

Chair
Cabinet Domestic Policy Committee

REVIEW OF THE HISTORIC PLACES ACT: FURTHER AMENDMENTS

Proposal

- 1 This paper seeks Cabinet's agreement to additional legislative changes arising from the review of the Historic Places Act 1993 (HPA).

Executive Summary

- 2 Cabinet has agreed to amend the HPA to reform the New Zealand Historic Places Trust's governance arrangements and to improve archaeological consenting processes. Parliamentary Counsel Office is drafting a Bill to give effect to Cabinet's decisions. Additional amendments are required to address issues that have arisen since Cabinet considered amending the HPA. The additional amendments will:
 - change the name of the New Zealand Historic Places Trust (NZHPT) to Heritage New Zealand, removing the word 'trust' in keeping with NZHPT's status as an Autonomous Crown Entity
 - establish emergency processes for archaeological consents, avoiding the need for Orders in Council in response to natural disasters such as the recent Canterbury earthquake
 - clarify that NZHPT can reject nominations for registration of historical and cultural heritage, providing certainty for property owners that NZHPT will not accept vexatious nominations
 - standardise the way Treaty of Waitangi settlement legislation refers to the HPA, ensuring a consistent approach in the way NZHPT engages with iwi on archaeological consenting processes.

Background

- 3 The Historic Places Act 1993 sets up the NZHPT in its current form. The NZHPT is an Autonomous Crown Entity that regulates the destruction and investigation of archaeological sites, maintains a register of historical and cultural heritage, and manages a portfolio of 48 heritage properties. It receives significant Crown funding (\$12.988 million in 2010/11).
- 4 Following a review of the HPA, Cabinet agreed to reform NZHPT's governance arrangements and to improve archaeological consenting processes. The governance reforms resolve tensions between NZHPT's statutory role and its Branch Committee structure by disestablishing the Committees and removing positions for elected members on NZHPT's Board. The archaeological reforms simplify and streamline HPA consenting

processes and align them with the Resource Management Act 1991 [DOM Min (09) 27/5 and DOM Min (10) 9/2].

- 5 Parliamentary Counsel Office is drafting a Bill to implement Cabinet's decisions. In the meantime, further work on the proposed governance reforms and recent experience administering the HPA have highlighted the need for additional changes, as set out below.

Comment

Change NZHPT's name

- 6 NZHPT's name - New Zealand Historic Places Trust (Pouhere Taonga) - implies the organisation is a 'trust', despite it being an Autonomous Crown Entity (from 2005). In keeping with the policy intent of the proposed governance reforms, Branch Committee members are working towards establishing independent heritage organisations, possibly as trusts.
- 7 It is therefore appropriate and timely to change NZHPT's name. NZHPT's Board recommends the new name of the organisation be 'Heritage New Zealand – Pouhere Taonga', and support this proposal. For the last eight years, NZHPT's widely distributed magazine has been entitled 'Heritage New Zealand', and adopting this name for the organisation is now a logical step.
- 8 NZHPT estimates the immediate cost of changing its name will be around \$65,000, and there will be further costs to phase in the new name over time (for example, to change signage at heritage properties). NZHPT has undertaken to meet the costs of changing its name within baseline.
- 9 While the reasons for changing NZHPT's name are compelling, there is a risk of some negative reaction, particularly from NZHPT's members. The extent of any opposition is difficult to judge at this stage. No public consultation on the proposed name change has been undertaken because there is a need first to safeguard NZHPT's legal rights to the name 'Heritage New Zealand'. To mitigate the risk of negative reaction, the Ministry for Culture and Heritage and NZHPT will publicise the reasons for the new name when it is announced.

Establish emergency provisions in the HPA that apply in the event of a natural disaster

- 10 The recent Canterbury earthquake has highlighted shortcomings in the HPA's archaeological consenting processes. The HPA already provides a defence against prosecution for damaging archaeological sites as a result of a natural disaster. Statutory timeframes to obtain archaeological consents are, however, too long to facilitate recovery after a disaster. Applicants are also required to supply more information than may be necessary to assess whether consent should be granted in these circumstances.
- 11 Following the recent Canterbury earthquake, it was necessary to establish emergency HPA processes for archaeological consenting in Canterbury by

Order in Council under the Canterbury Earthquake Response and Recovery Act 2010.

