



NEW ZEALAND
ARCHAEOLOGICAL
ASSOCIATION

NEW ZEALAND ARCHAEOLOGICAL ASSOCIATION NEWSLETTER



This document is made available by The New Zealand Archaeological Association under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

To view a copy of this license, visit
<http://creativecommons.org/licenses/by-nc-sa/4.0/>.

THE PROTECTION OF ARCHAEOLOGICAL SITES AND
MATERIAL IN NEW ZEALAND

J. R. McKinlay,
N.Z. Historic Places Trust

This is an updated version of the paper presented to the 1972 Annual Conference of the Association. It covers the history of legislative provisions for the protection of archaeological materials in New Zealand, and briefly discusses the present Act. Recent proposals and actions for the revision of the present Act are summarized and commented on.

An archaeological site is an assemblage of diverse physical elements of past cultural patterns which by chance, or because of the nature of their raw materials, or of the physical and biological condition of the environment in which they were fortuitously constructed or deposited, have survived the ravages of man and nature for perhaps many hundreds of years. In New Zealand, these records of past human activity find many expressions, ranging from the spectacular earthworks of major pa, through complexes of enigmatic pits, to apparently unexciting and unimportant dumps of shells and hangi stones. Associated with this generally non-portable evidence may sometimes be found a variety of portable artefacts, which of late have tended to take too central a place in the general public appreciation of what archaeology is all about, but which in fact are only one facet of the total corpus of data on which the cultural reconstructions of the archaeologist are based. Such evidence and such deposits have often suffered disturbance by later human activity of the same site, but it is such superimposed activity which enables the archaeologist to determine the temporal and spatial boundaries of his studies. However, the last few decades have been characterized by such rapid economic growth and development, associated with such accelerated demands on the total environment, that the destruction of the evidence with which archaeologists are concerned has assumed catastrophic proportions. So much is this so that an American archaeologist has recently been moved to write:

'The nation's past is contained in its soil. That soil is being disturbed and redistributed at an ever-increasing rate. Those of us alive today will be the last ever to see any significant portion of it in an undisturbed state.'

(McGimsey, 1972: 17)

The situation in New Zealand is not greatly dissimilar to that in the United States, and it is the problem of the protection of the evidence which remains in New Zealand that is the topic of this paper.

Antiquities legislation in New Zealand

The collection and removal of cultural materials from New Zealand commenced with Cook in 1769, for he had been expressly instructed by the Admiralty to '... cultivate a Friendship and Alliance with (the natives) making them presents of such trifles as they may value, and inviting them to Traffick.' (Beaglehole, 1955; cclxxxiii). As Shawcross has noted, the collection obtained '... stands as a document of the highest importance on prehistoric Maori materials and culture.' (Shawcross, 1970: 306). Subsequent arrivals of Europeans - explorers, sealers, whalers, traders, missionaries and settlers - resulted in a veritable flood of such material, which may now be found in museums and private collections in the United Kingdom, Europe and North America, leaving New Zealand.

However, it was not until 1898 that the conscience of any Colonial politician was sufficiently stirred for the matter of the protection of cultural and scientific materials to be raised in Parliament - and even then it was provoked by concern that the recently discovered specimen of Notornis mantelli might be bought by an overseas buyer and exported. As it happened, the specimen was purchased by the Government and deposited in the Dunedin Museum. The debate soon centred round the question of cultural items, but it resulted in no legislative action. The topic was again raised in 1901 when the Government was asked to introduce legislation prohibiting the exportation of Maori carvings and implements except subject to the approval of the Government. Although the principal intent was to ensure control, the Prime Minister, R. J. Seddon, raised the question of complete prohibition on sale for export. There was a general agreement as to the value of and the necessity for some form of State right to purchase for a national museum, and for some form of inventory or collation of this material 'as a duty to the colony, (and) to future generations.'

The debate, which was surprisingly well-informed, covered many areas - Government purchase and its effect on prices; interference with the rights of the individual; the effect of prohibition of export on the tourist trade; total prohibition as against Government control; gifts of notable artefacts and heirlooms to governors and important visitors; repatriation of artefacts already alienated overseas; the establishment of a State museum and its purchasing policy; ownership of newly discovered artefacts; the State as the custodian for Maori owners of family and tribal heirlooms - which are directly relevant to the problem in the present-day context. The contribution of one member in stressing the scientific importance of the Bill is worthy of note:

'We shall be providing the scientific and intellectual world with specimens and objects which will have a value for all time to come to those who take an interest in archaeology by marking out the actual position the Maori race occupied in the races of the World, and in the intellectual, artistic and industrial development of mankind.'

