NEW ZEALAND BUSINESS ROUNDTABLE

SUBMISSION ON THE HISTORIC HERITAGE MANAGEMENT REVIEW

APRIL 1998

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INTRODUCTION

This submission is made on behalf of the New Zealand Business Roundtable (NZBR) in response to the Historic Heritage Management Review Discussion Paper published in January 1998.

The review document invites comment on the existing legal and institutional framework governing heritage management and protection. This paper will address the key elements of the debate rather than focus on detailed analysis of existing legislation and the regulatory framework.

The NZBR agrees that heritage management is in need of review. Current policies appear to lack a sound rationale. They frequently have the potential to undermine normal private property rights. These can lead to perverse heritage effects and uncompensated losses to private parties. The Department of Conservation has not performed well in its heritage role, which is secondary to its responsibilities for nature conservation.

The main difficulty that the NZBR has encountered in preparing this submission is that the Discussion Document lacks a public policy framework. This means that there is no sound basis for evaluating the options for changes to policies and institutions that are set out in the document. We consider that the first task of the Ministerial Advisory Committee in reviewing submissions must be to articulate such a framework. This should be tested with people with the relevant expertise and, desirably, exposed for reactions in a further consultative document. In the absence of such analysis the government is unlikely to be able to reach sound conclusions.

In the next section of this submission we outline some elements of the analysis which we believe need to be incorporated in a policy framework for heritage management. We emphasise that we have not had the time and resources to develop this work in a comprehensive way. We hope the Ministerial Advisory Committee will be able to build on it. In the absence of a fuller and more formal analysis, the recommendations made in subsequent sections of the paper are tentative in some cases. We offer them as the best assessment we can make at this stage of the conclusions to which a more robust analysis might point.

OUTLINE OF A POLICY FRAMEWORK

The starting point of any analysis of heritage policy must be to ask why the government (at any level) should be involved at all. The Discussion Document does not do this. It jumps from a summary of the present system to a discussion of substantive issues and options. This is a serious deficiency. If there is no clarity concerning the need for government involvement there will be no sound basis for determining what it should be doing.

Most historic heritage is privately owned. The fact that heritage properties have economic value and value of other kinds to their owners frequently provides strong incentives for the conservation of a property. In other cases, however, the property may come to have higher value to the owner in alternative uses, or the owner may be unable to afford the outlays needed to adequately conserve it. There may be other reasons why a private owner is unwilling or unable to maintain a property that some may regard as a heritage asset. In the absence of any outside intervention, owners of such a property would be free to make their own dispositions about its use.

The heritage issue arises because other members of the community besides the owner may value certain historic assets and wish to see them preserved in some way. Other members of the community may also want to see property owners enhance the attractiveness of their existing properties. They may want to see old buildings restored or replaced by something more modern or better. There is no predictable limit or direction to what people might like to force property owners to undertake. Hence the legal system normally protects the property owner's rights against the desires or interests of those who might wish to violate them. Outsiders are usually only able to achieve their objectives by voluntary negotiation.

Voluntary collective methods of conserving heritage are clearly practicable where the asset would be lost or degraded from a heritage perspective if only the value placed on it by the owner were taken into account. There are many examples of such methods including fund raising, local working bees, commercial support and innovative financing. The existence of the New Zealand Historic Places Trust with a large voluntary membership base illustrates the viability of private action. Such initiatives reflect the genuine revealed preferences of the community associated with a particular piece of heritage or heritage in general, and a sense of 'ownership' of its conservation. Voluntary arrangements of this sort work because the owner is compensated financially or in other ways for conserving an asset which would otherwise be lost or diminished. The owner regards the arrangements as being at least of equal value to other possible dispositions of the property.

The difficulty arises when members of the community want to see a heritage asset preserved but are not willing to contribute (sufficiently) to its preservation on a voluntary basis. Instead they wish to see the coercive powers of the government (central or local) used to require the owner to preserve the asset in some form, or to compel taxpayers or ratepayers to fund its preservation. (A variant of this situation is where people desire the conservation of a publicly owned heritage asset which on economic grounds would be demolished or altered.)

