

# Regulatory Impact Statement

## Historic Places Act 1993: Review of archaeological consenting processes

### Agency Disclosure Statement

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

It provides an analysis of options to ensure that statutory processes for archaeological consent applications are efficient and streamlined, and that unnecessary duplication with the Resource Management Act 1991 is eliminated.

The Ministry for Culture and Heritage initiated a review of archaeological consenting processes within the Historic Places Act 1993 in response to anecdotal evidence that processes may not be as streamlined as they could be. The review has taken place within the context of the wider Resource Management Act reform process, and is required to be consistent with it.

The review does not seek either to extend or to reduce significantly the protection afforded to archaeological sites. The focus is solely on ensuring that statutory processes are as efficient and streamlined as possible.

Accurate estimates of costs for the three options are difficult, and rely largely on the known ranges of costs which exist at present for the resource consent process.

None of the three options considered in this analysis will impair private property rights, market competition, or the incentives on businesses to innovate or invest. None of the options will override fundamental common law principles. The analysis notes that two of the options (the RMA and Hybrid options) may impose additional costs on businesses and/or individuals seeking consents to modify, damage or destroy archaeological sites. The HPA option may reduce costs for some businesses and/or individuals seeking such consents.

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## Status quo and problem definition

### Status quo

- 1 The Historic Places Act 1993 (HPA) regulates protection of all archaeological sites. Anyone wishing to destroy, damage, modify or investigate an archaeological site must apply to the New Zealand Historic Places Trust (NZHPT) for permission to do so. This permission is known as an 'authority' or an 'archaeological authority'.
- 2 The Resource Management Act 1991 (RMA) promotes the sustainable management of natural and physical resources (excluding minerals). Local authorities administer resource consent processes under the RMA. Those processes consider and balance a diverse range of environmental effects, which may include consideration of the effects of proposed activities on archaeological sites, when such a site is listed on a District Plan (only 8 per cent of all recorded archaeological sites are listed).

### Problem definition, and size of problem

- 3 The main underlying issues are:
  - the archaeological authority provisions of the HPA are unnecessarily complex: there are three different types of authorities
  - no alignment of processing times for archaeological authorities and resource consents, and excessive processing times for archaeological authorities (up to six months)
  - duplication occurs when both an authority and a resource consent is required for the same activity, with the same information required in different formats
  - NZHPT's Māori Heritage Council does not have input into all applications for archaeological authorities affecting sites of interest to Māori.
- 4 The overall problem is small, and is likely to remain so. NZHPT receives approximately 350 applications for archaeological authorities a year (329 in 2008/9, 363 in 2007/8). By contrast, Councils receive around 43,000 applications for land use and subdivision resource consents a year.

### Decisions already taken

- 5 Cabinet invited the Minister for Arts, Culture and Heritage to report on proposals relating to archaeological consents by 2 June 2010 (DOM Min (09) 27/5 refers). The review of archaeological consents has an interface with Phase Two of the Resource Management Reforms, (CAB Min (09) 34/6A paragraph 16.2). This minute makes it clear that any changes to the Historic Places Act should be complementary to any in the RMA review process.

### Costs and benefits of status quo

- 6 There are several benefits to the status quo: national consistency offered by having the small number of applications for archaeological authorities all dealt with by the NZHPT, the centralised expertise the NZHPT can bring to the authority

process, and consequent efficiency because it is not necessary to duplicate expertise in each local authority, and the low monetary cost to applicants (the NZHPT does not currently charge any fees to applicants for lodging or processing applications).

- 7 The key cost of the current arrangements is potentially one of time. In the first instance, applicants face an unnecessarily lengthy process for obtaining an archaeological authority. There is also a potential time cost where applicants for archaeological authorities are also applying for a resource consent (40 per cent of applicants for archaeological authorities) and the lack of timeframe alignment lengthens the process. There are a number of other downsides to the status quo, such as the inconsistent treatment given to sites of interest to Māori.

## Options

### Desired government outcomes/objectives

- 8 The purposes of the review of archaeological consenting processes are to ensure:
  - archaeological consenting processes are efficient and streamlined
  - any unnecessary duplication of processes between the archaeological authority process in the Historic Places Act 1993, and the resource consent process in the Resource Management Act 1991, is removed.

### The Historic Places Act (HPA) option

- 9 This option keeps archaeological consenting in the HPA, with the following key improvements to simplify processes and align them with the RMA:
  - the two main types of archaeological authority are combined
  - applicants may elect to submit applications without an assessment of archaeological effects if these effects are minor
  - timeframes for processing applications for archaeological authorities are reduced, and aligned more closely with RMA consenting processes
  - NZHPT's Māori Heritage Council is involved in all applications for archaeological authorities affecting sites of Māori interest
  - information required for a resource consent can be resubmitted in its original format for an archaeological authority.

