**Legal Submission on Queenstown Lakes Proposed District Plan Stage 3**

Under Clause 6 of the First Schedule, Resource Management Act 1991

**To: Queenstown Lakes District Council**

**Submitters: Nicola and Mark Vryenhoek and Dynamic Guest House Limited and Lake House Mooring Company Limited (joining)**

1. This submission is further to and in addition to my earlier submission (3394) dated 21 November 2019 on the Queenstown Lakes District Proposed District Plan – Stage 3, Chapter 39 Wāhi Tūpuna. Joining as a submitter (if permitted) is Lake House Mooring Company Limited, a wholly owned company of Mark and Nicola Vryenhoek. The mooring company owns resource consent for a lake mooring located more or less where indicated on photograph (v) Annexure l and marked in red with the letter Y. Our two sites are shown marked with a red cross and dot on the QLDC maps in Annexure lV.

2. The Crown has an obligation derived from the Treaty of Waitangi to protect wāhi tapu (sites of significance to Maori) although this obligation is not absolute and needs to be balanced against broader public interests. The government policy defining and clarifying that obligation were referred to in my earlier submission and are included with this submission as Annexure ll and lll.[1] Those broader public interests include rights and obligations protected by the New Zealand Bill of Rights Act 1991 (the NZ Bill of Rights). The NZ Bill of Rights protect some personal and property rights that are more specifically protected by numerous other statutes as well as the common law. Apart from the obligations owed under the Treaty of Waitangi the Crown should as a matter of good government actively protect sites of significance to both Maori and non-Maori. It is my submission that the QLDC has failed to actually identify any "significant sites" as opposed to everyday sites of former occupation in progressing the mapping overlay methodology of wāhi tūpuna. It is our submission that the mapping overlay methodology combined with rules that contradict the strategic objectives of the QLDC PDP do not serve a resource management purpose.[2]

3. There are numerous statutory mechanisms that may be used to protect sites of significance to Maori and non-Maori. As previously submitted sites of significance are generally considered as discrete sites when in private ownership and in my view those discrete sites are better protected by the use of the Heritage New Zealand Pouhere Taonga Act 2014 (the HNZPT Act). The long title of the RMA states that the RMA is an Act to restate and reform the law relating to the use of land, air, and water, the purpose being to promote the sustainable management of natural and physical resources. That purpose is significantly wider than that of the HNZPT Act which is specifically to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand. While both pieces of legislation speak at the same time, HNZPT Act was clearly intended as a guide to process and form for the protection of wāhi tūpuna through identification of wāhi tūpuna involving site specific notification and evidence pursuant to sections 68 and 69 of that Act.[3] I draw your attention to a recent public notification of a proposal to enter Te Kamaka o Arowhenua,

[1] In good faith the Government agreed on methods for protecting sites of significance for Maori on surplus crown land for use in settlements arising out of Waitangi Tribunal proceedings. See CSC (96) 30 4 March 1996 and Review of Protection Mechanism CAB (96) M 8/15 (after 11 March 1996). These methods meet with statutory obligations under s8 of the RMA.

[2] *Attorney-General v Trustees of Motiti Rohe Moana Trust* [2019] NZCA 532 at para [66].

[3] *Pora Teina v R* [2000] CA 225/00 paras [30]-[45].

Huirapa St, Temuka as wāhi tūpuna on the NZ Heritage List made by Heritage New Zealand pursuant to section 68 of the HNZPT Act.[4] This recent application raises the possibility that in QLDC promoting an extensive spatial mapping methodology of wāhi tūpuna without substantive evidence presented to individual property owners as required by HNZPT Act, the wāhi tūpuna zones of QLDC might later be duplicated through this and other legislation at significant costs to the community, including land value depreciation. There is a risk that QLDC shall pre-empt evidential requirements of any reserve application for land covered by a wāhi tūpuna for those persons subject to Te Ture Whenua Maori Act 1993 for example. None of this has been quantified by QLDC in its section 32 or section 42A reports.

4. We have been advised in evidence presented by Edward Ellison and David Higgins for Te Rununga o Moeraki, Maree Kleinlangevelsloo and Michael Bathgate for Aukaha for Ka Runaka, that Wakatipu-Wai-Maori including the esplanade reserve, includes values important to Maori including some place names. Listed values in the schedule of wāhi tupuna for **Wakatipu-Wai-Maori (#33)** are wāhi taoka, mahika kāi and ara tawhito. It is not abundantly clear whether specific values attach to our Frankton Road properties although ara tawhito is the most apparent value for reserve front properties with steep topography. The edge of the mapped area includes the lower section of the steps leading onto Frankton Walkway and includes an exotic five finger boundary tree (ornamental chestnut) whose root system retains the stability of the bank and steps. These two sites are several kilometres from what was formerly the Queenstown pā located in the Queenstown Gardens. Although #33 is mapped as Wakatipu-Wai-Maori mauri of the water is not listed as a value for the Statutory Acknowledgement Area.

<u>Mapping of Wāhi Tūpuna - Wakatipu-Wai-Maori</u>

5. Any boundary bound by a moveable natural feature such as water is called an ambulatory boundary and is subject to the common law doctrine of accretion and diluvion. Application can be fraught with doctrinal difficulties.[5] The Wakatipu-Wai-Maori boundary varies several metres between dry and wet seasons. That changeable boundary is the legal boundary of the Statutory Acknowledgment Area of Wakatipu-Wai-Maori referred to in the Ngai Tahu Claims Area 1998. The lake is also zoned Rural General in the QLDC PDP. The red line drawn in the sand in photograph (ii) of Annexure l indicates the approximate natural legal boundary of the lake closest to our properties and adjacent to Frankton Walkway. That natural boundary shown is my estimation of the annual high-water mark of the lake (experienced over the last 20 years).