By way of analogy, many people might agree that it would be nice to have their favourite New Zealand entertainer or cultural group perform in a city square or

park, but find it hard to collect the funds in advance from anyone who might benefit. They might be inclined to regard this as a 'public good' situation. But clearly passing a law to require performances by the artists concerned would be an iniquitous act, and coercing taxpayers or ratepayers who disliked such performances to pay for them would be controversial. What is different about forcing someone to preserve an asset which is regarded as attractive by some passers-by or which non-owners associate with something special about the past? The example illustrates the dangers implicit in any 'free-rider' arguments in favour of heritage interventions on 'public good' grounds.

Under a system of private property - which typically promotes the common good more than a system of collective ownership - anyone working to preserve an asset against its owner's wishes must succeed in inducing the owner to agree to relinquish some or all of his/her property rights by non-coercive means. The obvious difficulty with giving others the power to 'do good' with someone else's property is that there will be no limit to their ambitions. Obviously, private property rights would essentially be at an end if the definition of 'heritage resources' and its application at the margin were sufficiently elastic and beyond independent judicial review.

In their book *Bridled Power*, Sir Geoffrey Palmer and Matthew Palmer make the point that "There are a good many things about which it is better not to legislate. Legislation gives the state its legitimate authority to exercise its coercive powers over citizens and it should not be entered into lightly." Given these dangers, it is suggested that the development of a more comprehensive framework for heritage management needs to be based on a recognition of the following elements and principles:

- respect for and protection of private property rights is critical to good government; governments should not exercise coercive powers lightly;

- private incentives exist for owners to conserve assets with heritage value. Public policies should be careful not to weaken such incentives;

- there are many ways in which people cooperate on a voluntary basis to pursue their preferences for heritage preservation. Public policies should support and not undermine voluntary initiatives, for example by crowding it out with public funding or high levels of taxation. An ongoing tax reduction programme would raise disposable incomes and the scope for voluntary discretionary spending on things like conservation;

- governmental action to expand the supply of heritage resources beyond the levels and forms produced through the decisions of private owners and voluntary collective action should be approached with caution, recognising the dangers of infringing on private property rights and creating 'forced riders' in the community - people who do not value heritage preservation highly enough relative to other uses of their resources but who are taxed or rated for this purpose;

- government interventions on heritage grounds may fail to meet equity criteria - they may be valued more highly by people on higher incomes rather

than by low income people who will bear a share of the taxes or rates raised to fund them;

- governments (particularly at the local level) may have a role to play in encouraging and coordinating voluntary heritage conservation efforts. They should not use coercive powers unless no other solutions are available and there is near unanimity or at least high levels of public support for a specific intervention. This could be required to be established by local referenda in important cases;

- governments should not intervene without clear and limited objectives. They should require a high level of proof that the benefits claimed do exceed the costs

- there should be no takings (diminution of value) of private property for heritage purposes without due compensation. Disputes over compensation levels should be settled through independent arbitration;

- there is a strong equity principle that those who benefit should pay. In many circumstances the best test of whether the benefits of what people want exceed the cost is to require those who want something to pay for it. Equity and efficiency are often compatible;

- the administration, compliance and (particularly) deadweight costs of taxation (including rating) should be taken into account in considering public funding of heritage. These may well equal or exceed the costs of private fund raising; and

- public funding of heritage conservation (whether by central or local government) should be by way of specific and transparent budgets. This would force elected politicians to prioritise heritage projects and to trade off expenditure on heritage against claims for other forms of spending and lower rates or taxes.

We consider that mechanisms and institutions for administering any public policies for heritage management (eg the registration of properties or sites, which might be a basis for determining funding priorities, and the nature of any central government institutional arrangements) should be determined on the basis of a more fully elaborated framework incorporating these elements and principles. The following sections provide some tentative discussion of approaches that could flow from such a framework.

GENERAL ISSUES IN HERITAGE MANAGEMENT

In this paper the definition of historic and cultural heritage is taken from the Historic Places Act 1993 (HPA). The definition includes historic buildings, places and areas, archaeological sites and wahi tapu.

The review document seeks proposals for simplifying the present system to maximise the protection of valued heritage. The NZBR considers that the fundamental questions to be asked in the review should be:

- What is the fundamental problem with private arrangements?
- How is a government to determine what should be preserved, enhanced or replaced?
- How is the government to determine what limits should be put on the cost to society from these interventions?
- Does historic heritage have special characteristics that demand public sector involvement?
- If so, how do we identify and assess what to save?
- If so, is the current regime successful, accountable and cost effective?
- If not, what are the alternative solutions?

