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ARCHAEOLOGY IN NEW ZEALAND

CURRENT DIRECTIONS AND ISSUES IN ARCHAEOLOGICAL SITE PROTECTION

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The *Resource Management Act 1991* and the *Historic Places Act 1993* have changed the approach to archaeological site protection in New Zealand. This paper is a national overview which reviews the changes, considers in general terms the extent to which site protection objectives are being achieved, and identifies current issues which merit attention. For those not wishing to read the exposition, a summary is provided towards the end.

It is 20 years since the *Historic Places Amendment Act 1975* provided, for the first time, specific protection measures for archaeological sites. Its provisions have remained, in modified and developed form, in the *Historic Places Act 1980* and the *Historic Places Act 1993*. The New Zealand Archaeological Association was influential in setting objectives for the *Historic Places Amendment Act 1975*. These objectives were coherently stated in Jim McKinlay's book, *Archaeology and Legislation* (1973), and are mostly consistent with recent international charters and guidelines, notably the International Charter for Archaeological Heritage Management (ICOMOS 1990). The recommendations made by McKinlay in 1973 are referred to frequently in this paper as a baseline to facilitate the assessment of progress and the identification of issues.

1. Roles and responsibilities of public agencies

McKinlay argued that, to avoid fragmentation and duplication, archaeological staff employed by the State should operate from a single agency (McKinlay 1973: 64; cf. UNESCO 1956: article 6; World Bank 1994: 7). Accordingly, after 1975 most public archaeologists were employed in the Department of Internal Affairs, at the Historic Places Trust, although the objective of full integration became inoperative from an early date with the employment of archaeologists by the New Zealand Forest Service and the Department of Lands and Survey (Figure 1).

A similar unitary philosophy lay behind the establishment of the Department of Conservation in 1987. It was foreseen that the new department would, amongst other things, record and manage sites, advise central and local government and the private sector on site protection, and monitor compliance with the historic places legislation (State Services Commission 1985: 46-47). Most archaeological staff previously employed in the Department of Internal Affairs, the New Zealand Forest Service, and the Department of Lands and Survey were transferred to the Department of Conservation (Figure 1).

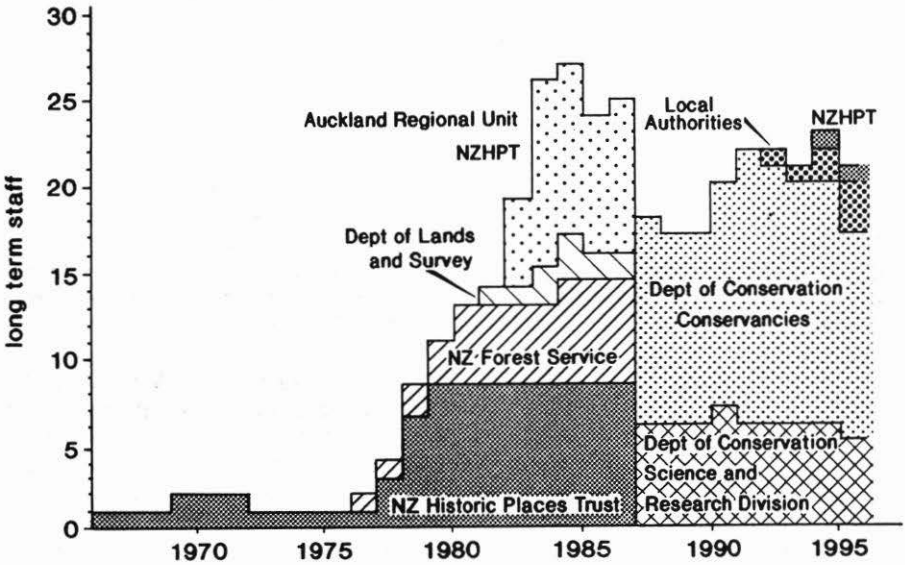

Figure 1. Approximate numbers of long term staff in public archaeology. (N.B. This is a general indication of trends, based on unverified estimates, in which problems of boundary definition arise with respect to what constitutes an archaeological job description, a long term position, and public archaeology. In particular, the responsibilities of Department of Conservation conservancy historic resources staff are only partly archaeological.)

Since then, the government policy to eliminate duplication of functions and to decentralise delivery of services has continued (Department of Conservation 1995c: 9). An environment of fiscal restraint has led to tighter definition of the roles and priorities of the various organisations involved. There has been contraction in staffing and funding in some areas. These trends, together with the implications of the *Resource Management Act 1991* and the *Historic Places Act 1993*, have caused changes from the former approach.

Accordingly, the role of the Department of Conservation in the management of historic heritage has recently been reassessed. The primary function of the Department is as "manager of the Crown conservation estate" (Department of Conservation 1995c: 10). The Department "cannot be regarded as the lead agency for historic heritage protection on lands it does not administer, and can no longer service the regulatory functions of the [Historic Places] Trust relating to archaeological sites" (op. cit.: 18). Because of this, the archaeological role of the Department has decreased.