6. In accordance with the doctrine of accretion the annual average mean high tide water mark is no higher than the pebble beach supporting the base of the rock retaining wall supporting the Frankton Walkway adjacent to our land and marked on photograph (ii) Annexure I.[6]

7. The wāhi tūpuna #33 extends the boundary of Wakatipu-Wai-Maori out from the annual mean high-water mark onto the esplanade lake reserve referred to as Frankton Walkway (controlled by QLDC and subject to the Reserves Act 1977) and over the cadastral boundaries of our privately owned land at 193 and 197-199 Frankton Road. The higher red line drawn on photographs (ii) and (iii)) indicates our site boundary at 197-199 Frankton Road zoned High Density Residential (HDR). It is our submission that there is no justifiable resource

[4] List No.9828 submissions close 19/06/20, News and Current Awareness Regional and District Plans, Westlaw NZ Database published 27/05/2020.
[5] *Ken Crosson Architects v Rotorua D.C* (1992) 1A ELRNZ 198
[6] Halsbury Laws of New Zealand

management purpose for that extension as the associated values of the Frankton Walkway are already protected by other PDP rules and more permanently by the esplanade reserve that forms a buffer between two zones. Urban HDR land in private ownership should not be set apart without ownership rights, even temporarily. The narrative of chapter 39 could and should be amended to reflect the knowledge that has now passed into the collective domain of what is a New Zealand environmental jurisprudence thereby eliminating the need for "cultural assessment reports" and further consultation with Kāi Tahu in the HDR zone.

8. Many of the problems arising from the natural movement of watercourses have already been resolved in the QLDC PDP by zone rules that relate to cadastral boundaries. While the wāhi tūpuna is a very small area on our two 'sites' wiggling around the chestnut tree, the wāhi tūpuna mapping #33 has the effect of triggering consultation requirements for activities occurring on the balance of our land not included in the wāhi tūpuna mapping overlay which forms the bulk of the two sites. That is because under section 95B of the RMA the wāhi tūpuna as currently mapped by is immediately adjacent to all Frankton Road lakeside properties. Both the rules and initial public consultation with QLDC staff at drop-in sessions are misleading in this regard. The suggested wording change from 'sites' to 'areas' at para 144 of Michael Bathgates evidence in respect of proposed provision 39.3.2.1 does not alleviate our concerns.[7]

9. The identified threats of #33 are all matters that are addressed in the granting of building and resource consents through the HDR zone rules and other chapters of the PDP including chapter 25 Earthworks. The PDP and RMA provides for limited notification of some resource consents. That in turn gives effect to section 7 matters such as (b) the efficient use and development of natural resources. Limited notification to neighbours is appropriate when specific technical issues impact only other residential dwellings immediately in the vicinity of possible development. Notification only to parties effected by these technical issues is efficient and practical while achieving the purpose of the RMA and fulfilling the strategic objectives of the PDP and NPS-UDC. Cultural values are not impacted by these technical issues.

10. The proposed wāhi tūpuna Wakatipu-Wai-Maori #33 overlay on the QLDC PDP has the effect of being a trigger to consult Maori for all and any development activity however minor, inside all HDR property adjacent to esplanade lake reserve whenever a resource consent is required. At present consultation is not required for residential development due to the esplanade reserve between the lakebed and properties in that zone. Any sediment or runoff from permitted activities are effectively covered by building consents, rules and mitigation measures that apply to consented residential developments in urban areas. Engineering standards are strict and enforced.

11. The vehicle driveway established by subdivision prior to 1991 is only partly formed. The driveway is shown by two red dashed lines in photograph (v). The unformed lower section of the driveway gives access to that site and the lower portion of the property above to enable completion of that development. The driveway is not located within the identified wāhi tūpuna. Completing formation even with a limited notification consent would trigger consultation and a cultural assessment report as noted above. Driveways enable development and that has progressively funded indigenous planting along the esplanade reserves for the betterment of the public domain. Our consultation is complete.

[7] Furthermore Policy 2.2.2 of the Partially Operative Regional Policy Statement (PORPS2019) implies a discrete site response rather than an all of rohe spatial mapping approach to wāhi tūpuna.

12. The submitters being adjacent property owners to the esplanade reserve have cleared wilding pines and relocated flax to the lake bed, albeit not on the impressive scale near Kelvin Heights esplanade reserve boat ramp. While our efforts to date have been limited to saving indigenous species, the submitters have also nurtured matagouri and beecb. Unfortunately, the beech trees did not survive recent dry summers. In contrast pest species predominate on vacant sites owned by absentee land bankers. The yellow gorse is visible on the left-hand side of photograph (v) Annexure 1. Undeveloped sites in the vicinity make good land management difficult for everyone. Driveways therefore are not a threat nor incompatible with values of public access to the lake for fishing – both introduced and indigenous species, and recreational pursuits. These natural values (including bird habitat) are protected permanently for Maori and Non-Maori by the esplanade reserve. It is our submission that any temporary "tapu" or restrictive notation over these public places is simply not appropriate.

13. The submitter supports the planning evidence of Mr Bair Devlin (3067) referred to as the Cabo Ltd Evidence (and others) and in particular the removal of urban chapters including all HDR zone from the 10m3 Earthworks rule. Adequate context was not given to the receiving environment of the HDR zone, including topography and presence of existing tracks reflecting the ara tawhito narrative of Mr Edward Ellison (the lakeshore and existing state-highway) whose evidence at paragraph 55 states that Kāi Tahu have no interest in consultation on small developments. That statement would apply to our driveway and site which in addition to being a partly unformed driveway from a pre-1991 subdivision has a compliance certificate for two apartments. It is our submission that a different mapping approach to wāhi tūpuna is necessary.

14. Wakatipu-Wai-Maori (#33) must reflect the legal boundary of the Statutory Acknowledgment Area of Lake Wakatipu and should not include esplanade reserve or privately owned housing. This would achieve integrated management of resources under section 31 of the RMA. The spatial mapping of a separate wāhi tūpuna with a 2-metre ribbon marking the walkway and other associated lake/river tracks could be included in the QLDC PDP as site #33(b) – ara tawhito. Alternatively, this ribbon could be marked as a new #46 valued for ara tawhito & mahika kāi with each section being named appropriately in accordance with the evidence of Dr Lynette Carter for Mana Whenua eg. Tāhuna-a-Te Kirikiri (Queenstown-Frankton) and Te Nuku-o-Hakitekura (Kelvin Peninsula). Also appropriate is the inclusion of further narrative in Chapter 39 of the PDP to reflect the exchange of knowledge that has occurred in these planning hearings. Additional planning rules are not necessary to achieve the purpose of providing for the relationship of Maori and their cultural and traditions (section 6(e) of the RMA for #33). The RMA is imbued with the environmental philosophies of Tikanga Maori.