The issues that need to be addressed to evaluate the effectiveness of the status quo and alternative scenarios include:

- The balance between private and public action and control
- The role of individuals
- The roles of central and local government
- Value for public expenditure.

Historic heritage resources are scarce and often unique. What period of history should be preserved may be controversial. People weigh the value of these assets against current needs, and attempt to find a balance between preserving heritage and producing new assets which provide modern amenities. The significance of heritage changes over time and any regulatory system should provide a degree of flexibility to reflect society's changing needs and perceptions.

Decisions about the future of the majority of historic heritage sites are made by individuals within the confines of public policy. If government intervention is contemplated, the issue arises of which historic heritage resources should be saved. To facilitate rankings there could be a case for a national database comprising a register of nationally significant items supplemented by registers of locally significant items. The greater the scope for the use of coercive power in relation to registered assets, the more stringent should be the criteria for registration. Control, regulation and funding for each tier should be undertaken by national and local government respectively. Finite funding imposes discipline on regulators.

Local communities should take responsibility for heritage valued at a local level. A national body cannot reflect the preferences of individuals at community level. To some communities and special interest groups heritage will be of value, to others a luxury and of little interest.

Secure private property rights are critical for sustained prosperity in a free society.[1] Uncertainty, inconsistency, additional cost and restricted site utilisation reduce property values. The desire for the most valuable and best use can result in the loss of heritage resources. Because of this there may be cases where it is justified to invoke public action to save and protect certain heritage resources. In certain cases compensating owners for loss of value, resulting from restrictions on property rights, would remove the incentive to destroy.

Systems which regulate the use and development of heritage property will fail if they ignore private property rights. A successful system must recognise private property rights, reduce disincentives to protection and provide a far greater level of certainty. By integrating heritage resources into the economy and addressing inequities and disincentives these losses may be reduced.

If heritage resources are valued in the market, private owners are encouraged to save and enhance their properties. Adaptive use, 'living' heritage is often a suitable solution. This approach has been successful in the housing market with the growth in restoration for modern use.

Current policies and institutional frameworks discourage protection of heritage resources. The present regulatory system is unclear, often time consuming and expensive, and there is little provision for compensating private owners for losses resulting from restrictions for the public good.

Regulation and policy should start from the premise of seeking to make heritage property an asset not a liability. Whilst heritage significance is perceived as a negative, enhancement is hampered and destruction encouraged. Rather than increased regulation, clear policy, accountability and education, together with innovative financing arrangements, would enhance protection.

Statutory controls are uncoordinated and confused. Provisions under existing legislation, namely the Resource Management Act 1991 (RMA) as amended and the HPA, should be simplified. The current review of the Resource Management Act is relevant to the review of heritage management.

At a local level, application of the RMA may be criticised. Standards of heritage protection vary throughout New Zealand with an inconsistent approach by local authorities to their responsibilities under the RMA. The New Zealand Historic Places Trust (NZHPT) register (the Register) is not automatically linked to statutory protection provisions. Records on the Register are in many cases inadequate.

At a government level, the Department of Conservation (DOC) has conflicting objectives with a remit covering both natural and historic heritage. There are no economies of scale in linking natural and historic heritage and the NZBR would advocate a clear separation of the two roles.

Currently Crown heritage property is owned and managed by a number of government departments including the Department of Conservation, the Department of Internal Affairs and Defence. There may be more effective means of

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[1] *Conservation Strategies for New Zealand* by Peter Hartley, Tasman Institute, New Zealand Business Roundtable, 1997, chapter 9.

operating these portfolios, eg making one department responsible for ownership and management of all Crown-owned heritage property, and/or competitively tendering management.

The role of NZHPT is confused, resulting in conflict and under-performance. In rationalising the current institutional framework and clarifying the status of this organisation, the functions that NZHPT has responsibility for should be reduced to focus skills and provide clearer objectives.

Of the summary models provided in the review document, the NZBR rejects the status quo as it believes the government's objectives are too open-ended for sound policy purposes, the uncertainty created for property rights is a major deficiency, and the current system is ineffective. It does not support the centralised model as it believes decision making should be devolved to a local level in all but nationally significant cases. A direct connection with ratepayers focuses accountability and individual preferences.