The full range of historic resources work of the Department of Conservation requires skills in addition to those of archaeology, such as history, geography, architecture, and landscape architecture (Department of Conservation 1995b: 10). Historic resources staff with archaeological qualifications are located in 6 out of 14 conservancies. The Department expended $3.8 million on historic resources work in the 1994-95 year, 3% of its total budget. The proportions of conservancy budgets allocated to historic resources work range from 15% (Auckland) to 5 to 2% (7 conservancies) and to less than 2% (6 conservancies; source: output tables, conservancy business plans 1994-95). The implementation of the Department's new Historic Heritage Strategy (1995c) may lead to increased funding in some areas.

The Historic Places Trust is now an independent non-Crown organisation (Department of Conservation 1995c: 9). It sees its primary role as New Zealand's "leading advocate of historical and cultural heritage conservation" (New Zealand Historic Places Trust 1994b: 3). Notwithstanding its non-Crown status, the Trust retains statutory responsibility for the archaeological protection provisions of the *Historic Places Act 1993*, but the Trust is not resourced to the extent that it can function as a national delivery agency (Whitehead 1995). The Department of Conservation intends to support the Trust in seeking adequate funding (Department of Conservation 1995c: 24).

Currently the Historic Places Trust employs one archaeological sites officer (New Zealand Historic Places Trust 1994a: 14), a specialist staffing level not dissimilar to that which pertained before 1977 (New Zealand Historic Places Trust 1977: 10; see Figure 1; note Cordy 1982: 286). In the 1993-94 year, national office archaeology expenditure was 2% of total Trust expenditure (New Zealand Historic Places Trust 1994a: 33). In 1978-79 and 1979-80, archaeology expenditure was 18% and 12% of total Trust expenditure respectively (New Zealand Historic Places Trust 1980: 19). These comparisons are partly explained by the transfer of staff to the Department of Conservation, mentioned previously. After 1987, much of the expenditure on archaeology was incurred by the Department in the Science and Research Division and in conservancies. The Trust regards the identification of heritage protection needs as being "a matter for the community to determine through the district plan process", administered by local authorities (New Zealand Historic Places Trust 1992: A3).

The recognition and protection of archaeological sites is a component of the responsibilities of local authorities under the *Resource Management Act 1991* (Young 1995; discussed further in 2 and 5 below). However, the wording of that enactment is empowering rather than mandatory. Phrases such as "shall have particular regard to", "shall take into account", "may be provided for", or "should consider" (RMA91: s. 7, 8, Second Schedule, Fourth Schedule) have allowed some local authorities to take the view that they do not have the mandatory duty (or the resources) to deal with the protection of archaeological sites. This

ambiguity should be resolved. Meanwhile, the Auckland Regional Council has in recent years employed archaeologists (included on Figure 1), and some other local authorities have utilised archaeological consultancy and contract services. Increasing local authority engagement in archaeological heritage management is an important current trend.

Thus, McKinlay's vision of a single State archaeological service, always tenuous, has collapsed. Fragmentation, present from the late 1970s to 1987, has re-appeared. Archaeological services are required and obtained by central and local government, by the Historic Places Trust, by other relevant agencies, and by the private sector. The Department of Conservation, the Historic Places Trust, and local authorities are seen as associates in heritage protection (Department of Conservation 1995c: 9, 23). A co-ordinated approach is envisaged. There are dangers in this imprecise situation. With various organisations taking roles relating to heritage protection, potential for duplication and inefficient use of resources remains, unless there is co-operation and co-ordination. Worse, site protection may in some situations fall between the stools, because no agency may consider itself obligated and resourced to initiate the co-ordination or to take the lead in the necessary action in particular cases.

The current situation provides an increasing opportunity for archaeological consultants to provide advice, impact assessments, and investigation services. This raises the very complex inter-related issues of standards, qualifications, and impartiality. Consultants have potentially conflicting responsibilities to the archaeological resource, to research, and to their various client relationships (Cordy 1982).

McKinlay recommended that a specialist advisory committee should be set up to advise on archaeological protection and statutory decisions (McKinlay 1973: 60). Before 1975 the Historic Places Trust established the Archaeology Committee of professionals and experienced amateurs (Law 1974: 153). This committee was disbanded in 1987 (Prickett 1987: 195). The position on the Historic Places Trust board appointed on the nomination of the New Zealand Archaeological Association under the *Historic Places Act 1980* (s. 7 (1d)) was abolished in the *Historic Places Act 1993*. However, a senior academic archaeologist has remained on the board (appointed in terms of HPA93: s. 42 (d)) and has also held membership of the Maori Heritage Council (appointed in terms of HPA93: s. 84 (2c)).

Since 1987 it has been the function of the Department of Conservation to advise the Minister of Conservation on policy concerning the conservation of historic resources generally (*Conservation Act 1987*: s. 6 (f); Department of Conservation 1995c: 9-10). Public input and advice are provided by the New Zealand Conservation Authority and 17 regional Conservation Boards (Department of Conservation 1993b: 54; 1995c: 24). The Department has

proposed a series of policy objectives for historic heritage management (Department of Conservation 1993a: 7-8; 1995c: 13-25). These cover in general terms all the issues raised in this paper, and include the improvement of protection legislation and systems at central, regional, and local levels.

