

Regulatory Impact Statement

Heritage New Zealand Pouhere Taonga Bill – additional policy issues

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for Culture and Heritage.

It provides an analysis of options to respond to issues raised by external reviewers, who the Minister for Arts Culture and Heritage invited to provide feedback on the draft Heritage New Zealand Pouhere Taonga Bill.

The overall objective of these options is to improve the efficiency and effectiveness of regulation around archaeological sites and heritage properties. This includes streamlining and simplifying processes where appropriate.

None of the options considered would impair private property rights, market competition, or the incentives on business to innovate or invest. None of the options would override fundamental common law principles.

Peter Richardson, Manager Heritage Sector, Cultural Policy Branch

[Signature of person]

[Date]

Status quo and problem definition

- 1 The Historic Places Act 1993 provides for the existence of the New Zealand Historic Places Trust and its governance arrangements, regulates protection of all archaeological sites, promotes other forms of protection for heritage properties, and establishes offences and penalties related to protection objectives.
- 2 A Bill has been drafted to replace the Historic Places Act. The Bill is based on past Cabinet decisions. Some further changes are proposed in the accompanying Cabinet paper. These changes result from a Ministerial request for external feedback.
- 3 The Bill accords with Cabinet's decisions to:
 - reform the governance arrangements of the New Zealand Historic Places Trust (NZHPT) Board, and change the name of the organisation to Heritage New Zealand [DOM Min (09) 27/5, DOM Min (10) 21/3]
 - simplify and streamline the archaeological consenting processes [DOM Min (10) 9/2, DOM Min (10) 21/3], and
 - clarify and improve other provisions of the Act [DOM Min (10) 9/2, DOM Min (10) 21/3].
- 4 A copy of the RIS completed on archaeological consenting processes is attached.

Objectives

- 5 The goal of the Bill overall is to increase the effectiveness and efficiency of the national regime for the protection of historic places.
- 6 The requirements of the Bill should be met from within existing baselines.

Regulatory impact analysis

- 7 The 19 initiatives set out in this paper are grouped as follows for the purposes of this Regulatory Impact Statement:
 - Increased regulatory impact
 - Neutral regulatory impact or administrative only
 - Decreased regulatory impact.

Group 1 (increased regulatory impact)

- 8 Group 1 includes 5.7 (require applications for scientific investigations to contain the same information needed for a harm application), 5.10 (reduce time allowed to appeal), 5.16 (power to apply for an injunction), 5.17 (mortgagee's consent required), and 5.19 (increase fines maxima).
- 9 Initiative 5.10 would reduce the time available to appeal an emergency authority from 15 working days to 10 working days (14 days).
- 10 There are no other options available to achieve the objective.

- 11 Initiative 5.16 would include a power for Heritage New Zealand Pouhere Taonga to apply for an injunction in cases where it is seeking to stop unlawful activity.
- 12 Other options available to achieve the objective are:
 - Status quo.
 - A power for Heritage New Zealand itself to stop unlawful activity.
- 13 The alternative options have been rejected. The status quo does not allow activity to be stopped urgently and with the backing of the law. A power for Heritage New Zealand to stop activity would have fewer checks and balances than the preferred option.
- 14 Initiative 5.17 would clarify in the bill that a mortgagee's consent is required before entering a heritage covenant. The objective of the initiative is to ensure that mortgagees are aware of the impact of a heritage covenant on the property they hold a mortgage impact over, and that they accept that impact.
- 15 The other option available to achieve the objective is to retain the status quo (i.e. assume that the mortgagee is informed).
- 16 This option has been rejected because it does not provide an assurance that all parties that may be affected are informed prior to a heritage covenant being put in place.
- 17 Initiative 5.19 would increase maxima for fines as a result of offences and would add a new category of fines for non-natural persons.
- 18 There are no other options available to achieve the objective.

Group 2 (administrative only or neutral regulatory impact)

- 19 Group 2 includes initiatives 5.1 (remove blanket prohibition on direction), 5.6 (divide investigation applications into two types), 5.9 (apply time limits on investigation of sites under emergency conditions), 5.11 (Treaty of Waitangi clause), 5.13 (define site of Māori interest), 5.14 (changes necessary as a consequence of the Marine and Coastal Area (MACA) Act), and 5.18 (notice giving is sufficient for registration).
- 20 These initiatives have no regulatory impact on any parties.

Group 3 (decreased regulatory impact)

- 21 Group 3 includes 5.2 (reduce time limit for interim registration), 5.3 (allow protection of upgraded category 1 site for 3 months only), 5.4 (owner does not pay costs where no archaeological site found), 5.5 (HNZ can exempt activities where resource consent suspended) 5.8 (extend time allowed to apply for emergency authority), 5.12 (narrow iwi consent requirement), and 5.15 (remove bylaw making power).
- 22 These initiatives reduce the impact of existing regulation on various parties.

Consultation

- 23 The following departments have been consulted on this paper and their comments incorporated: Canterbury Earthquake Recovery Authority; Department of Building and Housing; Ministry for the Environment; Ministry of Justice; Office of Treaty Settlements; Te Puni Kōkiri; Department of Conservation; Ministry of Transport; and the Treasury. The Department of Prime Minister and Cabinet have been informed.

- 24 There has been general agreement to the proposals suggested.
- 25 Te Puni Kōkiri has expressed concern about the proposed change to the Treaty of Waitangi clause.

Conclusions and recommendations

- 26 The draft bill was provided to targeted external parties in early 2011. Those external parties were invited to provide comments and/or suggestions. A significant amount of feedback was received. Out of 82 suggestions that have been considered, 19 are being progressed through Cabinet committee.

Implementation

- 27 These initiatives would require legislative amendment, by way of the proposed Heritage New Zealand Pouhere Taonga Bill. This bill is on the 2011 legislative programme with a category 4 priority (to be referred to a Select Committee in 2011). Any necessary transitional arrangements will be incorporated into this Bill.

Monitoring, evaluation and review

- 28 The Ministry for Culture and Heritage will monitor the effects of the new Act once it has been passed.