HERITAGE IDENTIFICATION AND ASSESSMENT

The majority of decisions about heritage preservation - whether for buildings, antiques, furniture, and other artifacts - are made privately. Most modern societies have also implemented public policies designed to safeguard parts of their heritage. In doing so they have to decide which heritage resources they wish to protect. These choices will be influenced by many factors including cultural, economic and political issues. The perception of heritage value changes over time and these decisions are subjective. Individuals will have widely varying views over the value of many assets that are candidates for heritage protection.

Since it is neither rational nor feasible to save everything given resource costs, it is necessary to define, identify and evaluate heritage resources. This leads to the question of who should identify these resources, how they should be assessed, whose preferences should dominate, and how preferences will be revealed once costs are taken into account.

Consider the status quo under the HPA. The NZHPT administers the Register of historic places. The Register is divided into historic places, historic areas, wahi tapu, and wahi tapu areas. These items are then divided into Category One ("special or outstanding historical or cultural heritage significance or value") and Category Two ("historical or cultural heritage significance or value").

Being on the Register does not guarantee protection or assistance. Local authorities may produce their own lists for the purposes of the RMA. These lists may include items on the Register. However, local authorities are required to take places on the Register into account when reviewing district plans, granting resource consents or issuing any Property Information Memorandum (PIM) or Land Information Memorandum (LIM). The current identification and regulatory system is therefore uncertain and inconsistent in many instances. The NZBR believes there is need for greater certainty and consistency of information.

Being included on the Register or within the list included in a district plan often means extra time and cost to applicants intending to alter or develop property, and brings few associated benefits. In the absence of a proper scheme of compensation people naturally seek to avoid registration. An approach that has been adopted in several countries is to link listing to a system of incentives to reflect restrictions on private property rights, eg a right to apply for rates relief or grants.

We believe the option of a voluntary register or registers drawn up by a body such as the NZHPT should be considered. The alternative is a two tier system with a national register of nationally significant items and local registers of those resources of significance to local communities.

Items on the national register would be strictly protected by legislation and private owners would be compensated fully for any loss in value resulting from registration. The agency responsible for administering the national register should be funded to purchase such property in cases where registration renders the land incapable of reasonable beneficial use or impossible to sell.

Resources not of national significance but valued locally would be on separate registers prepared by local authorities. Decisions relating to this second tier should reflect community aspirations and be tied to community electoral decisions and funding. However, careful consideration should be given to the danger that councils might abuse their powers, and there should be procedural and substantive constraints on decision making and the risks of arbitrary action, such as the opportunity for appeals to an independent tribunal.

This two-tier system would not preclude other lists being held or produced for recording and educational purposes. These could be prepared by people such as architects, local interest groups or iwi.

A danger we see with any state-sanctioned register is that it is highly subjective at the margin and may be a threat to owners who have not done harm to anyone. For this reason we believe a high test should be applied to items included on such a register. This would suggest that many existing registers should be pruned back significantly.

ARCHAEOLOGY

Three key areas of the existing legislation are seriously defective, namely the definition of archaeological sites, the blanket protection of sites *whether on the Register or not and whether recorded or not* and the lack of coordination between the provisions of the RMA and the HPA.

Currently, the HPA and the RMA govern the protection of archaeological sites. Under the HPA an archaeological site is defined as any place in New Zealand that -

(a) Either:

(i) Was associated with human activity that occurred before 1900; or
(ii) Is the site of the wreck of any vessel where that wreck occurred before 1900; and

(b) Is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand.

This definition is ridiculously wide and should be changed. We note that in 1994 some 42,800 sites were recorded nationally under the Site Recording Scheme of the New Zealand Archaeological Association.[2]

Not all archaeological sites are on the Register with its attendant links to the RMA. However, the existing HPA legislation requires any person wishing to destroy, damage or modify part or all of an archaeological site to apply for the consent of the NZHPT.

Under the legislation the NZHPT has rights of entry and the power to require site investigations to be paid for by the applicant. In view of the number of sites recorded, these powers have wide-reaching effects.

Since there is no coordination of the consent requirements of the HPA and the consent provisions in the RMA there can be duplication of effort and cost to applicants.

The HPA's purpose is "to promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand", with persons exercising functions or powers under the Act being required to "take account of material of cultural heritage value and involve the least possible alteration or loss of it".

The RMA's focus is "the promotion of sustainable management (use, development and protection)" with the requirement to recognise and provide for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga" (s.6) and to have particular regard to "the recognition and protection of heritage value of sites, buildings, structures, places and areas" (s.7).

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[2] See Cultural Heritage Planning Manual, New Zealand Historic Places Trust, May 1994.