### The Resource Management Act (RMA) option

- 10 The RMA option involves:
  - repealing all of the Historic Places Act authority provisions
  - amending the Resource Management Act to integrate archaeological consenting processes into District Plans by way of District Plan changes (a transitional phase would be necessary while Plan changes were made)
  - an RMA National Policy Statement (NPS) is desirable, possibly together with an RMA National Environmental Standard (NES) to ensure national consistency in policy and standards following devolution of responsibilities to the local level

**Hybrid option**

- 11 This option would involve:
  - repealing the existing archaeological authority provisions in the HPA
  - territorial authorities amending District Plans to determine which archaeological sites are to be listed and the rules which will apply (transitional phase as with RMA option)
  - NZHPT processing archaeological resource consents as decision maker, to the same time frames as other resource consents under the RMA.
  
- 12 The aim of this option is to achieve alignment of timeframes by integrating processes within the RMA, while retaining the benefits of centralised decisions for the relatively small number of archaeological authority applications processed each year.

**Regulatory Impact Analysis**

13 The strengths and weaknesses of the three options are outlined in the table below.

	<b>Strengths</b>	<b>Weaknesses</b>
<b>HPA option</b>	<ul style="list-style-type: none"> <li>• Central administration</li> <li>• National consistency</li> <li>• efficiency achieved by aligning timeframes and streamlining information requirements</li> <li>• quick and cheap implementation</li> <li>• costs to applicants reduced where archaeological effects are minor</li> </ul>	<ul style="list-style-type: none"> <li>• need for two or more consents for some projects continues, but duplication reduced by streamlining information requirements</li> </ul>
<b>RMA option</b>	<ul style="list-style-type: none"> <li>• reduced duplication of processes</li> <li>• resolves alignment issues by full integration into one piece of legislation</li> </ul>	<ul style="list-style-type: none"> <li>• increases costs for:               <ul style="list-style-type: none"> <li>- <u>TLAs</u>: to introduce plan changes</li> <li>- <u>applicants</u>: to pay for processing resource consent applications that are not currently required</li> <li>- <u>government</u>: to prepare NPS and NES, if agreed (lack of national consistency if not in place)</li> </ul> </li> <li>• involvement of wider range of parties under RMA may impede resolution of complex issues and increase litigation</li> <li>• multiple consents for some projects still required (for example, subdivision and land use consents)</li> <li>• fewer archaeological sites subject to consenting processes (only those on District Plans)</li> <li>• archaeological and Māori values only two of many considerations in decision process</li> </ul>

<p><b>Hybrid Option</b></p>	<ul style="list-style-type: none"> <li>• national consistency may be able to be maintained, depending on clear delineation of roles between NZHPT and Councils</li> <li>• most legislative provisions related to archaeological consents would be in one piece of legislation</li> </ul>	<ul style="list-style-type: none"> <li>• increases costs for: <ul style="list-style-type: none"> <li>- <u>TLAs</u>: to introduce plan changes</li> <li>- <u>applicants</u>: to pay for lodging fees by Councils that are not currently charged</li> <li>- <u>government</u>: to prepare NPS and NES, if agreed (lack of national consistency if not in place)</li> </ul> </li> <li>• involvement of wider range of parties under RMA may impede resolution of complex issues and increase litigation</li> <li>• complexity of roles and responsibilities between NZHPT and Councils may lead to conflict</li> <li>• lack of transparency due to unclear and nationally-variable decision-making processes</li> <li>• multiple consents for some projects still required (for example, subdivision and land use consents)</li> <li>• fewer archaeological sites subject to consenting processes (only those on District Plans)</li> </ul>
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14 In the Ministry’s view, the HPA option is the best option for the following reasons.

*Proportionate response*

15 While there are issues with the current regime, the scale of the problem is small, and does not warrant the kind of major change which would be required by both the RMA and Hybrid options. Those options would require:

- major legislative changes
- councils to make plan changes councils, with associated costs to ratepayers
- higher costs for applicants (more detail is provided below)
- the development of a National Policy Statement, if agreed (a major process, with costs for both central and local government).

16 The RMA and Hybrid options would likely result in:

- inconsistent heritage outcomes for archaeological sites if the overview of a single expert body is removed (RMA option)
- confusion in responsibilities between NZHPT and councils (Hybrid option)
- inconsistent protection of Māori sites of significance given that the RMA option will remove the oversight of NZHPT’s Māori Heritage Council
- the potential for conflict between councils and NZHPT where a range of values are assessed by Council and archaeological values by NZHPT.

