanisms and institutional arrangements currently in place for heritage protection in New Zealand do not reflect the complex reality of the present society, rather they continue an 'elitist' view that is now outdated.

The aim is to achieve a system of heritage management that celebrates our past without perpetuating its injustices. The difficulty before us is that legislation is written precisely to mask the social and economic interests it serves, while mechanisms of preservation appear to be entirely neutral expressions of the desire to protect the past. The way to overcome these difficulties is to make the relationship between heritage conservation and the historical interests of the population quite explicit. Such relationships occur at a number of levels ranging from the creation of a national identity, through the servicing of the needs of academic disciplines to assisting the legitimate historical aims of ethnic and social minorities. A model for such an explicit historical commitment exists in the form of the New Zealand Dictionary of Biography.

To further discuss these issues requires that the reader becomes familiar with the legislation, the mechanisms of heritage protection used here and overseas, and also with the institutions which put heritage policies into practice.

### 1.3 Heritage protection measures

A survey of legislation concerned with the management of heritage places reveals that, despite the variations in cultural and legal backgrounds, most countries approach these questions in broadly similar
ways. Institutions generally include central and local government departments with the latter responsible for land use planning, and a variety of private national trust organisations. Mechanisms of preservation range from ownership on behalf of the public to the setting up of controls to secure the protection of heritage places on privately owned lands.

Protection through ownership is achieved when a public agency or a national trust purchases or gains title to a historic place. It is then managed either as a museum or as part of a reserve or national park. Public ownership is an indication that the heritage value of a place outweighs its commercial value. It takes the historic place out of circulation and it ceases to be an exchangeable commodity (Carman 1995:24).

Attempting to protect the public values of privately owned heritage items is a more difficult question altogether. Here the aim is to retain such items in circulation while at the same time protect their heritage value. Legislatures and the courts take a great interest in balancing the rights of private owners against those of the community.

The identification of places of heritage value can achieve their protection through voluntary means by raising an owner’s or the public’s awareness of their value. More often, however, identification is followed by the imposition of some form of land use control to protect heritage values. The general approach is to establish norms or rules, e.g., making it illegal to demolish any listed item, and then following this with an administrative procedure that allows the regulations to be contravened in individual cases, e.g., resource consents in the Resource Management Act 1991.

Consent mechanisms and the method of selecting historic places for protection can take a number of forms. Firstly, some countries protect a class of historic places, such as archaeological sites, and demand an environmental assessment before any development projects can proceed. Secondly, protection might be gained through a list or schedule of places. Finally, there is heritage protection through planning legislation that creates zones where developers have to get permission to use land in a manner not otherwise provided for.

Covenanting, where an owner formally contracts to protect the heritage values of his or her own property, falls between public and private ownership. In this case, the individual owner voluntarily withdraws a heritage item from circulation and accepts a reduced commercial value for the property as a consequence.

1.4 Public ownership and planning procedures

The guaranteed permanent protection of any single historic place is almost impossible to achieve. The risks from war, decay and Acts of God, such as flood, fire, or earthquake are constantly present. Most countries attempt to protect as many places as possible in order to spread these risks.

Ownership, whether by a state or community authority or a sympathetic private owner allows active conservation measures to be undertaken. Historic buildings can be refurbished and strengthened, heritage gardens can be replanted, and archaeological sites can be managed to ensure their continued survival.

Zoning, scheduling, listing or making a class of historic place subject to a consent procedure provides the potential for protection in a number of ways. First, it raises public appreciation of the place, secondly, it encourages owners to look after the historic place in an appropriate way, thirdly, territorial or other consent authorities must take the status of the historic place into account when approving development proposals, and, finally, these measures encourage developers to alter their plans so as to avoid conservation zones and historic places.

Protection orders or consent procedures, for the most part, do not provide protection against decay or even against any injury associated with the existing use of the historic place. The Heritage Order provisions of the Resource Management Act 1991 are a typical example. A Heritage Order prevents any subdivision, or change in the character, intensity, or scale of the use of the land (Section 193) or the alteration of any building or land by removal, demolition or excavation (Section 9).

All effective conservation regimes require a level of active intervention through the ownership of historic places on the conservation estate. On the other hand, there will rarely be enough money to own or actively manage more than a small proportion of known historic places. Consequently, zoning, consent procedures and voluntary measures play an important role in attempting to limit the impact of development on historic places without prohibiting change.

1.5 Individual rights

The usefulness of zoning within planning legislation is that it is one of the legislative controls on land use that the courts are willing to apply without compensation being payable to landowners. This is the case even when a profitable land use such as a subdivision might be prevented.

However, heritage authorities often find it very difficult to refuse a developer’s request. The reason is that consent procedures are designed to provide a form of general protection while at the same time allowing exceptions to be made for individual cases. The total refusal of an application for a resource
controls and private property rights. This can work consequently lies in the interplay between legislative effectiveness of any heritage protection regime countries that are subject to the common law. Similarly, appeals against the Historic Places Act 1993 can be made on the grounds that the actions of the Trust prevent or restrict the existing or reasonable future use of the place for any lawful purpose.

These problems are particularly acute in countries that are subject to the common law. Blackstone in the 19th century noted that, in common law regimes, the public good is nothing more than the protection of every individual's private rights. The effectiveness of any heritage protection regime consequently lies in the interplay between legislative controls and private property rights. This can work both ways. Territorial authority panels generally dismiss individual objections in cases where the common good outweighs a private interest (Powles 1975). On the other hand, the preoccupation of the law and the courts in general is with private rights and interests in land (Barton 1976:83). Tremaine (1992:7) notes the emphasis on private property rights in New Zealand courts. He suggests that some system of compensation or incentives is needed before the courts will allow further infringement of property development rights.

Alder (1993:70-7) argues that English laws reduce the effectiveness of planning procedures. Courts prefer financially quantifiable interests when balancing competing factors. They adopt a semantic approach to interpreting definitions and rules. They concentrate on the protection of individual rights over those of the community. Finally, there is a presumption in favour of development where environmental interests are not recognised as rights. In the case of Maori spiritual values, Nuttall and Ritchie (1995:7) note that recent New Zealand case law, notably Haddon v ARC (1994), indicates that spiritual values are still no match for economic and legal values. This is despite the legislative directive that the relationship of Maori and their traditions with their ancestral lands is a matter of national importance.

1.6 Heritage in England and elsewhere

The actual mix of approaches adopted in different countries varies according to the local situation. Denmark protects all visible archaeological sites on both private and public lands (including a buffer zone of 100 metres around them) but combines this with a system of registration and conservation planning zones (Kristiansen 1984:27-32). In the US, the National Parks Service owns many historic properties and has a network of national parks where historic monuments are managed for their long term preservation. In addition, there is protection of all heritage sites on Federal lands under the Historic Preservation Act 1980 which makes Federal development projects subject to environmental impact assessment. Furthermore, city councils and state authorities can schedule buildings as landmarks (Doheny 1992) though questions of compensation can be thorny. Similarly the Australian 'Register of the National Estate' affects only the actions of Commonwealth authorities not those of state or local governments (which have their own heritage regulations) nor does it affect private owners (Flood 1979:21). In New South Wales, and in most Australian states, Aboriginal archaeological heritage and European historic archaeology are protected through different acts of parliament. Both, however, make it illegal to disturb or destroy archaeological evidence without a permit.

Because of the similarities between England and New Zealand in terms of legislation, institutions and approaches, the British situation will be discussed in greater detail. Both are systems of many parts, governmental and private, and both involve trade-offs between compulsion and individual freedoms.

On the government side in England, there is the Department of the Environment, and the Department of National Heritage which administers English Heritage, the RCHME (Royal Commission on the Historical Monuments of England, responsible for the National Monuments Record), and the Countryside Commission as independent commissions. Local Authorities fulfil a number of heritage functions from running museums and county archaeological surveys to planning and the provision of building permits. County, borough and district councils generally employ an archaeologist within their planning departments.

On the private side is the National Trust caring for areas of natural beauty as well as places of historic interest. The National Trust owns or manages 234,000 hectares of land in England, Wales and Northern Ireland, which contain 40,000 archaeological sites (1000 scheduled Ancient Monuments), 200 historic houses, 160 gardens, and finally, 25 industrial monuments, including mines and mills. The National Trust has protective covenants on a further 31,000 hectares.

Archaeological sites which are considered to be of national importance can be protected by adding them to the 'Schedule of Monuments'. Monuments were defined narrowly in the 1979 Act, but their definition was broadened under the National Heritage Act 1983 to include 'any structure, work, site, garden or area which in the Commission's opinion is of historic, architectural, traditional, artistic or archaeological interest'. The schedule contained
12,888 monuments in 1987. The 1979 Act introduced a Scheduled Monument Consent Procedure where the basis for scheduling has to be justified and can be scrutinised by the public. However, like all consent procedures, it is driven by the needs of development. Consequently, the duration of protection provided by scheduling can be as short as the next application for a resource consent. On the other hand, provisions for appeal against the Secretary of State's decisions are limited.

Developers in England and Wales have to prepare a field evaluation before a project is allowed. In order to protect a building or site, a development might be refused or the proposal modified so as to cause minimal disturbance. As a last solution, if the site cannot be preserved, then the developer has to make financial provision for excavation, the archiving of data and the publication of the results (Wainwright 1993:417). Developers are also advised to consider taking out insurance against the possibility of unexpectedly finding historic remains on a site after development has commenced. Planning Policy Guidance Paper 16 notes, 'The desirability of preserving an ancient monument and its setting is a material consideration in determining planning applications whether that monument is scheduled or not.'

Apart from its role in systematic data gathering and proposals for scheduling, English Heritage has published a strategy document, Exploring our past (1991), which outlines additional areas where central funding is essential. These are firstly, financial support for archaeological data-bases such as county records, secondly, provision for urgent archaeological projects where no other funding is available, finance for the production of syntheses of the information gained from salvage excavations, and finally, funding to promote the public enjoyment of the archaeological heritage.


The European Charter for the Protection and Management of the Archaeological Heritage (Cleere 1993) contains a number of general principles including:

a) if legislation affords protection only to sites which are registered in a selective statutory inventory, then provision should be made for the temporary protection of unprotected or newly discovered sites until an archaeological evaluation can be carried out.
b) the costs of archaeological heritage impact studies, including rescue excavations, should be part of the developer's project costs. (The principle that the developer should be financially responsible for any necessary archaeological work is also part of DoE, Planning Policy Guidance Paper 16).
c) The protection of the archaeological heritage must be based upon the fullest possible knowledge of its extent and nature.

The identification and protection of buildings follows different procedures to that for ancient monuments. The Department of National Heritage lists buildings and grades them into either Grade I, buildings of exceptional interest, or Grade II, buildings of special interest, warranting every effort to preserve. All buildings built before 1700 and most built between 1700 and 1840 are included in the total of more than 400,000 listed buildings. In England, it is an offence to demolish or alter a listed building without the permission of the local planning authority, a process that also provides the Secretary of State with 'call in' powers for buildings of particular merit or public interest. Ecclesiastical buildings have separate provisions. Buildings can also be scheduled under the Ancient Monuments and Archaeological Areas Act 1979, as amended (for England) by the National Heritage Act 1983. Buildings and sites of regional or local significance gain some protection under the Town and Country Planning Regulations (Assessment of Environmental Effects), district plans and from the procedures recommended through DoE Planning Policy Guidelines Notes 15 (Planning and the historic environment) and 16 (Archaeology and planning) (Saunders 1989, Wainwright 1989, Cleere 1984).


A feature of the British system of heritage management is the number of specialised organisations that are involved at both central and local levels of government. Cleere, however, notes (1984:61) that a major problem for heritage protection in Britain is the lack of integration between the legislation and the various bodies charged with its administration. Compared to other countries, England is remarkable for its system of scheduling monuments and archaeological sites which has been in place for more than a hundred years. More recently, English Heritage has attempted to put the nomination of scheduled monuments onto a rational and systematic
basis. In addition, it is exploring the limitations of scheduling as a method of protecting sites that range from small artefact scatters to entire landscapes. Additional developments include discussion of the ways to protect unscheduled sites and acceptance of the principle that where a site has to be destroyed, the developer should pay for its excavation, for the curation of artefacts and records, and, finally, for the publication of results.

New Zealand's system of local government and planning retained its similarities with that of England until the reforms carried out between 1988 and 1994 (Bush 1995:1-81). The new concepts of the Resource Management Act 1991 and the new organisational structure given to the territorial local authorities by the Local Government Amendment Act 1992 have taken planning in new directions. However, from a heritage management point of view, not all of the New Zealand system has been transformed and agencies in both countries grapple with problems of resourcing, of a multiplicity of agencies, with the assessment and nomination of places for scheduling, and questions of preservation versus salvage excavation. Neither would the concepts included in Planning Policy Guidance Paper 16, issued by the English Department of the Environment (1990) seem out of place in New Zealand's commercially liberal milieu.
CHAPTER 2
THE NEW ZEALAND FRAMEWORK

2.1 Organisations and mechanisms

The framework for heritage protection in New Zealand is created by various Acts of Parliament. These include the Conservation Act, the Resource Management Act, the Historic Places Act and Acts relating to the operation of territorial authorities. The major mechanisms available and the primary agencies responsible for them are listed in Table 1, below. A complete picture of the laws and organisations involved in heritage management is available in the Parliamentary Commissioner for the Environment's report (PCE 1996a:A7-A43). The linkages between the major Acts are weakly defined within the legislation and integration is only achieved through the practices and policies of institutions involved.

Functions at the two levels of government, central and local, are complemented by semi-governmental organisations such as the New Zealand Historic Places Trust and by non-governmental organisations such as Maori tribal authorities. It is common in colonial countries for the government to carry out functions that might elsewhere be the province of private organisations. New Zealand has retained such structures longer than many countries and hence it has no private and fully independent national trust organisation but rather the NZ Historic Places Trust which uncomfortably straddles the divide between being a government agency and a national trust.

2.2. Ministerial responsibilities

The Minister for Conservation is responsible for preparing coastal policy statements which include the protection of the coastal environment of special value to tangata whenua, including wahi tapu. A New Zealand Coastal Policy Statement (Minister of Conservation, 1994) was gazetted in 1994. The statement advocates that the identification and protection of such places should be in accordance with tikanga Maori and, furthermore, that local authorities should consider transferring or delegating their functions, powers, and duties to iwi authorities or to a committee of tangata whenua. No transfers of this nature have yet taken place.

The functions of the Minister for Conservation under the RM Act include the issuing of national policy statements, regulations prescribing national environmental standards, call in powers in cases of national importance, and consideration of the use of economic instruments to achieve the purpose of the Act. The Ministry for the Environment is charged with monitoring the effective implementation of environmental legislation. It also issues information papers. Given the general nature of definitions of terms such environment, ecosystem, natural and physical resources, land, and structures in the Act, a paper outlining the relevance of the Act for heritage management would be most helpful. Up to the present, the Minister has not used any of these powers in relation to heritage conservation and the Ministry plays little or no role in these discussions.

2.3 Department of Conservation

The Department of Conservation, Historic Heritage Strategy, Atawhai Ruamano Conservation 2000, has recently been formulated (DoC 1995). While the Conservation Act 1987 directs the Department to 'promote the conservation of New Zealand's natural and historic resources' wherever they occur, the historic heritage strategy redirects the Department's principal function to the management of historic resources on the lands it administers. Such lands cover almost one third of New Zealand's land area and contain thousands of historic places. Most of these, however, have not been identified and they receive little attention in DoC plans of management. Key historic places include 119 historic reserves.

Actively managed historic places will receive specifically targeted funding. Selection of these will be based on their historic significance, using Historic Places Act 1993 criteria and will include all registered places and historic reserves. Additional criteria include accessibility and visitor appeal.

One aim of the Historic Heritage Strategy is to increase the understanding of historic resources and management requirements through area surveys, area histories, thematic studies, site investigations and archaeological resource statements. Furthermore it is planned, in conjunction with the HPT and other associates, to identify historic themes relevant to the Department and to provide a classification system. Funding for these tasks, however, is minimal and little progress has been made.

The advocacy role of DoC for historic places on lands not on the Conservation estate is limited to assisting other agencies. DoC recognises the Historic Places Trust as the country's leading advocate of historical and cultural heritage and the leading Heritage Protection Authority. The outcome of this policy is that DoC will no longer service the regula-
<table>
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<tr>
<th>Mechanism</th>
<th>Protects</th>
<th>Agency</th>
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<tr>
<td>Ownership + Management.</td>
<td>Buildings, reserves, national parks.</td>
<td>NZ HPT, QE II Trust, DoC, Maori Land Court, Territorial Authorities.</td>
</tr>
<tr>
<td>Heritage Orders, Designations, Covenants.</td>
<td>Places or areas of special interest.</td>
<td>Heritage Protection Authorities, NZ HPT, QE II National Trust,</td>
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<td>Territorial Authorities.</td>
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<td>Planning procedures.</td>
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<td>(a) National Policy Statements,</td>
<td></td>
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<td>National Coastal Policy Statements.</td>
<td></td>
<td>Minister for Environment, Minister of Conservation,</td>
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<td>Territorial Authorities.</td>
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<tr>
<td>(b) Regional and District rules, plans,</td>
<td>Subdivision proposals, resource inventories.</td>
<td>Territory Planning Authorities, Maori Heritage Plans.</td>
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<td>assessments of environmental effects, Maori</td>
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<td>heritage plans.</td>
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<td>Resource Consents.</td>
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<tr>
<td>(a) Applied to a class.</td>
<td>Archaeological sites, native forests, trees above n. metres, subdivisions.</td>
<td>Secretary of Forests, NZ HPT, Territorial Authorities.</td>
</tr>
<tr>
<td>(b) Applied to a zone.</td>
<td>Historic landscapes, historic precincts, conservation zones.</td>
<td>Territorial Authorities.</td>
</tr>
<tr>
<td>(c) Applied to a nominated place or area.</td>
<td>Scheduled buildings, places, areas and trees.</td>
<td>Territorial Authorities.</td>
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Table 1. A partial listing of heritage protection mechanisms in New Zealand.

Tableary functions of the Historic Places Act nor singlehandedly pursue statutory advocacy on lands it does not administer. On the other hand, the Department does undertake to identify lands of high historical significance which might be added to the Conservation estate. Attempts to add lands of outstanding heritage value to date, such as Pouerua or the Otuataua stonefields in Auckland (PCE 1996b:27-52), have been rejected by the Department.

While a policy on wahi tapu is still being formulated, the DoC strategy aims to involve tangata whenua in the management of historic places including devolution options and partnership agreements that take tangata whenua kaitiakitanga into account. Despite these policies, relations with tangata whenua in areas where there is a large DoC presence, e.g., Urewera National Park, are often strained.

In terms of databases, DoC also undertakes to support the New Zealand Archaeological Association Site Recording Scheme and to work with NZAA filekeepers. Apart from the Historic Heritage Strategy, planning will be through Conservancy historic management strategies and national plans. Resourcing requirements are currently under review but cultural heritage is at the lower end of the Department’s priorities.

### 2.4 New Zealand Historic Places Trust

The New Zealand Historic Places Trust is a non-governmental organisation consisting of a Board, the Maori Heritage Council, a head office directorate, regional staff, district branches, and a voluntary membership. It acts simultaneously as a quasi-government department with statutory functions, a property owning and managing organisation, an advocate for public conservation concerns, an organisation in partnership with Maori, and a private member's society. Roughly two thirds of its estimated $6 million finances comes from government, a quarter
from member's subscriptions, and the rest is project funding from the Lottery Grants Board.

The New Zealand Historic Places Trust Property Management Division maintains the original charter set out in its 1954 legislation. This was to preserve and protect places and things of national or local historic interest by entering into voluntary arrangements with local government, corporations or individuals, or, to acquire them by purchase or lease or to accept such places as gifts. In addition, the Trust organises covenants with private property owners. The Trust owns 21 properties and jointly owns Highwic with the Auckland City Council. Four additional properties are leased by the Trust. In addition, the Trust manages 24 Crown historic reserves, 4 Maori reserves, and 6 private historic reserves. This gives a total of 60 properties managed or owned. Some Trust properties are run as museums and are open to the public who pay an admission charge. As the Trust advocates high standards of conservation and presentation, it has embarked on a programme of bringing its properties up to this standard. Pompallier House has benefitted from this programme and conservation of the Stone Store is currently underway.

A moratorium on the further acquisition of properties was put into place in 1982. The Trust Board initiated a review of its properties in 1994 and this review is expected to rationalise the Trust's property portfolio. Decisions will be made in terms of available finances and the extent to which any property assists the Trust to fulfil its statutory purposes. Government has not made adequate provision for the funding of this aspect of the Trust's work and the Trust has relied on a lottery grant for this purpose. In 1996, the Trust's grant was cut by 50% and a similar cut occurred in 1997. This will severely constrain the property management division's work.

2.5 The Trust's role in statutory regulation

Archaeological sites are protected through Sections 9 to 21 of the Historic Places Act 1993. The 1975 amendment which introduced these provisions came as the result of protracted discussions within the archaeological community (McFadgen 1966). Ideas for the extension of protection to archaeological sites on lands in private ownership derived from McKinlay's comparative study of overseas legislation, including the Danish model (McKinlay 1973), and from Professor Roger Green's knowledge of the US Hawaiian situation (Green 1973). The original amendment went through the Maori Affairs Select Committee and passed through the 1980 and 1993 reviews mostly unchanged (except for revised appeal procedures). Parliament has accepted that archaeological sites, because of their hidden and fragile nature, require a special form of protection.

The archaeological provisions of the various Historic Places Acts were not designed to provide permanent physical protection for any site but rather to protect the information in sites (McFadgen 1966:98). This was through a consent procedure where an Authority would be approved on condition that an archaeological investigation was carried out at the developer's expense. The emphasis on saving the information in archaeological sites rather than saving the site itself has meant that salvage excavation rather than long term protection is the outcome of most Authority applications. Protection is also available for archaeological sites, and all other categories of historic place, including wahi tapu, through the Heritage Order procedure of the Resource Management Act 1991.

The Register of Historic Places, Historie Areas, Wahi Tapu and Wahi Tapu Areas (Sections 22 to 38 of the HP Act) is also part of the statutory requirements of the Trust. However, while registration identifies historic places and hence plays an advocacy role, it itself provides no direct protection. Historic places, including archaeological sites, are classified as either Category I or II with owners being notified and able to enter an objection. There are different procedures for historic areas, wahi tapu and wahi tapu areas. The Trust uses the Register to notify a territorial authority about historic places within its locality. This notification constitutes information under the Building Act 1991 and the Local Government Official Information and Meetings Act 1987 (HP ACT Section 35). Territorial authorities can include the place in a schedule attached to a district plan if they wish.

2.6 Maori Heritage Council

As well as establishing the MHC, the Historic Places Act 1993 sets out the areas that directly concern it. The first of these is to ensure that the Trust fulfils responsibilities to the Maori community. Under the HP Act 1993, the Trust and Board has the obligation, among other things, to take account of all relevant cultural values, knowledge, and disciplines, and, to safeguard the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga. (Principles and Purposes, Sect.4).

The second area concerns the functions of the Council. These are set out in Section 85, and include;

(i) To develop Maori programmes for the identification and conservation of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interest, and to inform the Board of all
activities, needs and developments relating to Maori interests in such areas and places.

(ii) To develop its own iwi and other consultative and reporting processes and to recommend such processes for adoption by the Board, branches, and staff of the Trust when dealing with matters of Maori interest.

(iii) To advocate the interests of the Trust and the Council so far as they relate to matters of Maori heritage at any public or Maori forum.

It should be noted that the MHC is required by statute to consult and report to iwi when dealing with matters of Maori interest. For the rest of the HPT, consultation is voluntary. In terms of statutory protection, decision making by the MHC is restricted to wahi tapu. Section 85 states that one of the functions of the Trust is 'To consider and determine proposals for the registration of wahi tapu and wahi tapu areas.' Along with this provision goes Section 26 which states that the MHC may grant interim registration (protection) for any wahi tapu. Section 30 also allows the MHC to give final registration to a wahi tapu. Other business identified in the legislation includes recommendations regarding the registration of historic places of Maori interest, and also applications to modify or destroy archaeological sites of Maori interest. Provision is also made for MHC recommendations on consent applications that affect registered wahi tapu areas, and any applications from an archaeologist to excavate a registered wahi tapu as part of a research project.

2.7 Territorial authorities

The responsibilities of territorial authorities at the regional or district level are set out in the Resource Management Act and other Acts. Territorial authorities play a considerable role in heritage conservation. Like DoC, they own and manage reserves. They are responsible for regional and district plans which might include a schedule of protected items. Councils have discretion over some consent applications but they also conduct public hearings for objections to plans and rules, resource consents, and Heritage Orders.

How far any council goes to protect places of cultural heritage value varies widely. A few councils prepare their own cultural heritage strategies and inventories, demand the recording of historic places and archaeological sites as part of the assessment of environmental effects, have main street programmes and heritage conservation areas in their plans, and actively involve tangata whenua in policy formulation and decision making. An example of the latter is Manuka City Council's Draft Cultural Heritage Strategy which has as its objective the continued participation of tangata whenua in the identification, conservation and management of cultural heritage.

An enlightened council that fully engages with tangata whenua and heritage issues is likely to meet ratepayer and landowner resistance (Nuttall and Ritchie 1995:109). When Manuka City Council indicated the existence of sites of Maori significance at Kawakawa Bay in their District Plan, complaints from the Ratepayers and Resident's Association forced council to find other ways of protecting wahi tapu (Pohutukawa Coast Times, 29/3/97, p5). Similar situations have occurred in Shore City (Auckland) and Tasman District.