This has led some commentators to propose moving archaeological site protection from the HPA to the RMA. The argument for this would be to simplify the consent process and to change the focus of the purpose of legislation from preservation to sustainability.

Convenience is not a strong enough justification for focusing control through one piece of legislation. However, there is a strong argument for keeping regulations focused on narrow objectives to improve accountability and consistency.

Equally, submitting all archaeological protection to RMA processes in their existing form may expose applicants to greater time delays, costs and uncertainty due to the wide grounds of objection, consultation and appeal under that legislation.

There is more discussion in this submission on the provisions of the RMA with regard to heritage. We believe consideration should be given to the option of making registration of archeological sites voluntary so that those who want a site registered must persuade the owner to agree. If a mandatory scheme is justifiable, the NZBR strongly recommends that the definition of archaeological sites be reviewed and site recording be linked to a national database. This would comprise nationally significant sites and locally significant sites with respectively national and local identification, assessment and regulatory procedures (see the section on Heritage Identification and Assessment).

GOVERNMENT MACHINERY AND REGULATION

Currently several government departments have responsibility for policy and delivery of heritage protection. In addition, the NZHPT operates as a non-government organisation funded in part by government with diverse functions including regulation, registration, advocacy and education.

Legislation relating to heritage includes the HPA, the RMA, the Conservation Act, the Local Government Act, the Building Act, and the Reserves Act.

We will not attempt to analyse all of these relationships and provisions in detail but we suggest areas where the NZBR believes change could improve heritage objectives.

INSTITUTIONAL FRAMEWORK

We strongly contend that responsibility at government level for historical heritage resources should be simplified. We believe DOC's dual role for conservation of natural resources and some heritage resources leads to conflicting objectives and weakened accountability. There is considerable disparity between DOC's funding of natural and historic heritage. No justification can be found in terms of economies of scale for linking the two conservation portfolios.

Current central government involvement (through DOC) in heritage is not a large function. The policy and regulatory roles are quite modest. Central government funding of heritage (other than its own properties) is also small and we regard this as appropriate, given that we see it as largely a voluntary and local activity.

We would be opposed to the creation of structures which could lead to an expansion of central government's role in heritage.. Any agency is likely to become the subject of interest group pressures for greater government involvement, including funding. One option would be to set up a new agency to handle the policy and regulatory roles. Alternatively, an existing agency, perhaps most logically the Ministry for the Environment, could handle this function. It has many of the necessary policy skills and much relevant knowledge and, having a wider range of responsibilities, might be less vulnerable to interest group capture. We are inclined to favour this option. Because we do not envisage a significant central government funding role in heritage management, we do not see a need for a special funding agency.

We understand Crown-owned historic heritage resources are held by the Department of Conservation, the Department of Internal Affairs, NZHPT and Defence. We see no compelling reason for changing this arrangement. One advantage of diversified ownership and management is that these agencies are obliged to trade off claims for expenditure on heritage preservation against other expenditure priorities. Alternatively, there may be an argument for rationalising management under one portfolio. This could lead to shared knowledge, skills and efficiencies through economies of scale. A third approach might be to contract out the management of Crown-owned properties. If it is felt there may be net benefits in a change to the current arrangements, these should be tested in a proper feasibility study.

This leaves the question of NZHPT. The role and remit of the NZHPT is confused with current statutory functions including regulation, policy, ownership, management, advice and advocacy. Rationalisation is required.

In form we would favour either the re-establishment of the NZHPT as a non-governmental organisation or the setting up of a new national body to promote heritage. In either case we would support one body incorporating Maori and non-Maori representation. By reducing NZHPT's brief to advocacy, information (eg guidelines) and education the Trust would have a clearer focus. There should be nothing to prevent people forming other non-governmental organisations to perform similar roles. This would help keep the NZHPT responsive to members' interests.

The mandate of a revised independent organisation could include improving partnerships with owners, iwi, farmers etc. The organisation would continue to provide specialist advice to individuals and local authorities. It could also compete to supply services to the government agency with responsibly for historic heritage. Such services could include maintenance of a national database and the national register, proposing items for inclusion on the national register, management of heritage property and research on and delivery of incentive packages. Public membership totalling approximately 33,000 provides a means of voluntary action to support heritage.