2. Site records

The basis for all site protection programmes is the identification and recording of sites (McKinlay 1973: 60; cf. ICOMOS 1990: article 4; Cleere 1990: 11; Council of Europe 1992: articles 2 and 7; World Bank 1994: 7-8). The New Zealand Archaeological Association set up a site recording scheme in 1958 (Smith 1994: 282). Soon after 1975, the Historic Places Trust and the New Zealand Archaeological Association agreed that the central file of the association's site recording scheme would form the basis for the Trust's archaeological record systems (op. cit.: 289; see also Cassels 1976: 74, 76-79). The functions of the Historic Places Trust include the identification and recording of archaeological sites (HPA93: s. 39 (a)). For over a decade from the early 1970s the Trust funded many site recording projects to build the files, and continued to do so on a small scale (e.g. 26 grants in 1976-77: New Zealand Historic Places Trust 1977: 10; 6 grants in 1993-94; New Zealand Historic Places Trust 1994a: 24), but this support has recently ceased.

Since 1988 the central file has been administered by the Science and Research Division of the Department of Conservation (Smith 1994: 290-291). The Department carries out site recording and assessment, now mainly on the land which it administers (Department of Conservation 1995c: 14; e.g. Grouden 1993; Slocombe 1993).

The functions of local authorities identified in the *Resource Management Act 1991* include the gathering of information and the commissioning of research (RMA91: s. 35(1)). Accordingly, some local authorities have negotiated access to the site recording scheme to provide input to their heritage information systems and planning maps (e.g. Waipa District Council 1993). Some in the Auckland region have commissioned detailed archaeological inventories, largely drawing on existing data (Lawlor 1991; 1994; Mosen 1993). These are important initiatives. In general elsewhere, however, recognition of archaeological heritage at local authority level is frequently inadequate (Lawlor 1991: 107; Mosen 1993: 49; 1994: 47).

Other agencies have been active in site recording and protection. These include museums, university groups, local societies such as the Auckland Civic Trust, members of the New Zealand Archaeological Association, and district committees of the Historic Places Trust.

Maori groups engage in the recording of sites of relevance to them (e.g.

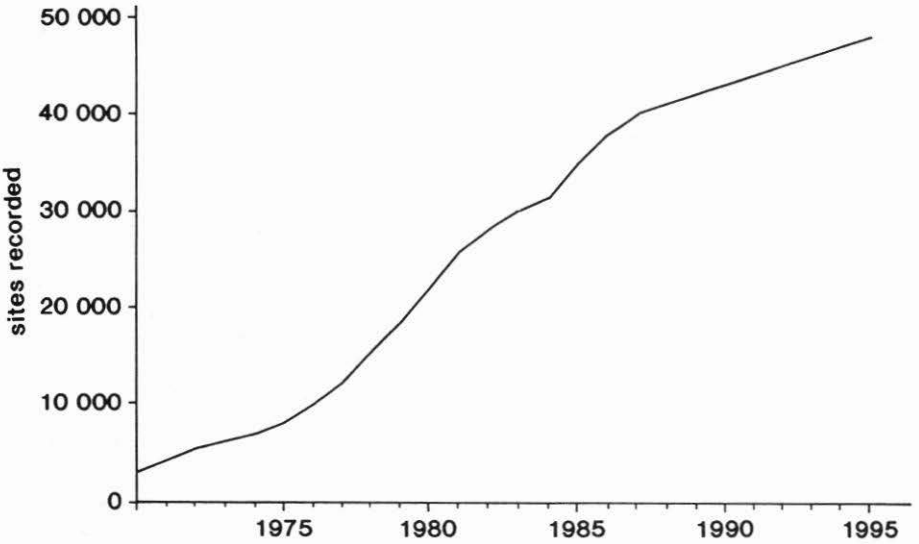

Figure 2. Numbers of sites recorded in the New Zealand Archaeological Association site recording scheme

rock drawing sites in Otago and Canterbury by Te Runanganui O Ngai Tahu; Allingham n.d.; Tau *et al.* 1990: 4.32). Databases compiled by iwi, and documents authorised by iwi authorities for the purposes of regional planning, draw on the site recording scheme (e.g. Tau *et al.* 1990: appendix B; RMA91: s. 66 (2cii)). Some Maori groups are lodging new records in the scheme. Issues of ownership of and access to information arise, and are identified as hindrances by others.

Notwithstanding pioneering work in some areas, the general pace of site recording has been slower since 1987 (Figure 2). Recent assessments have shown that existing inventory is seriously incomplete and of widely variable accuracy (e.g. Challis 1992a; Grouden 1992; Lawlor 1994). These limitations are not clearly understood by most non-archaeologists. Furthermore, most archaeologists are not placing in the site recording scheme updated information deriving from reinspection of previously recorded sites. In 1994-95, 344 site records were updated. At this rate it would take 140 years to update the current file. Renewed commitment to site recording and to the use of the national scheme is warranted.