At the other end of the spectrum are councils which leave almost everything to do with cultural heritage management up to HPT and, at most, include only registered historic places in attached schedules. Archaeological sites figure only as dots on a NZAA site inventory and application of the archaeological provisions of the HP Act is left to the Trust. Tangata whenua consultation and involvement are often perfunctory. Relationships between councils and tangata whenua can be strained leading to resistance to the publication of wahi tapu in district plans, one of the few protective measures available to this class of place (Nuttall and Ritchie 1995:86,105).

A review of local authority heritage protection measures (Woodward 1996) found that councils were relying too heavily on scheduling as a protective measure when their District Plans and associated rules provided little protection for any listed place. The Ministry for the Environment (1997:4) notes that councils continue to grapple with the conflict between the public benefit of protecting heritage features versus the restriction of landowner's property rights. They report that the response has been to make rules relating to heritage relatively permissive, allowing a range of activities without requiring a consent. Furthermore, Woodward (1996:6) suggests that councils were failing to recognise the archaeological resources within their areas and consequently these were not being sustainably managed as the RM Act requires.

Because the performance of territorial authorities in the field of heritage protection is highly variable, the Parliamentary Commissioner has prepared a Heritage Management Local Authority Guide to Good Practice (Hughes 1996:12). This guide states that territorial authorities have the primary role for the protection of cultural and historical heritage under the RM Act. Consequently, it outlines a number of areas where councils can achieve good practice including policy development, planning, assistance to tangata whenua, the use of resource consent procedures, and, finally, incentives to owners. Although empowered under Section 32 of the Resource Management Act to provide incentives or to waive charges (including rates) in order to achieve the
purposes of the Act, few councils have yet adopted such measures.

In semi-judicial hearings, councils are obliged to act as an impartial mediator though other officers of the same council might be appearing as advocates for the community interest in land use conflicts. Joint hearings in which tangata whenua representatives also sit on the bench might be an effective way of involving Maori in resource decision making.

One area where councils retain a degree of myopia, however, is their role as developers. Their activities have had considerable impact on historic places and wahi tapu in the past and continue to do so. The Britomart development on the Auckland waterfront is merely the most recent of many examples of the effects of council developments on historic places. Council policies can also create undesirable changes for both the landscape and the community. The provision, or lack of provision, of services such as transport, water or sewerage determines urban growth. Allied to this is the relationship between land values and the rating system which forces land owners on the urban fringe to subdivide. Ninety nine percent of local government's funding comes from land taxes and charges.

2.8 Maori authorities

Maori authorities could be an iwi authority, a runanga, a trust board, a hapu, a whanau or family, and in some instances, a single individual, who fulfills the function of kaitiaki as regards cultural places. Many pieces of legislation require consultation with tangata whenua and some require iwi permission for activities. Territorial authorities and other institutions often have difficulty in finding the appropriate group or person to consult with.

Some Maori authorities, like the Huakina Development Trust in South Auckland, have a very active involvement in resource management issues. Territorial authorities must have regard to iwi management plans for resources within their area when councils are drawing up regional or district policy statements and plans. Both Ngatihe te Runsanga o Ngatihe, 1990) and Kai Tahu have management plans for their areas. Waipa District Council interacts with Nga Iwi Topu o Waipa, a hapu based group, which vets resource consent applications. The Thames Coromandel District Council commissioned McEntee and Turou (1993) to provide recommendations regarding the protection of wahi tapu on the district plan.

The costs of consultation and of involvement in the resource management process weigh heavily on iwi. Submissions, appeals and hearings are expensive in time as well as money. The courts have not been backward in awarding costs against individuals or groups when a case is lost. Iwi report a submission overload in terms of council demands. Some councils have a policy of partially reimbursing iwi for the costs of reviewing applications while others offer no assistance (PCE 1995:62).

The Ministry for the Environment has put out a number of information booklets on the RM Act including Kia Matiratira: A guide for Maori (1992). A single page deals with wahi tapu and heritage protection (p31). It informs Maori that regional and district councils may provide for cultural heritage sites and values, including landscapes, historic places and wahi tapu. It notes that regional and district statements and plans should take account of and provide for wahi tapu where iwi have identified them. The document then outlines the Heritage Order procedure.

Maori have expressed concerns regarding the appropriateness of Heritage Orders as a mechanism to protect wahi tapu. Wahi tapu: Protection of Maori Sacred Sites (Manatu Maori 1991) notes that Heritage Orders are a long and costly process. The end result of litigation could be that a tribe fails in its attempt, or, if it is determined to protect a site, is directed to purchase the site by the Environment Court. It adds that this prospect would be so daunting that, in many cases, Maori are reluctant to pursue this method of protecting wahi tapu. In considering Heritage Orders and the setting up of Heritage Protection Authorities under the Resource Management Act 1991, the Waitangi Tribunal noted that heritage orders were essentially instruments of local government and the resource management process. It questioned their appropriateness for the protection of wahi tapu and suggested that they might be a violation of the rangatiratanga of hapu (Wai-38:257).

2.9 Queen Elizabeth II National Trust

The Queen Elizabeth the Second National Trust was set up by the QE II National Trust Act 1977. This trust works for the protection of open space and landscape features through covenants and agreements. It is a very successful organisation achieving the protection of 100,000 hectares of private lands through 1000 covenants. Unlike the English National Trust which also has houses, monuments and archaeological sites as an integral part of its operations, the QE II Trust deals mainly with the natural environment leaving heritage matters to the Historic Places Trust. The Historic Places Trust and the QE II National Trust are independent organisations which members can join by subscription. On the other hand, both are supported by government vote. The success of the QE II National Trust is probably a reflection of its highly focussed role as a permanent trustee protecting privately owned land through agreement rather than regulation. The
Chairman of the QE II National Trust noted that ‘Covenants are almost always owner initiated reflecting the landholder's acceptance of, and goodwill towards this form of protection’ (Elworthy 1992:7).

2.10 Resource management in a time of change

The New Zealand Town and Country Planning Act 1977 was typical of many statutory planning instruments. It directed planners to manage the spatial arrangement of land in order to mitigate the nuisances and hazards which arise from its use. An unquestioned environmental determinism is built into planning processes of this nature. Furthermore, planning has been dominated by people trained in the technical professions such as engineering, or surveying (Perkins et al., 1993:21). The activities of private landowners and developers are the engine of such planning processes and their applications are necessary to trigger a response from the planning authority.

This emphasis changed in NZ with the passing of the Resource Management Act 1991. This Act recommends that territorial authorities work towards the sustainable management of natural and physical resources. The Act continues, ‘..."sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or in a rate, which enables people and communities to provide for their social, economic and cultural well being and for their health and safety.

The conceptual differences between the previous approach and the Resource Management Act 1991 are summarised in Table 2. Under this Act, Territorial authorities have wide powers of how they interpret their role. It has been argued (Leggett 1996:5) that the RMA encourages a move away from entrenched land use planning, where certain areas are allocated for particular uses such as residential, rural or commercial, towards the control of only those individual activities that have adverse effects.

The Act creates a new conceptual approach through its emphasis on sustainability, outcomes and effects. Instead of attempting to control specific activities by listing them, the RM Act states that developers must avoid or ameliorate any effects on the environment that their activities might have. It is, however, not entirely consistent. Perhaps the legislators’ intentions were to achieve a balance between the freedom from prescription and the use of more conventional planning tools. Certainly councils have continued to use zoning, regulations and the concept of 'permitted activities' to provide consistent guidelines for developers and to maintain land values (Leggett 1996:5). A Ministry for the Environment Working Paper noted recently (MFE 1996:5) that the new Act,

‘...does not mean that traditional zoning techniques need to be abandoned altogether. Zoning is, after all, merely a means of defining an area to which particular rules apply. Zoning in one form or another will continue to be useful in distinguishing between areas of differing character. It is little wonder that district plans to date have, by and large, continued to adopt zoning arrangements. Used as a means of recognising different environments and areas displaying different amenity values, the approach remains legitimate.’

Furthermore, it carries over from the Town and Country Planning Act 1977 a list of prescriptions which are organised into Matters of National Importance (Section 6) and Other Matters (Section 7). Local authorities must recognise and provide for matters of national importance, but they need only to have particular regard to other matters. It has been established in NZ case law that the wording 'have particular regard to' imposes a lesser duty on councils (PCE 1996a:36). The protection of indigenous vegetation, outstanding landscapes and the relationship of Maori with their ancestral lands are listed as nationally important. However, the protection of the heritage value of places is relegated to other matters where it is placed alongside the protection of trout and salmon habitats. This gives councils discretion to do little or nothing in relation to heritage. Because of this, the Parliamentary Commissioner for the Environment has recommended that the Resource Management Act 1991 be amended to make the protection of the heritage values of sites, buildings and places a matter of national importance (PCE 1996a:93). Maori, however, would argue that having the relationship with their ancestral lands listed as a matter of national importance has not proved to be a panacea (Nuttall and Ritchie 1995:30-1). Some councils are likely to give historic places a low priority whatever the Act states.

2.11 Heritage management: a resume of the New Zealand system

The totality of the system of heritage management in New Zealand comes from the combined efforts of a great number of people and institutions working at three different levels.
---|---
Main emphasis | regulation of land use **activities** | evaluation of environmental **effects**
Purpose of planning | essential process in its own right | means of achieving environmental **outcomes**
Decision making | site specific, discipline specific | integrated, interdisciplinary

Table 2. Conceptual changes introduced by the *Resource Management Act* 1991 (adapted from PCE 1995).

i) The Department of Conservation, the territorial authorities, the NZHPT and the QE II National Trust own and manage historic reserves and national parks on the public behalf.

(ii) The identification and planning activities of government departments, the territorial authorities and the NZHPT create policy statements, regional and district plans, heritage registers, zones, rules, schedules and resource consent procedures to protect the historic and cultural values of places.

(iii) Maori authorities, members of the HPT, QE II National Trust and other heritage organisations, ICOMOS, the NZAA, Railway Heritage, architects, archaeologists, local historical societies and the public identify places of heritage value and protest at their continued destruction.
CHAPTER 3
MAORI HERITAGE MANAGEMENT

3.1 Introduction

In the preceding Chapters, the institutional framework of heritage management in New Zealand has been described together with the various protective mechanisms that might be applied. Whereas approaches to heritage management might generally follow overseas models, New Zealand presents unique constitutional and social arrangements that must also be taken into account. Provided they have not been explicitly extinguished by Parliament, Maori laws and customs must be recognised and provided for. In this chapter, the usefulness of the existing framework for the management of Maori heritage will be assessed. Changes that might improve the system from a Maori point of view will be discussed in Chapter 6.

3.2 Crown obligations to Maori

Full Maori participation in decision-making regarding the conservation and protection of historic places, archaeological sites and wahi tapu is guaranteed through the Treaty of Waitangi, and through Acts of the New Zealand Parliament and International Conventions, Statutes and Accords.

(I) The Second Article of the Treaty of Waitangi states: 'Ko te Kuini o Ingarani ka wakariteka ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o 'Nu Tirani te tino rangatiratanga o o ratou wenua o o ratou kainga me o o ratou taonga katoa ...' [Trans] The Queen of England agrees to protect the Chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures.

(II) The Third Article of the Treaty of Waitangi states: 'Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o o te Kuini ka taikina e te Kuini o o Ingarani nga tangata maori katoa o o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o o Ingarani'. [Trans] For this agreed arrangement therefore, concerning the Government of the Queen, the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

(III) Section 6, Part II of the Resource Management Act 1991 states that all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi. Section 61(2) a ii - When preparing or changing a Regional Policy Statement the regional Council shall have regard to any relevant planning document recognised by an iwi authority affected by the Regional Policy Statement.

Section 74 (2) b ii - When preparing or changing a District Plan, a territorial authority shall have regard to any relevant planning document recognised by an iwi authority affected by the District Plan.

(IV) The Conservation Act 1987 states 'This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi' (Section 4).

(V) Section 4, Purpose and Principles of the Historic Places Act 1993 states (2) In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise -

(3) The principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should -

(i) Take account of all relevant cultural values, knowledge, and disciplines; and,

(4) (c) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.

(VI) Section 2 of the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value states: The conservation of places of indigenous cultural heritage value ...is conditional on decisions made in the indigenous community, and should proceed only in this context.

(VII) The First Code of Ethics of the World Archaeological Congress (Member's obligations to indigenous peoples), passed at Barquisimeto, Venezuela in 1990, directed archaeologists:

i) To acknowledge that the important relationship between indigenous peoples and their cultural heritage exists irrespective of legal ownership.
ii) To acknowledge that indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage. and,

iii) To acknowledge and recognise indigenous methodologies for interpreting, curating, managing and protecting indigenous cultural heritage.

The definition of what constitutes taonga guaranteed by the Treaty of Waitangi, and the form of the relationship between Maori and their ancestral lands, water, sites, wahi tapu and other taonga listed in the RM Act are matters for tangata whenua, the iwihapu who hold the mana whenua of the local area, to decide. On the other hand, case law (Royal Forest and Bird Protection Society v W.A. Habgood Ltd 1987, Environmental defence Society v Mangonui County Council 1989) provides that ancestral lands include lands that might subsequently have been sold to other owners. Other Maori rights are protected through the common law and its guarantee of Maori rights under international law (McHugh 1991:67-81).

Maori have a right to participate fully in decision-making regarding all Maori historic places, archaeological sites and wahi tapu whether they are on privately-owned lands or not. However, the operations of these Acts and the institutions empowered to administer them have been criticised by Maori as inadequate for these purposes.

3.3 Waitangi Tribunal findings

Heritage conservation issues concerning archaeological sites and wahi tapu have been raised in a number of Waitangi Tribunal hearings. In a review of the Crown response to the recommendations made in seven hearings held between 1983 and 1988 (namely, Motunui, Kaituna, Manukau, Te Reo Maori, Waiheke, Orakei and Muriwhenua), the Parliamentary Commissioner for the Environment concluded that environmental management obligations under the Treaty had been breached in many instances (PCE 1988). The Parliamentary Commissioner for the Environment's examination of resource management processes in New Zealand found that they were monocultural in nature. The Commissioner recommended: First, that legislation be amended so as to give tangata whenua an increased share in environmental decision making at central and regional levels. Secondly, that new measures be introduced to allow the protection of Maori taonga according to Maori preference. Finally, that the Crown should manage natural and physical resources in a way that is consistent with the Treaty of Waitangi (PCE 1988:3-6).

Tribunal findings in three hearings (Motunui, Kaituna, and Manukau) recommended that the Crown should provide for the compulsory acquisition of wahi tapu as Maori reservations (PCE 1988:33).

The adequacies of the Historic Places Act and of the protection available for wahi tapu has been the subject of two hearings, Manukau and Te Roroa. In the Manukau hearing, the Waitangi Tribunal questioned whether the declaration of a traditional site under the HP Act 1980 gave wahi tapu any protection. Noting that an enhanced level of protection was available for archaeological sites because of their scientific value, the Tribunal continued, 'Bluntly put, there is one standard for sites of significance to New Zealanders as a whole, and another lesser standard for sites of significance to Maori people' (Wai-8:84).

The Tribunal also found that the framework for the protection of sacred and significant sites (including the then Town and Country Planning Act) was inconsistent with the Treaty in that its guarantees were not capable of legal enforcement (Wai-8:121).

The Te Roroa Report (Wai-38) contains an extended discussion of the failure of heritage conservation measures to safeguard places of Maori significance. The report documents efforts made by the tangata whenua over many years to manage archaeological sites and wahi tapu in Waipoua Forest.

The Tribunal found that, despite these efforts, the conservation programme requested by the tangata whenua was not carried out, the proposal for a Te Roroa - Waipoua 'Trust to manage the sites was not acted upon and an archaeological reserve under tangata whenua management was not created. A major conflict occurred at Waipoua when the Historic Places Trust registered 100 archaeological sites without sufficient consultation with tangata whenua (under HP Act, 1980). Five of the sites were primarily wahi tapu and the Trust was forced to create a process for deregistration. In this instance, Te Roroa's demand for autonomy in decisions regarding wahi tapu and the Trust's concern with its statutory obligations were in direct conflict (Wai-38:241-3). Te Roroa rejected the idea of 'consultation' in favour of active involvement in the management of all archaeological and traditional sites that fell within their area.

In evidence, DoC and the HPT acknowledged that wahi tapu were a Maori concept and that Te Roroa were the appropriate kaitiaki of traditional sites at Waipoua. They expressed the desire to move to a partnership model with joint management processes. The Tribunal concluded: 'Wahi tapu are taonga of Maori, acknowledged as such in article 2 of the Treaty. The role of the Department and Historic Places Trust in the partnership is not a decision making role [nor one] of 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' (Wai-38:254).

In the Te Roroa Report, the Waitangi Tribunal found that the Crown was in breach of the Treaty in a number of instances. Firstly, its use and
management of the land deprived tangata whenua of their kaitiakitanga over their taonga. Secondly, in using the land for exotic forests and farm settlement the Crown had failed to adequately protect and care for wahi tapu. Thirdly, it had denied the rights of tangata whenua to control and protect their own wahi tapu. Fourthly, the Crown had failed to respect the spiritual values of tangata whenua in the use and management of its land, forests, and fisheries. Finally, the Crown had failed to provide means for the effective participation of tangata whenua in the administration of its conservation estate (Wai-38:291). The Tribunal (Wai-38:294) recommended, among other things, that:

That the Crown re-affirms the traditional and the treaty rights of tangata whenua to control and protect their own wahi tapu and requires the Department of Conservation and other of its agents concerned in the management of national and cultural resources [including the HPT] to give practical effect to this commitment.

The formal response of the Historic Places Trust—to this recommendation has been concerned with processes of consultation. This misses the point to a certain extent and these issues remain unresolved. Agencies, including the HPT, have placed Whaipoua in the 'too hard' basket and no longer retain an active presence there.

It can be questioned whether either the Resource Management Act or the Historic Places Act 1993 have adequately addressed the issues raised by the Waitangi Tribunal. While consultation has been improved and territorial authorities take Maori concerns into account, the processes of resource management still follow monocultural models. Ultimately, the power of decision making still rests entirely in Pakeha hands. The Tribunal was quite clear that the Trust's role as far as wahi tapu are concerned should not be decision making but to assist tangata whenua to protect and manage their own taonga.

3.4 Tainui Maaori Trust Board review of the RM Act

Nuttall and Ritchie, working for the Centre for Maaori Studies and Research at the University of Waikato and the Tainui Maaori Trust Board, have recently (1995) completed a study of Maaori participation in the Resource Management Act. They measured the effectiveness of those parts of the Act which expressly allow for Maaori involvement through an analysis of the various policy statements and plans put out by territorial authorities.

As noted at the beginning of this chapter, a number of specific sections of the Resource Management Act 1991 direct councils to make special planning provisions for Maaori. The RM Act identifies Policy Statements, in the case of regions, and Plans, at the territorial authority level, as the mechanism for integrating environmental management between councils and other environmental organisations such as iwi. Nuttall and Ritchie found that policy statements and plans had a number of deficiencies. Such failings were consistent across all levels of local administration, up and down the country. They found that most policy statements and plans;

(i) Either ignored the Act by making no or minimal reference to the sections relevant to Maaori (Nuttall and Ritchie 1995:16,17,23,50,86), or,
(ii) Acknowledged the relevant sections but misquoted or paraphrased them in such a way as to defeat their purpose (1995:4,32,39,111), or,
(iii) Having acknowledged the requirements, failed to make any specific provisions or policies that would put them into practice (1995:24,25,31,40,48,50,87).

They do note (1995:85,99) that the performance of regional councils is better than that of district and city councils. However, the majority of territorial authorities scored quite badly in their survey. Such factors emerged in a number of ways. The planning documents show little uniformity. There are few or no mechanisms to monitor council policies and objectives relating to iwi concerns. Furthermore, in terms of the Maaori dimension, policy statements and plans lack any clear and transparent identification of goals, methods and desired outcomes.

A problem with the implementation of the Act is the gap between Maaori and council expectations. Whereas Maaori envisage active participation, councils wish to retain control of the planning process and limit Maaori involvement to consultation. The effect is to treat Maaori as just another lobby group (Nuttall and Ritchie 1995:22,69,72,90,106). Nuttall and Ritchie (1995:32) also criticise clauses in the RM Act and other planning documents limiting protection to 'outstanding' natural features, landscape or heritage values. They argue that the significance of places of Maaori interest is to a particular community and cannot be determined by some arbitrary external measure.

At the time the RM Act was being drafted, a parallel statute was planned to establish a tribal structure of iwi runanga for each region. While the Iwi Runanga Bill failed, the existence of these structures is assumed in the RM Act. Similarly, the policies of councils assume that appropriate Maaori organisations exist and are in a position to provide iwi planning documents, to identify resource management issues of significance to Maaori, and to participate as partners in the process. However, on the Maaori side there is an
inequality of resources, a lack of information, and a need for training and education in strategic planning and resource management. These factors make it difficult, if not impossible for Maori to adequately fulfil these expectations (Nuttall and Ritchie 1995:8, 93-6, 104, 108, 112). They note (1995:108), "...those charged with the responsibility of enacting the (RM) legislation failed totally to provide for the resourcing necessary to produce such iwi documents'.

The RM Act allows councils to create policies and plans at the regional and district level. These are operationalised through administrative procedures involving rules and consent procedures. At present, most interaction between Maori authorities and councils is at the level of resource consents. Individual consents suffer from the deficiencies of single-place decision making. In order to be effective, single-place decisions require to be made within the context of a comprehensive plan. An iwi or hapu environmental management plan can articulate the heritage management goals, aspirations and procedures for a group of people and their taonga. Its objectives might be to protect and maintain resources, assets, people, and to enhance the wellbeing of tangata whenua (Harmsworth 1997:13, Te Puni Kokiri 1993). It is through the medium of such plans that Maori might manage their own resources.

Maori communities need assistance to be available, if and when it is requested, to enable them to train their own members in the use of existing data banks such as the NZAA Site Record File, in the recording of oral information and field surveying of significant cultural and natural places, and finally, in the creation of Maori heritage plans. Each Maori community would then be in the position to make informed decisions regarding which conservation measures might be appropriate. These might include a list of places to be registered or scheduled, the nomination of areas requiring conservation zoning, and also places Maori wished to manage themselves. The existence of such plans would allow further decisions, such as a request to allow the investigation of an archaeological site to be made within the context of an overall strategy.

If Maori communities wish territorial authorities to manage some resources on their behalf, then councils must be provided with the information this requires. Information on Maori values, however, is generally specific to the people of each area who might not wish it to be divulged in its entirety to councils (Harmsworth 1997:12). Maori heritage plans, however, are capable of allowing specific individuals and groups to control the level of information given to councils.

The preferred Maori method of decision making is through face to face relationships. Maori communities wish to define the resources to be protected and do not want experts to do it for them. Maori regard planning, like the Treaty of Waitangi, as being about the protection and promotion of Maori community life. Any outcome that fails to maintain the community has to be judged a failure. In such circumstances, it is imperative that Maori be sufficiently resourced to undertake the heritage management of their own areas (Nuttall and Ritchie 1995:112). In addition, there is a need for education for the staff of both councils and Maori organisations including a transfer of technology and knowledge between them. To leave things as they are is to invite a climate of distrust where costly litigation continues to be seen as the most effective way forward.

3.5 Discussions within the MHC

Prior to the establishment of the Maori Heritage Council, the Maori Buildings and Advisory Committee of the Trust took a great interest in the conservation of Maori meeting houses. Up until 1995, the Trust employed two Maori conservators who conducted workshops to train and provide professional advice to tangata whenua who wished to conserve their whare tupuna. The Trust also provided small grants.

Through its conservators and the Maori committee, a personal relationship was established between tangata whenua and the Trust. Maraes were not classified. They remained in Maori ownership as did responsibility for decision making and the conservation process itself. As the carvings, painted rafters and tukutuku panels were refurbished, elders renewed connections with their young people who were often in an employment scheme being run by the marae.

Dean Whiting, up until recently a Maori Buildings Conservator with the Trust, has noted (1993:4),

'It was not until the involvement of Maori themselves in conservation, with the coordination and support of the New Zealand Historic Places Trust, that conservation found an empathy with Maori. However, before this acceptance was reached the conservation process had to adapt to a Maori value system to determine what it was conserving. Instead of emphasising the retention of material information held in the structure, paint layers and tooling marks, the conservation process had to recognise and preserve the relationship Maori people had to their marae.'

Times have changed and institutions other
than the Historic Places Trust have taken over this role. The Department of Internal Affairs no longer trains Maori conservators though a Maori organisation, Te Maori Manaaki Taonga Trust, has been formed to carry out this function. While Lottery Heritage directly provides the funds for marae restorations, it provides no conservation advice to assist Maori communities to achieve their ends. The outreach programmes of Te Papa Tongarewa (Museum of New Zealand) are limited by lack of funds and the internal needs of the museum.

The programme of assistance for Maori houses, however, offers a model for Maori heritage conservation. It was a community directed programme that strengthened the relationship between a Maori community and its whare tupuna. The programme empowered the community to make its own decisions regarding its heritage conservation needs. It was fully in line with Waitangi Tribunal recommendations that the role of DoC, the Territorial authorities and the Trust is to provide Maoris with assistance when asked, not to take on the role of guardians themselves. An important aspect of the Maori house programme of the HPT was that it occurred in the absence of formal legislative measures directed towards marae, such as registration or consent procedures. Had the HP Act legislated such a programme then it is doubtful whether it would have been such a success.

