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MAORI INVOLVEMENT IN DECISION MAKING

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Tena koutou. Tena koutou nga akonga a te Ao o Mua. Tena tatou katoa.

I greet us all as archaeologists, as students of a world that is no longer; a world that is recognised by its historic places, by the Korero that goes with it and by the information that archaeologists can extract from it.

I want to take you on a journey - a journey through legislation and the administration of legislation, and I hope at the end we arrive at an understanding of heritage conservation.

In 1975, the efforts of archaeologists, and others, at the time resulted in the introduction of an amendment to the Historic Places Act and archaeological legislation was set to happen. The Act came into effect in February 1976. Twenty years and two months ago. It was important legislation. Not because it controlled development nor because it controlled fossicking although it did both of these. The most important aspect, to me at least, was the public recognition that SITES PROTECTION should be part of the way we live in New Zealand.

That was the start. What happened? Archaeological staff were appointed to the Trust; a major development of the Clutha Valley saw the appointment of an archaeological team for the project; a prosecution was successful; authority applications started coming in; a staff member was allocated responsibility for site protection in forestry development; many on site discussions resulted in site avoidance often in total, sometimes in part. The one unfortunate matter was that those sites the Trust deemed to be too significant to warrant destruction and accordingly refused to grant an authority, were later granted on appeal.

These were also the times that Maori started taking a hand in things, particularly the Maori Heritage Committee of the Trust who successfully argued that the next revision of legislation ie: the 1980 Act should have provision for protecting places of traditional significance to Maori. The term 'traditional' was chosen deliberately - the Trust did not at that time wish to

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interfere with how iwi used the term 'wahi tapu', yet it wished to provide for wahi o nga tupuna ie: landscape features, battle sites, settlement sites, memorial places etc. **whether or not** these had any archaeological remains. The 1980 Act did not change the archaeological provisions.

So what happened in the 1980s? The same as before but more of it. The great success at this time was the traditional site protection. Provision was made only for recognising such places, however, by persuasion and working with the community, not one was destroyed, damaged or modified. There is one here at Matata, the Kaokoaroa battle site. The Trust, Whakatane District Council and DoC staff by working together, managed to save the site.

1987 saw a change in the administration of heritage sites. The Trust archaeologists moved to DoC and became regionally based. They provided the archaeological advice on which authority decisions were made. The Trust was thus separated from its resource, the sites, and became "paper-pushers". Only the regional staff of the Trust maintained any links with the sites themselves.

What can be retrieved in such a system? Prosecutions didn't happen, appeals were not as frequent, more authorities were being issued BUT what were the gains in archaeological terms? How much better did we understand New Zealand's past? The Trust seemed to be sidelined from its archaeological responsibilities. Instead, the Trust concentrated on traditional site declaration in the knowledge that public recognition of places provides its own protection and on developing an effective interaction with hapu and iwi.

An example of how the latter worked is the case of the Ngati Paoa urupa at Westfield. The area was an industrial site. The development proposed to destroy all evidence of past human occupation. A major investigation was proposed and agreed. A small area that was an urupa was not allowed to be part of the development. The holder of the authority appealed and was successful. Authority was issued. Ngati Paoa appealed to the High Court. The original appeal was found to be invalid. A new application was lodged and again refused. Another appeal, another appeal upheld. Again Ngati Paoa took action.

All Ngati Paoa required of the Trust was to continue to decline the authority (on its merits). They undertook the protection of their own heritage site beyond the protection accorded by the Historic Places Act 1980.

These last years of the 80s also saw the Trust's growing dissatisfaction with the Act. Registration of buildings and archaeological sites as separate entities was no longer seen as appropriate. Categorising levels of heritage significance was not considered appropriate for Maori buildings and sites.

The archaeological provisions were working to the benefit of developers who could mitigate the loss of a site by having it investigated but not to the benefit of the Trust (who is interested in achieving the least possible alteration) nor to the benefit of archaeology (which requires a research approach and a certain level of investigation) and certainly not for Maori (who want sites to be saved).

Unfortunately, the 1993 Act, written in the main by DoC, did not meet all the intentions of the Trust ie:

- the register became a two part register with a category for places of special or outstanding significance
- there was no protection for registered places
- there was no automatic protection for wahi tapu as there was for archaeological sites
- mitigation for archaeological sites (whether or not they were wahi tapu) continued to be seen in archaeological terms.

In respect of the archaeological provisions, the Act did:

1. require an applicant to consult with tangata whenua
2. require the applicant to establish the Maori value as well as the **archaeological** value of the site and the impact of the development upon those values.

The Trust, who by then had persuaded DoC of the value of the Trust employing an archaeologist, then set out to:

- ensure that the processing of applications was carried out in a manner that was fair and reasonable
- ensure the decisions made were legally defensible
ie: would stand up in an appeal
- ensure that the archaeological investigations were of a professional high standard.

I would like here to pay tribute to Warren Gumbley who was the archaeologist appointed at this time. It was his own professional and ethical approach and his commitment to heritage conservation that has placed the Trust and its staff in a position which has the respect of the legal profession and hopefully also of the archaeological profession.

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The disappointing aspect over this period is the sometime failure of professional contract archaeologists to produce a report on the investigation within a reasonable time, or sometimes at all.

So far I have dealt with the legal provisions and the administration of the law. It is time to look at the Trust's kaupapa and how Maori are involved in decision making.

Our kaupapa is set out in section 4, the Purpose and Principles of the Act. The Trust is an Advocate and voice for heritage conservation, recognising:

- that historic places have lasting value
- that there are many ways to appreciate such places
- that the Trust should aim for least possible interference with the sites
- that if the site cannot be kept, a full record is made and provided to iwi and others
- that legal protection through the Historic Places Act and the Resource Management Act are important

What are the Maori issues that the Trust deals with?

