

NEW ZEALAND

Archaeological Association Inc.

www.nzarchaeology.org

P O Box 6337
DUNEDIN NORTH

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Peter Richardson
Ministry for Culture and Heritage
PO Box 5364
WELLINGTON

Proposed Changes to the HPA

Thank you for the opportunity to comment on this.

1. Proposed Governance Amendments

Changes are proposed to the size and composition of the Board. It is proposed that the Board comprise nine members, being:
six members, including the Chairperson, appointed by the Minister for Arts, Culture and Heritage after consultation with such other groups and Ministers as appropriate; and
three members elected by the Trust.
It is proposed that at least three of these Board members must be Māori.

No changes are proposed to the size or structure of the Māori Heritage Council. In order to ensure, however, that the Board and Council continue to have four members in common, it is proposed that the Board members on the Council comprise:
three Māori members of the Board; and
one other appointed or elected Board member.

It is proposed to delete the section of the Act that provides for the Chief Executive of the Ministry for Culture and Heritage to attend Board meetings as it confuses the nature of the relationship between the Ministry and the Trust. The Chief Executive could continue to attend Board meetings by invitation.

The above changes will involve the Trust being designated a Crown entity, as it will meet the tests used to determine Crown entity status, in particular: that the Crown appoints a majority of the members of the governing body. This would mean that the Trust would be required to prepare a 'statement of intent' (an accountability document agreed with its Minister) and that its financial

results and position would be incorporated in the consolidated accounts of the state sector – the Crown accounts.

Comments

NZAA supports this change, with the expectation there will be a greater certainty of government funding to go with it.

Its semi-independent status has not allowed the Trust to flower. Charitable funding has not been forthcoming in any large amount. Lotteries funding has been erratic. A Trust Board more accountable to the Government should allow greater certainty of funding.

PROPOSED AMENDMENTS TO CLARIFY SECTIONS OF THE HISTORIC PLACES ACT 1993

The following technical amendments are proposed to improve the clarity of, and rectify defects in, some sections of the Historic Places Act 1993. Copies of the relevant sections of the Act are attached in Appendix I.

2. Clarify the meaning of the term ‘historic place’ (s2)

Currently, associated buildings and structures (such as a house and its outbuildings which collectively form a single integrated whole) cannot be considered as a single historic place. This causes difficulties when the Trust wishes to include such places on its Register of historic places.

It is proposed to amend the definition of ‘historic place’ to clarify that an historic place can comprise more than one associated building and/or structure.

Comments

This change is supported.

Note that an historic place as presently defined can include a combination of “land and...”, where land clearly includes an archaeological site. This ability to include an archaeological site in a “combination” historic place must be retained.

3. Introduce a date for exercising an ‘archaeological authority’ (a consent to destroy, damage or modify an archaeological site) (s20)

As currently worded, the Act does not prevent archaeological authorities being exercised before appeals have been lodged or the outcome of an appeal is known.

It is proposed to clarify the date an archaeological authority can be exercised by specifying that an authority is not valid until the period for lodging appeals against it has expired, and appeals have been heard or otherwise resolved. This amendment would confirm in legislation the Trust's recent practice of specifying in writing that authorities cannot be exercised until appeal periods have passed and/or appeal processes are completed.

Comments

This change is supported as ensuring protection is sustained until the matter is finally determined.

4. Require the Environment Court to have regard to Māori heritage values when considering appeals on 'archaeological authorities' (s20(6))

At present the Act specifies that the Environment Court must take into account 'the purpose and principles' of the Act, as set out in section 4, when considering appeals on archaeological authorities. Section 4 includes a requirement to have regard to Māori values, but the relevant clause is not worded as a 'principle'. Consequently, the Environment Court has determined that it is not required to have regard to it.

The proposed amendment to section 20 would require the Court to take all matters in section 4 into account when making decisions.

Comments

This change is supported.

5. Make optional the requirement to impose protection when a proposal to change the Category of registration of an historic place has been notified (s37(8))

Currently, when considering a review of registration, and publicly notifying a proposal to change the category of a registered historic place from Category II to Category I, the Trust must impose protection as if the historic place were subject to a requirement for a heritage order. (Category II historic places are places of 'historical or cultural heritage significance or value'; Category I are places of 'special or outstanding historical or cultural heritage significance or value'.) The effect of a requirement for a heritage order is to prevent alterations being made unless permitted by the order or unless the consent of the issuing authority is obtained.