Early on in its existence, the Maori Heritage Council held a waananga to establish its mode of operation. Disquiet was expressed at the lack of Maori consultation regarding the measures in the 1993 bill. Nonetheless, it was argued that the Council should proceed to consolidate the Maori viewpoint as best it could. Some time was spent discussing the question of 'who does the MHC represent'. The idea that the MHC could make decisions independently of iwi and Maori communities was rejected. Rather there had to be a policy of feedback and discussion. It was thought that the MHC should work to provide people with the knowledge and resources necessary so that Maori communities could take responsibility for managing their own cultural places. The duty of the Council was to protect the authenticity of values. On the other hand, it was argued that the MHC was not qualified to decide what is tapu and what is not. Only tangata whenua could finally judge local tapu (see also Nuttall and Ritchie 1995:11-14). The hope was expressed that despite the restrictive definition of wahi tapu in the Historic Places Act, the Council should not come down to a single definition of wahi tapu.

The above discussion set the scene for the MHC to put a 'community directed' approach into practice. Registration proposals for wahi tapu come from tangata whenua and are not ranked into Category I or II. The Council does not judge whether a place is a wahi tapu or not but rather whether the information provided by the proposer is sufficient to allow registration. Questions regarding the management of wahi tapu in terms of permissible regimes of use or visitation are referred back to tangata whenua.

Acting on a recommendation from the Parliamentary Commissioner for the Environment (PCE 1996a:957), the Maori Heritage Council recently convened a hui to address problems in managing Maori historic and cultural heritage, problems which the PCE described as 'systemic'. This hui, was held at Te Herenga Waka Marae in November 1996. Following this, John Klaricich, Chairman of the Maori Heritage Council expressed doubts about the appropriateness of the mechanisms currently available for the conservation of Maori places.

"...The Maori Heritage Council...is now re-assessing the value of registration as a tool, as part of its response to the wider crisis facing Maori heritage...[It] is now of the view that, being expected to identify individual wahi tapu or wahi tapu areas under the current registration system, marginalises Maori from their cultural base. It does nothing for them, or for the cultural landscape that sustains their identity...We need a national policy, and a revised statutory process, that will integrate the ancestral linkage characteristics into the land use consent process, in particular at local authority level but also involving regional councils. This will allow a practical opportunity for Maori people to demonstrate their cultural Kaitiaki responsibility..." (NZHPT 1996. Extract from the Annual Report to 30 June 1996).

In questioning the utility for Maori of the Register, the Chairman of the MHC has returned to the criticism that NGA AWANGAWANGA E PA ANA KI TE PIRA O TE POUHERE TAONGA (Maori Concerns regarding the Historic Places Bill) made of the 1993 Act. They stressed that wahi tapu, as a concept of tangata whenua, could not be moulded into the category of historic places. In creating a unified system of heritage management for all types of cultural places, the writers of the 1993 Act were attempting just such an act of cultural imposition. Maori opposition was successful to the extent that wahi tapu are not ranked or assessed by heritage professionals and were separated from the concept of historic places by being located in a different part of the Register. Nonetheless, the fact that registered wahi
tapu gain their protection through the actions of the territorial authorities means that registration has the potential to sever the connection between wahi tapu and the community of association.

In the Manukau hearing, the Waitangi Tribunal was critical of the Town and Country Planning Act 1973 for guaranteeing to Maori that its measures could protect their sacred and significant sites when this guarantee was not capable of legal enforcement (Wai-8:121). Given that the social role of planning has been diminished in the RM Act, claims that it can secure Maori community values must be harder to sustain. This Act creates a web of statutory procedures but locates the management of places significant to Maori in the hands of territorial authorities, who at best can only protect a minority of selected places. This falls well short of Maori expectations. Despite the existence of Section 5 (c) of the RM Act directing councils to provide for the relationship of Maori with their ancestral lands and sites, this Act, on its own, is incapable of achieving such a social outcome. It is also clear that the HP Act suffers from a similar inability to deliver what it promises to Maori.

The first and second resolutions of the hui at Te Herenga Waka Marae were:
1. In principle to move towards a stand alone Maori heritage body over the next twelve months; and,
2. To retain the current Maori Heritage Council as an interim structure.

The Maori Heritage Council Report to the Minister of Conservation (1997:9) requested that a practical and distinct kaupapa be developed for Maori heritage. This should be one that reflects Maori values and priorities, where Maori are responsible for defining the kaitiaki role and for determining appropriate systems for the protection and management of Maori historic heritage.

The Preamble to the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value sets out principles to guide the conservation of places of heritage value in New Zealand. These include the principle that under the Treaty of Waitangi, Maori should exercise responsibility for their treasures, monuments and sacred places irrespective of their current legal ownership. It also stresses that conservation of places of indigenous cultural heritage value and protocols of access or use should be conditional on decisions made in the community. Finally, the General Principles of the Charter allow for non-intervention in situations where the undisturbed constancy of spiritual association might be given priority over the conservation of a place's physical aspects (ICOMOS NZ, 1993). These principles offer a blueprint for a community directed system of heritage management that is amenable to Maori concerns. However, the gaps between the requirements of Maori heritage conservation and the realities of the system based on the RM and HP Acts remain substantial.
CHAPTER 4
REGISTRATION

4.1 Registration as a heritage management approach

The legislation and the philosophy governing Registration as a heritage approach will be discussed in the first part of this chapter. Second, the criteria listed in the Historic Places Act 1993 for Registering historic places and assigning Category I or Category II status to them will be described. Third, it will be argued that the Act cannot be understood in isolation from the legal and institutional framework within which it operates. The legislative process transforms the criteria for registration set up by the Historic Places Act 1993 into concepts of legal significance. Although the Act might allow a wide range of approaches to be pursued, these will only be legally effective if they conform with the more narrow reading taken by the courts. Finally, areas where improvements might be made, particularly shifting the balance from private rights towards community heritage concerns through the use of incentives, will be noted.

Registering, listing or scheduling heritage items consists of creating a list of places judged against specific criteria. These can take a variety of forms. Some do not attempt to grade or rank places even if the historical significance of each listed place must be documented in some way. Because it is assumed that only some places will qualify, an assessment process is built into the creation of the list in the first place. Listing has the advantage that the item is assessed prior to any threat to its survival. The demand that the significance of places be assessed in advance of any development proposals comes from a desire to avoid resource conflicts. The primary need of land managers and developers is for certainty, so that investment decisions do not unnecessarily run into costly legal or administrative hurdles (Johnston 1992:3).

Stemming from different understandings of the way things are known, the question of how to measure the heritage value of an item can be approached in two ways. The crucial division is between the belief that value is either an inherent, immutable, essential quality, or, alternatively, that value is relative.

The measurement of the significance of a historic place in terms of its essential and intrinsic value provides a qualitative judgement, generally one that concerns an association with a great person or event or its architectural or aesthetic quality (Tainter and Lucas 1983:707). In the case of persons and events, every assessment is unique. Where fine buildings are concerned, uniqueness is also assumed but this is the uniqueness of a work of art, of its merit in terms of architectural history and aesthetics. This is a commonsense approach that assumes that quality is observable and recordable in much the same way as a building's dimensions. Ranking here attempts to separate out the unique and remarkable from the run of the mill. Where a historic place does not qualify for ranking it is assumed that it lacks the qualities necessary for inclusion and therefore is of little importance.

Relative ranking systems are based on the belief that significance is an assigned value, one that is dependant on the assumptions of the person or authority ranking the site or place. In these cases, significance will vary as social and scientific values change, and as information about other places increases. A place that is not regarded as significant at one time could well become highly ranked at another. Threatened sites, because of their low survival rate, might be given a high ranking irrespective of other measures. Relative systems work well where thematic or regional assessments are made. The advantage of a relative approach comes where survey and assessment methodologies are designed to achieve a stated set of conservation goals and the success of a procedure can be measured.

Assessments call for the application of professional judgements. Startin (1993a:186-9) discusses how professional judgements might be made. They can be pictured as a continuum ranging from the ill-structured to the well-structured, depending on the degree of logical control in the process. An attempt to illustrate the cognitive processes involved in such judgements is presented on Table 3. below.

Startin suggests that most heritage assessments are made at the intuitive end of the continuum. However, decision making in almost all heritage legislative regimes involves panels, such as the Board of the Trust, who act on further advice. Such processes move heritage assessments further up the cognitive ladder to the level of peer-aided judgements. System-aided judgements might require the use of a variety of heritage assessment tools which begin with explicit criteria and a judgement process that can be explained and justified, and move on to include classificatory schemes and survey methodologies to create comprehensive inventories.
Well-structured / analytical judgements

6. Scientific experiments  
5. Controlled trials  
4. Quasi-experiments  
3. System-aided judgements  
2. Peer-aided judgements  
1. Intuitive judgements

Ill-structured / intuitive judgements


It is difficult to be systematic where judgements of quality are concerned and such assessments tend to be on a case-by-case basis. Though there might be a level of agreement about the top 50 buildings in a country or its 100 most important localities, comparisons between such places are notoriously difficult and can create a great deal of dissension (McLean 1997:4).

4.2 The Register created by the HP Act 1993

The form of the Register created by the *Historic Places Act* 1993 can only be understood through the realisation that the legislative review team wished to impose a unified system of protection on all types of historic places, including archaeological sites, Maori traditional sites and wahi tapu irrespective of their different conservation values and requirements (Historic Places Legislative Review 1989:18,24). Historic places were to be selectively ranked and protection was only to be applied to places of ‘importance’. A corollary of this aim was that this system would replace the special provisions for archaeological sites created by the HP Amendment of 1975. Part way through the legal process, however, it became apparent that such a unified system was neither useful nor achievable. The direction of the legislation was changed without it being consolidated from either point of view. Consequently, the 1993 Act remains an interesting, if flawed, document.

A historic place is defined in Section 2 of the *Historic Places Act* 1993 as any land (including an archaeological site); or any building or structure (including part of a building or structure); or any combination of land and a building or structure, that forms part of the historical and cultural heritage of New Zealand; and, includes anything that is in or fixed to such land. From the name of the Act itself and the definition above, it is clear that the term *historic place* is *generic* in nature, subsuming all categories of land-based heritage within it. This was a useful measure as it moved the Trust away from the concept of historic places consisting solely of buildings (McLean 1997).

The generic approach is continued in the criteria determining the *eligibility* of any place to be entered in the Register. Section 23 (1) of the HP Act states that ‘The Trust may enter any historic place or historic area in the Register if the place or area possesses aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value’. It has been observed on a number of occasions that this first set of criteria is so broad as to allow the entire country to be registered. This was exactly the point. In the first instance, any place might be *eligible* to be registered. However, immediately following Section 23 (1) comes Section 23 (2) with an additional set of criteria by which the multiplicity of eligible places might be placed within one of a number of more restricted groups.

Section 23 (2) states, ‘The Trust may assign Category I status or Category II status to any historical place, having regard to 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;  
(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 or cultural complex or historical and cultural landscape:

Section 23 (2) (a)-(k) of the HP Act situates historic places within one of a number of groups. If the stated groups are not sufficient for this purpose then in (l) and (m) the Trust Board is given the ability to add to them by regulation through the Governor-General and Order in Council (HP Act, Section 113). The criteria listed in Section 23 (2) of the Historic Places Act are similar to those listed by other legislatures such as the United States Register of Historic Places or the National Historic Landmarks scheme. In fact, they broadly follow the guidelines for the Australian Register of the National Estate as reproduced in the South Australian Heritage Act 1978 for the Register of South Australian Heritage Items. To this list has been added community association, educational values, historic landscapes, and, finally, rarity.

The Working Group (Historic Places Legislative Review 1989:37) believed that the protection of heritage conservation values over large areas, as distinct from specific places, was a matter best handled through the land use planning legislation. However, pressure was applied to ensure that areas were included in the Historic Places Act. In addition, the Maori Advisory Committee of the Trust recommended that a distinction should be drawn between historic places and wahi tapu as they represented different cultural concepts. Furthermore, they argued that it was inappropriate to rank places of Maori interest in terms of significance except where hapu/iwi asked that this should be done (Trust Board Paper 1993/4/22). As a consequence, the unified approach to ranking and classification began to falter. The legislators became convinced that a single register would be inappropriate, and, second, that historic areas and Maori heritage places should not be subject to a ranking procedure. In the end, the Historic Places Act 1993 created separate parts in the Register for historic places, historic areas, wahi tapu and wahi tapu areas. To add insult to injury, the archaeological provisions, which protect all archaeological sites as a separate procedure, were also retained.

Section 22 (3) (a) of the HP Act sets out the form of the Register and defines the nature of the distinction between Category I and Category II, a distinction which relates only to historic places. This section states, 'The Register shall consist of the following:
(a) A part relating to historic places, comprising the following categories:
(i) Category I: Places of special or outstanding historical or cultural heritage significance or value:
(ii) Category II: Places of historical or cultural heritage significance or value:
(b) A part relating to historic areas:
(c) A part relating to wahi tapu:
(d) A part relating to wahi tapu areas.'

It can be seen that the Register is a complicated document. It has a number of parts for different classes of heritage places comprised of historic places (including archaeological sites), historic areas, wahi tapu and wahi tapu areas, each of which are listed according to a different set of legal requirements. Given the different procedures and the fact that only historic places are ranked, it could be considered that there are in fact four different registers described as 'The Register'. Popular confusion is increased when it is recognised that the term 'historic place' has a number of meanings - first it covers all categories of heritage places (Interpretations), and, secondly, it takes on a narrower meaning when historic places are distinguished from historic areas, wahi tapu and wahi tapu areas (Part II, HP Act). Finally, archaeological sites are treated as a category of historic place for registration under Part II of the Act but they also gain protection through their own procedures in Part I.

As noted previously, the Register is part of the statutory requirements of the Trust (Sections 22 to 38 of the HP Act). However, while registration identifies historic places and hence plays an advocacy role, it does not provide any direct protection. A registration system that appears to schedule historic places but in reality provides no protection beyond identification achieves two ends. Firstly, it is a method of advocating the protection of privately-owned historic places without formally taking away any of the owner's property rights and hence avoids hearings and appeals. Secondly, formal scheduling by councils involves a system of hearings, adjudications and a consent procedure which are beyond the resources of the HPT. However, the public believes that registration conveys some form of statutory protection and owners frequently complain that registration affects their ability to develop or sell their properties.

Wahi tapu are defined in the HP Act as 'a place sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense', while a wahi tapu area is 'an area of land that contains one or more wahi tapu'. Nuttall and Ritchie (1995:14) note that the term wahi tapu is not defined in the RM Act. They comment that this is a term that only tangata whenua can define and disclose. Provisions for the registration of wahi tapu are set out in Section 25 of the HP Act. Wahi tapu can be nominated by any person who provides a legal description of the land affected and the general location of the wahi tapu. A wahi tapu can be registered if the Maori Heritage Council considers that proposal is supported by sufficient
evidence after it has notified the owner of the wahi tapu, the relevant territorial authority, every person having a registered interest in the wahi tapu, and, finally, the appropriate iwi.

It is interesting that the procedure for registering historic areas or wahi tapu areas does not require that land owners be notified, though generally a map of the area is published. The administrative difficulty of identifying and notifying multiple owners is a part of the rationale for this difference. However, the non-notification of communities affected by historic area registrations can also be the cause of considerable complaint.

Interim registration in the HP Act 1993 is part of an emergency procedure to protect unregistered buildings or wahi tapu while they are being assessed or in cases of immediate threat. Interim registration has the same force as a Heritage Order. However, this protection lapses immediately a place is given final registration.

### 4.3 Statutory criteria

The ICOMOS/NZHPT Register Workshop held at Hamilton in May 1997 produced a consensus on the need for a complementary national/local registration system based on clear criteria supported by adequate guidelines. Thus the Workshop supported the provision of a Register with criteria that broadly follow the outline of the existing legislation which it describes as reflecting 'international best practice'.

The Workshop also concluded that these approaches needed to be supported by adequate resourcing and a set of incentives. At only one point at the Workshop was the question of the nature of the relationship between statutory criteria and assessment methodology raised. Workshop members expressed the opinion that the existing statutory criteria were methodologically neutral being broad enough to allow both single place and thematic/regional assessments to be carried out.

The groupings of historic places created by Section 23 (2) are listed on Table 4, below. It can be seen from this table that both essential and relative criteria are not the end of the matter. The different groups of historic places created by clauses (a) to (k) in Section 23 (2) do not conform to any recognised system of heritage classification and it seems unlikely that they were intended for this purpose. Rather they represent a second, more restricted set of criteria that can be used to determine whether a place is eligible to be registered. The wording in Section 23 (2) that 'The Trust may assign Category I status or Category II status to any historic place, having regard to any of the following criteria' makes it clear that the listed criteria were designed to play only a minor role in the ranking of historic places for the Register. As noted previously, the phrase 'have regard to' has been taken by the courts to impose a discretionary rather than a mandatory duty on public authorities.

As far as ranking is concerned, the most significant terms within paragraphs (a) to (k) direct attention to 'the extent to which the place reflects important or representative aspects', to 'events, persons, or ideas of importance', to 'the importance of the place to tangata whenua', to 'the importance of identifying places known to date from early periods' and finally, to 'the importance of identifying rare types of historic places'.

The groups of historic places are simply guidelines that the Trust Board might 'have regard to' while it considers whether or not the place is important enough to be classified as either Category I or II. Classification and assessment in the HP Act, 1993, is, in fact, limited to assigning either Category I or Category II status. It is noteworthy in this regard that historic areas, wahi tapu and wahi tapu areas are not subject to any system of classification or ranking. Their nomination only has to be supported by sufficient evidence.
<table>
<thead>
<tr>
<th>Grouping</th>
<th>Type</th>
<th>Approach or heritage value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Important aspects of New Zealand history.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic / regional</td>
</tr>
<tr>
<td>Representative aspects of New Zealand history.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic / regional</td>
</tr>
<tr>
<td>Association with important events, persons or ideas.</td>
<td>essential or relative</td>
<td>unique intrinsic or thematic / regional</td>
</tr>
<tr>
<td>Potential to provide knowledge.</td>
<td>relative</td>
<td>scientific / educational or thematic</td>
</tr>
<tr>
<td>Importance to tangata whenua.</td>
<td>relative</td>
<td>community</td>
</tr>
<tr>
<td>Community association or esteem.</td>
<td>relative</td>
<td>community</td>
</tr>
<tr>
<td>Potential for public education.</td>
<td>relative</td>
<td>educational</td>
</tr>
<tr>
<td>Technical accomplishment, value or design.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic</td>
</tr>
<tr>
<td>Symbolic or commemorative value.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic</td>
</tr>
<tr>
<td>Places from early periods of New Zealand settlement.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic / regional</td>
</tr>
<tr>
<td>Rare types of historic places.</td>
<td>relative</td>
<td>rarity or threat</td>
</tr>
<tr>
<td>As part of a wider historical and cultural complex or historical and cultural landscape.</td>
<td>essential or relative</td>
<td>unique / intrinsic or thematic / regional / scenic</td>
</tr>
<tr>
<td>Additional categories by regulation.</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 4. The grouping of historic places and assessment approaches found in Section 23 (2) (a)-(m) of the HP Act.

Having representativeness as a criteria for assessing single places (Historic Places Act 1993, S23) is an attempt to get around the problem of selective and biased listings. This does not add up to a solution to these problems, however, as it gives the impression that the essence of an entire class of historic place can be captured in the listing of a single example. In such cases, the best example cannot also be a representative one.

4.4 Legal significance : historical significance

If the current system of historic classification can be demonstrated to be methodologically limited and in need of an explicit statement that allows a broader approach to be followed, how has such a system captured the Trust's procedures?

One answer to this question is that the Working Group intended that the ranking system should be legally binding. Consequently, as parliamentary advisers, they designed the criteria in the Act to merge historical significance with legal significance in a manner that would limit the Trust's options (Historic Places Legislative Review 1989:24).

Legal interpretations are likely to be more narrow and literal than those of the heritage profession (Alder 1993:74, Hammond 1981:60). Alder (1993:76) notes that the UK Government takes a narrow view of 'significance' as meaning unusual or exceptional. In this context, the repetition of the word importance in the criteria listed in Section 23 (2), together with the definition of Category I historic places in Section 22 (3) (a) as places of special or outstanding historical or cultural heritage significance or value, plus the use of the terms special interest and special significance for Heritage Orders in Section 189 (1) (a) of the Resource Management Act are terms that provide a clear signal to the courts. They direct the courts to expect that only unique or outstanding heritage places should be registered and/or scheduled.
Basing one’s selection of historic places on undefined concepts of ‘historical merit’ and then selecting the ‘best’ of these places for protection implies that these are common sense categories. It is their imprecision which makes them easy to convey to politicians, councilors and the public. Placing them within a statute, however, takes them out of common usage and into the courts. The statutory criteria in Sections 22 and 23 of the Historic Places Act do not absolutely prevent heritage professionals from using a wide range of thematic, regional or chronological methods to select places for registration. In fact, they can make use of any method of historical assessment they choose. However, registered historic places gain their protection through the Resource Management Act and such decisions are subject to appeal in the Environment Court. It is the literal interpretation of what constitutes ‘special or outstanding historical or cultural heritage significance or value’ that the court will follow. Unless the selection coincides with this more limited concept of significance, the case will fail.

Heritage professionals define ‘significance’ more broadly, as something that will vary with the context of appraisal. Similarly, Nuttall and Ritchie (1995:32) argue that tangata whenua are unhappy with the concept of the ranking of places against an external standard rather than in terms of what is special to them. They note that the use of terms such as ‘outstanding’ implies that the values of tangata whenua will receive little consideration. The courts are unlikely to take notice of such opinions when the law appears to be so clearly stated.

There is nothing wrong with criteria that enhance the protection of the special and the outstanding. But if legislation does only this, it cannot also fulfill the legal obligation for heritage conservation to take a plurality of interests into account. The legislation as it stands militates against ‘good practice’ in terms of a Register that is transparent and based on a system-aided approach to heritage evaluation.

4.5 Importance as significance

One of the aims of the Historic Places Act is ‘to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand’. The extent to which identification might be directly involved in the protection of New Zealand’s historical and cultural heritage is a matter of considerable weight within the legislation. The relationship between classification and protection was explicit in the classification of buildings in section 35 of the Historic Places Act 1980, as:

(a) Those buildings having such historical significance or architectural quality that their permanent preservation is regarded as essential:
(b) Those buildings which merit permanent preservation because of their very great historical significance or architectural quality:
(c) Those buildings which merit preservation because of their historical significance or architectural quality:
(d) Those buildings which merit recording because of their historical significance or architectural quality.

The Working Group reviewing the 1980 legislation wished to continue this emphasis arguing that protection should vary according to the importance or merit of the place. The rationale for this was ‘the idea of a Register of historic places which would be selective in some degree, and receive a special degree of protection accordingly’ (HP Legislative Review Report of the Working Group 1989:11-12). While it was intended in the original Bill that the process of classification should distinguish between places of ‘national importance’ and those of ‘regional or local importance’, in the legislation that eventuated, this was changed to Category I and Category II.

Each of these classificatory schemes (National/Regional, Category I and II, or A,B,C,D, as listed above) suffers from the same deficiencies and one is not likely to mark an improvement on another. All cut across classes of historic places to create Register categories which have little in common beyond an assumed level of importance. In some ways the Category I/II division is preferable because it more openly reveals the nature on which the ranking system is based. Their chief deficiency is that they work by classifying places by a top-down process and through registration attempt to bring the best examples together into a single list. Regionally significant places, like the Category II’s, or the B’s, are what is left after the Category I’s, the cream of nationally significant historic places have been separated out. The legislation, as originally proposed, assumed that historical importance can be converted into measures of national and regional significance. Although the country (through Acts of Parliament) is divided into administrative levels that conform to the national / regional / district split, the nation’s historic places might not share a similar division.

Beyond the creation of regional significance as a residual category for historic places - the place getters rather than the winners in the heritage assessment stakes - this approach creates a defacto,
but invisible, Category III - the also rans - i.e., those historic places which do not qualify for inclusion on the list and therefore must be considered to be without 'historical significance or value'. At the 1987 Trust conference, District Committee members were concerned that 'C' or 'D' classified buildings, as places of local importance, should not be regarded as unimportant when management decisions were being taken (Quirk and Thornton 1987:61). Their fears were well grounded. Under the previous legislative regime, the Trust classified 4,520 buildings with 91 being classified as A's, 390 as B's, 3,310 as C's and 729 as D's. It is estimated that 11% of classified C and D buildings (422) and 10 B buildings were demolished between 1980 and 1988 (Historic Places Legislative Review 1988:10).

A criticism that the Historic Places Legislation Review Working Group levelled at the 1980 ABCD classification was that it was weighted in favour of architectural criteria. The 1993 legislation aimed to make it clear 'that architectural values must be judged in the context of historical significance' (1989:6). This is interesting given that the Register continues to be biased towards architectural and stylistic values rather than historical ones.