15. Consultation involving the exchange of knowledge in the plan change process recognises and provides the required acknowledgement of the principles of the Treaty of Waitangi pursuant to section 8 of the RMA. The extent of local government protection should therefore be considered in light of all relevant laws including private property rights of Maori and Non-Maori and rights of due process owed under the NZ Bill of Rights.[8]

NJ Vryenhoek, Barrister

[8] *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 at [50]. See also a record of Government policy of active protection since the Lands case Sites of Significance policy n1 above.

Annexure I


(i)


(ii)


(iii)

(iv)

(v)

Annexure II

CSC (96) 30

# CABINET STRATEGY COMMITTEE

**CSC (96) 30**

4 March 1996

Copy No: 20



**Title**

**REVIEW OF PROTECTION MECHANISM : PROTECTION OF SITES OF SIGNIFICANCE TO MAORI (WAHI TAPU)**

**Purpose**

This paper reports on methods for protecting sites of significance to Maori on surplus Crown land incorporating the use of existing heritage protection mechanisms.

**Previous Cabinet/ Committee Consideration**

On 11 September 1995 Cabinet directed officials to report back on:

- Crown obligations to protect wahi tapu;
- existing systems of protection (including Category A sites);
- the future protection of wahi tapu;
- whether the cost of any wahi tapu returned should continue to be charged against the envelope [CAB (95) M 34/11 refers].

Officials were also directed on 11 October 1995 to consider whether the definition of wahi tapu that is being used in respect of the protection mechanism is adequate [TOW (95) M 17/7 refers].

On 25 October 1995 CSC invited the Minister of Finance and the Minister in Charge of Treaty of Waitangi Negotiations to submit a revised set of recommendations on the issues related to wahi tapu protection to take account of the concerns raised on the return of culturally significant properties which are of significant value, and invited Ministers to consider the use of the term "discrete site" in any definition of sites of significance to Maori [CSC (95) M 40/7 refers].

**Summary**

Maori have traditionally distinguished wahi tapu from other sites of occupation. The Crown has also recognised that certain sites have cultural, spiritual and historical significance to Maori with a range of statutory and administrative mechanisms to protect their heritage significance. Where these sites exist on surplus land, the Crown has responded to its Treaty obligations and to Maori aspirations to have sites protected.

The paper assesses the former Category A protection mechanism, identifies key current statutory and administrative heritage protection mechanisms, and identifies a range of objectives which cover the Crown's interests in protecting sites of significance, and the key elements of a protection process.

Problems with the Category A mechanism are outlined in paragraphs 12 to 15. Additional statutory and administrative mechanisms are identified in paragraph 16. The Parliamentary Commissioner for the Environment is currently reviewing the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection, and identifying and listing procedures for the protection of historic and cultural heritage. This review is to be completed by June 1996.

TPK, Environment and DoSLI consider that a process for protecting sites can be implemented forthwith, drawing on existing mechanisms which are specific and effective. Their proposal takes as its premise the protection of Maori heritage as a matter of national importance consistent with the obligation the Crown has to protect the heritage of all New Zealanders. It incorporates a tightening of the former Category A definition to specify precisely the types of sites which the Crown will agree to protect. Officials consider that the duty of good government to protect national heritage is distinct from an obligation to settle historical grievance under the Treaty of Waitangi. They believe, however, that where Maori claimants choose to use the landbanking system to have sites returned, it is appropriate that these costs be charged to the Settlement Envelope. Their proposals are set out in paragraphs 22 to 38.

Treasury and OTS consider that any changes to the current protection mechanism or existing statutory and other heritage protection processes preempts the outcome of the review being undertaken by the Parliamentary Commissioner for the Environment. They believe that the new funding which is proposed to meet the costs of protection using existing mechanisms is unlikely to be effective as a short-term solution before the review is completed. Their views are set out in paragraph 39.

**Baseline Implications**

A new initiatives bid has been submitted to Gatekeeping Ministers seeking $1 million per annum (GST inclusive) for the next three years as a new non-departmental other expense in Vote: Maori Affairs for the financial years 1996/97, 1997/98 and 1998/99. The bid does not include compensation for a perceived loss in market value by vendor agencies where sites are protected and released for sale in the open market. Further details are set out in paragraphs 32 to 35. Treasury considers it is inappropriate that vendor agencies should bear the costs of meeting the Crown's Treaty or good government obligations.

**Legislative Implications**

There are no legislative implications in the TPK/Environment/DoSLI proposal. However, it is possible that the review being undertaken by the Parliamentary Commissioner for the Environment, or the review of heritage protection mechanisms proposed by Treasury and OTS may have legislative implications.

**Timing Issues**

TPK, MfE and DoSLI consider that further delays are undesirable. Certainty of the sale and protection process is required to clear the backlog of applications.

**Announcement**

It is recommended that Ministers withhold any formal announcement until implementation details have been developed and approved.

**Consultation**

TPK, Justice (OTS), Treasury, CCMAU, Conservation, DoSLI, CLO, Environment.

The Minister has indicated that consultation with Caucus and other parliamentary parties is not required.

**The Minister of Maori Affairs recommends that the Committee:**

a note that the Crown has an obligation derived from the Treaty of Waitangi to protect sites of significance to Maori, but that this obligation is not absolute and needs to be balanced against the broader public interest;

b note that, apart from its obligations under the Treaty of Waitangi, the Crown should as a matter of good government actively protect sites of significance to both Maori and non-Maori;

c note that there are a number of existing statutory mechanisms which may be used to protect sites of significance to Maori and non-Maori;

d note that the Parliamentary Commissioner for the Environment has begun a review of the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection, and the identification and listing of procedures for the protection of historic and cultural heritage which is expected to be completed by the end of June 1996;

e agree that officials (DOSLI to lead) report to the Cabinet Committee on Treaty of Waitangi Issues with recommendations on a case by case basis on those surplus sites of significance which are at risk of having their heritage value destroyed;

f note that Maori can seek to have their significant sites protected by applying under current statutory mechanisms (whether or not they have a claim), or by using the protection mechanism and the claims resolution process (if they have a claim);

g agree that for the purpose of the protection of sites of significance the criterion of being a "discrete" site be interpreted as "having definable boundaries";