REGULATION

Poor regulation can have unintended effects discouraging protection and encouraging destruction of historic heritage. Reasons for this include inconsistency, uncertainty, increased compliance costs and systems which weigh against adaptive use.

Several pieces of legislation currently control the use and development of historic heritage resources. We concentrate on the existing legislation under the RMA and the HPA. The fundamental questions are whether the benefits of existing provisions outweigh the costs, whether these controls enhance heritage protection or detract from it, and whether changes would improve the goal of meeting heritage objectives.

We note that there is discussion at governmental level on whether the RMA should be limited to biophysical matters with removal of some issues including heritage from the legislation. Owen McShane's report to the minister of the environment on the RMA has recently been released. Any review of heritage legislation may be debated in this context. We do not seek to make specific comment on Mr McShane's report in this submission.

The alternative would be to place all heritage protection outside the RMA and HPA in new legislation. This could be advantageous if objectives were clear, accountable and transparent. The disadvantage of new legislation would be a another period of transition and testing.

There is also another suggestion that all heritage protection be controlled under the RMA. This may be possible under a complete restructuring of the institutional framework and regulations. The advantage of all provisions being contained in the

RMA is a 'one-stop shop' approach. The disadvantage, critics of the RMA would argue, is the broad range of considerations allowable by local authorities under this piece of legislation.

Rather than analyse these provisions in detail we support rationalisation with a mandate to improve certainty, consistency and accountability provided this can be done at low cost. Given absurdities such as the archaeological provisions of the HPA, there should be a fundamental review of existing regulation to evaluate its strengths and weaknesses against those criteria.

Historic Places Act

The HPA provisions seek "to promote the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand". The structure and functions of the NZHPT are set out in the legislation together with its powers and responsibilities under the Act.

Since the NZBR advocates either voluntary registration or changes to registration with a split between nationally and locally significant items, with responsibility for each respectively at a national and local level, plus simplification of the role and responsibilities of the NZHPT, it envisages a significant revision of existing legislation.

Existing protective mechanisms under the HPA include heritage orders, covenants, archaeological protection, interim registration and offence provisions.

Heritage orders have been of limited use in practice as heritage protection authorities (HPAs) do not have the financial resources to meet their liabilities. This is a clear sign that they do not reflect community preferences in relation to cost. Heritage orders are a means of last resort and increase delay costs to applicants in many cases. A rationalised system of registration linked to control and incentives would alleviate the need for heritage orders and we would propose their abolition as a conservation tool.

Presently interim registration provides a 'cooling off' period of up to eight months for non-registered places deemed to be at risk. Eight months is excessive and places an unacceptable burden in terms of cost and delay on applicants. It may also provide an incentive to owners to destroy heritage resources if registration is not in place.

The NZBR would propose a reduction in interim protection to a maximum of 40 days for newly discovered archaeological sites only. With transparent national and local registration mechanisms there should be no need for spot registrations in the majority of cases.

Resource Management Act

Under the current system most control regarding the use and development of historic heritage resources results from provisions in the RMA. The Act's purpose is to promote sustainable management (use, development and protection) whilst sustaining the potential of resources to meet the reasonably foreseeable need of

future generations and avoiding, mitigating and remedying any adverse effects on the environment.

Advocates of the RMA regard the effects-based legislation as preferable to the prescriptive nature of the former Town and Country Planning Act. Supporters argue the legislation encourages consultation, information gathering and, therefore, awareness.

Criticisms include:

- whether the purpose should be "sustainable *development*" rather than "management";
- whether the definition of environment which includes "social, economic, aesthetic and cultural conditions" and the reference in s.5 to "social, cultural and economic well being" allows local authorities too wide a remit in their decision making; and
- excessive compliance costs and time delays in meeting consultation procedures and producing effects-based analysis.

In summary, critics contend the definition of factors for consideration is too wide, it is often difficult to predict outcomes and costs and delays can be unreasonable. In addition, some local authorities have had difficulty shifting their mindset to the effects-based provisions and controls may be detailed and excessive.

There is evidence of significant cost and time delays in the compliance procedure under the Act for applicants in some areas. In the case of heritage property this may be a significant factor resulting in projects being uneconomic. If the objective is to protect heritage resources, disincentives such as compliance costs and delays should be carefully considered. If heritage remains within the RMA, we believe provision should be made for appeals on notification and fees.

Clearer provisions and institutional structures increase accountability and certainty. We also see value in pursuing the independent certifier approach used in building control.