The Bill became law as the "Maori Antiquities Act 1901, an Act to prevent the removal from the Colony of Maori Antiquities". The details of the provisions are not needed here. Suffice it to say that the application and administration of the Act was neither effectively nor enthusiastically carried out, even though several changes incorporated in the amendments of 1908 attempted to overcome the major anomalies. The Act never operated effectively and by the 1920s there were widespread dissatisfactions, both from those concerned with the protection of artefacts, and those who wished to trade in them. By the 1930s it was clear that the Act was inadequate, but it was not until the 1950s that renewed pressures, particularly from museums and art galleries, for a widening of the scope of the legislation to include artistic and documentary material of relevance to the history of New Zealand, resulted in a re-examination of the legislation, and the appearance of the present legislation, the Historic Articles Act 1962.

This Act aimed to provide for a degree of control over the export of certain historic articles and not to prevent such export as had the Act which it replaced, although, as we are beginning to appreciate, in operation it is hardly more effective. The details of the provisions, with two exceptions, are not needed here, nor are the details of the parliamentary debate, which was neither as informed nor as interesting as had been the earlier debates. The two sections which might be noted here are:

(a) The definition: an historic article is defined as

- (1) "any chattel, artefact, carving, object or thing which relates to the history, art, culture or economy of the Maori or other Polynesian inhabitant of New Zealand and which was or appears to have been manufactured in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor of any such inhabitant, more than 60 years before the commencement of this Act." (i.e., before 1903).
- (2) Various documentary material of relevance to the history, etc. of New Zealand.
- (3) Scientific type specimens.

(b) Applications for permits to export:

It is an offence to knowingly remove, or attempt to remove, any Historic Article from New Zealand otherwise than with a permit issued by the Minister. In considering an application the Minister is directed to consider:

- (1) its historical, scientific, cultural or national importance,
- (2) its rarity,
- (3) the public holdings of such items in New Zealand,
- (4) the probable effect of its removal on research in New Zealand,
- (5) other relevant matters.

Having considered these matters, and having obtained whatever expert opinion he might think necessary, the Minister must either allow or decline the application. If, however, the article is being exported for the purpose of sale, and if the Minister is undecided as to the wisdom of allowing the export, he may cause the article to be advertised in the Official Circular and invite offers for its purchase. Should an offer satisfactory to the owner be made the article is sold and retained in New Zealand. If the owner declines all offers, and he is not required to submit to arbitration, the Minister is obliged to issue a permit and allow the export. It would appear that these provisions have tended to act in the direction of allowing export,

for in the first seven years of operation there were 37 approvals and only one refusal.

It is important to note, however, that this specific antiquities legislation offers no protection to archaeological sites, and this would appear to be the major weakness of the present situation. There are other New Zealand Acts - notably the Historic Places Act 1954, the Reserves and Domains Act 1953, and the Town and Country Planning Act 1953 - which peripherally to their main purpose do provide for a certain degree of protection and preservation of sites, and which have been so used, but they are no substitute for specific legislation.

(For a more detailed discussion of the above section the reader is referred to McKinlay, 1972: 21-89.)

Recent moves to achieve legislative protection

The only body which has persistently pressed for greater legislative safeguards for archaeological sites, or for more effective administrative practices to lessen the degree of site destruction, has been the New Zealand Archaeological Association, but as the steps taken have been previously published (McFadgen, 1966; McFadgen and Daniels, 1970; and generally in the Association's Newsletter, Vol. 9, No. 3, and Vol. 13, No. 4) they need not be detailed here.

There has however been a most important recent development. The New Zealand Historic Places Trust, disturbed by the 1969-71 inflation of the market for Maori artefacts, requested the Department of Internal Affairs to call a meeting of all bodies interested in, or affected by, this question, and to discuss ways and means by which the Historic Articles Act might be amended in order to make it more effective. Attending the meeting, which was held in October 1971, were representatives of the Departments of Internal Affairs, Lands and Survey, Customs, Tourist and Publicity, and Maori and Island Affairs, the N.Z. Antique Dealers' Association, the General Auctioneers' Association of New Zealand, the Dominion Museum, the N.Z. Historic Places Trust, the Art Galleries and Museums Association of New Zealand, and the N.Z. Archaeological Association.