GOOD GOVERNMENT

h i agree that as an objective of good government the Crown's policies should continue to provide mechanisms for protecting the following categories of sites of significance to Maori, being those discrete sites which are:

A burial places;

B rua koiwi;

C sacred shrines;

D underwater burial places and caverns;

E waiora or sources of water (springs) for healing;

F sources of water (springs) for death rites;

ii agree that where Maori seek to have surplus or non-surplus sites as set out in recommendation (h)(i) protected, the Crown should continue to consider each application on its merits and, in negotiation with applicants, may pursue methods of protection including:

A return of site (using existing mechanisms);

B retention of Crown ownership with claimant management (using existing mechanisms);

C release for sale after establishing an appropriate protection measure (using existing mechanisms);

iii note that consistent with its obligations to act in the public interest the Crown will also reserve the right to decline an application if it has good reasons for doing so;

i note that where sites are returned outside the Treaty process and under existing statutory and administrative mechanisms costs of compensating vendor agencies will continue to be met from outside the settlement envelope,and;

j note that there is anecdotal evidence that the existing statutory heritage protection mechanisms are not providing for adequate protection of significant sites to Maori due to either a lack of knowledge about the mechanisms or a lack of resources in the implementation of these mechanisms;

EITHER [*Te Puni Kokiri, Ministry for the Environment,DoSLI*]

k i note that Te Puni Kokiri, the Ministry for the Environment and DOSLI consider that significant improvements to the process of protecting significant sites on surplus Crown may be implemented quickly;

ii direct officials (TPK to lead) to report to CSC by 27 March 1996 on an implementation plan to carry out the process described in recommendation (h) to include:

A elaboration of criteria to be applied in deciding upon appropriate protection of sites;

B the identification of administrative and legal costs;

iii note that the use of the processes described in recommendation (h) above does not preclude any future consideration of policy issues which may arise from the outcome of the Parliamentary Commissioner for the Environment's report described in recommendation (d) above;

iv note that:

A a new initiatives bid has been submitted by Te Puni Kokiri to Gatekeeping Ministers seeking $1 million per annum (GST inclusive) for Vote: Maori Affairs for the financial years 1996/97, 1997/98 and 1998/99.

B the $1 million comprises $900,000 for a new non-departmental other expense for the cost of compensating vendor agencies where sites are returned, and $100,000 per annum as an increase to Output Class 7 : Facilitation of Local Services to meet the following costs:

1 establishment of a committee to consider applications ($20,000);

2 a process by which to identify and verify the status of sites of significance ($30,000);

3 associated administrative/legal costs of protection (not expected to be greater than $5,000 per site);

OR [*Treasury, OTS*]

l i note that Treasury/OTS consider that recommendation (k)(ii) above preempts the outcome of the Parliamentary Commissioner's report described in recommendation (d) above;

ii direct officials (TPK lead) to report back to CSC by the end of July 1996 drawing on the outcome of the Parliamentary Commissioner's review described in recommendation (d) above on whether the objectives of good government may be achieved through existing statutory and administrative mechanisms, including:

A recommendations to amend the mechanisms if necessary;

B an implementation plan including any new decision-making bodies if they are required to meet the objectives of good government;

C criteria to be applied in deciding on appropriate treatment if a decisions-making body is required;

D (Treasury lead) the fiscal implications resulting from the review described in paragraph (l)(ii) A -C above and how costs may be absorbed within existing baselines;

TREATY SETTLEMENT PROCESS

m note that claimants can choose either good government statutory heritage protection mechanisms or the Protection Mechanism through the Treaty claims process to protect sites of significance;

n note that if sites are returned through the Treaty claims process costs should continue to be met from the Settlement Envelope.

(Signed) Sue Sharp

COPIES TO:

Cabinet Strategy Committee
Chief Executive, DPM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Secretary for the Environment
Chief Executive, CCMAU [CRIs)
Minister of Conservation
Director-General of Conservation
Director-General, Department of Survey and Land Information
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Secretary, TOW

Office of the Minister of Maori Affairs

Chair
Cabinet Strategy

**Review of Protection Mechanism: Protection of sites of significance to Maori (wahi tapu)**

**Purpose**

1. This paper reports on methods for protecting sites of significance to Maori on surplus Crown land incorporating the use of existing heritage protection mechanisms.

**Executive Summary**

2. Maori have traditionally distinguished wahi tapu from other sites of occupation. The Crown has also historically recognised that certain sites have cultural, spiritual and historical significance to Maori and have provided a range of statutory and administrative mechanisms to protect their heritage significance. Where these sites exist on surplus land, the Crown is responding to its Treaty obligations and to Maori aspirations to have such sites protected.

3. The paper assesses the former Category A protection mechanism, identifies key current statutory and administrative heritage protection mechanisms, and identifies a range of objectives which cover the Crown's interests in protecting sites of significance and the key elements of a protection process. It also discusses methods for protection and develops criteria for choosing between them.

4. TPK, Environment and DoSLI consider that a process for protecting sites can be implemented forthwith, drawing on existing mechanisms which are specific and effective, and recommend officials be directed to develop implementation details. Whilst changes advocated are minimal there are costs outside the Treaty settlement process which will require new funding. TPK has sought a new initiatives bid in conjunction with this paper.

5. Treasury and OTS consider that any changes to the current (revised) Protection Mechanism are premature and should await the outcome of a review currently underway by the Parliamentary Commissioner for the Environment on linkages between agencies involved in heritage protection and an assessment by officials of the effectiveness of these mechanisms.

6. **Background**

In the review of protection mechanisms [CAB (95) M34/11 refers] Ministers:

directed officials to report back to TOW by 25 October 1995 on:

i. Crown obligations to protect wahi tapu;

ii. existing systems of protection (including Category A sites);

iii. the future protection of wahi tapu, and

iv. whether the cost of any wahi tapu returned should continue to be charged against the envelope

7. Ministers also directed officials to consider whether the definition of wahi tapu that is being used in respect of the protection mechanism is adequate [TOW (95) M 17/7 refers].