The classification of historic places into Category I or II, through Sections 22 (3) (a) and Section 23 (2) of the HP Act retains a Whig attitude to New Zealand history (see Section 1.2). The linking of the concept of national importance with historic places of a superior quality plays an ideological role. The Act creates a hierarchy of places in terms of their historical merit based on the idea that what is best and most important should be preserved. Its corollary is the disregard for ordinary or locally significant places in both the legislative and local government processes. The approach appears to be based on the assumption that the distribution of historic places is somewhat akin to the distribution of status in Victorian England. Quality is located at the top, a small proportion in the middle might merit some recognition, while the poor majority at the bottom can happily be ignored. The basis for this type of judgement is the intuitive recognition that one's own values are shared by discerning others. In a recent number of NZ Home and Building, Watkins (nd:188) argues that the preservation of buildings parallels the respect that should be given to people 'of great mana', qualities he suggests are lost when consumerism prevails. The present procedures for registration, and the Register itself, relate more to the study of architectural aesthetics than to the understanding of contemporary New Zealand history. The preoccupation of heritage professionals with architectural icons, however, no longer fulfils the public interest in history. Teague (1997:3), in arguing for the preservation of the ordinary, notes, '...conservation practice is still very much preoccupied with the history of architecture, which while presenting an aesthetically pleasing view of the past, is fundamentally limited. Importance must be given to the history of people, which includes everyday activities...These social activities contribute to the essence of our existence, and influence how we create and give meaning to our environment. They are interwoven with our cultural traditions of the past, our cultural identity in the present and our cultural aspirations for the future'.

At present, such concerns are badly served by the activities of the NZ Historic Places Trust. In a survey of the Register, McLean (1997:8-9) noted that major themes in New Zealand history, including assisted immigration, the development of export industries, of communications, of organised labour, party politics and women's suffrage, were poorly represented in the Register. Teague (1997:4) suggests that we should broaden our concerns to include primitive, vernacular, ordinary and recent architecture as well as the stylistic. Being blind to the domestic aspect of New Zealand's history has already proved costly. Of the 500 to 600 Fencible cottages constructed during the 1850's, Murphy (1997:11) notes, '...only some 11 cottages remain. Of this number most have been removed to either the Historic Village at Howick or have been relocated to some other location for safe keeping. Only one cottage remains on its original site...'

The problem with the present legislation and the criteria is not one of selective versus comprehensive listings. It is not the selectivity that is at fault so much as basing the selection on historical assumptions that are too narrow. Restricting one's approach to the creation of a list of 'important' places through case-by-case nominations seems designed to produce an unrepresentative and biased list. Furthermore, it ensures that the process by which other places are eliminated is not open to inspection. Selective lists of historic places can be drawn up on many different accounts with each list achieving a different end. Individuals and communities can often hold to quite different ideas of what constitutes the national culture. In view of this, Government agencies might desire to conserve and protect representative and social aspects of a country's heritage, while at the same time recognising the
importance of individuals and elites in producing moments of change and places of aesthetic beauty. Because essential and relative approaches to assessment do different things, both are required to achieve a comprehensive coverage of historic places. A plurality of approaches has the utility of ensuring that the selection has emerged from a comprehensive review of historic places not just the luck of the draw. If decision making is systematic and subject to openly declared rules, the process might be more rather than less selective than existing approaches.

4.6 A two-tier system

The Working Group recommended that legislation be drafted in which the significance of individual items would be judged before statutory processes of protection were applied, with the ranking system determining which places should be permanently preserved (1989:16,18). It was advocated that the Register should be divided into two categories, places of 'national importance' and places of 'regional or local importance'. The system of ranking was intended to indicate both the 'degree of significance or merit and the level of government that would deal with the item'. It was further envisaged that assessments made by the Trust would be binding on regional and local government (Historic Places Legislative Review Report of the Working Group 1989:24). A two-tier system of heritage management was clearly in the legislator's minds. However, while the statutory mechanisms in the Act give such an appearance, the reality is otherwise.

The purposes of the Register as set out in Section 22 (2) are to inform members of the public about historic places, areas and wahi tapu, to notify owners of historic places, areas and wahi tapu, and to assist the protection of such places through the Resource Management Act. Consequently, while the Trust's register identifies places it is left to territorial authorities to manage their long-term survival. At first glance, this might seem to represent a useful separation of functions. Identification is through Trust processes while management decisions are taken by the territorial authorities, who are in the business of land-based management. The relationship between the HP Act and the RM Act is spelled out by Hughes (1996:11), who notes,

'...the intention of the legislative review leading to the RMA and the HPA was that the identification and assessment of historic places should be covered by the HPA and protection should be addressed primarily through the RMA. Therefore, regional councils and territorial authorities have important roles in providing for historic and cultural heritage protection and management under the RMA'.

Even in their guise as Categories I and II, the assumed relationship between the classification of national and regional historic places and the level of government that should deal with them provides us with a clue as to the basis of the classification. It is driven by administrative requirements rather than by any recognised assessment methodology. Instead of identification determining the appropriate form of management, it is the over-reliance on regulatory measures which has distorted the system of assessment. The argument in fact goes, because councils can schedule and have any chance of defending only the most significant places, they should be the only ones that are selected in the first place. If only the best can be preserved then all attention should be given to outstanding places while little energy should be devoted to the majority which are beyond a council's ability to protect.

The territorial authorities are also caught up in an aesthetic or elitist view of the role of heritage management and duplicate the Trust's approach. Like the Trust, territorial authorities rely on identification as their primary management tool through the creation of lists of individual places. Most territorial authority lists are unsystematically created and are rarely comprehensive. Again, it is assumed that management decisions should follow directly from an assessment of the historical importance of the place.

Councils work in a milieu of financial accountability to rate payers and business interests. When councils go into bat for a historic place they also argue that only the best should be saved. Hence, where a place has a Category I registration it is likely to be scheduled in the district plan and to have rules attached preventing its demolition. Instead of Category II places being given protection at the regional level, the council focus is also on saving Category I places. The system becomes one of a selection within a selection and instead of being able to save just the cream, we are left with only the 'creme de la creme'.

The problems of the Trust's approach are mirrored rather than resolved at the local government level. As far as historic places are concerned, both the Trust and councils appear to equate management with regulation at a time when the planning environment locates regulation within a wider range of options. At present, identification leads to regulation, and both are substituted for active management procedures. The difficulties of the potential redundancy of council and Trust efforts remain (PCE 1996a:95). It is interesting to note that when the Auckland Regional Council attempted to classify the region's historic places using
a national / regional split, they could not make a system based on intrinsic differences work and instead relied on the relative measure of **community of interest** for this purpose (I.Lawlor *pers. comm.* 6/97).

The duplication of approach and effort is even extended to the conservation of historic places on the DoC estate. The Department argues that it does not have the resources to manage the thousands of historic places that are located within its parks and reserves. The selection of those places which may receive targeted funding, and hence will be **actively managed**, is based on their historical significance using *Historic Places Act* 1993 criteria, and including all places that are registered by the Historic Places Trust and all historic reserves (Department of Conservation 1995:14).

The Parliamentary Commissioner for the Environment (PCE 1996:82) has recently advocated a return to a national / regional split as a way of indicating those places that territorial authorities should be responsible for. The difficulty, however, is that the linkages between the HP Act and the RM Act do not achieve this. The present legislation makes identification a national responsibility and management a regional one. This makes territorial authorities financially and politically responsible for safeguarding both the national and the regional heritage. What is required is a clear statement from central government as to how it will take up its responsibilities for the conservation of the national estate.

### 4.7 Registration of archaeological sites

Non-archaeological heritage professionals find it difficult to comprehend the strength of archaeological opposition to the present Registration system. In part these difficulties go back to 1966, when the discipline first proposed that sites on public lands should be protected. The response of the Minister for Lands was negative, "...it would be too restrictive to make every archaeological site subject to [protection] without consideration of the type of public reserve involved'. The Minister further argued "...only significant sites should qualify but this demands [a] survey ...to assess what are significant sites before applying an historic reservation to them." (McFadgen and Daniels 1970:167). McFadgen and Daniels (1970:160) report that the legislative proposals lapsed because the discipline could not come to agreement regarding an appropriate system of site classification and assessment. From this point on, the archaeological community became convinced that a system that offered some form of protection for all archaeological sites without a system of prior assessment was the only useful way of protecting them. On the other hand, land managers, taking their lead from the Minister for Lands, have continued to push for a system of site ranking, with protection for any site being dependent upon an assessment of archaeological importance (see Hosking 1987:27 re selecting 'key' sites of national significance to identify them for permanent protection within DoC plans of management, and also the emphasis on HPT registered places on the DoC estate in DoC 1995).

The continuing reason for this opposition, however, is that while a register might be useful for some archaeological sites, the majority of them fit only poorly into register-type formats. In addition to spectacular archaeological sites, New Zealand has large numbers of shellfish middens, gardening soils, pits and terraces which are the result of everyday Maori activities of the past. These places, the equivalent of the mundane houses of small farmers or labourers of the 19th century, are protected by the archaeological provisions. Their value is relative to the manner in which people lived and worked in the past and to our knowledge of landscape change. Such places are unlikely to qualify for listing in a selective system of registration based on 'importance' or to have an application to destroy them refused. Under the existing Registration criteria (Part II of the HP Act 1993), only the most spectacular individual historic places (whether buildings, bridges or monumental archaeological sites) are likely to gain registration (Cordy 1982). Following this territorial authorities may make a small selection of them subject to a consent procedure by listing them in the district plan.

An understanding of the past requires preservation of examples of both the spectacular and the ordinary. Protecting a small or token sample of sites (as would happen under the current system of Registration) can in no way fulfill the legislative and social requirements currently placed on the Historic Places Trust by Parliament. The 50,000 sites currently listed on the New Zealand Archaeological Association Site Record File present practical difficulties for prior assessment and the selective imposition of protection. Given these difficulties, archaeologists are more comfortable making assessments only for those sites which are definitely endangered, i.e., those subject to an Authority application. Consequently, archaeologists have continued to press for the protection of unregistered or undiscovered archaeological sites and to argue that in some circumstances general protection should be extended to cover historic buildings and wahi tapu as well.

Unless they are designed to be truly comprehensive, register-type approaches do not easily accommodate archaeological sites. In the 22 years since the *Australian Heritage Commission Act* 1975 set up the Australian Register of the National Estate, 9072 historic places have been listed. However, only
9% of the total have been entered, compared with 793 Aboriginal and Torres Strait Islander places, or recorded. This stands poor comparison with the 10% will remain minute: less than 2% of the 46,000 places were entered onto the Register. Few of these religious buildings (State of the Environment Council 2432 residential houses, 1978 administrative Protection Programme aims for. If it is intended to future, the number of registered archaeological sites were archaeological sites. Even in the foreseeable up, are heavily biased towards the built environment.

The rate at which the Historic Places Trust intends to register places is quite low. The Trust's 1996/7 Statement of Service Performance notes that 107 nomination proposals were assessed, while 77 places were entered onto the Register. Few of these were archaeological sites. Even in the foreseeable future, the number of registered archaeological sites will remain minute: less than 2% of the 46,000 recorded. This stands poor comparison with the 10% of sites that the English Heritage Monuments Protection Programme aims for. If it is intended to achieve a credible national Register which replaces the present archaeological consent procedures then approximately 500 sites should be registered each year for the next ten years (Challis 1994).

Startin (1995:143) notes that the protection strategy chosen should reflect both the nature of the resource identified and the pressures which are bearing on it, concluding that for many archaeological resources 'preservation must be argued as the only sustainable strategy'. He goes on (1995:141) to stress that it is not possible to move from identification directly to effective conservation action - we cannot protect what we do not understand. After identification there must be a programme of recording, analysis and synthesis of knowledge as the basis for conservation decisions. The criteria for listing historic places on the Register of the State of Vermont (1986) takes note of the fact that historic and prehistoric sites have quite different levels of information available for their assessment. Archaeological sites and buildings therefore have different criteria and procedures for their inclusion in the register.

English archaeologists advocate scheduling as the most appropriate strategy for protecting individual or closely related groups of sites. They argue that scheduling works best for individual, well-understood monuments such as medieval buildings where much of the fabric of the site is above the ground. It does not work well with the built environment in an urban setting. In this latter case, as with industrial archaeological areas and landscapes, it is argued that protection through planning procedures such as zoning or the creation of 'Environmentally Sensitive Areas' is the more appropriate procedure (Startin 1995:142). In any case, urban areas require good data bases, archaeological assessments and explicit management procedures if protection through planning is to be effective.

Neither scheduling or zoning works well for small, poorly defined or fragile site types such as artefact scatters, prehistoric crop marks or field systems. For these types of sites, Startin suggests that further study including research excavation is required, adding that development which provides the opportunity for further research might be just as much a management strategy as preservation.

4.8 Can registration be made to work

In order to be effective, listing and scheduling has to be systematically applied with definite aims in mind. The experience of English Heritage, which has the longest history of scheduling based on prior assessment, is relevant here. Where each historic place is assumed to be unique it can only be assessed as part of a one-off procedure. In 1984, the Inspectorate of Ancient Monuments (now English Heritage) found that the lack of systematic procedures for the nomination of monuments resulted in a biased sample that could not achieve its purpose despite the continued expenditure of funds (Darvill et al., 1987:394).

To overcome these difficulties and to ensure that the coverage of scheduled monuments was comprehensive for all periods and types of buildings and sites, the Department of the Environment in England has established a Monuments Protection Programme (Startin 1995:137-9). The programme is designed to support scheduling procedures and to maintain an adequate data base through i) grants-in-aid to county sites and monuments recording, ii) electronic data processing, iii) the commissioning of monument class descriptions, and finally, iv) the development of systematic evaluation systems to identify sites qualifying for scheduling.

In 1983, the DoE set out eight non-statutory criteria governing the selection of monuments of national importance: Period; Rarity; Documentation; Group Value; Survival / Condition; Fragility /Vulnerability; Diversity; and Potential (These terms are explained in Appendix 1). The criteria address three issues. Firstly, the characterisation of the resource in order to allow the selection of a representative sample of England's monuments for preservation. Secondly, the discrimination of monuments in order to separate those of national importance from those of regional or local importance. Finally, the assessment of the management situations of monuments in order to make appropriate recommendations for their long term preservation (Darvill et al., 1987:395).

Initial results indicate that work on monument class descriptions is proceeding satisfactorily, evaluation procedures have been streamlined and there has been an increase in the
preparation of scheduling recommendations (Darvill et al. 1987). Scheduling recommendations have grown from an average of 50 per year (1984-90) to 400 in 1990-1 and 1240 in 1993-4. The work will continue until the year 2008, by which time there will be an estimated 30,000 scheduled monuments covering some 45,000 individual archaeological sites (Wainwright nd.). Known sites and monuments are estimated to number 600,000 (Wainwright 1993). At the same time, RCHME has initiated a Monuments at Risk Survey concerned with all archaeological monuments, whether scheduled or not (Darvill and Wainwright 1994:820-24).

Compared with the English system for the scheduling of ancient monuments, the problems of the New Zealand approach to Registration include i) inadequate financing, ii) poor assessment criteria, iii) unsystematic procedures which have led to a limited and biased coverage, iv) the absence of a genuine two-tiered system of responsibility, and, finally, v) a system of protection has been allowed to distort the system of identification (see Table 5).

The weak linkage between identification and protection in the HP Act would not be a disadvantage if the procedures of the territorial authorities did not also contain a similar gap to the extent that the protection applied even to the most 'important' places is often illusory. This comes as a result of the generous provision for appeals available through the RM Act. Legal advice usually takes the form that to refuse a resource consent or to apply a Heritage Order will leave councils or the Trust open to a claim for compensation.

The New Zealand system might be improved by taking on some of the elements of the English scheme. The first step must be a comprehensive and broad based procedure to identify the historic resource. A second step could uncouple the concept of national from that of 'importance' through non-statutory criteria that emphasise the variety and range of places that have contributed to the national consciousness.

4.9 Balancing rights through incentives

In commenting on heritage management in New Zealand, Tremaine (1992:14) concluded, 'No one approach will be appropriate in all circumstance. The main challenge therefore remains for central, regional and local government [and the HPT] to devise a range of methodologies and processes which will further advance an understanding and acceptance of heritage issues and which will protect, conserve, maintain and promote heritage for both the present and the future. Central, regional and local government [and the HPT] must continue to work across all fronts through: 1) the negotiation of property rights; 2) regulation; 3) advice and information; 4) economic instruments and incentives and; 5) advocacy.'

<table>
<thead>
<tr>
<th>1993 HP Act, Part II</th>
<th>English Ancient Monuments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory criteria.</td>
<td>Non-statutory criteria gazetted by Secretary of State.</td>
</tr>
<tr>
<td>Ranked, Category I and II in terms of special or outstanding historical or cultural heritage significance or value.</td>
<td>Single List, Ranked, Monuments of National Importance.</td>
</tr>
<tr>
<td>Selective, based on the nomination of a small number of places.</td>
<td>Systematic procedures aimed at the comprehensive coverage of all periods and styles.</td>
</tr>
<tr>
<td>Assessment and identification does not provide protection.</td>
<td>Assessment and identification provides protection.</td>
</tr>
<tr>
<td>Protection and consent decisions made by territorial authorities with generous grounds for appeal to Environment Court.</td>
<td>Protection decisions made by English Heritage, consent decisions by Secretary of State with limited grounds for appeal.</td>
</tr>
<tr>
<td>Inadequately financed.</td>
<td>Adequately financed?</td>
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Table 5. Identification and protection measures in New Zealand and England.
At present, government and council policies promote the use of regulation as the main heritage management tool. It is ineffective, however, because the same legislation gives private land owners generous provisions for appeal. As noted previously, Tremaine has also commented on the fact that New Zealand courts are unlikely to allow further infringement of private property rights unless this loss of rights is offset through either a national acquisition fund or a system of incentives (cf PCE 1996a:69).

Rather than relying on regulation alone, many countries seek to encourage land owners to protect heritage places in their possession through the provision of incentives or assistance. The New South Wales Department of Planning has a Heritage Conservation Fund, which it has built up from the sale of state-owned heritage properties. This fund totalled AUD$21 million in 1992 allowing annual grants of $3 million to individuals and community groups for heritage conservation. In addition, the Department encourages local government to provide additional incentives through the joint funding of heritage advisers and through rating discounts (NSW Dept of Planning, Information Sheets 12 and 13, 1991). The Commonwealth Government introduced a taxation incentive scheme in 1994. Private owners of heritage listed properties can apply for an income tax rebate of 20% for approved conservation work (PCE 1996a:25). Many rural archaeological sites in New Zealand have survived until now through the agency of sympathetic landowners. In recognition of a similar situation, the Kentucky Archaeological Registry has a scheme of landowner participation in site preservation (U.S. National Park Service 1989) to assist and educate landowners. A comment by Peter James (1987:17) is relevant here: "...the real problem with all legislation is that it cannot work miracles. You really only get conservation, particularly of the built environment, in one way - and that is where you have a willing owner."

The Parliamentary Commissioner for the Environment's inquiry into heritage management has found, however, that there is a lack of financial incentives available in New Zealand. In addition, it was observed that this limits the effectiveness of other heritage approaches (PCE 1996a:47,67,86). A similar situation prevails at the local level. Few councils waive fees or financial contributions for applications which involve heritage properties (Woodward 1996:7). Instead of considering such places to be a part of community amenity values, councils actively enforce parking and other standards thus indirectly contributing to the destruction of heritage properties. The PCE identified the current government earthquake insurance provisions and the lack of any recognition of heritage values in the building code as having a severe impact on the pre-1930 architectural heritage. Individual property owners face considerable costs associated with insurance and required structural upgrading (PCE 1996a:48). In these cases, central and local government have created an effective set of disincentives that encourage the owners of older buildings to consider demolition as the most cost-effective strategy available to them.

The point about incentives is that they increase the effectiveness of regulatory procedures by providing councils and owners with an alternative to costly appeals. In an environment where incentives are available to offset the costs of regulation, a national agency could take responsibility for the protection of nationally significant places by scheduling them as is done in England.

A second tier of heritage management would involve local government using the full range of management instruments currently available to conserve places of significance to the region and locality. The list of such places would come from a comprehensive survey complemented by a set of publicly debated heritage objectives. Together with incentives to increase the level of voluntary heritage protection, this would provide a greater depth to regional heritage protection than does the present regime.

The Trust identifies the Register as the major tool of advocacy that is available to it. However, the existing form of the Register prevents its effective use. The Register, and most local government heritage initiatives, are designed to identify and protect only a minority of places, ones that are judged to be important according to inadequate and biased criteria. While the Trust is comfortable with this approach, it is one that fails the broad mandate given to it by Parliament. The Historic Places Act 1993, Section 4 (b) recognises 'The principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should -

(i) Take account of all relevant cultural values, knowledge, and disciplines; and,
(iv) Be fully researched, documented, and recorded, where culturally appropriate.'

The legislation requires that the Historic Places Trust protects historic places on behalf of all sections of the community and, furthermore, that it should relate its actions to an understanding of the historical dimension of New Zealand society as this evolves. The central issue is not the protection of individual historic places but rather how might the conservation of places contribute to a growing understanding of ourselves in historical terms.
CHAPTER 5
ARCHAEOLOGICAL SITES AND AUTHORITIES

5.1 Introduction
The Authority (resource consent) system provided for the heritage management of archaeological sites by Part I of the Historic Places Act will be discussed here. Because they offer an alternative model for site protection, the archaeological provisions have represented a challenge for heritage management in New Zealand since they were first mooted in 1962-3 (McFadgen 1966). The move to create a unified system of heritage management in the 1993 HP Act, based on the Register of Historic Places, was also an attempt to remove the archaeological provisions and to impose a system of selective assessment on sites. The misapprehension that a single, narrowly defined approach might be extended to all classes of historic places has forced archaeologists and other heritage professionals to devote a considerable amount of time arguing the relative merits of these different approaches to heritage protection.

The attempt to accommodate Maori heritage requirements has come as an additional challenge. As will be seen below, the existing legislation (Part I of the HP Act) defines sites in scientific terms and identifies archaeologists as central to decision making about them. Similarly, the continued loss of sites through development is seen as a threat to the discipline. Salvage excavations enhance the discipline's reputation for expertise while adding to its knowledge base.

From the late 1980's, however, Maori have redefined archaeological sites as taonga, guaranteed to them under the Treaty. The right to identify ancestral sites as significant and to determine their future has become a factor in marking tangata whenua status. Such a status is accorded rights in a number of Acts of Parliament, including the HP and RM Acts. Failing to protect a place by giving permission for a salvage excavation, could be identified as a failure to fulfil the kaitiaki role that tangata whenua status assumes. The different meanings given by Maori and the archaeologists to sites have created conflicts for their management.

As a solution, the Parliamentary Commissioner for the Environment has recommended devolution of the archaeological provisions to the RM Act. The role of salvage excavation as a conservation measure together with the conflict this has created for Maori heritage management will be considered. Whether devolution of the archaeological provisions is an appropriate solution to these problems will be discussed in the final sections of this chapter.

5.2 Archaeological sites as a special case
Archaeological sites are defined within the HP Act 1993 as: "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 may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand". Section 10 of the Act makes it illegal for any person to destroy, damage, or modify, the whole or any part of any archaeological site. Section 11 sets up administrative procedures whereby a person can apply to the Trust for an Authority to destroy, damage or modify an archaeological site.

The definition of an archaeological site within the Historic Places Act is a generic one. It subsumes all the possible variations in site types, paa, middens, terraces, artefact scatters, colonial redoubts and buried villages. They are linked only by the stipulation that they "... may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand". This definition emphasises the information content of archaeological sites and directs attention to the presence of physical evidence that is capable of being investigated by archaeological methods.

As noted in Chapter 1, it is possible to define an entire class of heritage item and to attach a consent procedure to all the places or objects that fit the legal definition. Examples within New Zealand legislation include archaeological sites (HP Act 1993), native forests on private lands (Forest Amendment Act 1993), and trees above a defined height (rules within District Plans). These procedures mean that the heritage item does not have to be individually selected and assessed in advance of any application for a resource consent. An application itself acts as the trigger mechanism for the assessment and decision making process.

The existence of two different methods of protecting archaeological sites, through either the archaeological provisions (Part I of the HP Act) or the Register of Historic Places (Part II) has been the cause of considerable confusion. The major difference between the consent procedures for archaeological sites and the procedures adopted through the Register is that the archaeological provisions apply to all archaeological sites as a class (see Table 6). Archaeological sites are assessed only after an application for an Authority to destroy or modify
them is lodged with the Trust. The selection process for registration, on the other hand, relies on the prior identification of highly ranked items and protection is left to the RM Act.

Many countries, including England and the state governments in Australia, protect archaeological sites and buildings through different Acts of legislation. The Australian State of the Environment Advisory Council reports (1996:9-27) that, "All States and the two Territories now have legislation to protect indigenous objects associated with archaeological sites or places of religious or other significance. The blanket protection provided to places provides a high level of legislative protection for those in situ, although the actual effectiveness of the protection is not known'.

The approach adopted for archaeological sites in the Historic Places Act follows the Australian model and is similar to the general approach to the assessment of environmental effects in the Resource Management Act. Instead of attempting to control specific activities by listing them, the RM Act defines the 'environment' in general terms and states that developers have to avoid or ameliorate any effects on the environment their activities might have. Developers provide councils with an assessment of the environmental impact of their proposals (Fourth Schedule, RM Act). This information becomes the basis for resource consent decisions and any conditions that might be attached.

Once an application for an authority to modify or destroy an archaeological site is made to the Trust, the site is assessed in terms of archaeological and legal advice. The process is unsystematic in the sense that the Trust has not developed explicit guidelines for this process. In appeal situations, the Environment Court is directed to consider 'the historical and cultural heritage value of the site' without further guidance being provided (Section 20 (6) (a) HP Act). As will be discussed further below, the usual outcome of an Authority application is that permission is given to destroy or modify the site, either with no conditions or else with conditions requiring some form of investigation at the developer's expense.