Initially the discussions covered only the areas relevant to the Act - control of trading in New Zealand, licensing of dealers, control or ban of exports, difficulties of detecting evasions, greater State participation, national registers of sites and artefacts,

rights of individual artefact owners and landowners, problems of increasing travel volumes and international policies to reduce documentation for travellers - but gradually the meeting shifted to consideration of the protection of antiquities generally and of sites in particular. The meeting was not intended to come to any final decisions, or even to make recommendations, but was to be an airing of views. The representatives involved left the meeting with instructions to have the minutes discussed by their organisations and to then present their views in writing to the Department of Internal Affairs which would then call a second meeting.

The second meeting was called by the Department in September, 1972. In addition to the participants of the first meeting, representatives of the Royal Society of New Zealand, the Consumers' Institute, and of the New Zealand Maori Council also attended. All of the participating bodies had previously forwarded written submissions. These were wideranging in their content, and the meeting's deliberations were arranged around a framework of 17 of the major topics. The submissions of the two organisations most concerned with archaeology are summarized as follows:

New Zealand Archaeological Association Submissions

First, it was stated that there was a need for a greater degree of control over the buying and selling of artefacts than provided by the present Act. There then followed several inter-related proposals which it was envisaged would be built around the creation of some form of State Antiquities Agency which would be responsible for the overall administration of the legislation. As any proposal for the protection, preservation or control of antiquities is dependent on a knowledge of what exists, there was provision for the compilation of national registers of both sites and artefacts. For artefacts, it was proposed that all holdings, both public and private, should be registered by a nominated date, after which all unregistered artefacts, and that of course would include all those not yet discovered, would be deemed to be State property. New finds would have to be reported to the agency. All dealers in artefacts would need to be licensed, and would trade only in registered artefacts, with artefacts owned by the Crown being available for export only for cultural exchange or scientific study. It was proposed that the sites which were registered should not knowingly be disturbed without a permit, and that newly discovered sites should be reported to the agency. It was felt that the agency should be responsible for the co-ordination of all salvage programmes, for the issue of permits for all excavations, and for the carrying out of archaeological investigations in its own right.

New Zealand Historic Places Trust Submissions

The Trust's submissions comprised three main sections.

First, a general statement set out the Trust's belief that there was a need to regulate the export of Maori artefacts but that the present Act did not achieve this; that the uncontrolled sale of Maori artefacts was a contributory factor in the despoliation of prehistoric sites; that the excavation of such sites should be undertaken only by authorised and qualified organisations and individuals; and that sites should be protected as far as possible from despoliation by fossickers and by development projects.

Secondly, with regard to archaeological sites, it was submitted that:

- (a) In order to provide effective protection for sites the following action would be necessary:-
 - (i) stronger legislation than presently exists would have to be enacted.
 - (ii) The new legislation would have to be adequately policed.
- (b) As a first step towards the adequate protection of archaeological sites, sites would have to be fully recorded and registered, perhaps by an extension of the present New Zealand Archaeological Association's Site Recording Scheme. This programme would need to be financed by Government, and could be co-ordinated by the Trust, with assistance from those Government Departments having a local organisation which could be utilised to provide the field and other facilities necessary for the proper location of sites on the ground, and for the searching of titles and legal descriptions of the land involved.
- (c) While it was emphasised that the greater need was for a National Register of all sites and for legislation which provided for the protection, but not necessarily the permanent preservation, of all sites, a special register or classification of a limited number of sites of outstanding national importance, whether on private or Crown land could be prepared, and that these sites be specially protected by legislative provision in the national interest for all time. It was recognised that such a register would not be a definitive list, and that it would need to be added to or amended as new sites of the requisite degree of

importance were discovered or as the results or requirements of historic and scientific research indicated.