8. Ministers also [CSC (95) M40/7 refers]:

**invited** the Minister of Finance and the Minister in Charge of Treaty of Waitangi Negotiations to submit to the Cabinet Strategy Committee on 1 November a revised set of recommendations on the issues related to wahi tapu protection to take account of the concerns raised on the return of culturally significant properties which are of significant economic value;

**invited** the Minister of Finance and the Minister in Charge of Treaty of Waitangi Negotiations to consider the use of the term "discrete site" in any definition of sites of significance to Maori

**Crowns obligations to protect sites of significance**

9. The Crown has an obligation derived from the Treaty of Waitangi to act reasonably and in utmost good faith towards its Treaty partner. This duty is not merely passive but extends to active protection.

10. The Crown also has a good government obligation to protect sites of historical, spiritual and cultural importance to Maori and non-Maori. This is reflected in numerous statutes which enable protection not only for Maori but for all New Zealanders. However this obligation is not absolute and needs to be balanced against broader public interests.

**Existing Protection Mechanism**

11. The current Treaty claims Protection Mechanism operates to protect the interests (on surplus Crown land) of Maori with a Treaty of Waitangi claim. It is activated when surplus Crown-owned land and surplus land held by CHE and CRI becomes available for sale and the offer back requirements to former owners under the Public Works Act 1981 have been met. The Protection Mechanism provides that surplus land (other than land in the Crown Settlement Portfolio area or where there is a claim specific land bank) is advertised, and claimants are notified of its status as surplus land. Where claimants consider the land to be of special historical or cultural importance, or non-substitutable, or identifies its importance for a future use, claimants can apply to have the land land-banked pending settlement of their claim. These criteria are sufficiently wide to allow sites of significance to be landbanked provided also that they comply with the fiscal restriction requirements applying to regional landbanks.

**Problems of former Category A**

12. The former protection mechanism was reviewed in 1995 during which the Category A mechanism, was set aside for review. The Category A process was available both to claimant and non-claimant applicants. Several problems lead to it being reviewed. For many claimants the prospect of protection from sale and the possibility of quicker return provided an incentive to seek Category A protection for land which may not have fitted the definition. The difficulties which arose created a backlog of applications related to the investigation required to verify whether applications fully met the criteria. A number of sites were also the subject of cross claims with the identity of the rightful recipient unresolved. Furthermore, unencumbered return of title was the primary option available, with little recognition, guidance or support for the use of existing statutory and administrative heritage protection mechanisms. Another inadequacy was that the landbanking system was not an available mechanism for applicants without a Treaty claim.

13. Maori also objected to the fact that costs of return of significant sites were charged against claimant settlements because they consider:

i. it is objectionable to associate monetary value with sacred sites;

ii. where the costs of return of significant sites is charged against settlements the result is to reduce the amount available for redress of a grievance which was likely to be of a fundamentally different nature from Maori aspirations to provide effective protection for wahi tapu;

iii. that the Crown has a "good government" obligation to return sites as a matter of heritage protection, distinct from the settlement of historical Treaty claims.

14. A related concern of Maori was that significant sites sometimes existed on land which the Crown owned which may not have been surplus but which was nevertheless feasible for the Crown to return. Taken collectively these concerns indicate major risks to the Crown Maori relationship should an inadequate response be made.

15. Ministers also sought advice on the former Category A reference to "discreteness" in size of sites. Officials propose that the term be interpreted as meaning "clearly defined boundaries" in order to ensure specificity and precision in the identification of sites of significance, therefore facilitating decisions on appropriate means of protection.

**Additional statutory and administrative mechanisms**

16. There currently exist a range of administrative and statutory mechanisms which reflect an obligation to protect sites of significance. Any person, whether a claimant or not, can seek protection for sites of significance using these mechanisms. The costs associated with these mechanisms lie with administering departments. These mechanisms include:

i. The establishment of a reservation under sections 338, 339 and 340 of Te Ture Whenua Maori Act 1993.

ii. The issuance of a Heritage Protection Order by the Minister of Maori Affairs as provided for in s187 of the Resource Management Act 1991.

iii. The transfer of powers or delegation of management functions to kaitiaki from local authorities or tangata whenua under sections 33 and 34 of the Resource Management Act 1991.

iv. The registration of a site with a territorial authority when a plan, or an amendment to a plan, is proposed under part I of the First Schedule of the Resource Management Act 1991.

v. Registration of a wahi tapu site on the Historic Places Trust national register.

vi. The three tiered system of protection for significant sites on lands to be transferred to SOEs under the State Owned Enterprises Act 1988.

vii. Covenants for the protection of sites having spiritual, cultural or emotional significance under section 18 of the Crown Forest Assets Act 1989.

viii. Conservation and management of wahi tapu sites on reserve land managed by the Department of Conservation.

**Review of statutory and administrative mechanisms**

17. There is a strong focus in the current mechanisms on protection of significant sites in local level consultation with affected groups. This is also appropriate for wahi tapu in that the significance of most sites is localised rather than national in scope. However, there is anecdotal evidence to

suggest that these mechanisms are being under utilised due to either a lack of knowledge about the mechanisms, or a lack of resources in the implementation of these mechanisms.

18. The Parliamentary Commissioner for the Environment is currently reviewing the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection and identifying and listing procedures for the protection of historic and cultural heritage. The review is expected to be completed by the end of June 1996. Treasury and OTS consider that the Commissioner's report will assist in determining the effectiveness of the mechanisms and propose that officials (TPK to lead) report by the end of July on whether the objectives of good government may be adequately achieved through these mechanisms. Treasury and OTS contend that any changes to the legislative and statutory mechanisms before then will pre-empt this work.

19. Te Puni Kokiri, the Ministry for the Environment and DOSLI however, consider that Te Ture Whenua Maori 1993 provides for an effective form of protection through its provisions to create Maori reservations under s 338 and s 340 of the act. These provisions have been specifically designed to provide the Crown with an effective method of reserving particular parts of its estate which have historical spiritual or emotional significance to Maori. Reservations of this nature are common place amongst Maori, who utilise these provisions to manage wahi tapu on their own Maori land.