### *Lower cost*

- 17 The HPA option will be cheaper than both the RMA and Hybrid options for both applicants and councils. In the first instance, the HPA option will reduce costs for applications under the proposed 'minor effects' process. Currently all applications require an archaeological investigation before lodging. Under the minor effects process, between 10-15 percent of applications will no longer require this, reducing costs for those applicants by \$1,000-\$3,000 per application. The NZHPT does not currently charge for processing applications (and does not plan to at this time).
- 18 By contrast, the RMA option will:
- increase costs to territorial local authorities, which will need to prepare District Plan changes (average estimated cost per change: \$109,000). Local authorities will also bear some of the costs of processing consents, if all processing costs are not fully recovered from applicants.
  - increase costs to applicants, who will be required to pay for resource consents (costs are likely to be within the range \$861-\$1,243 for non-notified applications and \$4,139-\$23,934 for notified applications).
  - incur costs to government, if a National Policy Statement is to be prepared. This cost is estimated to be over \$400,000, and a National Environmental Standard may cost up to \$250,000. While the government can elect not to develop these instruments, this would undermine the effectiveness of the RMA option in delivering a nationally consistent approach.
- 19 The Hybrid option will:
- increase costs to local authorities, which will need to prepare District Plan changes (average estimated cost per change: \$109,000).
  - increase costs to applicants, who will probably be required to pay a lodgement fee to a local authority (not currently required), and be likely to face some kind of cost recovery charging by NZHPT, which will be faced with major increases in costs to process applications within the RMA framework.
  - incur costs to government, if a National Policy Statement is to be prepared. This cost is estimated to be over \$400,000, and a National Environmental Standard may cost up to \$250,000. While the government may elect not to develop these instruments, this could undermine the effectiveness of the RMA option in delivering a nationally consistent approach.

### *Alignment and shortening of timeframes for processing archaeological authorities*

- 20 The HPA option will largely align timeframes between RMA and HPA processes. The RMA and Hybrid options would result in longer timeframes to process some applications (up to 70 working days for a notified application with hearings, compared with 40 working days for a complex application under the HPA option).

## *Better heritage outcomes*

- 21 The HPA option will maintain the administrative consistency and technical expertise of the status quo by having NZHPT as the central body processing archaeological authorities. Leaving these decisions in the hands of NZHPT will not only mean that decision-making consistency will be continued, but also that applicants will have more certainty about the likely outcome of applications for authorities. The HPA option will also maintain and enhance the current involvement of the statutorily-appointed Māori Heritage Council. The RMA option would remove the input of this body, and leave consultation with Māori stakeholders to councils to manage. Given the high proportion of archaeological sites that are of interest to Māori, failure by a council to adequately consult could result in appeals (and current council consultation processes are of variable quality), with attendant costs for applicants.
- 22 Neither the RMA nor Hybrid options address the need to regulate scientific investigation of archaeological sites where no development of a site is proposed, or the situation where previous unknown sites are uncovered during works. These are specialised HPA functions that do not align well with RMA processes and additional processes would need to be incorporated into the RMA to address them (thus potentially reintroducing duplication).

## **Implementation**

- 23 The HPA option would require legislative amendment, by way of the proposed Historic Places Amendment Bill (on the 2010 legislative programme with a category 4 priority: To be referred to a Select Committee in 2010 (CAB Min (10) 6/7 refers). Any appropriate transitional arrangements would be incorporated into this Bill.
- 24 The RMA and Hybrid options would also require legislative amendment. This would be accomplished as part of the Resource Management reform process.
- 25 The RMA and Hybrid options would require a transitional phase, in which all activities affecting all archaeological sites would be deemed to require a resource consent from the relevant local authority. Councils would then need to initiate Plan Changes to integrate archaeological consenting processes into their District Plans, and identify the particular archaeological sites to which these controls apply.

## **Monitoring, evaluation and review**

- 26 Under the HPA option, NZHPT will continue to monitor archaeological consents, as now. This will include noting the numbers, nature and location of the consents.
- 27 Under the RMA or Hybrid options, the Ministry for the Environment will incorporate monitoring of archaeological consents into its usual resource consent monitoring.

## **Consultation**

- 28 The Ministry for Culture and Heritage convened a Reference Group of key users of archaeological consenting processes, as well as Māori and archaeological interests. The Group considered problems with the current regime, and the

proposals in this analysis reflect those of the Reference Group, with some amendment.

- 29 The Ministry for Culture and Heritage has consulted with the Ministry for the Environment, NZHPT, Te Puni Kōkiri, Local Government New Zealand, the New Zealand Council for Infrastructure Development and the New Zealand Archaeological Association. Views of consultees have been incorporated into the analysis. Further consultation on the associated Cabinet Paper also took place.