Funding for site recording may increase in future. For example, a recent forecast of funding priorities for the Public Good Science Fund proposes an

increase in support for social and cultural research outputs, particularly those related to Maori issues (Science Priorities Review Panel 1995: 2, 10). The Environment and Heritage Committee and the Science Research Committee of the Lottery Grants Board are signalling criteria with which archaeological recording and assessment projects would be consistent (New Zealand Lottery Grants Board 1994; 1995). However, there is a need to set standards and define methodologies for such work (Allen 1994: 223; cf. Cassels 1976: 76-78).

3. Authority to destroy, damage, or modify

The so-called authority provisions have been regarded by archaeologists as the cornerstone of site protection legislation for 20 years. It is not lawful to destroy, damage, or modify an archaeological site, whether recorded or registered or not, without the authority of the Historic Places Trust (HPA93: s. 10(1); cf. HPAA75: s. 9F(1); McKinlay 1973: 61; cf. ICOMOS 1990: article 3). These provisions are of great importance. They provide an opportunity to assess a site at the time it is under threat, to negotiate a less damaging outcome than might otherwise occur (New Zealand Historic Places Trust 1977: 11; Allen 1994: 222), and where appropriate to require that an investigation be carried out (HPA93: s. 15).

The authority provisions are a consent process. Authority is rarely declined without prior agreement, and appeals against refusal are usually upheld. In most cases, consent is granted, in some cases subject to conditions. In accordance with free market practice and individual property rights, all legal avenues are open to an applicant to counter any claim for site protection (Cleere 1990: 11; Allen 1994: 208, 221). For example, in determining an appeal, the Planning Tribunal considers "the extent to which the protection of the site restricts the existing or reasonable future use of the site for any lawful purpose" (HPA93: s. 20 (6c)).

The coverage of the authority provisions is not unlimited. They do not apply to sites associated with human activity solely after 1900 (e.g. certain gold mining sites and military installations) unless such a site is declared, by notice in the *New Zealand Gazette*, to be able to provide significant evidence (HPA93: s. 9(2)). No such site has yet been so declared.

In practice the nationwide application of the authority provisions is hampered by the small scale of the staffing and funding made available to ensure compliance and to prosecute violations (see 1 above and discussion in New Zealand Historic Places Trust 1994a: 16; cf. Harris 1994). In the 1993-94 year the Trust issued 67 authority approvals and investigated 4 cases of site damage (New Zealand Historic Places Trust 1994a: 25). This averages as less than one authority application per local authority area per year and, as reported 17 years ago, is thought to be a small fraction of the cases where authorities

should have been applied for (New Zealand Historic Places Trust 1978: 12). The low rate of compliance raises questions about the effectiveness and fairness of current administration of the authority provisions, and whether or in what way the provisions can be appropriately operated or facilitated by an organisation on the scale of the Historic Places Trust.

It is not that the authority provisions are too onerous by overseas comparison. In some respects they do not meet international guidelines (ICOMOS 1990: articles 2 and 3; World Bank 1994: 6-7). Applicants for authority are not required to minimise their impact on sites, nor are they required to consider alternative courses of action which would not damage sites, although the Trust may attempt to negotiate this with reference to principles stated in the legislation (HPA93: s. 4 (2bii)). The authority provisions are not fully integrated with the *Resource Management Act 1991*. Resource consent applications under that enactment are rarely accompanied by archaeological assessments. Resource consents may be granted by local authorities without consideration of archaeological issues, but subject to later consideration of the requirements of the *Historic Places Act 1993* by the Trust, thereby creating circumstances unsympathetic to consideration of alternatives.

McKinlay recommended that, where development projects are planned, the agency responsible should ascertain the extent of the threat (McKinlay 1973: 63; cf. ICOMOS 1990: article 3; World Bank 1994: 2-6). The authority provisions of the *Historic Places Act 1993* include the requirement that applicants shall provide a description of the sites to be affected, an assessment of archaeological, Maori, and other relevant values, and an assessment of the effect of the proposed development on those values (HPA93: s. 11 (2)). Many examples of surveys and assessments funded by developers exist (e.g. Coster and Johnston 1978; Brassey *et al.* 1986; Marshall *et al.* 1993).

Site assessment is specialised and controversial work (cf. Cordy 1982: 279-280). Subsurface evidence cannot readily be assessed, the extent and implications of past and/or proposed destruction may be underestimated, and the local and/or regional context of assessment may not have been documented (Allen 1994: 211-212; Lawlor 1991: 107). Applications to the Historic Places Trust for authority to modify may thus be accompanied by insufficient, understated, misinformed, or otherwise incorrect assessments. This situation is open to abuse unless the Trust is able to establish whether the information and assessments presented are correct, by conducting its own assessments where necessary, so as to consider the merits of the individual case and ensure that its decision is supported by proper evidence (Crown Law Office n.d.: 9). This places a workload on the Trust which cannot always be met (cf. New Zealand Historic Places Trust 1978: 13; Allen 1994: footnote 10; see also 1 above).