The elements of the archaeological provisions of the HP Act, (up until the 1993 Act), are listed in Table 6. These provisions, although not based that sites are a repository of information and that the community's right to this information goes beyond on a system of prior assessment and scheduling, share some features with the English system for ancient monuments. These include the comprehensive nature of the scheme, the centralising of decision making in the hands of heritage professionals, the limitation of the grounds for appeals, and, finally, the inclusion of the principle that the developer should be liable for the costs of recovering archaeological information made necessary by the destruction of sites.

The archaeological provisions retained a consistency of approach which carried them through the 1975 Amendment and the revised Historic Places Act of 1980. This consistency is built on the premise

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<tr>
<td>The heritage value of an archaeological site is defined in terms of its information content.</td>
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<tr>
<td>The provisions are comprehensive, they relate to all archaeological sites.</td>
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<tr>
<td>Assessment and Authority decisions are centralised in the Trust.</td>
</tr>
<tr>
<td>Authority consents can preserve the heritage value of a site by requiring an investigation to recover its information content.</td>
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<tr>
<td>Provisions include the principle that developers should pay for archaeological investigations made necessary by their activities.</td>
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<tr>
<td>Appeals to the Minister were limited on the grounds that the Act sought to protect the information in a site not its land use.</td>
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Table 6. Consistency of logic in the archaeological provisions of the 1975 Amendment.
that sites are a repository of information and that the community’s right to this information goes beyond that of individual landowners. Even if an archaeological site has to be destroyed, the site’s information content could be preserved through a rescue excavation carried out at the developer’s expense. Because a land owner cannot claim explicit rights to the information within a site, the grounds for appeal were limited. As will be discussed later, the consistency of these measures was weakened by the generous appeal rights contained in the 1993 HP Act, which altered the balance between site protection and individual rights in favour of the property owner.

The definition of an archaeological site as a location of recoverable information also represents its weak point as a heritage protection measure. That the Authority provisions mostly work to record information prior to a site’s destruction was criticised by the Historic Places Legislative Review (1988:18). If sites are to be managed to ensure their long-term survival, it was argued, a wider range of heritage values have to be taken into account. However, once a definition of sites in informational terms was written into statute, as with the criteria for the Register of historic places, it has taken on a legal significance. This means that the existence of physical evidence and the information content of sites has become the legal basis for their protection.

Jones (1981) lists a number of different systems of assessment applied locally or overseas. Many schemes make allowance for measures other than scientific significance, such as rarity, educational or visual values. The assessment of a place in terms of its ability to provide scientific information or its rarity value involves making a judgement of its relative rather than its essential or intrinsic value (see 4.1 above).

The archaeological provisions of the HP Act should work in tandem with resource consents obtained through the RM Act to protect archaeological and other heritage sites. Part of the amelioration of the effects of a development can be a requirement for an investigation or a reserve contribution at the developer’s expense, though explicit guidelines for this have yet to be developed (Atkins 1996). The application of these measures, however, is uneven. Many developers, and apparently some councils, are unaware of either the Trust’s archaeological provisions or of the necessity for a survey of the effects of a development on archaeological or other historic places. In other cases, councils give discretionary approval without demanding an assessment of environmental impacts (Hughes 1996:10-11, Woodward 1996:132-3). Some councils have approved resource consents over areas known to contain archaeological sites without reference to the Trust or its legislation. A difficulty occurs when the attention of developers is drawn to the archaeological provisions of the HP Act after they have fulfilled other council requirements. Carrying out an archaeological survey when all other plans have been completed can mean substantial costs or delays to the developer. Such situations place the Trust and the developer in an untenable position. There is always the possibility that an archaeological site requiring preservation or investigation will be discovered during the initial survey or after work has begun. To avoid this possibility, English Heritage suggests that developers insure themselves against the risk of coming upon an archaeological site after work has commenced (Department of the Environment 1990, PPG 16:Section 31).

5.3 Limitations of the Authority procedure

A difficulty with the Authority procedures is that they deal with sites singly and in isolation. Archaeological sites protected under the provisions of the Historic Places Act can end up being little more than ‘dots on the map’, individual sites that have been selected for development as against the dots found on maps compiled from the NZAA Site Record File.

Despite the argument that the archaeological provisions of the HP Act protect all sites, decision making for Authority applications does not diverge significantly from that for the Register in two crucial ways. Firstly, the assessment of archaeological sites involves processes at the more intuitive end of the decision making spectrum discussed previously (Section 4.1 above. Arguably in their present form they are only partly peer-aided). Secondly, development will be prevented and an application refused only for the ‘most significant’ archaeological sites. Applications to destroy small middens are likely to be approved even if an investigation, which can be token 'monitoring', is required. Finally, because of the manner in which the HP Act is written, judgements regarding the legal significance of sites subject to an Authority application must be made in terms of the information that might be recovered from the place in question. As instruments of long-term management, both a system of prior assessment (Registration) and the archaeological provisions share many of the same deficiencies. The security provided for any scheduled historic place, and for all archaeological sites, lasts only as long as the next application for a resource consent.

As currently applied, the archaeological provisions of the Historic Places Act 1993 can militate against good practice in the achievement of heritage management goals. This occurs in a number of ways. (i) The selection of archaeological sites subject to Authority applications is in the hands of developers.
(ii) Scientific significance is implied in the definition of an archaeological site in the Historic Places Act 1993. Where sites are to be assessed for their scientific significance it is generally accepted that this should be in terms of the potential of the place to answer timely research questions (Schiffer and Gumerman 1977:241, Schiffer and House 1977:249-251, Jones 1981:177). However, the Trust has failed to develop a systematic framework for the assessment of sites. Consequently, each site is assessed in terms of its unique, essential value. This situation compares unfavourably with the Heritage Office of the NSW Department of Urban Affairs and Planning which has published a series of manuals on site assessment procedures (1993, 1996a, b).

(iii) Because the provisions apply to all archaeological sites, research into the appropriate classification of sites in terms of their local, regional and national variation has remained at a rudimentary level. Neither have fragile sites, sites in threatened environments, nor sites subject to cumulative impacts been identified. The single decisions being made under the archaeological provisions of the HP Act are not part of any overall heritage strategy.

Decision making on a one-off basis has proved to be especially flawed where impacts on historic places come as the result of systematic or cumulative processes, such as urban growth. An assessment of the cumulative effects of an engineering scheme on archaeological sites has been carried out by Allen (et al., 1994) who studied the impact of the Waihou River flood protection scheme on the archaeological sites of the Hauraki Plains. This is an area which contains a unique record of Maori activities including places of the greatest importance to Hauraki tangata whenua. The study found that the Waihou scheme has had a devastating impact on the archaeological sites of the area. Up to 62% of all sites, including pa, had either been destroyed or severely damaged. The most recent flood protection scheme (1981-1995) is responsible for three-quarters of this damage. The study concluded that in the face of a systematic process of landscape change, firstly, that site-by-site decision making by the HPT and DoC had been ineffective, and, secondly, that the developing agency, Environment Waikato (previously Hauraki Catchment Board) had made little attempt to modify the environmental impact of the scheme despite their commissioning of a detailed archaeological survey to this end. A similar study in the Canterbury region found that, over a period of twenty years, 70% of recorded lowland archaeological sites and over 40% of hill country sites had been damaged or destroyed (Challis 1994).

Neither do the archaeological provisions entirely avoid the difficulties involved with the assessment of the historical or scientific value of sites with subsurface features. An example of this comes from the Papahinau site, adjacent to Auckland airport. Development proposals across Pukaki Creek, associated with the runway extension, showed some impact on site R11/229, recorded as a midden scatter and a possible [pit] structure, and the adjacent R11/1800, recorded as a possible terrace. It is unlikely that surface indications of a midden scatter of cockles and two possible structures would have qualified for registration or for an Authority refusal. Any conditions that might have been applied are likely to have been woefully inadequate. Fortunately, however, there were historical records indicating that a Maori settlement had existed here between 1835 and 1863. Excavations carried out by the Department of Conservation under a Historic Places Trust Authority revealed an extensive settlement consisting of 14 houses and 37 pits covering the entire headland (Sewell and Forster 1996). The excavations at Papahinau have added greatly to the knowledge of Maori settlement in South Auckland. Tangata whenua for the area, Te Akitai, have used this evidence as part of their case for a return of their ancestral lands along Pukaki Creek. It is likely that similar extensive settlement sites occur along this shore of the Manukau which is under considerable pressure for development.

A major concern to all those involved in heritage management must be the current inadequacies of the New Zealand Archaeological Association Site Record File (Smith 1994, Wilkes 1997). Some of these deficiencies reflect the site based approach in vogue at its inception (see Davidson 1974). The categorisation of sites within the scheme is limited to simple functional types, such as middens, terraces, and paa. Furthermore, the provision of information to regional and district councils is usually in the form of lists of site locations and their file numbers. While the unstructured nature of this information has its advantages in terms of the administration of the scheme, it limits its value as a management tool. Most councils are unwilling to list many sites in their plans and only the Auckland Regional Council has attempted to use the Record File as the basis for a comprehensive inventory.

Considerable research into survey and recording methodologies, and the characterisation of archaeological features and relevant land systems is required before the Site Record File can be directly used by councils and iwi authorities. Recent changes in research methodologies, particularly the provision of Geographical Information Systems and GPS locational systems, however, make it easier to integrate archaeological point data within area-based data sets. Such new methodologies have the potential to introduce archaeological information into council management data bases (Harmsworth 1997, M.
Jackson pers. comm. August 1997).

In commenting on the research needs for effective heritage management, the Parliamentary Commissioner for the Environment noted that the NZAA File is a major source of information for archaeological sites throughout the country and is a database of national significance. The PCE went on to criticise the lack of research funding available for upgrading the File under Research Output 13 of the Public Good Science Fund operated by the Foundation for Research, Science and Technology (FRST). It was noted that there is "...a significant gap in the funding of archaeological research, especially that based on survey and maintenance of databases" (PCE 1996a: A49). Recent exchanges between archaeologists and the secretary of the Social Science Committee of the Royal Society of New Zealand (Jacomb, Green pers. comm. May 1997) emphasise that the Site Record File is a 'National Database' which should be supported in terms of research funding. On the other hand, it was argued that the day to day running of the File should continue to be the subject of special funding through the Department of Conservation.

5.4 Conflicts in the management of archaeological sites

The allowing of a resource consent or authority application, with conditions, can be the occasion for conflict between those who wish the place to be conserved without change (generally conservationists and minority cultural groups) and those who see saving a part of the value of a place as a beneficial outcome. Given the prevailing disposition of the Environment Court, heritage professionals are generally willing to accept a partial outcome rather than risk a complete defeat. Thus historians might be satisfied with a plaque and town planners with a preserved facade. Conservation architects might not worry that a place's function or surrounds have changed provided the fabric of the building itself is retained. Similarly, archaeologists might advocate salvage excavations to recover scientific information from a site that will later be destroyed. Some conservationists and minority groups, however, are unhappy with such compromises. They question whether the existence of negotiated settlements might not short-circuit the examination of preservation as a viable option. Ameliorations that were designed to be "measures of last resort' have instead become the normal outcome of the process.

Salvage excavation, as a condition of an Authority to destroy or modify an archaeological site, has been chosen to illustrate some of the difficulties that occur when conservation values conflict. The archaeological case, however, raises issues of general applicability. The question here is the extent to which alternative conservation values, such as preservation, should be given priority over the salvage excavation of archaeological sites? A second question is whether shifting the archaeological provisions of the HP Act to the Resource Management Act 1991, as advocated by the Parliamentary Commissioner for the Environment, represents a solution to these problems?

Startin (1993a:185) puts forward a number of reasons as to why archaeological remains are sufficiently important as to justify their on-going preservation. He notes that the principal reason must be that they contain information about the past. The damage or destruction of any site causes the loss of information unless it is recorded. In addition, surviving archaeological remains are valuable because they are fragile and irreplaceable. He notes that we are already dealing with a fragmentary record of the past. Also important are aesthetic values of townscape and landscape as well as the educational values of display or the contribution archaeological sites, such as Maiden Castle, make to recreational activities. Finally, Startin notes that many archaeological sites also have a symbolic value.

Questions regarding both rescue and voluntary research excavation are also raised by Startin (1993b). Various documents, such as codes of conduct for archaeologists, the European Convention on the Protection of Archaeological Heritage or the ICOMOS Charter for the Protection and Management of the Archaeological Heritage, present the dual aims of preservation of the archaeological heritage and the facilitation of research into human history through excavation. Similarly, the English Department of the Environment's Planning Policy Guidance Paper 16 (1990), advises councils that, "Where nationally important archaeological remains, whether scheduled or not, and their settings, are affected by proposed development there should be a presumption in favour of their physical preservation ... If physical preservation in situ is not feasible, an archaeological excavation for the purposes of 'preservation by record', may be an acceptable alternative'.

It is the choice between these alternatives that is the question here. Most documents provide little guidance as to how the potential conflict between the aims of preservation and investigation might be resolved.

Because the heritage value of undated and unexcavated sites is generally assessed to be low, Frankel (1993) argues that excavation often enhances the significance of a site. Furthermore, excavation of a single site might demonstrate the importance of
providing information about the resource that is being protecting an entire class of sites. The process of excavation to be refused. The question of what might be an academically viable sample of any single class of archaeological site in England has yet to be raised. Considerations of this kind in the future might well be the occasion for an application for a research excavation of some of them might well come down on the side of excavation. It can be concluded that the saving of information from archaeological sites that will be destroyed by development represents a legitimate conservation aim. On the other hand, Starin (1993b:424-5) notes that one of the reasons we might wish to protect a site is to allow for its study in the future. The question of what might be an archaeological site in England has yet to be raised. Considerations of this kind in the future might well be the occasion for an application for a research excavation to be refused.

Not all conservationists and archaeologists are happy about the emphasis on salvage or rescue (the information) archaeology (Greeves 1989, Pryor 1990). This concern was also expressed by the committee which reviewed the 1980 legislation (Historic Places Legislation Review 1988:18). While acknowledging that archaeological research contributes both to an increase in human knowledge and our understanding of the archaeological record, research excavation can also represent a threat to the survival of sites.

Much of the existing archaeological legislation in New Zealand came into existence in order to lessen the effects of uncontrolled development or the pillaging of sites for personal gain. In most parts of the world these represent a more serious danger to the survival of archaeological sites than does salvage or research excavation. The pressure to amend the 1954 Historic Places Act, in fact, came from people concerned about the fossicking of archaeological sites and the uncontrolled export of Maori carvings. The result of these pressures was the 1975 Amendment to the Historic Places Act which created the authority provisions for the protection of archaeological sites and a separate Antiquities Act.

The majority of archaeological sites in New Zealand are of Maori origin. Consequently the archaeological provisions of the HP Act provide a de facto consent procedure for sites of Maori interest. On the other hand, archaeological sites, defined in terms of their scientific values, are given a higher priority in the legislation than are places of Maori historical or spiritual significance. As will be discussed in regard to Waitangi Tribunal findings, this has long been a matter of complaint (Historic Places Legislation Review 1988:33-35, Report of the Maori Delegation to WAC 1991: 3.3.5).

Archaeological sites as a class are given an objective definition, through the presence of physical evidence. Wahi tapu, on the other hand, are wahi tapu because tangata whenua regard them as so. Oral traditions or written accounts are sufficient to define traditional or wahi tapu sites (whether or not the evidence is made public). They do not require any physical manifestation. The current archaeological provisions of the HP Act protects some of the places that are of significance to Maori. However, they also protect many places that are of little significance while excluding others which are of great importance (see PCE 1996b:1-25, 27-52 for a discussion of the Ngunguru and Otutaua cases). From a Maori point-of-view the archaeological provisions are, at best, a hit and miss affair.

The archaeological provisions assist in the protection of some Maori sites, firstly, by dissuading developers from going to the trouble of making an application or, secondly, by getting them to modify their proposals so as to avoid archaeological sites. When a development proposal requires that a site be destroyed then an Authority application has to be made. The most common outcome is for the developer to be given permission to modify the place provided an archaeological investigation is carried out. Maori are dismayed by the fact that even the enhanced level of protection given to archaeological sites leads in almost every case to salvage excavation. While an excavation might secure some of the scientific values of the place, many investigations do little to protect Maori values. For the most part, Maori involvement in the process is restricted to giving - or denying - consent for the excavation to go ahead (O'Regan 1990:100). The Act directs the Trust towards consultation with tangata whenua for Authority applications, for their consent for scientific investigations, and for the referring of sites of Maori interest to the Maori Heritage Council. However, the effect of these directions is to limit the role tangata whenua can play in the conservation and protection of their taonga.

A Maori delegation attended the World Archaeology Congress at Barquisimeto, Venezuela in 1990. At that Congress, Alex Nathan (Te Roroa), in questioning the protection for wahi tapu under the Historic Places Act, complained that decisions directly affecting wahi tapu were being made by archaeologists or bureaucrats who had no intimate knowledge of local situations, nor were they accountable to tangata whenua. NGA AWANGAWANGA PA ANA KI TE PIRA O TE POUHERE TAONGA (Maori Concerns regarding the Historic Places Bill) stated that accepted conservation practices do not take indigenous methodologies sufficiently into account. They stressed that wahi tapu, as a concept of tangata whenua, could not be moulded into the predominant categories of historic or
cultural sites. Instead, they argued, a localised approach to decision making for wahi tapu should be adopted.

In many cases Maori request that the provisions of the HP Act be used to guarantee the preservation of sites of Maori significance from both investigation and development. Because any salvage excavation requires tangata whenua permission, some Maori now claim that all archaeological sites within their areas are wahi tapu and have refused permission for any salvage excavations. The inability of the Trust to impose suitable conditions has forced some Maori to seek redress for this situation through the Waitangi Tribunal or through the courts, as in the cases of Waipoua (Wai-38, Te Roroa Report), Westfield, Papamoa and Otataua (PCE 1996b:1-25,27-52). Where the operations of heritage institutions are perceived as failing Maori, litigation has become the only alternative.

The present legislative set-up can penalise rather than assist a community's rights to safeguard its relationship with sites of significance. This emerged in a recent appeal to the Planning Tribunal by the Ngatiwai Trust Board. This was against the Trust's granting of an Authority which allowed a developer, after an investigation, to destroy middens on the Ngunguru sandspit. Te Waiariki hapu of Ngatiwai argued that the sandspit was the location of an important battle and a burial ground for its fallen warriors. Because the HP Act 1993 only allows the right of appeal to 'any person who is directly affected by any declaration, decision, condition or review of any decision made or imposed by the Trust' (Section 20), the Planning Tribunal refused Ngatiwai's application. The Tribunal stated that as the Ngatiwai Trust Board was not a person directly affected by the Trust's decision, it had no standing in the appeal (Ngatiwai Trust Board v New Zealand Historic Places Trust A13/96, PCE 1996b:1-25).

As noted previously, the success of resource consent procedures depends to an extent on how liberal, or otherwise, are the provisions for appeal and compensation. Such cases involve owners who might be refused permission for a development or, alternatively, be given permission on condition that they pay for an expensive investigation. The sole exception allowed in the HP Act 1980 was that of farmers who could (with permission) destroy, damage or modify an archaeological site 'solely for farming or agricultural purposes' without bearing the investigation costs (Section 6). The appeal and compensation provisions of the 1975 Amendment and the 1980 Act were quite limited. Appeals could only be made to the Minister (initially of Internal Affairs and subsequently the Minister of Conservation). No grounds for costs or compensation were listed. While this might seem a rather draconian situation, the legislation here followed the English Heritage model fairly closely.

Boast (1983:457), in a Master's thesis in Law presented to Victoria University of Wellington, commented, 'The essential feature of the 1980 [HP] legislation is that it provides a system of rights to compensation which is very illiberal in relation to archaeological sites, but which is quite generous to owners of buildings made subject to protection notices'

These comments had an impact on the drafters of the revised Act (cf Historic Places Legislative Review 1989:14) to the extent that appeals against Authority decisions in the 1993 legislation (Section 20) were transferred to the Environment Court and the grounds for appeal were extended beyond those available in the RM Act. Such provisions make it unlikely that the current archaeological provisions of the HP Act can be used to stop any developer's plans without the Trust being required to acquire the property or to pay compensation. They also make it more difficult for the Trust to impose conditions except where the cost of such conditions is low relative to the value of the overall development (see serious hardship, RM Act, Section 195). In these circumstances, the Trust has found it difficult to use the existing legislation to further the Maori interest in the protection and conservation of sites.

One of the aims of heritage legislation is to reduce resource conflicts, especially those which arise from competing claims regarding the significance of the past (Smith 1993:63). When conflicts move to major tribunals, such as the Waitangi Tribunal or the courts, it is clear that the legislation is no longer fulfilling this function. It is for this reason that the Historic Places Trust considers the archaeological provisions of the HP Act to be unsustainable in their present form.

5.5 Devolution of the archaeological provisions

The Parliamentary Commission for the Environment recently concluded that while the archaeological authority provisions of the HP Act are similar to the resource consent processes of the RM Act, they are inadequate in respect of local decision making, consultation, independent assessment and systematic enforcement. It was recommended that the Minister of the Environment consult with the Minister responsible for historic and cultural heritage on the desirability of placing the archaeological site authority provisions of the HP Act within the RM Act (PCE 1996a:99). More recently, the Minister for Conservation in a speech to the NZHPT/ICOMOS
Workshop on Registration, stated that he was against centralised decision-making and favoured a devolved process for the archaeological provisions of the 

*Historic Places Act.*

The PCE also noted potential difficulties with such a shift of responsibilities. These included, firstly, a lack of experienced archaeologists working at council level, secondly, the lack of heritage awareness in most authorities, and, finally, the lack of experience in dealing with sites of significance to Maori. The PCE also noted that there is a gap between the archaeological site provisions of the HP Act and the RM Act stemming from the failure of local authorities to provide for the protection of sites in their policies and plans (PCE 1996a:86,94). The level of performance by councils as regards their existing responsibilities towards Maori is variable but remains low. While many councils make idealistic statements, their planning documents include few specific policies or performance measures by which Maori resource management needs might be achieved (Nuttall and Ritchie 1995:24-5, 40, 48,50).

Devolution of the archaeological provisions to regional or district councils might be a solution for some of the administrative difficulties associated with the archaeological provisions of the HP Act. However, such a change would not improve their working either from a Maori or a general heritage management perspective. As far as Maori are concerned, council decision making is no less centralised, nor less Pakeha dominated, than is decision making by the Trust. Councils similarly reduce Maori participation to consultation while decision-making on matters of interest to Maori is firmly retained within council hands. The effect is to treat Maori as another lobby group (Nuttall and Ritchie 1995:22,69,72,90,106). For the time being, the tendency for development proposals affecting Maori sites to be allowed with conditions would seem to militate against the search for acceptable alternatives.

An additional aspect of the devolution of the archaeological provisions will be to leave the existing Register provisions of the HP Act as the chief means of providing for the identification of historic places, historic areas, wahi tapu and wahi tapu areas. The inadequacies of the existing registration criteria and the failure of register-type approaches for archaeological sites have been discussed in Chapter 4. Furthermore, the Chairman of the Maori Heritage Council has publicly questioned the value of registration arguing that it marginalises Maori from their own heritage.

The current level of protection provided by councils for historic places, historic areas, wahi tapu and wahi tapu areas comes through the RM Act. It is largely judged to be inadequate (PCE 1996a:93). In such circumstances, the devolution of further areas of heritage responsibility to councils is unlikely to result in a more effective system of heritage protection.

If as is recommended in Chapters 6 and 8, two separate agencies are created at the national level, one to assist Maori heritage management, and the other to take responsibility for national historic heritage, then the options for archaeological site management are increased.

Ultimate decision-making power should reside with the Maori authorities within whose territory such places are located and involve the resources and assistance of the national agencies and territorial authorities. A transfer of this kind is entirely possible under Sections 33 and 34 of the RM Act, which provide for the transfer of powers and the delegation of functions to iwi authorities. Maori, in partnership with councils and archaeologists, could then work towards the protection of archaeological sites and wahi tapu through iwi planning documents, management plans, management strategies and statements of environmental principles, as provided for in Sections 61 and 74 of the RM Act. Moving the archaeological provisions of the HP Act to local authorities without giving Maori a central role in such decision making will force Maori to continue defend their taonga, archaeological sites and wahi tapu through the courts. The involvement of other agencies, however, should assist Maori to achieve their conservation aims by increasing the conservation options that are available to them.

The 1975 archaeological amendment to the HP Act was a product of its time. However, changes in both circumstances and the legislative framework for resource management have made these provisions less effective and an obstacle to full Maori participation in the protection and conservation of sites and wahi tapu. It is necessary now that councils, archaeologists, Maori and government agencies move towards a more effective regime for site protection, one that is based upon partnership.

### 5.6 Is there a continuing place for salvage investigation

If decision making as regards archaeological sites is devolved to Maori as recommended above, it is likely that the process will continue to involve some form of consent procedure. Archaeological sites will still be under pressure from development and a refusal of permission to destroy or modify a site will continue to involve court appeals and/or the costs associated with permanent preservation. The possible outcomes of such procedures are either:

(i) The application to destroy or modify an archaeological site, or wahi tapu, is approved without conditions, or,

(ii) The application is approved with conditions, or,

(iii) The application is refused in its entirety.

Here it is intended to explore the question of
conditional approvals acceptable to Maori and, secondly, the circumstances under which the salvage excavation of archaeological sites might remain a viable conservation option.

In a recent discussion (NZ Herald August 5th, 1997:A11), Simon Upton, Minister for the Environment, stated that developers who use environmental resources should expect to pay the cost, asking 'Why should any of us be able to impose the costs of our resource use on others?' However, he also advocated that councils should search for flexible solutions that secure the environmental outcome the community is after. In such cases, the Minister suggested, it might be possible to leave the property owner happy, especially where compensation is the appropriate response.