1. Firstly, Maori need the Trust to understand that Maori are Kaitiaki, ie: that they have both a right and a duty towards their past. The choice of whether or not to exercise Kaitiakitanga is not theirs, it is given. How to exercise it, is. The results are seen by the Trust in terms of a decision whether or not to register a historic place or wahi tapu and whether or not to appeal an authority decision.

2. Secondly, Maori require the Trust to register and protect Maori heritage places without divulging the tapu nature of the site or revealing all of its history. This means that if the Trust lends its support to heritage site conservation it cannot at the same time be an information source about the heritage of New Zealand. It can, and is, of course, a participator in information retrieval but the Trust's record is never complete, it is never the final word.

Let me illustrate how this works.

An application may be lodged to register a particular wahi tapu (which may also be an archaeological site). The Maori Heritage Council needs to be sure that the person who makes the claim, has the right to do so. The Council

then determines whether sufficient information has been provided.

At times, the Maori Heritage Council has gone to a marae to hear the information which is presented orally but not recorded, ie: The Trust seeks to require only the minimum information that is required to justify a decision.

3. Maori require the Trust to involve them in decision-making. Some of you, have applied for registration for archaeological sites. The Trust's procedure is to contact tangata whenua who also have a history for the site and who will also have a view as to whether or not registration is warranted. Your request may therefore take some time in the processing.

4. Many iwi have set up iwi heritage management committees. Some iwi have their own heritage policies in regard to information sharing and assessments of heritage value or preservation value. When they are consulted on archaeological authority applications they often give conditional approval expecting the Historic Places Trust to include the conditions in the authority. The Trust is, of course, able to do so except where a condition would either nullify the authority or where such a condition differs from the Trust's own policies or objectives. This may sound easy but when it comes to an iwi wanting a particular archaeologist and no other to work on their sites, it is not so straightforward. Nor will it be straightforward if iwi do not want a site to be investigated when the Trust has already approved site modification.

5. Maori require the Trust to understand heritage on their terms. You will all know about Ngunguru Spit, a wahi tapu to Ngati Wai. From another angle it can be seen as a number of midden (about 50). The same situation arose at Papamoa. Middens were considered to be a repository of archaeological information with little lasting value in their own right. Nga Potiki first and now Ngati Wai have put us right. These are places that associate Maori with their ancestral lands. These may be sites which can be studied but then they should be returned to the land whence they came. Such redeposited middens may be a headache for archaeologists in the future, but I cannot think of any good reason why iwi requests cannot be met. The Nga Potiki Papamoa heritage study currently underway should provide some guidance as will Rick McGovern-Wilson's work on middens.

6. Maori believe that, at times, the wahi tapu nature of a site overrides all other considerations, including archaeological. Burial places are and urupa are an example. Trust practice is to leave the decision as to whether to move the Koiwi or leave them where they are to iwi. If iwi ask for them to be left, we would refuse an authority, realising that it could be overturned on appeal. It is then up to iwi to take out a heritage order to protect the site or to offer to buy back the site.

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Not only burials but other wahi tapu can be considered inviolate by tangata whenua. The situation for the Trust in relation to Part 1 of the Act (the archaeological provisions) is easier if the wahi tapu is already on our register as this indicates the Trust will respect the wahi tapu.

7. Maori usually do not believe in ranking sites or grouping sites. Every site is history, every place tells a story, for every site there is a time for the story to be revealed. The Trust tried hard to get a single register and it achieved this for wahi tapu but not for historic places.

To reiterate, Maori want the Trust

- to respect them as Kaitiaki
- to maintain confidentiality of information
- to listen to their concerns
- to involve them in heritage decisions
- to understand their heritage perspective.

It is time to explain about the Trust, Te Pouhere Taonga, the pillar that binds taonga in sites and buildings. The Trust, ie: the Board and the Maori Heritage Council are the 'pou' of Te Pouhere Taonga. The Maori Unit sees its role as the 'here', the tie which links the Trust to whanau/hapu/iwi and whanau/hapu/iwi to the Trust.

The Maori Heritage Unit is there to support the Maori Heritage Council:

- in the registration of wahi tapu or wahi tapu areas, and of historic places and historic areas of Maori interest
- in developing a bicultural view which respects archaeological, Maori and community (ie: special interest groups) values
- in making recommendations on authority applications for places of Maori interest
- in making decisions on Maori heritage, ie: by understanding Maori values allowing them to operate and not hindering such concepts as kaitiakitanga, tapu, etc.

The Maori Heritage Unit also provides advice and assistance to iwi in regard to:

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- (1) site recording
- (2) heritage studies (with Local Bodies)
- (3) conservation plans for heritage places in relation to re-occupation such as Takahunga marae or tourist ventures.

I want to leave you to think ahead. I have been asked by the Maori Heritage Council and Board to prepare a Sites Policy document for the Trust, and I will shortly be preparing a discussion paper and inviting comments. I will, of course, be sending one to the NZAA Council but individuals may also wish to comment. Issues that will be canvassed include:

The legal definition of an archaeological site and what to do in cases of difficulty.

Procedural aspects of authority decision making by the Trust the basis for granting or declining an authority including Maori reasons.

The setting of conditions.

Site identification, conservation, legal and physical protection.

Site registration.

Covenanting.

I guess in many ways it will be a review of the provisions of the Historic Places Act 1993 and how these can be used to maximum advantage.

Thank you for listening, I think a session which provides the perspective of an administrator of the law, of tangata whenua, and of an archaeologist is very valuable as it will lead us into new visions.

Tena tatou katoa