

Finding a Way Forward

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New Zealand has yet to establish an effective legislative framework for protection of its heritage of historic buildings and sites

In June 1996 the Parliamentary Commissioner for the Environment called for the creation of a new ministry for historic and cultural heritage. In her report to Parliament on Historic and Cultural Heritage Management in New Zealand, Dr Helen Hughes concluded that a lack of ministerial accountability threatens the loss of much of the country's identity and heritage. The Historic Places Act 1993 (HPA 1993) has not proven as successful as it might have in protecting our cultural heritage, though the picture is by no means all dark.

The Historic Places Act 1993 (HPA 1993) was intended to incorporate the preservation of historic places into the resource management framework introduced by the Resource Management Act 1991 (RMA). The HPA 1993 also introduced a new procedure for heritage orders, which were designed to react to a threat to a historic place. Procedures for issuing orders were streamlined. The criteria for objection and appeal processes were made more effective. The requirement to take into account national and regional policy statements, and regional and district plans in deciding whether the order should be upheld was stressed.

Most importantly from the point of view of the Commissioner's report, the HPA 1993 was intended to provide a clearer allocation of responsibility between central and local government. The Historic Places Trust, which administers the act, is now regarded as a non-Crown entity, thereby supposedly strengthening its representational role, though not necessarily at the expense of its regulatory role. However, the Trust has always seen its role as primarily an advocacy body, working with and through local government rather than by the legal mechanisms of protection that the law provides. Heritage protection is now seen as an integral element of resource management, and Government control of the Trust has been greatly weakened. Whether this is appropriate remains uncertain. However, as a result, there is an absence of a clear ministerial responsibility for heritage protection.

The HPA 1993 (and its predecessor act of 1980) was intended as a compromise between owners' rights to use their property as they see fit, and public rights in the preservation of historic places and archaeological remains. The Trust has not any greater powers today than it did before 1993. Unfortunately, despite the act attempting to integrate historic building preservation with the resource management system, local authorities have too often abandoned completely any role in heritage protection.

In the former legal regime the Town and Country Planning Act 1977 (TCPA) and the HPA 1980 each provided some protection for historic places. There were duplicate procedures, overlapping responsibilities and gaps, and omissions leading to incomplete and ineffective protection for some types of historic places. The HPA 1980 gave power to the Historic Places Trust to provide direct protection for the most important buildings through protection notice procedures, and for archaeological sites. In other cases, the powers of central government

(exercised by the Trust) were to identify and make recommendations to appropriate bodies or persons on how these places should be protected. No direct protection responsibilities were associated with this task, although the Trust has managed some properties for many years. The main responsibility for the preservation of historic places was placed on local authorities through the TCPA, although the coverage given to historic places by District schemes was often haphazard and incomplete.

The new substantive provisions of the HPA 1993 deal mainly with the registration process. This is the process whereby the Trust identifies historic places worthy of preservation, both for its own purposes, and as guidance to the local authorities upon whom the onus to protect the sites still lies. Heritage protection as such is to be achieved largely by these local authorities through mechanisms in the RMA.

Registration by the Historic Places Trust, or by a local authority under their District Scheme is at best an early warning system. Registration is not only ineffective but may well destroy the very ability of the owner to preserve the building and would adversely effect the value.

The Historic Places Trust had hoped that the new HPA 1993 would enable it to protect historic places more effectively. The previous four category classification system for buildings was replaced by a system whereby there are only two categories, thereby simplifying the task of registration. More importantly, a single comprehensive register of all historic places, including Maori, was commenced. The hope is that this new register will give clear guidance to property owners, local bodies and the public on what buildings and sites should be preserved. This strengthened the Trust's role as advocacy body for the built heritage, but did little to help actually preserve anything.

The danger was that the belief that the HPA 1993 strengthened the Trust might lead to a reduction in the efforts of local government. However, under the new act, territorial authorities must advise the Trust of any planning applications that affect places on the new register. The Trust also has the power of interim registration for places not already registered. By initiating registration, the Trust is able to give six months' protection to any building or site believed worthy of conservation. This does not however apply to wahi tapu areas (places or areas sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense) and historic areas because of the difficulty of administering detailed controls over such extended land areas during the registration process. Protection may be extended for up to a further two years. The owners, occupiers and others with an interest in the property are all entitled to take part in the process.

Whether the heritage orders will be granted or not will depend on the financial obligations of the Trust as a heritage protection authority. There is still no provision for the issuing of repairs notices on owners allowing their building to deteriorate, but the RMA allows interim enforcement orders, which partly substitute for these. Registration protects historic places as if the order were in place (s 25 HPA 1993) on an interim basis. The Trust, which is deemed a heritage protection authority (s 189(c) RMA) can apply for a heritage order as of right. This however is only in respect of historic places, not historic areas (s 14 HPA 1993). The penalty for destruction or demolition of a protected site is \$100,000. To modify, alter or extend a historic place will cost the malefactor \$40,000. Archaeological sites are now defined those dating from before 1900.

The Act also establishes a Maori Heritage Council with wide responsibilities to develop programmes for the protection and conservation of Maori heritage. This council has power to decide the registration of wahi tapu and wahi tapu areas. The effect of this is to incorporate specifically Maori buildings into the Historic Places Trust regime where previously the Trust had only classified Maori churches. Maori archaeological sites will be covered by the system largely as before. As there may be some places which Maori people may not wish the public to know the exact location or nature of, there is provision for such information to be kept confidential to the people concerned. The main role of the Maori Heritage Council however is to advise and act on behalf of the Trust.

A major disincentive to breaches of the new legislation is that the Courts are empowered to deprive an offender of the right to develop land for up to five years where illegal demolition or destruction has occurred. The Act does however introduce a procedure enabling applicants to apply for a general authority to destroy, damage or modify all sites within a specific area or any class of sites within an area. This is intended to avoid the necessity to make applications on a site by site basis. The Trust is also able to review the conditions it has imposed on an authority and the holder of an authority is also able to apply to the Trust for a review. A three months' time limit for decisions by the Trust is provided, although this can be extended where the Trust requires further information from the applicant. Appeal is now directly to the Planning Tribunal rather than to the Minister of Conservation as formerly.

Integrating historic building preservation into the resource management system may have the effect of reducing the effective protection which buildings have enjoyed to date, although overall the reform is positive, especially the interim protection measures. As always the Trust is limited in what it can achieve by lack of finance, and preservation still does not rate highly among the factors to be balanced by resource management bodies.

The most serious shortcoming of the new Act is the lack of a clear statement that the protection of historic buildings is of importance to the nation. This might be less of a problem if a separate ministry were established. However, it would be unlikely to be effective unless the rights of private owners were restricted, or much greater funding provided. In the absence of any real commitment by central government to fund the preservation of our built heritage there can be little real hope for this to change, given the strong belief in the rights of private property owners.