Section 108 of the RM Act covers the conditions of resource consents. These include the possibility of financial contributions, the payment of bonds, covenants, the setting aside of a portion of subdivided lands as reserves (Section 220), management agreements, and any other conditions, including recordings, investigations, or the provision of other information that the council deems necessary. Within this Section, the term financial contribution can mean money, land, works, services or any combination of these. It has been suggested that a requirement for a financial contribution should not be imposed for permitted activities, i.e., those which are considered acceptable to the community and have limited effects (Atkins 1996:2).

On the point of the principle that the developer should pay, the European Convention on the Protection of the Archaeological Heritage notes that Party States should ensure that the costs of any archaeological work resulting from major public or private development schemes should be met from the finances of those schemes (O'Keefe 1993:411). Similarly, the Department of the Environment (UK) Planning Policy Guidance Paper 16 (1990, Section 25) states,

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CHAPTER 6
CAN THE SYSTEM DELIVER TO MAORI

6.1 Introduction

The difficulties that Maori have with the system of heritage management created by the Resource Management and Historic Places Acts were discussed in Chapter 3. Here it is proposed to consider whether the system, even if it is working at its best, is capable of providing for Maori heritage management? The discussion will be limited to the protection of Maori heritage places on privately held lands, i.e., those that are not part of the DoC estate, the foreshore or on lands controlled by a Maori Trust or through some other customary title. The discussion then is limited to Maori 'ancestral lands' as defined by the Resource Management Act through the findings of the Court of Appeal.

Places of Maori value, either as historic places or wahi tapu, can be identified through the Register of the Historic Places Trust. Individual or groups of Maori places might be listed in District Plans and be subject to a resource consent procedure. A detailed discussion of the Registration procedures of the HP Act was provided in Chapter 4. It was concluded that the Trust, local councils and the courts were all working in terms of an iconic view of historic preservation where it is assumed that the full weight of protective measures would only apply to a small number of places of recognised 'importance'. While the Register should be aligned with a broader view of the national history, it is questionable whether this will necessarily improve its performance from a Maori point of view. Selectivity is at the heart of the process. The question remains whether Maori requirements can be fulfilled even by a generous registration and scheduling process that might list up to 10% of the places of known significance? Once listed and/or scheduled, however, decisions regarding the protective management of such places remain in the hands of the territorial authorities who are limited by the appeal procedures of the RM Act. Whether a place is permanently protected will often come down to 'who is to pay'?

The Authority provisions for archaeological sites (Part I of the HP Act) were discussed in Chapter 5. As a conservation measure, these provisions score more highly in their approach to the totality of archaeological sites. They are also effective in encouraging developers to avoid archaeological sites or else run the risk of paying for a costly salvage excavation. The definition of archaeological sites in terms of their information content, however, is legally significant. This means that the conservation value of sites is slanted in favour of the scientific information they contain. Furthermore, the Authority procedures point heritage managers in the direction of salvage excavation as the usual condition of allowing a site to be modified or destroyed. Again, it is only the most significant archaeological sites which will have an Authority application refused outright.

In each of the cases discussed above, the mechanisms of protection follow general heritage procedures as they are applied in New Zealand and overseas. These procedures have been extended to include Maori places but were not developed with this in mind. Maori heritage management has come as something of an afterthought. It is not yet conceived as a field that might require its own approaches. As a result, Maori have been forced to use the existing measures to safeguard their heritage. Inevitably, these have failed to measure up and serious conflicts have been the result (see Chapters 3 and 5). The question remains whether the conventional heritage management approaches can be further altered to accommodate Maori needs, or, whether an independent system, such as the Australian Sacred Sites Authority (NT), should be set up.

An example of the strains that have emerged in trying to protect Maori heritage with approaches that were not designed to achieve this end can be found in the Historic Places Trust, which is recognised as the lead agency for the management of New Zealand's historic and cultural heritage. The operations of the Trust have grown in an uncoordinated fashion reflecting the various revisions of the Act itself. The initial Historic Places Act 1954 established the Board and Trust membership and gave the Trust the power to acquire, purchase or lease any land, buildings or places for the purpose of maintaining and preserving them. In 1975, the Act was amended to make it necessary to apply for an Authority before any archaeological site could be destroyed. The Historic Places Act was further amended and consolidated in 1980. A system of classifying buildings in terms of their historical merit or architectural quality was incorporated, with protection for buildings coming from a separately applied Protection Notice (designation) issued by the Minister (initially of Internal Affairs but later the Minister of Conservation). Finally, the Historic Places Act 1993 maintains the Authority consent procedure for the protection of archaeological sites while creating a Register of historic places (including archaeological sites), historic areas, wahi tapu and wahi tapu areas. The 1993 Amendment also
established the Maori Heritage Council.

As a result of these changes, the *Historic Places Act* 1993 and the HPT now incorporate a number of different approaches to heritage conservation. These are, firstly, the identification and registration of historic places, secondly, the protection of archaeological sites through the archaeological provisions, and, finally, a community directed approach for Maori wahi tapu. As summarised on Table 7 below, each approach has its own mix of features. The Register and the archaeological provisions of the Act emphasise the role of heritage professionals, by contrast the nomination of wahi tapu is in the hands of Maori communities though their management remains with the territorial authorities. The listing of historic places in the Register involves their ranking while archaeological sites and wahi tapu utilise non-ranked, relative assessment procedures.

Such a mix of approaches is not unusual in

<table>
<thead>
<tr>
<th>Conservation approach</th>
<th>Historic Places</th>
<th>Archaeological Sites</th>
<th>Wahi tapu</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation</td>
<td>HP Act Part II, Register of historic places and areas</td>
<td>HP Act Part I, archaeology provisions</td>
<td>HP Act Parts II and IV, Register of wahi tapu/ MHC</td>
</tr>
<tr>
<td>Nature</td>
<td>Externally driven, top-down</td>
<td>Externally driven, top-down</td>
<td>Community directed, bottom-up</td>
</tr>
<tr>
<td>Type</td>
<td>Prior assessment of individual places and areas</td>
<td>Archaeology sites defined as a class. Assessment follows Authority application</td>
<td>Community identifies and assesses individual places and areas</td>
</tr>
<tr>
<td>Significance assessment</td>
<td>Ranked</td>
<td>Non-ranked, relative</td>
<td>Non-ranked, relative</td>
</tr>
<tr>
<td>Decision making</td>
<td>Trust Board</td>
<td>Board delegated to Officers</td>
<td>MHC and Maori community consultation</td>
</tr>
<tr>
<td>Basis of decisions</td>
<td>Trust assessment of historical, architectural scientific or cultural values</td>
<td>Trust assessment of scientific values, cultural and conservation value secondary</td>
<td>Provision of adequate information by Maori community in the proposal form</td>
</tr>
<tr>
<td>Protective measures</td>
<td>Protection by Heritage Orders or consent procedure if listed by Territorial Authorities.</td>
<td>Trust consent procedure. Can require recovery of information at the developer's expense.</td>
<td>Protection by Heritage Orders or consent procedure if listed by Territorial Authorities.</td>
</tr>
<tr>
<td>Aim of measure</td>
<td>Protect fabric and conservation values</td>
<td>Protect information, conservation values</td>
<td>Protect the relationship between Maori community and its significant places</td>
</tr>
</tbody>
</table>

Table 7. Conservation approaches within the HPT (excluding property ownership).
procedures, however, suggests that the tasks of protecting buildings and monumental sites, archaeological sites and wahi tapu have different conservation requirements. These differences are based on conservation necessity rather than preference.

Unfortunately for heritage management in New Zealand, the poorly conceived aims of the 1993 Act, were achieved in part. The archaeology Authority provisions were weakened. While Maori resistance was able to achieve a separate category in the Register for wahi tapu and wahi tapu areas, and the MHC was able to shift the nomination of wahi tapu to the communities concerned, wahi tapu are still subject to a registration procedure that is inappropriate for them and does not deliver the level of protection they require. As noted previously, the Chairman of the MHC has concluded that the registration process, instead of protecting the relationship of Maori and their culture and traditions with their ancestral lands as the Act requires, ‘...marginalises Maori from their cultural base' (NZHPT Annual Report, 1996).

It is clear that an effective system of heritage protection in New Zealand is only achievable if the system allows different categories of heritage to be assessed and protected in ways that are appropriate to them. The conflicts between these approaches to heritage management are greater than the ability of the Trust to contain them. Together they destroy the consistency of Trust advocacy. Whether any of these functions should be performed by an organisation such as the NZ Historic Places Trust will be further discussed in Chapter 8.

6.2 Protecting social values

If, as was discussed in Chapter 1, heritage management has a great deal to do with the creation of the 'national identity', to what extent can the same legislative measures and heritage places be used to maintain the cultural identity of Maori? Certainly, one justification for the selection of a historic place put forward in the statutory criteria is 'the strong or special association of that place with a community for social, cultural or spiritual reasons'.

Heritage assessments generally focus on the intactness of the original fabric of the place and other abstract qualities such as their historical, architectural or scientific significance. The emphasis is on the value of places as unique historic artefacts or icons. In the case of archaeological sites, it is the value of their information content for archaeological interpretation. Johnston (1992:26) argues that protection of the social value of a place requires quite different measures to those available for places of historic or scientific value. She criticises the focus on significant places and the consequent neglect of the rest of the cultural environment. Similarly, Ellis (1994) notes that a 'dots on the map' approach through the scheduling of individual places is an insufficient response to indigenous rights and interests in cultural places.

In Australia, Russell (1993:12-13) states that the Register of the National Estate reflects superceded concepts. These include an emphasis on single places as historic icons, the professionalisation of heritage decisions as part of a top-down approach, and, finally, the co-option of community involvement into statutory processes. Russell suggests that attempts to preserve a community's historic places have less to do with nostalgic romanticism than with understanding the way social institutions operate through historic processes. The preoccupation with the 'building stock' is contrasted with the union-led Green Bans of the 1970's. These did not aim to save or restore old terrace houses but rather to defend the communities who lived there, for whom the terraces had a social rather than a historical meaning. Russell also argues that existing heritage measures based upon registers and planning measures need not be redundant if they can be reformulated within the wider context of community involvement.

Preservation of social values implies the continuation of the ongoing relationship between people and place that created the social value. Such places are best protected by an informed and politically active community that is able to look after its own interests. This might mean acting to protect the social and economic relationships that enable a community to remain viable and stable.

While noting that social value will continue to be unamendable to easy formulation, Johnston concludes that 'Community Directed' approaches to conservation (see Table 8. below) are a step in the right direction. Table 8. contrasts externally directed approaches (those generally applied by conservation professionals) with approaches that address the conservation needs of particular communities. Conservation measures that attempt to preserve a community association with particular places have to rely on relative assessment procedures. Value is not inherent in the place itself so much as in the strength of the connection the group of people who relate to it.

That Community interests are poorly served by ranked assessment systems was demonstrated by the case of the 'Gluepot', the Ponsonby Arms Hotel in Auckland. Although the fabric of the building had little architectural merit, the Gluepot over the past twenty years has been an important venue for young and not so young followers of jazz, blues and rock music. A large number of prominent local and overseas musicians have played at the Gluepot. Many Auckland residents were dismayed at plans for its
<table>
<thead>
<tr>
<th>Task</th>
<th>Externally Directed</th>
<th>Community Directed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification</td>
<td>Based on nomination</td>
<td>Places identified by consulting within the community</td>
</tr>
<tr>
<td></td>
<td>Communities defined by professionals</td>
<td>Community self-defined</td>
</tr>
<tr>
<td>Assessment of Significance</td>
<td>Professional assessment of significance</td>
<td>Community identifies places of social value</td>
</tr>
<tr>
<td>Statement or Heritage Plan</td>
<td>Professionals to prepare with community input</td>
<td>Community to prepare with professional input.</td>
</tr>
<tr>
<td></td>
<td>Consult to ensure agreement</td>
<td>Consult to ensure agreement</td>
</tr>
<tr>
<td>Conservation Decisions</td>
<td>Measures follow heritage conservation practice</td>
<td>Measures take the form suited to the community</td>
</tr>
</tbody>
</table>

Table 8. Contrasting external and community directed approaches to heritage management (adapted from Johnston 1992:22).

re-development as apartments for the well-to-do. Their protests were unsuccessful and the redevelopment has gone ahead. Externally the building looks much the same but it no longer serves the same community (McEwan and Kelly 1997:3-4).

The activities of heritage managers working for the refurbishment and renovation of buildings and precincts can disempower a community. Bennett (1993:222-40) documents the intersection of commercial interests with historic preservation in The Rocks Project in Sydney. This redevelopment created a tourist showpiece and a gentrified residential zone while the previous working-class residents were moved to high-rises in the distant Western Suburbs.

6.3 The RM Act and social values
Perkins (et al., 1993:27) argue that the generic nature of definitions in the RM Act turns the social dimension of community planning into a non-issue. Along the same lines, Kirkpatrick (1996:3) questions whether the RM Act permits planning along allocative lines as well as the more obvious control of effects.

"The suggestion appears to be that an allocative function was abandoned with the Town and Country Planning Act 1977 and its "directed development" bias and that sustainable management is intended to fit within a market regime where exchange issues are left unregulated or at least only regulated to the extent necessary to safeguard "environmental bottom lines"."
Kirkpatrick (1996:3,18) observes that all social systems have complex rights that include not only private property but also rights which are held in common. Where the distinction between private and public property is drawn, however, is socially and historically determined,

'...property rights are not rights of people in respect of property: they are really rights of people against other people. Legal rights cannot exist between people and things...Legal relations exist between people.'

The ownership of property involves both exchange and use value, where exchange value includes rights to income as well as the power to transfer and use value includes possession and management. Kirkpatrick goes on to note that the Resource Management Act concentrates on the use value of resources even though these are inseparable from other property rights. Exchange values or the rights of people against other people are left to the market. He concludes that the lack of attention given in the RM Act to the social dimension of its operations prevents it from making adequate provision for a diversity of cultural values.

In introducing the Resource Management Bill in 1991, the Hon. Simon Upton noted '...the Bill is not designed or intended to be a comprehensive social planning statute. It has only one purpose - to promote the sustainable management of natural and physical resources...(Fookes nd:1). Similarly, a Ministry for the Environment Discussion Paper (Fookes nd: 4) goes on to state that where councils wish to consider social and economic matters, these should be approached initially through a biophysical ecological perspective. These observations raise the question of exactly how social concerns are to be dealt
with under the resource management framework.

In Chapter 4, various clauses designed to facilitate the protection of Maori cultural heritage in Acts and Protocols are listed. These generally take the form of recommending .. that persons, in achieving the purpose of this Act should also take Maori values `into account'.

Discussing the evolution of environmental law, Whalan (1977:308) notes that, at one time, developmental Acts such as forestry or mining were also directed to take the need to protect the flora, fauna, fish, fisheries, scenic attractions, and features of architectural, archaeological, historical or geological interest into account. Environmentalists were never satisfied with such a token acknowledgement of their interests. Arguing that such legislation favours development over conservation, they lobbied vigorously for specific environmental legislation. Environmental law in New Zealand has now passed through this stage but retains vestiges of it where resource managers are now also directed to consider social factors. The RM Act places Maori social issues as secondary to the sustainable management of natural and physical resources. Territorial authorities are able to satisfy these legislative requirements by token `consultations' and the listing of a few heritage places in their plans.

The nearest that the Resource Management Act 1991 comes to providing for the community concerns it lists as Matters of National Importance lie in the provision it makes for the protection of `amenity values'. This is because the concept of natural and physical resources in the RM Act is taken to include such values, defined as `...those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes'. The MfE paraphrases this definition of amenity values as `people's appreciation of the character of a locality' (Fookes nd:5).

These issues have been taken up again in a recent speech by the Minister for the Environment and a working paper put out by the Ministry (Upton 1996, Leggett 1996), where it is claimed that the concept of `amenity value' is capable of sustaining the values of urban communities without undue recourse to regulatory action. Efforts to maintain the character of residential neighbourhoods, at least as far as preventing a petrol service station from being located in a residential zone, have been supported by the Environment Court. Consequently, it is argued that councils might be defining amenity values too prescriptively when they restrict them to residential site controls (Leggett 1996:4-5, Upton 1996:6-8). It is possible that controls on height limits, signage controls and car parking restrictions might stifle rather than enhance the amenity values of urban areas. Certainly such prescriptions make it harder to preserve older buildings within the city.

The Minister's call for creative rather than coercive thinking and the principle that amenity control is warranted only when there are clear public benefits can take us part of the way towards the creation of a community directed approach to heritage management (Upton 1996:7). Moving past generalities into specifying exactly what values give rise to amenity in any given area at least provides the community with the opportunity to measure council's ideas against their own. However, councils and heritage professionals continue to assume that they act for the community in defining what is the public good. The various examples of the use of amenity value provisions that are provided, e.g., inner-city apartments and character-filled urban places such as Parnell and Thorndon (Upton 1996:7), suggests that the concept of amenity value will only be of limited assistance for Maori efforts to protect their heritage and their communities.

In terms of heritage protection, the HP and RM Acts are preoccupied with the use value of places as icons. The conceptualisation of historic places as `resources' invites us to regard preservation as a technical matter that is solely concerned with the place in question. As Kirkpatrick (1996:3) makes clear this is to ignore half the picture. The Maori Heritage Council's incorporation of a `community directed' approach into Trust procedures must be seen as an attempt to reinstate Maori social concerns as central to the heritage management project. Attention must also be directed towards the social relationships that are created or enhanced through the conservation of places.

The advantage of retaining an Act such as the Historic Places Act is that it addresses the social dimension of heritage management, even if this is hidden behind its preoccupation with the technical functions of identification, protection, preservation and conservation. To consider that the role of the HP Act is to identify the historic and cultural heritage of New Zealand, while such places are managed by the territorial authorities through the RM Act, is to ignore both the limitations of resource management legislation and the conceptual differences between the two. While heritage remains a secondary objective of the RM Act, its usefulness will continue to be limited.

6.4 Are Maori simply members of the community

The Local Government Amendment Act 1992, which replaced a multiplicity of borough, town and city entities with new administrative units consisting of regions and districts, created a new system of local government for New Zealand. The
system is based on the assumption that the populace included in each district is a 'community', which is consulted through representative Community Boards. The criteria listed in the Act (Section 37) as relevant for boundary changes make it clear that administrative efficiency not social cohesiveness was the central issue in this reorganisation. As a consequence, there have only been a few applications by smaller communities, such as Devonport and Howick, for boundary changes on the grounds of social distinctiveness. Most of these have been unsuccessful.

In its briefing paper to the incoming Minister, Local Government New Zealand (1997) argues that local government is a partner with central government 'in the governance of New Zealand'. At the same time it claims that this provides a 'voice for local communities...based on sound democratic and accountable processes, as well as the provision of local services; services that are more appropriately delivered locally rather than nationally.' Nuttall and Ritchie (1995: 93-6) note that councils believe that they represent 'the community' and treat Maori as if they are simply another lobby group seeking to advance their sectional interests.

Hamer (1997:263) notes that a number of concepts that are foreign to New Zealand have entered the planning world. Such concepts include 'streetscape', 'Main Street', 'Precincts' 'Districts' and 'Neighbourhoods'. He observes that such terms are new to New Zealand even though they have been the focus of social construction in the United States for more than 50 years. In suggesting that the cultural roots that would nourish a heritage strategy emphasizing districts are shallow in New Zealand, he continues,

'In the United States the word 'district' has cultural connotations which are largely absent in New Zealand. American area preservation has had broad cultural dimensions, especially as a consequence of having become caught up in the enthusiasm for neighbourhood preservation of the 1970s. The vitality of American community life was seen then as being particularly dependent on the health and integrity of the neighbourhood, frequently referred to as the most fundamental unit in the community structure'.

Hamer (1997:264) doubts whether attitudes of this kind have had much prominence in New Zealand. The Local Government Amendment Act 1992, however, which created a new relationship between central and local government, is based on the idea that the system of governance should mirror the governed society. In this case, the nation is conceived as being divided into communities which are its building blocks. Such a relationship might be represented as:

Central government: Nation
Local government: Community

Planning and administrative law assumes, and possibly demands, the presence of social entities which might not yet exist and which Hamer has described as being culturally foreign to New Zealand.

Such ideas have already had an impact through the RM Act where central government has devolved resource management to local government on the grounds that environmental decision making should be as close as possible to the community affected. If heritage managers wish to take community values into account, then exactly how the community is defined and consulted becomes an important question.

A nation / community split becomes less straight forward if Maori concerns are added to the social equation. The protection of Maori heritage presently involves relationships at four levels; Maori with the Crown, with local government, with the general community, and, finally, with other Maori.

In terms of the partnership between Maori and the Crown, Nuttall and Ritchie (1995:4,69,87,88,110) note that the respective roles of central and local government are unclear. While the safeguarding of Maori rights under the Treaty is a Crown responsibility, its obligations for the management of resources of interest to Maori have been transferred to councils through the Resource Management Act 1991. Beyond the insertion of Sections 6(e), 7(a) and 8 into the RM Act, the Crown has not made it clear how it expects Territorial Authorities to fulfil the Treaty obligations it has transferred to them.

Nuttall and Ritchie (1995:11-14,93,106) also observe that the Resource Management Act 1991 marks a fundamental shift in planning away from prescription. It seeks to replace a rational, legalistic and regulatory planning process with a newfound holistic Pakeha philosophy based on the objective of sustainability. There is a tension between the libertarian emphasis of the Act and the Crown's responsibilities regarding Maori resource management needs. Consequently, councils can show a high level of independence in their interpretation of the Act and many appear to be resistant to implementing sections that are of benefit to Maori. In any case, given the limitations of the RM Act as far as social planning is concerned, councils might not be in a position to effectively manage environmental resources on behalf of Maori. Nuttall and Ritchie (1995:109-110) suggest that councils which form a genuine partnership with Maori might pay a heavy political cost from ratepayers.
From a Maori point of view, regions and districts often include a number of iwi and hapu groupings, which are defined in opposition to each other. Although they are ratepayers, Maori are likely to see councils as representing the Crown, as the Treaty partner, rather than their community interests. Maori and Pakeha communities also continue to see themselves as culturally distinctive despite their common residence and employment patterns. Notwithstanding the devolution of resource management to the local level, political and economic power remains concentrated.

In Section 6.3 above, attention was drawn to Kirkpatrick's discussion (1996:3) regarding property rights. It is likely in New Zealand that Maori and Pakeha concepts regarding public, private and communal interests in land differ in significant ways. The attention of councils is on the use of land to further the public interest. The conceptualisation of historic places as 'resources' also emphasises their use value. These concepts almost certainly infringe Maori traditional rights as regards their heritage. Maori are unlikely to be happy with a resource management structure that protects wahi tapu by taking them into a form of public ownership where decision making is in the hands of councils.

Too much of the discussion thus far has been focussed on the Resource Management Act, which is designed for the management of 'physical and natural resources'. Section 6 of the Resource Management Act 1991 which provides for the relationship of Maori and their culture and traditions with their ancestral lands, is a useful provision. However, the Act itself is not a vehicle for achieving planned social outcomes and Maori need to look at the impact on their communities of the full range of council activities. Maori would identify their dissatisfaction with the RM Act as being little different to the difficulties they experience with the generality of council administrative policies. It is necessary to broaden the discussion to include the wider relationships between local government and Maori. Councils treat Maori as subjects to be governed and also as undifferentiated members of the general community. Maori are given particular, if variable, attention in resource management matters. What is missing is any consideration that councils might give to Maori as their partners in local governance.

Local Government New Zealand (1997:9-12) notes that territorial authorities implement or administer a variety of Acts. It observes, however, that the reform of legislation is incomplete and many Acts have yet to be integrated with each other. Similarly, Kirkpatrick (1996:4) considers that while much is made of the RM Act's objective of 'integrated management' its piecemeal approach creates significant problems. Particular points of concern include the lack of connection between the Resource Management Act, the Building Act, the Local Polls and Elections Act, the public resource controls included in the Local Government Act, the Rating Powers Act, and, finally, the requirement in the Local Government Amendment Act (No.3) 1996 that councils differentiate between what is a public good and what constitutes a private benefit. Council activities affect Maori heritage in many ways and a number of the measures discussed here are likely to be defined as a private benefit to Maori rather than a good to the entire community.

If local government has a social planning role then this is through its wider legislative brief. Local Government New Zealand notes that "...local government now has the opportunity to add value to their communities, intervening in a cost effective and targeted manner to either address community problems, or enhance community well being" (1997:10-18). Taken together with the RM Act, it can be seen that territorial authorities have a considerable, if discretionary, social role. However, the ambiguities within the legislative structure regarding the role of local government in governance, as representing the Crown as the Treaty partner, as representing the community interest and as representing Maori have yet to be clarified. In this context, both central and local government need to specify what they mean by the term 'community' and how it relates to Maori or else run the risk of using it to deny Maori rights in the same way as the concept of New Zealanders as 'one people' did a generation ago (Hohepa 1978).

Maori are guaranteed the rights of citizens under Article 3 of the Treaty. They should be able to call on councils to govern in a manner that is reflective of the differences between Maori and the dominant culture. As noted previously, the interest of Maori communities in their heritage should be related to the totality of Acts administered by local government. As these come up for review and integration with the RM Act, it is important that Maori be in a position to work towards a system of local government that provides for their social wellbeing.