Such protection does not apply once a review has been completed. Imposing protection during the review period increases the complexity and the costs of the process of review of registration, can put at risk productive working

relationships with property owners and is often unnecessary.

It is proposed that the imposition of protection should be optional.

Comments

This change is supported.

6. Include the term 'wāhi tapu' in the functions of the Trust (s39)

The Historic Places Act 1993 has a range of provisions relating to historic places, historic areas, wāhi tapu and wāhi tapu areas. While the terms 'historic place', 'historic area' and 'wāhi tapu area' have been included in section 39 of the Act, which itemises the Trust's functions, the term wāhi tapu has been omitted.

It is proposed that this omission be rectified.

Comments

This change is supported as making the Act more consistent.

7. Delete reference to Trust powers to appoint branch committees and branch committee members (s54(2)(l) & s60(1)(e)), and insert wording empowering the Trust to establish or disestablish branch committees

The power to appoint branch committees and branch committee members is not exercised by the Trust and is contrary to the democratic underpinnings of the Trust's voluntary membership base. The voluntary members currently elect branch committees, and Trust members consider interference in committee membership by the Trust Board unacceptable.

It is proposed that the Board have the power to establish and disestablish branch committees in response to changes in population or enthusiasm and interest amongst members over time.

Comments

This is not a matter on which NZAA has an interest.

8. Clarify grounds for defence against prosecution for destruction, damage, or modification of an archaeological site, or an historic place or

wāhi tapu subject to interim registration, when that damage relates to an event beyond the control of the defendant (s106(2)(b))

Section 106(2)(b) of the Act sets out defences against: prosecution for the destruction, damage or modification of an archaeological site; breaching conditions of an authority to destroy, damage or modify an archaeological site; or destruction, damage or modification of an historic place or wāhi tapu subject to 'interim registration'. (Interim registration imposes protection on a place or wāhi tapu while registration is being considered).

There is a grammatical error in the wording of section 106(2)(b) that makes it unclear. The section provides for a defence to be made if:

'the action or event to which the prosecution relates was due to an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case either –

- (i) The action or event could not reasonably have been foreseen or been provided against by the defendant; and
- (ii) The effects of the action or event were adequately mitigated or remedied by the defendant after it occurred'.

It is proposed to change the wording so that it is clear that both conditions (i) and (ii) must be met. It is also proposed to modify the wording of (ii) by deleting the requirement to remedy adequately 'the effects of the action or event' while retaining the requirement to mitigate these effects. It is considered that a requirement to remedy damage is too onerous an obligation in the event of an 'Act of God'.

Comments

The change to make it clear that both conditions apply is supported.

The wording came from the RMA S341(2)b, where the "either" had to be removed as well.

In respect of remedying, a mechanical failure or sabotage are not "Acts of God". We can envisage circumstances where remedying rather than mitigation might be appropriate. Restoration of a stone wall damaged by a falling load for instance. The wording does not require remedying, where mitigation might be more appropriate. Evidence that the perpetrator had paid the Trust the cost of restoration and it had occurred would seem to us to be an adequate defence and in the interests of heritage.

We do not see the need for the change to this aspect.

Further Change Suggestion.

There is an inconsistency in the act in the way it applies to shipwrecks. A terrestrial archaeological site which was first occupied say in 1880, where the occupation continued to say 1920 is within the definition of an archaeological site.

Contrast this with a ship which was built in 1880 and wrecked in 1920. It is not covered, yet the information in the wreck about the ship's construction may be very relevant. Inspection of standard sources on New Zealand shipwrecks indicates there are many wrecks in the early years of last century which were of ships built much earlier.

We believe ships launched before 1900 should be covered.

Because the launch date of a vessel is not always known it would be sensible to retain the 1900 wreck date as well.

We would suggest changing the definition in 2(a)(ii) to

(ii) Is the site of the wreck of any vessel where either that wreck occurred before 1900, or the vessel was launched before 1900; and ...

The additions are underlined.

Yours faithfully

Garry Law
President