**Crown objectives in the protection of sites of significance**

20. The following objectives identify the key goals of the Crown in protecting Maori significant sites on surplus Crown land. They provide the basis for developing appropriate processes and policy tools to meet those goals.

    i. Recognition of the special heritage values intrinsic in sites of significance to Maori;

    ii. Fulfilling a Treaty obligation for the active protection of Maori interests, including a recognition of the kaitiaki (guardianship) status of tangata whenua; and to encourage the broader community's recognition of significant sites;

    iii. Protecting the highest priority sites, by the most cost-effective choice of method of protection, which is affordable relative to other expenditure priorities;

    iv. Fair treatment of applicants who are claimants and those who are not;

    v. Efficiency and certainty in the disposal of surplus Crown properties;

    vi. Consistency with Treaty settlement policies;

    vii. Consistency with already existing protection mechanisms for non-surplus and other land.

**Future protection of significant sites**

21. Building upon these objectives the following elements are key to a satisfactory process for protecting sites of significance:

    - clear identification sites of significance;
    - maximum flexibility in methods of protection and criteria for choice between them;
    - a means to manage incentives and expectations, including for high value sites;
    - a process for making decisions, including identifying/verifying the significance of sites;
    - provision to meet costs of protection, including for high value sites.

**Te Puni Kokiri and Ministry for the Environment Proposal**

22. Te Puni Kokiri and the Ministry for the Environment consider that minimal changes to the current protection mechanism process will enable the use of additional avenues to provide effective protection of significant sites. These processes apply (as did the former Category A process) to both claimant and non-claimant applicants.

23. The proposal takes as its premise the protection of Maori heritage as a matter of national importance consistent with the obligation the Crown has to protect the heritage of all New Zealanders. It incorporates a tightening of the former Category A definition to specify precisely the types of sites which the Crown will agree to protect because of their significance to Maori. This level of precision is feasible because of the potential for recent reforms to the landbanking processes to greatly ease claimant concerns about the disposal of surplus Crown land. For claimants, landbanking can be expected to become the preferred route for return of land. Accordingly, where applicants who are claimants choose to use the landbanking process such costs should continue to be met from the Settlement Envelope. In turn this means that greater focus may be directed at managing a significant site protection mechanism for its intended purpose. The following processes therefore contain a mix of incentives and disincentives for applicants. The incentives are toward heritage protection *managed by applicants.*

*Defining sites of significance*

24. The proposal requires that the types of sites of significance on surplus Crown land which will be protected outside the Treaty of Waitangi claims process be those discrete sites which are:

- burial places;
- rua Koiwi (places where skeletal remains are kept such as rock overhangs, caves, hollow trees);
- sacred shrines (tuahu);
- underwater burial places and caverns;
- waiora or sources of water (springs) for healing;
- sources of water (springs) for death rites.

*Methods of Protection and criteria for choosing appropriate method*

25. The following criteria provide a basis for deciding which methods of protection are appropriate in specific cases. They are:

- applicant's preferred choice of method of protection
- level of significance of site and the evidence for this
- effectiveness of method of protection
- fiscal and economic cost
- strength of a group's claim to a site, and presence of cross claims
- existence or otherwise of a Treaty breach in the manner the Crown acquired the site
- incentives upon applicants to manage sites and meet on-going costs.

26. Currently where applicants apply for surplus land they seek to have land protected through the claims process (i.e. landbanking). At the time applicants notify of their interest, the current statutory mechanisms by which the site could be protected can be made available. Thus the Crown can consider each application for protection of surplus sites on a case by case basis and in negotiation with applicants pursue one of the following methods for protection:

**I Return of site (using existing mechanisms)**

27. This may be achieved by utilising a number of statutes. For sites of significance to Maori the most appropriate mechanism at present is the Te Ture Whenua Maori Act. Provisions of the act (s338 and s340) enable land to be set apart for the purposes of a "place of cultural, historical or scenic interest, or for any other specified purpose". Land may be set aside as a Maori reservation and managed by trustees appointed by the Maori Land Court. The Act provides that while the reservation exists it shall be inalienable and subject to determinations of the Maori Land Court. In the event of cancellation of the reserve the land is vested in the former owner immediately before it was constituted as a Maori reservation. In addition Maori (or other New Zealanders seeking protection of their heritage sites) may also seek protection under the Reserves Act which also provides for the possibility of returning specific sites.

**II Retention in Crown ownership with Maori management (using existing mechanisms)**

28. Whilst the Te Ture Whenua Maori Act also provides for this form of protection the Reserves Act (which applies equally to Maori and non-Maori) has provision for flexibility in establishing management structures and arrangements with the Department of Conservation or local bodies which would hold title. Protection and management regimes can be developed on a case by case basis depending on the nature and circumstances of each site.

**III Release for sale after establishing appropriate protection measures (using existing mechanisms)**

29. It is expected that even in the event of some sites meeting the revised categories for protection Ministers may not consider the return or retention of the site. For example in the case of high value urban sites such as the Ministry of Commerce building in Bowen Street, Ministers can agree to a more specific and discrete form of protection which recognise and protect wahi tapu values but enable the clearance of the site for sale. These forms of protection can include registration with the Historic Places Trust, access arrangements or agreed restrictions on the future use of specific areas.

*Decision making and verification process*

30. Consistent with its obligation to act in the broader public interest the Crown has the right to decline an application if it has good reasons to do so. The assessment of sites and negotiation of forms of protection can be carried out at a local level by a centralised expert committee using the TPK regional office network. (OTS consider that the issue of assessment and negotiation is a matter to be further clarified after the Parliamentary Commissioner's report).

Advantages (TPK/MfE Comment)

31. The advantages of the above processes are:

- An early resumption of the disposal process
- Fair treatment of claimant and non claimants
- Protection of high priority sites is achieved through clear identification of sites
- maximum use of existing mechanisms
- Enhances and clearly separates the Crown's good government obligations as well as its Treaty settlement responsibilities;
- Clearly provides for the objective of heritage protection;
- Creates an environment of goodwill on the part of the Crown and therefore may improve the Treaty claims process;
- Manages risks in a proactive way

**Fiscal implications**

32. Officials consider that the duty of good government to protect national heritage is distinct from an obligation to settle historical grievance under the Treaty of Waitangi. The protection of sites of significance to Maori should be seen as predominately derived from the duty of good government of heritage protection (thus being equally applicable to Maori and non-Maori). However, where Maori claimants choose to use the landbanking system to have sites returned it is appropriate that these costs be charged to the Settlement Envelope.