6.5 Safeguarding Maori heritage values, the national role

Maori sources will be used in this section to explore a potential definition of Maori heritage values. Secondly, the range of legislation designed to provide for these values will be looked at. Thirdly, existing structures within government charged with safeguarding Maori heritage interests will be examined. Finally, the question of an additional Maori heritage body in partnership with the Crown will be discussed.

The number of concerns which might be
associated in some direct manner with Maori heritage values, including public broadcasting of te reo and the performing arts, is vast. The focus here is with **heritage places**. From a Maori perspective, however, concentrating on places alone is too narrow. **Maori places** are associated with human groups, whanau, hapu and iwi. The link between place and community (both living and dead) is forged by genealogical ties and traditional knowledge. Beyond the core of values formed by community, place and knowledge, are those attributes of a place which define its character. These might include its physical form, vegetation, animals, its tangible and intangible contents, and activities that might have occurred there, both economic and spiritual.

Harmsworth (1997:7) defines **Maori values** in regards to heritage as ‘any natural resource, area, place or thing (tangible or intangible) which is of economic, social, cultural, historic, and / or spiritual significance to tangata whenua’. He notes that Maori values refer to a large range of items including biophysical features, plants, animals, objects, places and areas of cultural / social / historic / spiritual value, buried items such as carvings (whakairo) and pounamu, placenames, genealogies and oral traditions.

In the report on Historical and Cultural Heritage Management in New Zealand, the Parliamentary Commission for the Environment (1996a:91) noted ‘Historic and cultural heritage is part of a continuum of types of heritage, including natural, historic and cultural heritage of all types whether insitu or conserved in collections. The PCE argued that there should be an integrated strategy for **all types of heritage**.

A partial listing of statutes, governmental and non-governmental agencies responsible for the management and conservation of land-based resources and heritage **at the national level** in New Zealand is shown on Table 9. The complexity of arrangements for heritage management is increased by the fact that the existing legal framework enshrines British rather than Maori customary understandings. Thus the **Resource Management Act** 1991 divides the **land** from the **coastal marine area** located below the mean high water line. Different mechanisms are provided for their management, i.e., national, regional and district policy statements, and plans versus national, regional, district **coastal** policy statements and plans. Furthermore, minerals, whether on land or under the sea, fish, and indigenous plants and animals have their own legislation.

The Treaty of Waitangi and subsequent statutes guarantee Maori a direct role in the conserva-

<table>
<thead>
<tr>
<th>Category</th>
<th>Legislation</th>
<th>Organisation</th>
</tr>
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<tbody>
<tr>
<td>vegetation, animals, birds, fish, insects</td>
<td>Wildlife, Fisheries, Wild Animal Control, Marine Mammals Protection, Forestry</td>
<td>Department of Conservation, Ministry of Agriculture and Forestry</td>
</tr>
<tr>
<td>land, soil, water, air, structures, buildings</td>
<td>Resource Management, Conservation, National Parks, Reserves, Environment, Building, New Zealand Walkways, QE II National Trust, Historic Places, Te Turi Whenua Maori Act, Lands</td>
<td>Territorial Authorities, Ministry for the Environment, Department of Conservation, QE II Trust, NZHP Trust, Te Puni Kokiri, Lottery Grants Board, Maori Land Court</td>
</tr>
<tr>
<td>special places, sacred sites</td>
<td>Resource Management, Conservation, National Parks, Reserves, Environment, Building, New Zealand Walkways, QE II National Trust, Historic Places, Te Turi Whenua Maori Act, Burials and Cremation Act</td>
<td>Territorial Authorities, Ministry for the Environment, Department of Conservation, QE II Trust, HP Trust, Te Puni Kokiri, Lottery Grants Board, Maori Land Court</td>
</tr>
<tr>
<td>objects, creative arts</td>
<td>Antiquities, Museum of NZ Te Papa Tongarewa, Arts Council Toi Aotearoa</td>
<td>Department of Internal Affairs, Ministry of Culture</td>
</tr>
<tr>
<td>metaphysical, oral traditions, waiata, place names</td>
<td>Lands</td>
<td>Department of Internal Affairs, NZ Geographic Names Board</td>
</tr>
</tbody>
</table>

Table 9. A partial listing of legislation and organisations with responsibilities for Maori heritage (see also PCE 1996a:Appendices 2-6).
tion of their resources and values. On the other hand, Article 3 of the Treaty guarantees Maori the protection of their rights as citizens. Maori heritage management has been 'mainstreamed' through the Resource Management Act and other Acts of Parliament, and any special Maori requirements now have to be achieved through a raft of general statutes.

The Maori interest in organisations with statutory responsibilities for heritage matters is safeguarded through Maori membership of various decision making Boards, Authorities, and Committees. This can be limited as in the QE II National Trust where one Director is appointed by the Minister of Conservation, in consultation with the Minister of Maori Affairs, with regard to 'the interests of the Maori community'. On the other hand, the HP Act directs that the Board of the Trust should have three Maori members out of a total of eleven, together with the Maori Heritage Council with a majority of Maori members (see Table 10. below).

The lack of integration and coordination that the PCE has identified for the entire system of historic and cultural heritage protection also limits the effectiveness of Maori representation in the organisations listed above. Four organisations have been given supervisory roles to assist the Crown, and by extension the territorial authorities and other organisations charged with managing aspects of Maori heritage, to carry out their duties in a manner that conforms with Articles 2 and 3 of the Treaty.

Te Puni Kokiri, the Ministry of Maori Development has the responsibility of increasing Maori levels of achievement in areas which include 'economic resource development' and, 'Monitoring, and liaising with, each department and agency that provides or has a responsibility to provide services to or for Maori for the purpose of ensuring the adequacy of those services' (Ministry of Maori Development Act 1991, Section 5).

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986 to ensure that public authorities and others are held accountable for their planning and management as it affects the environment. Matters which should be given a full and balanced account in the management of natural and physical resources include (c) the principles of the Treaty of Waitangi, and, (e) the needs of future generations (PCE 1988:7).

The Ministry for the Environment is charged with providing government, its agencies, and other public authorities with advice on the application, operation, and effectiveness of the Acts specified in the Environment Act 1986. Such legislation includes laws relating to animals, conservation, fisheries,

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Maori Representation (excluding staff)</th>
</tr>
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<tbody>
<tr>
<td>DoC Conservation Authority</td>
<td>2 members</td>
</tr>
<tr>
<td>Ministry for the Environment</td>
<td>in the process of creating a Maori Advisory group</td>
</tr>
<tr>
<td>Internal Affairs</td>
<td>Maori Advisory Council, 16 members</td>
</tr>
<tr>
<td>Lottery Grants Board</td>
<td>Interim Marae Development Committee, Environment and Heritage Committee 1 member</td>
</tr>
<tr>
<td>NZ Historic Places Trust</td>
<td>3 Board members, Maori Heritage Council 7 Maori members</td>
</tr>
<tr>
<td>NZ QE II National Trust</td>
<td>1 member, a subcommittee of the Board, Te Komiti Whenua Toitu, is responsible for Maori lands</td>
</tr>
<tr>
<td>Museum of NZ: Te Papa Tongarewa</td>
<td>Maori members of the Board</td>
</tr>
<tr>
<td>Creative New Zealand</td>
<td>Maori members of Arts Council of New Zealand Toi Aotearoa and of Te Waka Toi - Maori Arts Board</td>
</tr>
<tr>
<td>Territorial Authorities</td>
<td>Iwi consultative committees, Community Boards</td>
</tr>
</tbody>
</table>

Table 10. A partial listing of Maori representation on various Boards and Committees.
forests, historic places, lands, reserves, resource management, and wildlife.

Finally, there is the Maori Heritage Council of the Historic Places Trust which, among other things, is expected

(b) To develop Maori programmes for the identification and conservation of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interest, and to inform the Board of all activities, needs and developments relating to Maori interests in such areas and places. (Historic Places Act 1993, Section 85).

These bodies have the responsibility to oversee and coordinate the work of government and non-government organisations as far as Maori heritage is concerned. Their role is especially important given the complexity of the existing legislative framework and the mainstreaming of Maori requirements within it. Given the statutory roles of the organisations listed above, it is likely that the Maori interest would be best served firstly, by resourcing the existing regulators to do the job Parliament has required them to do, and, secondly, by mandating one of these organisations to be responsible for ensuring that there is coordination between their activities. The Ministry for the Environment, in particular, has failed as far as its stewardship and responsibilities towards Maori are concerned.

The discussion of Maori heritage management in Chapter 3 detailed the failure of the existing system from a Maori point of view and the recommendation from the hui at Te Herenga Waka Marae that a stand alone Maori heritage body was necessary. Of the four organisations listed above, the Maori Heritage Council, as the only organisation directly concerned with the conservation of places, would appear to be in the best position to be an advocate for Maori within government without imposing itself between the community and the resources Maori wish to conserve.

The Maori Heritage Council should be reconstituted, through its own Act of Parliament, as a stand alone Maori heritage agency charged with:

(a) Advising government on the full range of heritage associated with Maori places.

(b) The development of a national strategy for the conservation and protection of Maori heritage.

(c) Specialist advice to Maori authorities and organisations as to how they can use the various heritage Acts to achieve Maori cultural ends.

(d) The coordination of the work of the various Maori members of Boards and Committees and the creation of a network of Maori organisations concerned with heritage issues to allow joint approaches, pooling of resources, education and training initiatives.

(e) Assisting Maori organisations to set up appropriate structures and facilities for heritage management.

(f) Advocating the transfer or delegation of functions, powers and duties regarding the management of wahi tapu from Territorial authorities to iwi or Maori authorities as provided under Sections 33 and 34 of the RM Act.

The measures discussed could encourage Maori to use the existing heritage management framework to greater effect on their own behalf and also to create a new, more appropriate system for Maori heritage. The Maori Heritage Council has attempted to foster a community directed approach. However, it is underfinanced and its legislative role is directed towards the Register of wahi tapu, the effectiveness of which it has serious doubts about. Finally, the Council is in no position to offer planning assistance to Maori communities where it is needed. Inadequate resourcing of organisations dedicated to a system of bicultural heritage management such as the Maori Heritage Council would seem to be a self defeating strategy on the part of the Crown. The other side of the coin that denies sovereignty to Maori are the barriers, both legislative and procedural, which prevent Maori from receiving the full benefits, as citizens, of community funded activities such as a heritage management regime that is appropriate to Maori needs (Nuttall and Ritchie 1995:63).
CHAPTER 7
PLACES, AREAS, LANDSCAPES

7.1 Heritage protection and archaeological research

Notwithstanding the requirements for a separate Maori heritage management system, it is important that the existing general heritage management arrangements also be improved. The deficiencies of both the Register and the archaeological authority system have been discussed in Chapters 4 and 5.

Because archaeology is also an academic discipline, archaeological heritage management in New Zealand will always be split between the aims of promoting Maori management of sites, of enhancing their public conservation values, and, finally, of protecting sites as the source of knowledge on which the discipline depends. For this reason the protection of archaeological sites presents a different case to that of historic places in general.

The relationship between archaeological research and heritage conservation is directly reflected in the history of heritage legislation in New Zealand over the past 40 years. As the requirements of archaeological research have changed, archaeologists have worked to bring the legislation into line with these requirements.

Up until c.1950, most research was carried out on artefacts. The archaeological context was considered to be less important in determining historical relationships than were the humanly made objects the sites contained. In fact, excavations, in the 1954 Historic Places Act, were primarily seen as a means of discovering and preserving "...relics, chattels and other things" (1954, Section 9). It could be argued that the registration process in the HP Act 1993, through its preoccupation with historic places as icons, retains an artefactual approach to heritage conservation.

During the 1960's, archaeological research shifted from artefacts to the study of structures within their site context. The subsequent development of settlement pattern archaeology focussed attention on functional relationships between sites. These concerns were incorporated into 1975 Amendment which protects all site types, both the humble and the monumental.

The focus on individual sites, however, has carried the research agendas of the 1970's into the 1993 Act. The closeness of fit between archaeology as a science and the heritage measures included in the HP Act has weakened. This is because the site concept, as a location where archaeological features and artefacts might be concentrated, has itself come under discussion (Dunnell 1992, Binford 1992). New methods have been developed which take into account the fact that human activities are continuous across the landscape and that places where the evidence appears to be concentrated (sites) are partly the result of the archaeologist's expectations. It is now considered that the site-based frame of reference on which the Authority provisions of the 1993 HP Act were based either ignores evidence located between sites or else has the effect of amplifying every archaeological find-spot into a separate site. Archaeological heritage management needs to be broadened to allow the protection of areas as well as single sites.

A similar trend has occurred in England where archaeologists now question the philosophy of a system based entirely upon the scheduling of single monuments. Fowler (1987:413) argues that scheduling is fundamentally site-specific at a time when archaeological conservation should be moving from individual sites to representative areas chosen from the regions. Fowler states '...the whole canvas of the archaeological environment, not just the blobs of brightest paint upon it, is what makes the picture'.

It is clear that archaeological heritage management in New Zealand retains a close relationship with archaeological research especially as the HP Act defines archaeological sites in scientific terms. However, the Act does not explicitly deal with the relationship between archaeological research and heritage management nor does it define what responsibilities the Trust has towards archaeology as an academic study. A model for the relationship between a scientific discipline and heritage management might be that between ecology and nature conservation.

As with archaeology, the emphasis of conservationists has shifted over time from the protection of individual areas of scenic beauty to a concern with the totality of conservation values in the landscape. Apart from the creation of pest-free refuges on the offshore islands, most attention has been given to the protected natural areas or PNA programme. This programme has three dimensions (Royal Society of New Zealand 1987:3-4). The first is conceptual, focussing on communities, habitats, ecosystems and landscapes. These are scientifically defined entities which explore the web of interrelationships between organisms and the physical world. The second dimension involves the classification and surveying (inventory) of the range and variability of natural areas in New Zealand and...
the determination of their regional, national and international significance. The third dimension is the putting into place of practical measures that will ensure the long term survival of representative examples of natural ecosystems and landscape, as required by Section 3(c) of the Reserves Act 1977.

It is interesting to note that New Zealand's first site protection legislation was the Scenery Preservation Act 1903, which was designed to provide for the acquisition of lands of scenic or historical interest. Sadly, the excellent work of this Commission which had S. Percy Smith as chairman and Hoani P. Tunuiarangi as a member was not continued after the administration of the Act was transferred to the Department of Lands and Survey. Emphasis then shifted to reserving blocks of native forest along the North Island main trunk railway (Leach 1991:83-90).

Since 1977, the Reserves Act, has provided for 'the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character'. It is further noted that protected areas may be established for their intrinsic worth (natural, cultural, historical, scientific or landscape values) or beauty as well as for the benefit and enjoyment of the public (Protected Areas Legislative Review 1988:6).

At a paper presented to the Conference of New Zealand Archaeological Association held in New Plymouth in 1982, McKinlay reported that a new and selective approach to the protection of New Zealand's archaeological heritage had been adopted by the Board of the Trust (18 March 1982). McKinlay noted that

'...The basic goal must be the preservation of an adequate sample of New Zealand's archaeological resource so that archaeological information is not lost forever' (McKinlay 1982:1).

A goal such as preserving a sample of all archaeological sites is an attempt to avoid the bias towards the unique and spectacular that most ranking systems create. Neither the registration of historic places nor the archaeological provisions of the Act are capable, on their own, of preserving representative samples of archaeological sites. Policies capable of achieving such a sample, however, were not put into place and the Trust has made no progress towards this end in the 15 years since this measure was adopted.

At a HPT Conference in 1987, Murray Hosking from DoC suggested that heritage conservation might have something to learn from nature conservation as far as ecosystems and natural area approaches were concerned (Hosking 1987:27). It is notable that an emphasis on ecosystems, and their intrinsic values, has been carried into the Resource Management Act 1991. Blaschke (1996:13) also suggests that local government should take all heritage values into account when attempting to sustainably manage the cultural and historical heritage and that the adoption of 'natural science' methodologies regarding sampling and the protection of representative areas might be useful (see also PCE 1996a:A33). In Australia, the Australian Heritage Commission is in the process of adapting a system designed for the natural environment to identify and assess cultural values on a regional basis (Feary 1994). The work was stimulated by the fact that Environmental Impact Statements prepared for forested regions of Victoria largely ignored cultural and social values. At the end of a pilot study, the Commission concluded that a regional assessment approach provided a sound framework for the management of areas of the National Estate subject to the systematic and cumulative impacts stemming from forestry operations.

A shift to a model based on the protected natural areas programme, however, might not be as simple as Blaschke (1996) suggests, for the PCE also notes that the conceptual approach of the RM Act is fundamentally different to that of the HP Act 1993 (PCE 1996a:95). Natural scientists and environmental planners tend to work in terms of class and community data, e.g., environmental zones, while most of the work of archaeologists and heritage professionals is with point or spot data, i.e., sites or individual historic places (Allen 1988:143-5). Even historic 'areas' within the HP Act are defined as areas of land that contain "...an inter-related group of historic places' rather than as areas that have an intrinsic value in their own right. Although it is unlikely that Maori spatial concepts coincide with these ideas, the site-based approach has been extended to wahi tapu and wahi tapu areas in the HP Act.

One of the conclusions of Chapter 6 was that the conservation of social values requires a different approach to resource based heritage management. Paradoxically, the separation of natural from cultural heritage (discussed in Sections 1.1 and 7.2 below) does not achieve this result. Perhaps this is because the separation of the two is often accompanied, in western thought, by the privileging of the natural over the cultural environment and the collapsing of cultural categories as if they were a part of the natural world.

In government departments that are charged with the conservation of both the natural and historic heritage, such as DoC, heritage managers are uncomfortable with providing more than the protection of single, isolated historic places (cf., Nickels 1994). The Historic Heritage Strategy published by the Department of Conservation in 1995 defines a number of historical themes and calls for
their integration within the general conservation work of the Department. However, it does not put forward any specific measures by which such themes might be translated into conservation practice (1995:11,15,30). On the other hand, as previously noted the selection of historic places on the DoC estate for active management follows the registration criteria of the Historic Places Act 1993. This is despite the fact that the registration process is primarily designed to protect historic places on private lands.

Cleere (1989:11) observes that, as most countries are constrained by legal, political or financial considerations from protecting all sites, some system of selection is necessary. He argues that a culturally and scientifically valid selection should consist of a representative sample drawn from a known totality of the national heritage. A question that must be raised here is what exactly archaeologists might mean by the term a representative sample and secondly, whether concepts such as community and ecosystem are archaeologically meaningful? Past human relationships with either the environment or with other humans are no longer observable and attempts to define regional variations and social or political communities in the archaeological record have proved to be difficult in the extreme (Groube 1964). On the other hand, the archaeological signature in New Zealand does vary from region to region and most archaeologists would have little difficulty in identifying areas where the human use of distinctive environments has left a unique record. Examples would include the use of volcanic cones and stonefields, the artificial shellmound sites found in the Waihou, the Waikato lakes and the Horowhenua, and sites on fragile coastal dune systems. To create measures capable of protecting samples of the New Zealand archaeological record requires an approach that is more subjective and somewhat less ambitious than the natural areas programme. The concept of a representative historic areas programme does not yet find a place in the practice of heritage professionals.

Though it is rarely used for the protection of cultural or historic values, the usual answer to large scale land management is the creation of zones within District Plans. It is argued that protection through planning procedures, such as zoning or the creation of conservation or amenity areas, is more appropriate than the imposition of consent procedures on single places whether through listing or through the archaeological provisions (Startin 1995:142). However, the experience of the Far North District Council is relevant here. The FNDC placed a number of significant natural areas into their District Plan and attached rules for their management. Farmers, who had learnt to live with the scheduling of single places and the protection of archaeological sites and indigenous forests through the HP and the Forest Amendment Acts, would not tolerate this additional imposition by a council that is politically accountable to them. They successfully agitated for the withdrawal of the entire Plan and have spearheaded the call for a government enquiry into the Resource Management Act itself.

Placing the responsibility for national conservation objectives entirely onto local authorities is unlikely to work. On the other hand, the attempts to impose new conservation zones suggest that the strength of zoning lies in the consolidation of existing land use practices rather than as a vehicle for change. As will be seen in Section 7.2 below, a change in land use practices and attitudes requires that attention be given to social as well as technical relationships, an aspect that is only weakly developed in the RM Act.

Archaeologists would like a heritage system that is capable of preserving representative historic areas for their future study. Such a project might be advanced by combining two approaches. Firstly, additional areas should be incorporated into the Conservation Estate so that they can be managed with this end in mind. Secondly, archaeologists should pursue approaches to landscape conservation through voluntary community involvement which seeks to achieve multiple planning objectives.

7.2 Landscapes and communities

It has been suggested that the concept of ‘cultural landscapes’ might allow a broader approach to heritage preservation, one that facilitates community involvement in the process. Landscapes are ‘a social construction of space, an amalgam of practices, meanings, attitudes and values’ (Bradley 1996:39). Defining landscapes for preservation requires a different approach to that required for representative areas which are scientific determinations. Cultural landscapes invoke a personal and emotional reaction. They include the natural terrain, the built environment, pathways and even place names. The relationships they represent are human as well as historical. The identification and preservation of landscapes requires that heritage professionals shift their view from single places to the intersection of natural resources, technology and social systems, which have a historical dimension. Understanding modern landscapes requires a perceptual approach based on direct experience and engagement (Darvill 1996:143). Landscapes have been the subject of study of a number of significant historical publications. These include W.G. Hoskins’ The making of the English landscape, Raymond Williams’ The country and the city, D.W. Meinig’s (edited) work The Interpretation of Ordinary Landscapes, and D.N. Jeans and P. Spearritt’s The
Open Air Museum: The cultural landscape of New South Wales.

The identification and protection of relic cultural landscapes is discussed by Darvill (et al., 1993:563-74). They note that such landscapes are the only ones that preserve the hierarchy of monuments and their intervening spaces that are the characteristics of a past society. Their protection requires special measures and concepts. In addition, Fowler (1996:14) argues that as we have lived through a period of great socio-technological change, the preservation and study of industrial landscapes will prove to be of considerable historical significance.

Upton (1996:8) defines the constituent parts of the landscape as 'the open space, production systems and remnant ecology that provide the visible expression of our culture and our history'. He argues that regulatory action should be based upon the ecological processes that underpin the landscape.

'...any attempts to sustain the landscape will be rooted in a detailed understanding of the geology, geomorphology, climate and natural systems of the region. It will understand the physical processes by which materials - living and inert - are transported and recycled through the landscape. And since people are part of these physical processes, it will be sensitive to the way people identify with and relate to that landscape' (Upton 1996:9).

The protection of outstanding natural features and landscapes is listed as a matter of national importance in the RM Act (Section 6 (b)). It has been suggested that the concept of amenity value might also be of some utility in the protection of landscapes. Amenity value identifies people and their values, both past and present, as being important in the creation and maintenance of landscapes (Upton 1996:8-9). However, as was discussed in Chapter 6, the protection of cultural landscapes requires that heritage managers move beyond the Resource Management Act and make use of a wider range of protective measures.

Relic landscapes, because of their size, are at the opposite end of the scale to places that are judged to be insignificant on the basis of smallness. Mixed in with modern land tenures, ancient landscapes retain a hierarchy of places from the most to the least significant with much of their value being relational. In New Zealand, they are generally the result of land use by single industries or of a single period. Examples in New Zealand include the missionary and Maori sites in the Kerikeri Basin, the gold mining areas of Otago and the Coromandel, the timber and gumfield areas of North Auckland, Maori agricultural systems including the stone fields of Auckland, Pouerua, and Waipoua, the Auckland volcanic cones, the soil complexes of the Waikato, the midden sites on the Papamoa sand dunes, the volcanic terraced sites of the Bay of Plenty, and the shell-mounded swamp pa of the Hauraki Plains.

The importance of archaeological sites lies in their landscape or environmental values and not solely as a source of historical information. As with Maori place names, the existence of archaeological sites on the New Zealand landscape is a tangible reminder to today's inhabitants that once the entire country was owned and used by Maori, a society based upon different premises of life. To the general community, the archaeological landscape consists of places for enjoyment, for recreation, for information and, finally, for reflection. Many archaeological sites such as Mount Eden (Maungawhau) in Auckland, and indeed, the pa, terraces and shell middens that dot the coastal landscape are held in high regard by the populace (Allen 1991:17). They are a significant part of the physical and cultural landscape of New Zealand and should be a part of the environment that is sustainably managed for the enjoyment of future generations.

The protection of landscapes requires a coordinated approach. Agencies, however, continue to use single place conservation measures that are quite inappropriate for them. Consequently, such landscapes are the subject of severe resource conflicts and the unimpeded destruction of their heritage values. Pouerua is a case in point. While it is acknowledged to be a landscape of exceptional archaeological and Maori significance, attempts to get an agreement between DoC, the HPT and Ngapuhi in order to preserve it through purchase failed. Through a lack of coordination between the agencies involved, the private land-owner was able to get planning permission from the Far North District Council to subdivide the area, including the archaeological landscape, into 14 titles which have subsequently been sold. As a result, the Trust has had to consider multiple authority applications for house sites and their servicing. The protection of Pouerua as a wahi tapu is of great concern to Ngatihine (Te Runanga o Ngatihine 1990).

Landscapes of more recent historic interest do not fare any better. The Kerikeri Basin, second only to Waitangi in the part it played in the foundation of the country, is currently suffering degradation caused by rapid urban encroachment and piecemeal development. Components of this landscape are owned and managed by a number of authorities (DoC, HPT, FNDC) and private land-owners. Attempts by the Far North District Council to create a unified management plan that would coordinate the activities
of these agencies, and involve tangata whenua and residents, were aborted by the Kerikeri National Trust Bill. This bill seeks to create a single heritage authority, the Kerikeri National Trust, to consolidate the lands of the area into a park. As a measure, it emphasises ownership and control at a time when other initiatives emphasise joint management agreements between existing agencies, including iwi authorities and land owners. The Kerikeri National Trust Bill is presently at the Select Committee stage (1997). Even if this Bill lapses, we are no further forward and the problems of development in the Kerikeri Basin continue unabated.