- (d) There was a necessity for legislative provisions to ensure that where registered sites were likely to be affected by any form of proposed development work, the organisation or individual responsible for the development work should be required to ascertain the degree of threat involved and to notify the national body responsible for the register of sites, which should have the power, if it were deemed desirable, to order the postponement of the work in order to allow an adequate archaeological survey, and if necessary, salvage programme to be carried out.
- (e) A major principle should be that the agency or individual responsible for damage to, or destruction of, an archaeological site should be made to contribute a financial subsidy to the salvage archaeology.
- (f) It should be a requirement that where a previously unknown (and therefore unregistered) site be discovered accidentally in the course of development or other work, its presence should be reported immediately to the appropriate authority.

Thirdly, with artefacts it was submitted:

- (a) That the present, almost automatic, provisions under the Historic Articles Act for the export of articles which the State is unwilling to purchase, and for which no other offer acceptable to the owner has been made, should be amended.
- (b) That a panel of experts be appointed to determine a 'reasonable price' in cases where no agreement can be reached with the owner who has applied for a permit to export an article coming within the scope of the Act.
- (c) That there is an obligation on the State to ensure a greater public awareness of the need for the legislation to protect sites and artefacts, and of its provisions, by carrying out effective public education programmes.
- (d) That, as the fossicking of archaeological sites in order to obtain artefacts is a significant aspect of site destruction, all Maori artefacts yet to be disclosed from the soil should be deemed to be Crown property, and that it should be an offence to knowingly disturb such artefacts without an appropriate permit first having been obtained.

- (e) That there did not seem to be any need to press for the compilation of a National Register of Artefacts, for in addition to being an expensive, difficult, and time consuming exercise, such a register might not achieve the aims which had been set, and in fact might raise more problems than it would solve.

It must be recorded, that as with the initial meeting, the discussions were characterized by a common concern, despite the diversity of interests, opinions, and attitudes represented, that real progress was made towards the goal of achieving an effective reframing of the legislation. Space, and confidentiality of the discussions, does not here permit a detailed report on all of the areas covered and the agreements reached, although it would be correct to state that as far as they went, the recommendations agreed to would be, in the main, acceptable to both the Trust and the Association. However, these agreements were concerned largely with artefacts and the Historic Articles Act, and not with archaeological sites. With this reservation being kept in mind, it did seem that considerable progress was made at this meeting, at the conclusion of which the chairman expressed his belief that amending legislation (with regard to artefacts) might very well be prepared for the 1973 session of Parliament. The legislative programme of the recently elected government may have some effect on this.

What is needed, however, and what the Association must strive for, is not a tinkering with the present unsatisfactory legislation, but for the writing of new legislation embodying entirely new and bolder concepts of site protection, and leading to the establishment of some form of Government antiquities agency. A perusal of the data given in McKinlay (1972: 90-217) will show that New Zealand is one of the few nations in which the State is not actively involved in some positive programme of recording, protection, preservation and investigation of the nation's pre-history. McGimsey has stated (1972: 24): '...archaeological sites are one of the State's non-renewable resources, and since proper conservation of resources is a public concern, this conservation is the responsibility of each State.'

Such objectives will not be quickly or easily attained, and will probably not be achieved at all unless there is a major effort to educate the public generally as to the aims, methods and objectives of archaeology, and of the diverse and wide-ranging benefits which might accrue from successful public archaeology programmes. It is in this area that the greatest efforts will have to be made in the next several years if the long-term objectives of the Association are ever to be achieved.

REFERENCES

- Beaglehole, J. C. (ed.) 1955 The Journals of Captain James Cook, Vol. 1, Cambridge University Press for the Hakluyt Society, London.
- McFadgen, B. G. 1966 Legislative problems in the Preservation of New Zealand Prehistoric Sites, NZAA Newsletter, Vol. 9, No. 3: 92-102.
- McFadgen, B. G. and J. R. S. Daniels 1970 Recommendations for the Protection of Sites of Archaeological Interest, NZAA Newsletter, Vol. 13, No. 4: 160-172.
- McGimsey, C. R. III 1972 Public Archaeology, Seminar Press Studies in Archaeology, Seminar Press, London and New York.
- McKinlay, J. R. 1971 Archaeology and Legislation: a study of the protection of archaeological sites and material by legislative action. Unpub. M.A. Thesis, University of Auckland.
- Shawcross, W. F. 1970 The Cambridge University Collection of Maori Artefacts, Made on Captain Cook's First Voyage, Journal of the Polynesian Society, Vol. 79, No. 3: 305-348.