The effectiveness of the authority provisions in relation to development

projects has recently been assessed in the case of the Lower Waihou River (Allen *et al.* 1994). It has been found that the majority of the sites in this area have been damaged or destroyed by human agency since 1975 without the authority required. The Waihou Valley flood protection scheme has had a devastating effect. Although the Hauraki Catchment Board commissioned an archaeological survey (Best 1979), its findings were not taken into account in the planning of the scheme. Applications were made to the Trust for authority for some sites, but attempts to protect them on a site-by-site basis were ineffective.

McKinlay recommended that, where sites will be damaged by development projects, an investigation should be carried out, financed by the agency responsible for the damage (McKinlay 1973: 63; cf. ICOMOS 1990: article 3; Council of Europe 1992: article 5; World Bank 1994: 7). An investigation may be required by the Historic Places Trust as a condition of an authority, if the Trust is satisfied on reasonable grounds that the investigation is likely to provide significant information (HPA93: s. 15(1); cf. HPAA75: s. 9F(3)). All intact archaeological deposits, however small, contain some information of significance to the cultural history of an area. However, it may be necessary for the Trust to conduct its own preliminary investigation, if it is to establish such grounds sufficiently clearly to stand close scrutiny under appeal or judicial review (Crown Law Office n.d.: 22; note Cordy 1982: 280). The staff, funding, and time necessary for such preliminary investigations may not always be available.

Archaeological excavation, analysis, and reporting are labour-intensive and thus expensive. Detailed investigations are rarely required as a condition of an authority. A factor in this is the potential cost involved in relation to the necessity to be seen to be fair and reasonable to the individual interests affected (op. cit.: 14-15, 25). The Trust required investigations as conditions of authorities in the 1993-94 year in 5 cases (New Zealand Historic Places Trust 1994a: 25; in the 1979-80 year they were required in 24 cases; New Zealand Historic Places Trust 1980: 10). A watching brief is more frequently imposed, requiring that an archaeologist be present to observe the development, in order to identify and record any evidence uncovered. Unfortunately, the circumstances of earthmoving for land development are not normally conducive to archaeological recording (cf. Higginbotham 1989), and no readily accessible archive of archaeological reports has resulted. The extent of investigation desirable in archaeological terms where destruction is authorised is rarely achieved (cf. Cordy 1982: 283; Lawlor 1994: 58; Birmingham and Wilson 1989).

McKinlay also recommended that, where the cost of an investigation exceeds that which can reasonably be included in development costs, provision should be made for the application of State funds (McKinlay 1973: 63-64; cf. ICOMOS 1990: article 3; Council of Europe 1992: article 6). No funds are established to enable timely investigations to occur where costs are not

recoverable from the applicant. In some such circumstances, university, museum, tangata whenua, and/or other volunteers have provided assistance.

The lack of dedicated funds for such investigations, or for the compensation of owners for additional costs of upkeep, or for revolving purchase schemes, or for property acquisition, together with the general absence of incentives for protection at local authority level, severely constrain the Trust's attempts to negotiate protection and/or mitigation options with applicants for authority (Whitehead 1995: 2). There is thus greater potential for conflict to develop. This is contrary to the Trust's interests in good public relations, given the Trust's dependence on public sources for its finances (New Zealand Historic Places Trust 1994a: 4).

Overall, difficulties are being experienced in the implementation of the authority provisions. While the legislation presents some problems, many others arise in its implementation. The limited staffing, funding and incentives available are major factors. There are no archaeological units or funds for rescue archaeology. The Historic Places Trust now lacks the specialised archaeological staffing on the scale which it developed in the 1970s and 1980s in recognition of the authority-related workload.

4. Authority to investigate

Control of archaeological excavation (previously known as the permit system) has been a relatively uncontroversial aspect of the legislation (Cassels, 1976: 75). No person may carry out an investigation without the authority of the Historic Places Trust, which in considering an application takes into account the purposes of the investigation, the competence of the person, and the adequacy of the institutional and professional resources (HPA93: s. 18; cf. HPAA75: s. 9H; McKinlay 1973: 61; cf. UNESCO 1956: article 5; Council of Europe 1992: article 3).

Although the introduction of the permit system had the immediate effect of stopping certain unscientific digging activity, fossicking has remained widespread, particularly on sites of European origin (e.g. see Challis 1994: 19). Compliance and enforcement programmes are required. There is also a need to specify and require appropriate standards of excavation, analysis, reporting, and curation in permitted investigations (Cassels 1976: 81; ICOMOS 1990: article 5; cf. New Zealand Historic Places Trust 1994a: 22-28).