12 Whenever possible, it is preferable to enact such legislative provisions through the Parliamentary process, rather than by Order in Council. I recommend that the HPA be amended to include emergency provisions that can be invoked in the event of any future natural disasters that cause, or are likely to cause, loss of life, injury, or serious damage to property. These provisions will:

- establish a separate type of archaeological authority known as an emergency consent
- provide NZHPT with discretion to reduce the amount of documentation required as part of applications on a case-by-case basis
- require NZHPT to make decisions on applications in no more than 5 days of their receipt (reduced from the maximum of 20 working days Cabinet has recently agreed for routine applications)
- allow a maximum of 14 days for directly affected parties to lodge appeals, to the Environment Court, on NZHPT's decisions (reduced from 15 working days).

[DOM Min (10) 9/2]

13 In all other respects, the routine consenting requirements will remain in place, including a requirement for NZHPT to consult its Māori Heritage Council on applications affecting sites of interest to Māori [DOM Min (10) 9/2].

14 NZHPT will retain discretion to determine whether applications will be accepted under emergency provisions, or processed under the routine processes, as the circumstances require.

15 In some circumstances, councils and owners may need to act more quickly than is possible under the proposed emergency provisions. Buildings erected before 1900 fall within the HPA's definition of archaeological site. Under the Building Act 2004, councils may issue notices requiring owners to repair or demolish dangerous and insanitary buildings within the timeframe the council requires, which must be no less than 10 days. If the owner does not comply with such a notice the council may repair or demolish the building in question. In the event that a council or owner cannot obtain an emergency archaeological consent before taking such action, they will have the defence against prosecution already provided in the HPA (section 106), if they have acted reasonably.

Clarify NZHPT will not accept vexatious nominations for registration

16 The HPA requires NZHPT to establish and maintain a register of historical and cultural heritage to inform the public, notify owners and to assist protection under the Resource Management Act 1991. Anyone may nominate a place for inclusion on the Register.

- 17 There is a risk of vexatious nominations being lodged, as highlighted recently when NZHPT received a nomination one day before the nominated property was to be auctioned, possibly frustrating the sale. I recommend the proposed Historic Places Bill clarify that NZHPT and its Māori Heritage Council will reject any nomination that does not meet the relevant statutory criteria and definitions. This will ensure there are safeguards against vexatious nominations being lodged.

Amend settlement legislation to standardise references to the HPA

- 18 Treaty of Waitangi settlement legislation requires NZHPT to have regard to the interests of iwi in relation to the HPA archaeological consenting processes.
- 19 Pre-2001 settlement legislation (Ngāi Tahu and Pouakani) contains obligations relating to the whole of section 14 of the HPA, concerning the archaeological consenting process. Settlement legislation enacted from 2001 refers to section 14(6)(a), concerning one part of this process only. This means that NZHPT is required to have regard to the interests of:
- Ngāi Tahu and Pouakani in all parts of the relevant archaeological consenting process
 - other iwi when it wishes to extend the time it has to make a decision on an application for an archaeological consent (but not on any other part of the archaeological consenting process).
- 20 In 2009, the Office of Treaty Settlements (OTS) decided, in consultation with the Ministry for Culture and Heritage, that new settlement legislation should revert to the broader requirements established by the Ngāi Tahu Claims Settlement Act 1998 (that is, contain obligations relating to the whole of section 14 of the HPA). NZHPT advises this reflects actual practice: it consults iwi on all parts of the process.
- 21 I consider all historical settlement legislation that refers to the HPA should follow the precedent set by pre-2001 settlement legislation. OTS advises previous amendments to legislation, including the Property Law Act 1952 and the Public Finance Act 1989, have included amendments to settlement legislation. I recommend the Historic Places Bill also amend relevant legislation. The Office of the Clerk advises amendments could potentially be made to settlement legislation in a separate part of the Historic Places Bill, and that under Standing Orders the bill would then be classified as an omnibus bill.
- 22 The Ministry for Culture and Heritage will inform relevant iwi of the proposed changes before they are introduced to the House.