Measures to protect areas and landscapes which retain a distinctive cultural imprint have proved inadequate. Neither the Conservation estate nor the existing system of reserves achieves this aim. Most of the estate is in the mountainous or forested lands of the central North Island and the South Island, where human activities have been transitory. 96% of national parks and 80% of forest sanctuaries and ecological reserves are on hilly country above 300 metres ASL. By contrast, the majority of archaeological sites are located on the productive lowlands, below 300 m. These comprise 57% of the land area of the North Island which is given over to farming, manufacturing and residential use. Apart from offshore islands in the Auckland Conservancy, only a small proportion of productive lowlands are in reserves (Campbell 1986:2). The off-shore islands, however, are themselves the location of a conflict between environmental conservationists and archaeologists over plans to return them to native forests (DoC 1992). Public ownership of other productive lowland areas is an unlikely outcome. A change of conservation values will be required before the preservation of landscapes will be given any priority by the Trust, councils or DoC.

Much planning in fact goes into the segregation of incompatible activities and the isolation of developed lands from those with conservation values. This is an example of the 'Yellowstone' syndrome, the idea that the protection of natural and historic values is incompatible with continued economic use. Unfortunately this latter view has been incorporated into the International Union for the Conservation of Nature definition of a national park as 'an area where ecosystems have not been materially altered by human exploitation and occupation, and where human exploitation and occupation has been eliminated (West and Brechin 1991:xvii). Proposals for Natural Area status in New Zealand require that there is no evidence of human modification despite knowledge that Maori had major effects on this landscape, one that ties ecological and cultural relationships into a single web.

Maori economic needs cannot be divorced from conservation needs. National parks and protected archaeological sites perform a dual role in terms of both tourism and conservation within the national economy. However, such conservation measures often exclude Maori from participation and can have negative social and economic impacts (see also Nuttall and Ritchie 1995:27,63,70,86). Conservationists might have to extend their concepts to include Maori economic uses of the conservation estate that are compatible with mutually agreed conservation aims. Consideration of these topics from an Aboriginal perspective were the subject of a conference held recently in Australia (Birchfield, de Lacy and Smith, 1992, see also West and Brechin, 1991).

Land-use regulation generally does not seek to control existing uses of land (c.f., RM Act Sections 9 and 193 where only changes in the character, intensity, or scale of the use of land or an alteration of a building or land are controlled). Processes that are outside these parameters include erosion, building degradation, flood, and fire which are partly Acts of...
God and partly under human control. As far as the scale of threats to archaeological sites are concerned, erosion caused by the combined processes of existing land uses and natural forces presently outweigh those associated with land use change. In any case, only a proportion of land use changes require a resource consent. The built heritage is similarly vulnerable, particularly as much of it, because of our colonial and environmental situation, has been constructed from timber or from cheaper building materials. The realisation that existing regulatory mechanisms deal only with the lesser part of the threat to the preservation of historic places should make us search for more effective strategies.

Though the concept of landscape as amenity represents an advance on the static thinking of planners, there is evidence that the Minister's ideas continue to privilege natural processes over cultural ones (Upton 1996:9). If councils truly wish to take effective conservation measures for the protection of landscapes then an understanding of social and historical processes is also necessary. As discussed previously, the declaration of a conservation zone cannot be an end in itself. It merely creates the possibility for a plan of management to promote the long-term preservation of the landscape or area. Such a plan should also bring council and other decision making authorities, landowners and interested parties together to work towards mutually acceptable ends. As yet, neither the Trust, DoC nor Territorial Authorities have given sufficient attention to the creation of effective management regimes capable of sustaining the historical and cultural values of landscapes (Woodward 1996:6). Regional, district and thematic assessments can be the basis for an efficient approach to the goal of preserving representative historic areas and landscapes. Regional approaches have been explored in a number of recent publications put out by the Department of Conservation (Challis 1991, Sheppard 1989) and by regional councils (Lawlor 1989, Mosen 1993). A guide to a thematic approach to historic places has been published by the HPT (McLean 1996). Whether or not a class or category of historic place is under specific threat must also be a factor of importance in management decisions.

The English Countryside Commission (1996:10) stresses that the aim of landscape preservation is not to lock up landscapes from development but rather that '... a clear understanding of the historic landscape and of past management systems can... provide the framework for larger scale policies for conserving and enhancing the countryside as a whole, and for recreating or restoring parts of it'. The assessment of landscapes requires a consensus of both professional and public opinion as to its importance and its role in maintaining a sense of community identity and of place (Countryside Commission 1993:25, 1996:10).

It could be argued that the role of the Queen Elizabeth the Second National Trust in New Zealand, which is charged with encouraging and promoting 'the provision, protection, and enhancement of open space for the benefit and enjoyment of the people of New Zealand' is analogous to that of the English Countryside Commission. The QE II National Trust Act defines open space 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 of social interest or value'. QE II covenants currently protect a variety of open space including forest and forest remnants, wetlands, lakes, peat lakes, coastline, tussock grassland, tracts of rural landscape, archaeological sites, and geological formations (Elworthy 1992:7). The emphasis, however, is on remnants of indigenous vegetation and their associated landscapes. In noting that the QE II National Trust has protected only a few cultural landscapes, its chairman Sir Peter Elworthy suggested that this reflects the recentness of cultural change in New Zealand (Elworthy 1992:7). However, this situation also reflects the priority given to natural over cultural conservation by the QE II Trust. It is not known whether the imposition of regulations for the conservation of remnant indigenous forests, through the Forest Amendment Act 1993, has affected the voluntary nature of the work of the QE II National Trust. The difficulties and opportunities presented by the preservation of landscapes requires the early and active involvement of the community and the encouragement of voluntary measures through incentives as well as regulation. The success of the approach adopted by the QE II National Trust, through the negotiation of covenants, might represent the best way forward here. However, QE II National Trust approaches need to be broadened to give a higher priority to cultural landscapes.

New Zealand has recently set up the Landcare Trust, a variation on the National Landcare Programme initiated by the Australian Conservation Foundation and the National Federation of Farmers. Landcare programmes bring government, councils and land owners together to raise community awareness of environmental issues. They represent an attempt to combine a bottom-up community movement with a top-down government initiative.

As with the Far North District Council Draft Plan, discussed in Section 6.1 below, regulation and direct intervention do not work well above a certain scale, particularly if the aim is to change existing land use practices over substantial areas. In Australia, this proved to be the case for soil conservation measures that required a change in pasture management techniques. Both regulation and scientific intervention
failed in this environment. Consequently, the emphasis was shifted to voluntary measures and the incorporation of local knowledge and a sense of place to encourage landscape restoration (Baker 1997). The English Ministry of Agriculture, Fisheries and Food operates a similar scheme called *Countryside Stewardship*, which helps landowners to conserve and enhance the countryside through the protection of its historic and archaeological features (Countryside Commission 1996:2-3).

Archaeologists have been slow in joining with councils and landowners to attempt to protect the archaeological heritage through comprehensive planning. Similarly, the possibility of making use of a Landcare Programme to also secure Maori values would face severe obstacles. It requires that Maori groups voice their concerns directly to landowners in forums where up to now the government and councils have acted as intermediaries.

Put at its most general, landscape conservation requires a number of different agencies working at different levels of government negotiating with a variety of interest groups, property owners, developers, rate payers, business organisations, local and central government and iwi authorities to achieve clearly stated heritage goals. Strategies, plans, rules, and regulations are tools for the achievement of these goals. In addition, they provide consistent guidelines for decision making and certainty for current landowners (MfE 1996:6-7). They create the space, both temporal and legal, within which negotiations can take place. Where regulations are imposed, they should be designed to facilitate communication rather than to decide the outcome of a conflict. It is at this point, that heritage management becomes responsive to community values. Such values, however, continue to represent a challenge to conventional heritage philosophy and methods.
CHAPTER 8
TOWARDS THE FUTURE

8.1 Introduction
The Minister for Conservation introduced the review of historic heritage management in January 1998 by issuing *Historic Heritage Management Review: A Discussion Paper for Public Comment* (DoC 1998). The public have until 24th April 1998 to make formal submissions to the Ministerial Advisory Committee. It is planned to introduce new heritage legislation by the end of 1998 and a Parliamentary Select Committee will hold further hearings once the Bill has had its first reading.

As part of this review, the Maori Heritage Council, with the Department of Conservation, will hold 17 hui at marae between Kaitaia and Invercargill. This is the first time that the MHC has been able to fully consult with its constituency about heritage management issues. A major question will be the resolution passed at the national hui held at Te Herenga Waka Marae on 29/11/96 that NZ should '...move towards a stand alone Maori heritage body...'

This issue has been raised in the context of this work by questioning the appropriateness of existing heritage management institutions and legislation for Maori heritage management (Chapters 3 and 6). Decision making and formal advice to the minister, however, will come from Maori at these hui.

The issues for the New Zealand community in general are also significant. The HPT and DoC will be holding 13 public meetings and the discussion document and questionnaire will be widely circulated. Major concern are the interface between the HP and RM Acts and the delineation of national and regional responsibilities for heritage management. There is also the opportunity to ensure that the legislative mechanisms available for the protection of different types of heritage are the ones that are appropriate to them. In institutional terms, the New Zealand Historic Places Trust has been forced to perform multiple heritage roles with inadequate resources with a commitment on the part of central government that has been lacklustre at best.

8.2 The Trust's national and regional role
The New Zealand Historic Places Trust is the leading agency for heritage conservation in New Zealand. It has been set up by Parliament to identify, protect, and conserve the historical and cultural heritage of New Zealand. It also represents the community's interests in heritage matters.

At present, the HPT is administered by the Minister of Conservation. Since 1993, however, the Trust has been a non Crown-owned entity. Of the government departments currently in existence, the Department of Conservation, through the *Conservation Act* 1987, retains the closest affinity with the work of the Trust. On the other hand, a degree of independence, such as that maintained by the QE II National Trust (which is also administered by DoC), could be a considerable advantage. As an organisation, the Trust's attention is focussed on the historic and cultural heritage on private lands, while DoC retains a primary emphasis on the natural heritage and the Conservation Estate.

Critics complain that mixing a governmental and a private membership organisation has created an unsatisfactory structure for the Historic Places Trust. This structure, however, appears to have worked well for the QE II National Trust. On the other hand, government departments are equally capable of performing effectively. Over the last decade, the History Branch of Department of Internal Affairs has produced both the *Dictionary of New Zealand Biography* (1990 onwards) and the *Historical Atlas* (1997) (Jones 1997:7). In contrast to the Historic Places Trust, the above organisations have been charged with quite specific and limited aims and have been funded accordingly.

New Zealand is unusual for the number of private organisations, including Maori trusts and the regional museums, whose organisational structure, powers and functions are set out by Acts of Parliament. No matter what the eventual structure of the Trust looks like, it will still be governed by statute. Table 11. lists the statutory requirements of the HP Act and how this Act shapes the company structure of the Trust.

The difficulties of the Historic Places Trust go beyond its organisational structure to include the additional functions the government placed onto the Trust through amendments in 1975, 1980 and 1993. In the absence of sufficient government funding, these amendments have had a cumulative effect on the coherence of Trust activities. Function has been piled upon function with insufficient attention to how together these approaches might advance the aims of the Trust. At the present time, the Trust has to fulfil its heritage role to government at the national and local level, to the public at the national and community level, to its members, and cutting across these, to Maori as well. As a result, the Trust is coming apart at the seams.
On the other hand, the HPT performs some of its statutory functions in an exemplary fashion. These include its work on conservation standards, covenants, and the ownership and management of historic properties. Difficulties with the Trust’s operations, apart from financial stringency, are focussed in three areas. Firstly, the Maori Heritage Council and the inadequate level of protection provided for wahi tapu, secondly, the Register, and, finally, the archaeological provisions of the Act. The question is, should a non-governmental, membership and advocacy agency also be required to carry out government tasks in these areas?

Maori heritage management needs have already been canvassed and are to be further discussed at the MHC/DoC hui as part of the Minister’s Review. Much attention within the Trust has been focussed on the archaeological Authority provisions. However, the difficulties of the Trust’s regulatory role as regards archaeological consents similarly affect the Register. Despite the fact that the Register of historic places does not provide any protection, the public perceives it as doing so. The PCE has recommended that the Register should be restricted to places of national significance and linked to a carrot (incentives) and stick (regulation) regime. Given the perception of the Register as a regulatory mechanism and the probable move to link the National register with some form of regulation, retention of the Register as a Historic Places Trust function would render its status as a non-regulatory national trust ambiguous once again. The Register and the archaeological provisions are functions that should be performed by a new government agency and not by the Trust.

The Trust’s future is canvassed in the Review (DoC 1998:37). Its central features, those that it shares with most national Trusts, are firstly, its management of heritage properties and museums, and secondly, its membership. It has also worked effectively in heritage assessment, the establishment of conservation standards and the provision of advice to territorial and Maori authorities. To a certain extent, its work with voluntary covenants parallels that of the QE II National Trust for landscapes.

The Trust’s relationship with its membership also needs to be considered. The profile of the membership, which numbers 33,000, consists mostly of people who are 40+ in age, of middle income status or above, and who have joined the Trust either because of an interest in history or the fact that Trust membership gives access to National Trust properties overseas through reciprocal agreements. The general membership is not activist but enjoys the Trust magazine and the occasional Trust social activity or house visit.

The local arm of the Trust’s membership is centred on the Branch Committees. The membership at large elects three members of the Board which the Branch Committees regard as their representatives. There is also a meeting of Branch chairpeople once a year. Along with Regional Trust Officers, Branch Committees provide an extraordinary amount of local support and action. Just as general resource management in New Zealand now encompasses two distinct levels of administration, it is likely that much of the advocacy work of the Trust will continue to be split between the two. The existence of the Branch

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Table 11. Structure and functions of the HPT as set up by the Historic Places Act 1993.
Committees assists the Trust to function at these two levels.

The best option for the New Zealand Historic Places Trust would be to relinquish entirely its regulatory functions, including the Register. It could retain statutory functions which are similar to those of the QE II National Trust (advice, research, advocacy, education, voluntary conservation measures, heritage funding and property management) through a revised HP Act. It could in fact form an effective working partnership with the QE II National Trust, with both organisations being administered by the Minister for Conservation. Such changes would allow the Trust to concentrate on the things it does best and to give attention to its membership without being compromised by attempts to provide a protection regime that embroils it in hearings and court cases.

8.3 A new national agency for historic heritage

In reviewing the system of historic and cultural heritage management in New Zealand, the first recommendation made by the Parliamentary Commissioner for the Environment (in this case to the Prime Minister) was to,

‘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’ (PCE 1996a:93).

Clearly the PCE regards the Trust as having failed its mission. Furthermore, in advocating the establishment of a new heritage unit within government, the PCE suggests that even a reconstituted Trust would be unable to fulfil this role. The call at Te Herenga Waka Marae for a stand alone Maori heritage body also suggests that the Trust, even with the MHC, has been unable to accommodate Maori heritage needs. Finally, the proposal to devolve the archaeological provisions of the HP Act to the territorial authorities and the RM Act also marks a lack of confidence in the Trust’s activities as currently constituted.

The Parliamentary Commissioner for the Environment (1996a) concluded that among the deficiencies of the existing set up were;

(i) the lack of clear separation of responsibility for heritage at the national and local levels.
(ii) the need to identify nationally significant heritage and for central government to take responsibility for its protection.
(iii) the absence of any system of voluntary incentives.

Once a major government advisor has recommended the creation of a new government agency, and this possibility is factored into the Ministerial Review of Historic and Cultural Heritage (DoC 1998:35-39), it is difficult to imagine that the status quo can be retained. The Historic Places Trust survived the re-organisation of government departments during the 1980’s. However, the combined effect of its non-governmental status, its complex structure and poorly defined functions means that it no longer fits easily with central and local government activities.

Options for heritage management at the national level were discussed at a HPT Board Workshop (Dec 1997). At this workshop, it was observed that the government prefers administrative models which separate, firstly, the purchase of services from their provision, and secondly, the separation of policy from the operational aspects of its delivery. This model has taken the form of a single purchasing/policy agency, at one level of government, with a multiplicity of government and non-government agencies, competing to provide services at another.

A new central government agency for historic and cultural heritage, with the functions listed in Table 12. below could solve many of the deficiencies of the system listed by the PCE and also represent an attractive option for the government.

The new government agency could be the vehicle through which central government fulfils its responsibilities towards the conservation of heritage places that are part of the nation’s patrimony. The nomination of places for the Register of the National Historic Heritage could emerge from a widely debated brief that locates the understanding of New Zealand history as its primary aim.

The attraction of the Historic Places Trust for the government has always been its voluntary membership who pay their subscriptions and are active on the local heritage front. The existence of the membership ensures that the government gains parsimony as an attribute that all governments share. New units and new ministerial responsibilities are expensive items, especially when the Coalition Government’s shopping list is already long. The Historic Heritage Management Review makes it clear that the outcome will depend on the most effective means of achieving heritage outcomes with regard to costs and benefits (DoC 1998:11-12).

The existing system is not particularly cheap. It has high compliance and administrative costs relative to its effectiveness. Part of this stems from an over reliance on regulation and also on the fact that protection, even for places of acknowledged national significance, is applied by local rather than central government. The provision of funds to enable the system to shift to agreement and negotiation, through
The purchase of Crown heritage services from other agencies

The provision of policy advice to the Crown

Responsibility for national heritage strategies, policies, methodologies and standards

Identification of nationally significant heritage through a Register

The protection and management of nationally significant heritage through a balance of voluntary incentives (national heritage fund) and regulation

Table 12. Possible functions of a Crown agency responsible for historic and cultural heritage.

compensation and incentives, could in the long run save the country millions of dollars in court costs alone.

8.4 Will heritage management be divided along ethnic lines

Will the creation of a new government agency for heritage management, as has been recommended here, and the possibility of a new Maori heritage management body, as recommended at Te Herenga Waka Marae, and in Chapter 6, split heritage management along ethnic lines and consequently set up agencies to deliver similar services to different communities? The answer to this question is probably not. The two agencies would be delivering different services to the government on behalf of the entire community.

When the MHC was created by the 1993 Act, there was a misapprehension that the MHC would deal with Maori places while the Trust Board dealt with Pakeha ones. This misunderstanding stems directly from the technical preoccupation with places in the existing system. The functions of a stand alone Maori Heritage Council would be with the maintenance of the relationship of Maori with their ancestral lands, water, sites, wahi tapu, and other taonga (see possible functions of the MHC listed in Section 6.5). As has been documented many times in this work, existing heritage conservation measures are an assault on this latter relationship. An entirely new and Maori directed approach is required.

On the other hand, Maori have the right to expect that the Crown will provide for their historical interests just as it does for all other citizens. While Maori can claim that heritage places prior to the arrival of Cook in 1770 were the result of actions within a Maori frame of meaning, the material dimension of activity after that date involved varying degrees of interaction between the Maori and Pakeha communities. Since about 1814, there has been no purely Pakeha or purely Maori history and consequently there can be no purely Pakeha or purely Maori historic places, despite appearances to the contrary. While Maori have a vital interest in New Zealand history and its interpretation, history itself is not an indigenous methodology and the relationships between place, history and community within this context will not conform with Maori cultural concepts.

The new Crown Heritage Agency would not be separated from the MHC through the objectification of places in racial terms, but rather through the fact that the interests of the agency would be with the national history and how this is reflected in the conservation of historic places. The emphasis of the MHC would continue to be with Maori cultural places and wahi tapu.

At present, however, the greatest difficulty for heritage management is that conservation approaches based on historical understandings are being imposed onto wahi tapu, which are not historic places. Making sure that the Maori voice is heard regarding historic places would continue to be the Crown agency’s responsibility, just as it is to ensure that the voices of other sections of the community are also heard. The work of a new stand alone Maori heritage body and a new government heritage agency will be complementary, they will be performing essentially different functions.

8.5 Parting words

The conclusions of this work are summarised at its beginning. There are no perfect heritage management set ups anywhere in the world and this work certainly cannot provide a prescription for one. In describing and critically analysing the technical aspects of heritage management at length, the aim was not to exhaust the reader but rather to free the reader from having to immerse themselves in such detail. It is hoped that an approach that has looked at the entire set up might more easily reveal common elements and common deficiencies as a guide to our future actions. A conclusion that runs through this work is that the existing legislation concentrates too much on the mechanisms of heritage conservation and too little on the relationships between New Zealand history, the places that are conserved, and the community. One of the tasks of this work has been to attempt to clarify what the government and the community can expect
from heritage legislation and the institutional framework created by it. Legislation can only operate effectively when the communities that exist within New Zealand society are taken into account. The shakeup of government departments and the rewriting of laws that have occurred over the past decade in New Zealand have had their impact on society in ways that are poorly understood. In shattering older forms of power and authority, the government reforms have altered the symbolic basis on which that authority rested. Nothing is so stale as national symbols that have lost their power to engage, yet it is these that the Trust's Register is designed to protect and enhance.

Heritage management should seek to achieve a genuine engagement with the national history and with the populace as part of the democratic process. This is history in the widest possible sense, those events, processes and individuals that have been creative of the New Zealand society of today, with a particular emphasis on the centrality of place to this history. Heritage is an ingredient of the cement that binds communities together into a nation. If the nation and its communities change, then heritage management must change with it. Heritage management should be part of an ongoing process where its aims and methods can be reevaluated against the national history, not the last bastion of outmoded beliefs. A new vision is required, one that is shared by the populace at large.

Historically, the most interesting thing about New Zealand is not just the attempted transfer of British social institutions to these islands. The social experiment has been made far richer by the presence of Maori society with an entirely different world view. This history of mutual interaction, of resistance and compliance has led to the creation of a new society that retains the complexity of its origins. Architects are fond of contrasting places, which are filled with symbolic meaning, and spaces, which are voids. This reminds us that historic places and their meanings are socially constructed. The Maori cultural dimension means that our interpretation of historic places can never be from a single viewpoint, they must always retain a sense of the unexpected. Superficially, New Zealand society looks like that of Australia or Canada but one only has to live in those societies to become aware of how greatly our circumstances differ. The system of heritage management that is required for New Zealand is one capable of relating the distinctiveness and diversity of the human experience in New Zealand both to ourselves and to the rest of the world.
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75.


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Appendix 1.

ANNEX 4

SECRETARY OF STATE’S CRITERIA FOR SCHEDULING ANCIENT MONUMENTS

The following criteria (which are not in any order of ranking), are used for assessing the national importance of an ancient monument and considering whether scheduling is appropriate. The criteria should not however be regarded as definitive; rather they are indicators which contribute to a wider judgement based on the individual circumstances of a case.

(i) **Period:** all types of monuments that characterise a category or period should be considered for preservation.

(ii) **Rarity:** there are some monument categories which in certain periods are so scarce that all surviving examples which still retain some archaeological potential should be preserved. In general, however, a selection must be made which portrays the typical and commonplace as well as the rare. This process should take account of all aspects of the distribution of a particular class of monument, both in a national and a regional context.

(iii) **Documentation:** the significance of a monument may be enhanced by the existence of records of previous investigation or, in the case of more recent monuments, by the supporting evidence of contemporary written records.

(iv) **Group Value:** the value of a single monument (such as a field system) may be greatly enhanced by its association with related contemporary monuments (such as a settlement and cemetery) or with monuments of different periods. In some cases, it is preferable to protect the complete group of monuments, including associated and adjacent land, rather than to protect isolated monuments within the group.

(v) **Survival/Condition:** the survival of a monument’s archaeological potential both above and below ground is a particularly important consideration and should be assessed in relation to its present condition and surviving features.

(vi) **Fragility/Vulnerability:** highly important archaeological evidence from some field monuments can be destroyed by a single ploughing or unsympathetic treatment; vulnerable monuments of this nature would particularly benefit from the statutory protection which scheduling confers. There are also existing standing structures of particular form or complexity whose value can again be severely reduced by neglect or careless treatment and which are similarly well suited by scheduled monument protection, even if these structures are already listed historic buildings.

(vii) **Diversity:** some monuments may be selected for scheduling because they possess a combination of high quality features, others because of a single important attribute.

(viii) **Potential:** on occasion, the nature of the evidence cannot be specified precisely but it may still be possible to document reasons anticipating its existence and importance and so to demonstrate the justification for scheduling. This is usually confined to sites rather than upstanding monuments.
RESEARCH IN ANTHROPOLOGY AND LINGUISTICS

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For pagination reasons it may not always be possible to include art on the same page as its textual reference. For this reason, insertion points for art should be identified in the text, e.g., “take in Figure 1 here”, rather than leaving blank spaces in the manuscript.

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Authors will be asked to supply a brief summary (<100 words) of their work and biographical details for inclusion on the rear cover.
Harry Allen is an Australian-trained archaeologist in the Department of Anthropology at the University of Auckland. His research interests range from Indonesian archaeology through to community approaches to heritage management. He has been a member of the Board of the New Zealand Historic Places Trust since 1998 and provides archaeological advice to its Maori Heritage Council.

Current research projects include a study of environmental impacts on the archaeological heritage of the Waihou River and a project, with the Bulimanga Aboriginal Corporation, Maningrida, Arnhem Land, on the public presentation of rock art sites.