5. Pro-active site protection

Reservation of land or purchase by the Historic Places Trust has been seen as the highest form of protection in a range of available means (Department of Lands and Survey 1978: 7; Allen 1994: 206-207; see also

McKinlay 1973: 61; cf. ICOMOS 1990: article 2; Council of Europe 1992: articles 2 and 4). There are 213 historic reserves in New Zealand, 125 managed by the Department of Conservation and 88 by other agencies such as the Trust and local authorities (Department of Conservation 1995a: 1). Over half of these reserves have primarily archaeological values.

The portfolio of historic reserves is not regionally or thematically balanced (Department of Lands and Survey 1978: 11). There have been few acquisitions over the past 15 years which might have improved this. No public authority currently appears to recognise a clear mandate to purchase archaeological sites to ensure their protection. There are no dedicated funds for the purpose. Arrangements have not yet been finalised for the protection of representative sites in the Auckland region identified over 10 years ago by the Historic Places Trust as meriting it (Bulmer 1984).

Many sites lie on other categories of protected public lands managed by agencies such as the Department of Conservation and local authorities (Bulmer 1986). Regional studies have shown that between 7 and 16% of recorded sites may lie on protected public lands (e.g. Grouden 1992: 8; Challis 1992a: 10). However, such lands are characteristically mountainous, remote, unstable, or otherwise residual, and so carry an unrepresentative sample of sites (Jones 1989: 1; Challis 1991: figs. 5 and 6; Challis 1992a: 11). Furthermore, management conflicts not infrequently arise between archaeological values and other values and activities on protected public lands including historic reserves. It has long been recognised that there can be no absolute guarantee of permanent site protection (McFadgen 1966; Cordy 1982: 282).

Various enactments provide for the protection of sites on private land by voluntary agreements. Protected private land agreements have been used to protect pa sites, rock art sites, and gold mining sites (*Reserves Act 1977*: s. 76; Department of Conservation 1995a). Some sites are located on land protected by open space covenants and conservation covenants (*Queen Elizabeth the Second National Trust Act 1977*: s. 22; *Reserves Act 1977*: s. 77; *Conservation Act 1987*: s. 27). Some sites have been protected by heritage covenants (HPA93: s. 6; e.g. Te Rua Hoanga pa, Ohaeawai, New Zealand Historic Places Trust 1985: 7). However, the success of such arrangements to date has been mixed. Incentives for voluntary protection are not generally available. Appropriate management and monitoring of protected sites on private land is necessary to ensure their survival (Cordy 1982: 282).

The major heritage protection initiative in the *Resource Management Act 1991* is the heritage order mechanism (RMA91: s. 187-198; cf. HPA93: s. 5). This prohibits any use or change of use contrary to specified restrictive conditions, without prior consent. It is potentially an expensive process, and is likely to be applied rarely as a last resort (Department of Conservation 1990;

Allen 1994: 212). Interim registration under the *Historic Places Act 1993* (s. 26, 27) has a similar effect but for a maximum of 8 months. This may be useful as a short term holding action for sites which have not been registered previously.

Much progress can be made by local authorities accepting archaeological protection as a resource management responsibility, providing for it in policy statements and plans, and supporting it with competent staffing (Lawlor 1991: 103-108; 1994: 60-62; Young 1995). Sites may be listed or scheduled in district or regional plans and thereby protected by associated rules or codes. The Department of Conservation and the Historic Places Trust have co-operated with a number of local authorities to achieve this (e.g. Tasman District Council: Fyfe 1995), but the process has not been applied universally and the quality and effectiveness of the results vary widely. Several local authorities have recently declined to list any archaeological sites in their plans for a range of reasons, including the grounds that such identification for the purposes of protection is the responsibility of the Historic Places Trust. The relationship between district or regional plan listing and registration under the *Historic Places Act 1993* requires review, in order to clarify this unsatisfactory situation. Furthermore, although it is nearly twenty years since it was shown that archaeological landscapes could be protected by declaring conservation overlay zones with associated rules in district plans (Nugent 1978; Allen 1994: 209, 210), none is yet known to exist.

The Historic Places Trust is required to maintain a register of historic places, historic areas, wahi tapu, and wahi tapu areas (all these categories may include archaeological sites), to assist their protection under the Resource Management Act 1991 (HPA93: part II; cf. HPAA75: s. 9G, 9J, 9K). Of the 48,000 archaeological sites now recorded, about 1000, or 2%, are registered. Some other countries have a register or schedule of 10 to 15% of recorded sites (Mosen 1994: 47). There are 42 local authority areas with registered archaeological sites, and 34 with none (op. cit.: 14, 47). Since 1987, for a range of reasons, very few archaeological registrations have been processed (Challis 1992b: 234-235; Mosen 1994: 47). Problems of philosophy and methodology arise (Cordy 1982: 279-282; Allen 1994: 213-218). Registration achieves no explicit protective classification, although it is intended to assist through the process of notification for certain statutory purposes (HPA93: s. 33, 34, 35). A national programme of registration has been advocated (Challis 1992b: 239-240).

Overall, although a suitable range of protection mechanisms exists, progress in pro-active site protection in recent years has been slow and in some areas non-existent. Major factors are the imprecise apportioning of responsibility to public agencies, the lack of resources applied nationally and locally to fund assessments and protection options, the lack of incentives available to private owners, and the lack of public pressure in many areas. The initiatives of some local authorities and the involvement of some Maori groups

constitute hopeful signs.