Consultation

- 23 The following departments have been consulted: Department of Building and Housing; Department of Conservation; Department of Corrections; New Zealand Defence Force; Department of Internal Affairs; Ministry of Civil Defence and Emergency Management; Ministry of Economic Development; Ministry for the Environment; Ministry of Health; Ministry of Justice; Ministry of Transport; Office of Treaty Settlements; State Services Commission; Te Puni Kōkiri and the Treasury. NZHPT has also been consulted and the Department of the Prime Minister and Cabinet has been informed.

Financial Implications

- 24 There are no direct financial implications. NZHPT will absorb additional costs associated with changing its name within baseline.

Human Rights

- 25 The proposals contained in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once the Historic Places Bill has been drafted.

Legislative Implications

- 26 The 2010 legislative programme includes an Historic Places Amendment Bill with a category 4 priority. To be referred to a Select Committee in 2010 [CAB Min (10) 6/7]. Parliamentary Counsel Office is currently drafting an entirely new Act. A new Act is required, rather than an amendment Bill, because the proposed amendments are extensive, and the existing Act already incorporates a large number of amendments.

Regulatory Impact Analysis

- 27 Regulatory Impact requirements do not apply. The proposed changes have no or only minor impacts on businesses, individuals or not-for-profit entities, and involve technical revisions that substantially re-enact the current law to improve legislative clarity.

Gender Implications/Disability Perspective

- 28 There are no gender implications/disability perspectives.

Publicity

- 29 I intend to release a media statement when the proposed Bill is introduced into the House. I also intend to release publicly this paper subject to any necessary withholdings. The Ministry for Culture and Heritage and NZHPT will publicise the reasons for changing NZHPT's name.

Recommendations

- 30 The Minister for Arts, Culture and Heritage recommends that the Committee:
- 1 **note** that Cabinet has agreed to amend the Historic Places Act 1993 (the Act) to reform the New Zealand Historic Places Trust's governance

arrangements and to improve archaeological consenting processes [DOM Min (09) 27/5 and DOM Min (10) 9/2];

2 agree to amend the Act to:

- 2.1 change the name of the 'New Zealand Historic Places Trust (Pouhere Taonga)' [NZHPT] to 'Heritage New Zealand - Pouhere Taonga';
- 2.2 establish a separate process for obtaining consent to destroy, damage or modify an archaeological site in the event of natural disasters that cause, or are likely to cause, loss of life, injury or serious damage to property (an emergency consenting process);
- 2.3 model the emergency consenting process on the routine consenting process but:
 - 2.3.1 provide NZHPT with discretion to reduce the amount of documentation required in applications on a case-by-case basis;
 - 2.3.2 require NZHPT to make decisions in no more than 5 days of receipt of applications (reduced from 20 working days for routine applications),
 - 2.3.3 provide a maximum of 14 days for directly affected parties to lodge appeals to the Environment Court on NZHPT's decisions on applications (reduced from 15 working days);
- 2.4 clarify that NZHPT and its Māori Heritage Council can reject nominations for registration of historical and cultural heritage that do not meet statutory criteria or definitions, so that vexatious nominations cannot be lodged;
- 2.5 ensure consistency in the way Treaty of Waitangi settlement legislation refers to the Act, in line with relevant provisions of the Ngāi Tahu Claims Settlement Act 1998, through a separate part of the Bill;

Next steps

- 3 **note** that an Historic Places Amendment Bill is included on the 2010 Legislation Programme with a category 4 priority (to be referred to a Select Committee in 2010);
- 4 **note** that an entirely new act is being drafted because the proposed amendments are extensive, and the existing Act already incorporates a large number of amendments;
- 5 **invite** the Minister for Arts, Culture and Heritage to provide drafting instructions for the Parliamentary Counsel Office to give effect to the decisions in 2 above;

6 **authorise** the Minister for Arts, Culture and Heritage to release publicly this paper subject to any necessary withholdings.

Christopher Finlayson

Hon Christopher Finlayson
Minister for Arts, Culture and Heritage
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