Under s 6 of the RMA, local authorities *must recognise as a matter of national importance* the relationship of Maori and their cultural and traditions with their ancestral lands, water, sites, wahi tapu and taonga. Under s.7, local authorities are *to have regard to* the recognition and protection of heritage values of sites, buildings, places or areas.

We note the suggestion that historic heritage protection be blanketed under s.6 but see little benefit. However, in the context of our comments on registration, we could envisage that heritage resources of national significance (as laid out in the register of nationally significant historic heritage including Maori sites) be covered in s.6; historic heritage places on local registers would be retained under s.7.

The NZBR would not support a national policy statement encompassing both national and local heritage. We believe responsibility for most heritage resources is best located at a local level and served by private ownership. There may, however, be an advisory role at a central level to assist and review local authority performance

in compiling local registers, offering incentives and adopting workable implementation methods.

Whether heritage protection is removed from the RMA, placed entirely subject to the provisions of the RMA or embodied in new legislation, the fundamental concerns should be certainty, clarity, accountability, cost control and effectiveness. Increased regulation with most or all of the burden placed on private owners will be ineffective and counterproductive.

VOLUNTARY PROTECTION AND INCENTIVES

Most historic places on the Register are in private ownership. If the package of regulatory control and costs (eg specialist repairs, increased borrowing rates, lengthy consent processes) has the effect of historic heritage resources being viewed as liabilities, there will be a strong disincentive to protect. Low market values (driven by restricted site utilisation, additional costs and uncertainty) discourage conservation. Conversely high market values provide incentives for protection.

Where restrictions on private property rights for the benefit of non-owners reduce beneficial use and inhibit sale, it is appropriate that owners be compensated for loss. This principle is adopted elsewhere in legislation such as the Public Works Act. There is a strong argument for compensation in such cases at a national and local register level. In addition to providing an equitable response, this approach imposes accountability and selectivity on those drafting restrictions.

When drafting provisions for compensation and/or other incentives, careful consideration should be given to real loss. Purchase prices may reflect perceived additional cost and uncertainty and there may be a case for different incentives applying to those on a register and those subject to new registration.

There can also be unintended effects when incentives are formulated. The NZBR would support further research into the operation and effectiveness of incentives offered in New Zealand and abroad. Under the provisions of the RMA, local authorities may adopt policies to encourage the conservation of heritage resources. In some cases incentives have been offered to heritage owners including tradable development rights, rates relief, grants, loans, free specialist advice and reduced application fees and reserve contributions. However, some local authorities may not have the expertise and experience to adopt such measures.

In all but a small number of cases we would advocate an adaptable use of heritage resources. Flexibility to allow an upgrading of facilities to meet current expectations should be encouraged. Provisions under the Building Act already allow a reasonable approach to the provision of modern services in historic buildings. Research at a central level into, for example, innovative seismic engineering solutions could advance the options available to heritage property owners.

Clear legislation and effective government administration will result in enhanced protection. Regulation alone is unlikely to promote conservation. Recognition of private property rights is a critical element in promoting conservation at a local and national level.

SUMMARY

- Current policies appear to lack a sound rationale. A proper framework for establishing policies needs to be developed.

- The case for efficient government intervention needs to be carefully assessed.

- Currently those determining which resources should be protected do not appear to have to take full account of the resource costs of those decisions.

- There appears to be a longstanding policy of denying owners of property full compensation.

- The concept of heritage resources appears to be highly subjective and potentially limitless.

- The uncertainty introduced into property rights is material and troubling. Perverse heritage and other effects are commonplace.

- To restore certainty to property rights, the emphasis must be placed on voluntary arrangements and compensation.

- The NZBR would only support measures which limit the scope of the use of the government's coercive powers, introduce greater certainty into property rights, and create incentives for those seeking to protect resources to take the costs of their decisions into account. Accordingly it believes:

  - the costs to private users resulting from imposed restrictions for the 'public good' must be recognised;

  - there should be compensation to private owners where the value of their assets is diminished as a result of intervention;

  - flexibility is required in terms of funding solutions, adaptive use and approaches to protection;

  - the institutional framework should be rationalised to increase effectiveness and accountability. The NZBR considers that responsibility for policy and regulation for heritage conservation should be removed from DOC and placed in a separate agency, perhaps the Ministry for the Environment; and

  - legislation should be clarified to reduce uncertainty and overlap and reduce compliance costs.