6. The role of Maori

Local level participation in the identification, assessment, protection, and management of sites is essential, particularly when the sites relate to the Maori community (ICOMOS 1990: articles 2 and 6). Maori communities expect that recording and assessment of sites of Maori interest will lead to management in which they will take an appropriate role. In some cases they have taken the initiative (e.g. Tau *et al.* 1990: 4.30-4.32). The *Resource Management Act 1991* provides a clear mandate for consideration of Maori cultural values, and for Maori guardianship through the transfer of powers from local authorities to iwi authorities (RMA91: s. 33; see also s.6(e), 8, 66(2cii), second schedule part I 4(c), part II 2(c)). There is provision for the setting aside of archaeological sites as Maori reservations (*Maori Land Act 1993*: s. 338).

The authority provisions, by their reference to archaeological evidence and investigations (HPA93: s. 15(1)), have sometimes been seen to give priority to a Euro-centric scientific approach, unacceptable to Maori and inconsistent with principles of indigenous cultural ownership. However, archaeological sites are recognised by iwi as places which require protection or, in appropriate circumstances if destruction cannot be prevented, investigation according to strictly professional criteria (e.g. Tau *et al.* 1990: 4.30-4.32). Rather than undermining the Maori guardianship role, legal protection mechanisms are necessary to reinforce it. There is strong provision in the *Historic Places Act 1993* for consideration of Maori cultural values and for the delegation of functions and powers to Maori (HPA 93: s.4(2bi,c), 14(3), 55, part IV). The Maori prerogative of consent to investigations has always been present in the legislation (HPA75: s. 9H(2); cf. HPA93: s. 18(3)).

The creation of the Maori Heritage Council (HPA93: part IV) has signalled the strengthening of Maori involvement in the protection of sites of Maori interest by the Historic Places Trust, with particular reference to the authority provisions and registration (HPA 93: s.23(2d), 25, 32, 33). The development of effective working relationships with hapu and iwi is anticipated by the Trust through joint advocacy of protection and through promotion of agreed policies, protocols, and standards (New Zealand Historic Places Trust 1994b: output 2).

It is the policy of the Department of Conservation that tangata whenua should participate in the management of sites (*Conservation Act 1987*: s. 4; Department of Conservation 1995c: 20-22). The Crown has proposed that areas of the Crown conservation estate of special significance to Maori, such as pa sites, may be considered in settlement of Treaty of Waitangi claims, where protection of conservation values will not be diminished. This could be achieved by transfer of ownership, revesting of land, or transfer of a significant

management role (Office of Treaty Settlements 1994: 13-14).

Overall, the potential for co-operation between tangata whenua and protection agencies is very great (Lawlor 1994: 58-59). Appropriate legal mechanisms are in place. However, problems arise in implementation: for example, the number of agencies with which tangata whenua have to deal. Furthermore, the resources available in Maori communities for dialogue and participation may be very limited.

SUMMARY

The foregoing review has identified the following current trends which have potential to be positive in assisting site protection.

1. Roles and responsibilities of public agencies

(1) The primary role of the Department of Conservation, which relates to the Crown conservation estate, is clarified.
(2) There is increasing recognition of responsibility by local authorities.
(3) Some co-ordinated projects involving public agencies and Maori are occurring.
(4) There is increasing opportunity for consultants to provide specialist advice.

2. Site records

(1) 48,000 sites are already recorded.
(2) Use of the site records by other agencies is widespread.
(3) Involvement in survey and inventory by other agencies is proliferating.
(4) There may be an increased range of funding opportunities for site recording.

3. Authority to destroy, damage, or modify

(1) The authority provisions provide an important opportunity to negotiate a less damaging outcome and/or to require that an investigation be carried out.
(2) The authority provisions reinforce the role of Maori.

4. Authority to investigate

(1) These provisions have been relatively uncontroversial.

5. Pro-active site protection

(1) A suitable range of protection mechanisms exists.

(2) Some Maori groups are taking initiatives.

6. **The role of Maori**

(1) Legal mechanisms exist for consideration of Maori values.
(2) Legal mechanisms exist providing for Maori guardianship.

On the other hand, this paper has identified the following current problem areas in archaeological site protection.

1. **Roles and responsibilities of public agencies**

(1) Staffing and funding resources in the Historic Places Trust are at a low level.
(2) Although the legislation implies co-operation, no agency is required to take the leading role.
(3) Registration is not integrated with district plan listing.

2. **Site records**

(1) Existing inventory is seriously incomplete and of variable accuracy.
(2) The rate of recording and updating is slow.
(3) Not all agencies and groups are contributing to the site recording scheme.

3. **Authority to destroy, damage, or modify**

(1) The provisions do not meet international guidelines.
(2) The provisions are not integrated with the resource consent process.
(3) Post-1900 sites are not covered.
(4) The compliance rate is low.
(5) The provisions are ineffective in relation to major development projects.
(6) Assessments of values and effects may be deficient.
(7) Investigations prior to destruction are rarely adequate.
(8) There are no funds for investigation or protection options.