*New initiatives bid proposal*

33. TPK and Environment propose that the costs of protection outside the Treaty claims process for sites of significance under this option be met from outside the settlement envelope and from a new appropriation. TPK and MfE do not consider that the above processes will result in a significant number of properties to be returned in any one year. This is based on the fact that of the 1000 properties considered for protection under the former Category A process, only seven have met the criteria. Based on the weighted average value of surplus land sales in 1994/95 of $105,000 it is proposed to budget for the return of less than ten sites per year.

    A new initiatives bid has been submitted by Te Puni Kokiri to gatekeeping ministers seeking $1million per annum (GST incl) for the next three years as a new non-departmental other expense Vote Maori Affairs for the financial years 1996/97, 1997/98 and 1998/99. This bid includes the cost of compensating vendor agencies where sites are returned ($900,000). It is proposed that the remaining $100,000 per annum be approved as an increase to Output Class 7: Facilitation of Local Services to meet the following costs:

    - establishment of a committee to consider applications ($20,000)
    - a process by which to identify and verify the status of sites of significance ($30,000)
    - associated administrative/legal costs of protection (not expected to be greater than $5,000 per site).

35 The new initiatives bid does not include compensation for a perceived loss in market value by vendor agencies where sites are protected and released for sale in the open market. This perceived loss will need to be addressed by Ministers as a mainstream finance issue. TPK and MfE propose that Treasury be directed to report back on the impact upon vendor agencies balance sheets of the costs of protection of significant sites on surplus Crown land.

36. Treasury considers that it is not appropriate that vendor agencies bear the costs of meeting the Crown's Treaty or good government obligations and that they should continue to be able to manage their portfolios in a commercial manner.

**Funding and timing of revised processes**

38 TPK, MfE, DoSLI consider that further delays are undesirable. Certainty of the sale and protection process is now required to clear the backlog of applications expediently. Furthermore, there is risk to the relationship with Maori where protection of highly important sites may be delayed further. Officials of key departments are confident that the proposal can be implemented quickly and with minimal change to existing structures. Compensation to vendor agencies will be inevitable in any protection mechanism which enables the return of sites. The resourcing required for this proposal is co-ordinated with the new policy bid and reflects a pro-active policy initiative aimed at reducing fiscal and political risk. Any future review of existing mechanisms can only enhance the proposed changes.

**Treasury and OTS comment on TPK/MfE proposal**

39. Treasury and OTS do not agree with the above funding proposal. They also consider that immediate implementation of any revisions to existing Protection Mechanism or existing statutory and other heritage protection processes pre-empts the outcome of any review based on the report of the Parliamentary Commissioner for the Environment expected by the end of June 1996. In particular, the new funding which TPK proposes to meet costs of protection using existing mechanisms is unlikely to be effective as a short term solution in the period before the review is taken. It will not be effective because:

- the proposal does not clarify the problems which it seeks to address
- it pre-empts the outcome of the review
- it may not necessarily improve the situation
- the basis for the new initiatives bid has not been identified sufficiently clearly
- the bid does not include mechanisms for prioritising applications within the ceiling if applications for protection involved costs greater than available funding.
- by providing additional funding outside the fiscal envelope to claimants this option effectively expands the envelope. This is inconsistent with current Government policy and risks creating a precedent for the return of other assets not being offset against the envelope.
- providing funds for the return of sites to Māori who do not have a Treaty of Waitangi claim creates an undesirable precedent, and one which Ministers have not had adequate time to consider.
- it is not clear how funding provided to Te Ture Whenua mechanisms will interact with current funding arrangements. Treasury considers it likely that this additional funding will mean pressure for the funding of all the statutory and legislative mechanisms to be sourced outside existing baselines.
- it is not clear that the full fiscal cost has been identified. For instance, it is not clear how the management of properties held in Crown ownership would be funded.
- there are risks in setting an arbitrary cap of $1million. In particular, it may cause applications to be delayed if the level of funding is insufficient. It has also never been discussed how the proposed system would prioritise among the large number of applications likely with the $1million cap.

40. OTS and Treasury consider that for sites of significance on surplus Crown land the revised landbanking system will adequately protect Maori interests. Any changes to the various statutory and administrative mechanisms should be made following a comprehensive review of them all.

**Communications strategy**

41. It is recommended that Ministers withhold any formal announcement on the protection of significant sites until implementation details have been developed and approved.

**Legislative implications**

42. There are no legislative implications. However, it is possible that the current review being conducted by the Parliamentary Commissioner for the Environment or the review of the effectiveness of heritage protection mechanisms which Treasury and OTS propose officials undertake may have legislative implications.

**Consultation undertaken**

## Consultation undertaken

43. This paper has been prepared by Te Puni Kokiri in consultation with the Office of Treaty Settlements, Department of Survey and Land Information, Treasury, Crown Company Monitoring Unit, the Ministry for the Environment, Crown Law Office and the Department of Conservation. The Department of Prime Minister and Cabinet has also been consulted.

## Recommendations

44. It is recommended that the Cabinet Strategy Committee:

(a) **note** that the Crown has an obligation derived from the Treaty of Waitangi to protect sites of significance to Maori but that this obligation is not absolute and needs to be balanced against the broader public interest;

(b) **note** that apart from its obligations under the Treaty of Waitangi the Crown should as a matter of good government actively protect sites of significance to both Maori and non-Maori.

(c) **note** that there are a number of existing statutory mechanisms which may be used to protect sites of significance to Maori and non-Maori.

(d) **note** that the Parliamentary Commissioner for the Environment has begun a review of the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection and the identification and listing procedures of the protection of historic and cultural heritage which is expected to be completed by the end of June 1996.

(e) **agree** that officials (DOSLI to lead) report to TOW Committee with recommendations on a case by case basis on those surplus sites of significance which are at risk of having their heritage value destroyed.

(f) **note** that Maori can seek to have their significant sites protected by applying under current statutory mechanisms (whether or not they have a claim) or by using the protection mechanism and the claims resolution process (if they have a claim).

(g) **agree** that for the purposes of the protection of sites of significance the criterion of being "discrete" be interpreted as "having definable boundaries".