4. **Authority to investigate**

(1) Fossicking remains widespread, particularly on sites of European origin.
(2) Issues of standards and curation arise.

5. **Pro-active site protection**

(1) Historic reserves are unrepresentative and there is no acquisition programme.
(2) Sites on other public lands are unrepresentative and management conflicts

arise.
(3) Incentives are not generally available for the protection of sites on private land.
(4) Heritage orders are potentially expensive and are rarely applied.
(5) It is not generally regarded as mandatory to provide lists of sites and associated rules in district plans.
(6) No archaeological conservation overlay zones exist.
(7) Only 2% of recorded sites are registered and there is no national registration programme.
(8) There are no general monitoring and site management services.

6. **The role of Maori**

(1) There is a lack of resourcing for Maori participation and guardianship.

CURRENT ISSUES

In conclusion, the respective roles and responsibilities of the various agencies associated with site protection are not yet clearly established in practice. Recent rates of achievement in the recording of sites, the recovery of information prior to its destruction, and the protection of sites, have been slow. Serious issues arise, particularly aspects of legislation, funding inadequacies, low levels of implementation and compliance, lack of co-ordination between public agencies, matters of professional practice, and the extent of community awareness and participation. All these issues have been identified in general terms by the Department of Conservation in public documents (Department of Conservation 1993a: 7-8; 1995c: 13-25). The main issues on which some action would be appropriate are listed below.

1. **Legislation and statutory responsibility**

(1) Integration between the *Historic Places Act 1993* and the *Resource Management Act 1991* (e.g. the relationship between the authority provisions and the resource consent process, and between registration and listing or zoning in district plans).
(2) Compliance with international guidelines (e.g the need to minimise impact and consider alternatives; and the protection of post-1900 sites).
(3) Clarification and co-ordination of the respective roles and responsibilities of public agencies (e.g. the Historic Places Trust and local authorities).

2. **Funding**

(1) Resourcing statutory protection (e.g. the authority/consent provisions, declaration of post-1900 sites, and registration/listing).
(2) Funding for protection options (e.g. investigations, grants, compensation,

incentives, and purchase).

3. **Site records**

(1) Upgrading the site records (recording, updating, and systems development).
(2) Issues identified by Maori (ownership, access, and usage).

4. **Professional practice**

(1) Methodologies (e.g. for identifying sites meriting registration and/or district plan provisions, and for determining whether investigation as a condition of an authority is justifiable).
(2) Standards, impartiality, and quality control (e.g. for recording, assessment, and investigation related to statutory decisions).
(3) Management of protected sites (on public and private lands; policy, maintenance, and monitoring).

5. **Community participation**

(1) Empowering Maori guardianship (knowledge, skills, participation, and direct management).
(2) Public awareness of and support for site protection objectives.

These issues are on the agenda of the Department of Conservation, the Historic Places Trust, and some local authorities (e.g. New Zealand Historic Places Trust 1994b: 3; Lawlor 1991; Young 1995). In addition, the contribution of the New Zealand Archaeological Association as the relevant specialist interest group is of great importance. The Department of Conservation regards the Association as a key associate in its historic resources work (Department of Conservation 1995c: 23).

Since the early 1960s, the Association has actively pursued issues of legislation and funding, led by senior figures from universities and museums (e.g. Green 1963; Park *et al.* 1973). Issues of professional practice and the upgrading of the site record files were under discussion by the Association in the 1970s (Cassels 1976: 74, 81). There remains an ongoing opportunity for the Association to contribute to intellectual leadership at national level, and to foster public awareness of site protection issues.

Over twenty years ago, the need for local level participation in site protection was also identified (McKinlay 1973: 61). It was suggested that the Association should set up regional groups to establish priorities and co-ordinate effort to achieve protection (Cassels 1976: 78-79; cf. Cordy 1982: 284). Given the policy of government to devolve decision-making to local level, and given

the trend towards local authorities taking a lead in heritage protection, there is a need for the continued application of the principles and energies of the Association at local level, in co-operation with Maori communities, the Department of Conservation, the Historic Places Trust, and local authorities.

ACKNOWLEDGEMENTS

The writer would like to thank Harry Allen, Susan Bulmer, John Coster, John Daniels, Kaye Green, Roger Green, Warren Gumbley, Kevin Jones, Ian Lawlor, Bruce McFadgen, Tony Walton, and Ann Williams for commenting on earlier drafts of this paper.

ENACTMENTS REFERRED TO, WITH ABBREVIATIONS USED

The Historic Places Amendment Act 1975 (HPAA75)
The Queen Elizabeth the Second National Trust Act 1977
The Reserves Act 1977
The Historic Places Act 1980
The Conservation Act 1987
The Resource Management Act 1991 (RMA91)
The Maori Land Act 1993
The Historic Places Act 1993 (HPA93)

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