## Good Government

(h)(i) **agree** that as an objective of good government the Crown's policies should continue to provide mechanisms for protecting the following categories of sites of significance to Maori being those discrete sites which are:

(A) Burial places;

(B) Rua koiwi;

(C) Sacred shrines;

(D) Underwater burial places and caverns;

(E) Waiora or sources of water (springs) for healing

(F) Sources of water (springs) for death rites.

(ii) **agree** that where Maori seek to have surplus or non-surplus sites as set out in recommendation (h)(i) to be protected, the Crown should continue to consider each

application on its merits and in negotiation with applicants may pursue methods of protection including:

I Return of Site (using existing mechanisms)

II Retention of Crown Ownership with claimant management (using existing mechanisms)

III Release for sale after establishing an appropriate protection measure (using existing mechanisms)

(iii) **note** that consistent with its obligations to act in the public interest the Crown will also reserve the right to decline an application if it has good reasons for doing so.

(i) **note** that where sites are returned outside the Treaty process and under existing statutory and administrative mechanisms costs of compensating vendor agencies will continue to be met from outside the settlement envelope, and;

(j) **note** that there is anecdotal evidence that the existing statutory heritage protection mechanisms are not providing for adequate protection of significant sites to Maori due to either a lack of knowledge about the mechanisms or a lack of resources in the implementation of these mechanisms.

**Either (TPK/MfE)**

(k)(i) **note** that Te Puni Kokiri, the Ministry for the Environment and DoSLI consider that significant improvements to the process of protecting significant sites on surplus Crown may be implemented quickly;

(ii) **direct** officials (TPK to lead) to report to CSC by 27 March on an implementation plan to carry out the process described in recommendation (h) to include;

elaboration of criteria to be applied in deciding upon appropriate protection of sites;

the designation of an officials committee to consider applications and to verify significant sites;

the identification of administrative and legal costs

(iii) **note** that the use of the processes described in recommendation (h) above does not preclude any future consideration of policy issues which may arise from the outcome of the Parliamentary Commissioner for the Environment's report described in recommendation (d) above;

(iv) **note** that a new initiatives bid has been submitted by Te Puni Kokiri to gatekeeping ministers seeking $1million per annum (GST incl) for the next three years as a new non-departmental and other expense for the financial years 1996/97, 1997/98 and 1998/99 including the cost of compensating vendor agencies where sites are returned ($900,000). It is proposed that the remaining $100,000 per annum be approved as an increase to Output Class 7: Facilitation of Local Services to meet the following costs:

- establishment of a committee to consider applications ($20,000)
- a process by which to identify and verify the status of sites of significance ($30,000)
- associated administrative/legal costs of protection (not expected to be greater than $5,000 per site).

Or (Treasury, OTS)

(l)(i)note that Treasury/OTS consider that recommendation k (ii) pre-empts the outcome of the Parliamentary Commissioner's report described in recommendation (d).

(ii) direct officials

(A) (TPK to lead) to report back to CSC by the end of July 1996 drawing on the outcome of the Parliamentary Commissioner's review described in recommendation d above on whether the objectives of good government may be achieved through existing statutory and administrative mechanisms, including:

- recommendations to amend the mechanisms if necessary;
- an implementation plan including any new decision-making bodies if they are required to meet the objectives of good government;
- criteria to be applied in deciding on appropriate treatment if a decision-making body is required;

(B) ( Treasury lead) the fiscal implications of the review in l(ii) A and how costs may be absorbed within existing baselines.

**Treaty Settlement Process**

(n) note that claimants can choose either good government statutory heritage protection mechanisms or the Protection Mechanism through the Treaty claims process to protect sites of significance;

(o) note that if sites are returned through the Treaty claims process costs should continue to be met from the Settlement Envelope, and;

Hon John Luxton
Minister of Maori Affairs

Annexure III

CAB (96) M 8/15

# CABINET

## CAB (96) M 8/15



Minister of Maori Affairs

Copies to:

Prime Minister
Minister of Finance
Minister of State Services
Attorney-General
Minister for State Owned Enterprises
Minister for the Environment
Minister for Crown Research Institutes
Minister of Forestry
Minister of Justice
Minister in Charge of Treaty of Waitangi Negotiations
Minister of Local Government
Minister of Conservation
Minister of Survey and Land Information
Minister for Crown Health Enterprises
Chief Parliamentary Counsel
Secretary, TOW
Secretary, CSC

**REVIEW OF PROTECTION MECHANISM : PROTECTION OF SITES OF SIGNIFICANCE TO MAORI (WAHI TAPU)**

References: CAB (96) 135; CSC (96) M 5/1; CSC (96) 30

At the meeting on 11 March 1996 Cabinet:

a noted that the Crown has an obligation derived from the Treaty of Waitangi to protect sites of significance to Maori, but that this obligation is not absolute and needs to be balanced against the broader public interest;

b noted that apart from its obligations under the Treaty of Waitangi the Crown should as a matter of good government actively protect sites of significance to both Maori and non-Maori;

c noted that there are a number of existing statutory mechanisms which may be used to protect sites of significance to Maori and non-Maori. These mechanisms include:

i the establishment of a reservation under sections 338, 339 and 340 of Te Ture Whenua Maori Act 1993;

ii the issuance of a Heritage Protection Order by the Minister of Maori Affairs as provided for in s187 of the Resource Management Act 1991;

iii the transfer of powers or delegation of management functions to kaitiaki from local authorities or tangata whenua under sections 33 and 34 of the Resource Management Act 1991;

iv the registration of a site with a territorial authority when a plan, or an amendment to a plan, is proposed under part I of the First Schedule of the Resource Management Act 1991;

v registration of a wahi tapu site on the Historic Places Trust national register;

vi the three tiered system of protection for significant sites on lands to be transferred to SOEs under the State Owned Enterprises Act 1988;

vii covenants for the protection of sites having spiritual, cultural or emotional significance under section 18 of the Crown Forest Assets Act 1989;

viii conservation and management of wahi tapu sites on reserve land managed by the Department of Conservation;

d noted that the Parliamentary Commissioner for the Environment has begun a review of the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection, and the identification and listing of procedures for protection of historic and cultural heritage, which is expected to be completed by the end of June 1996;

e directed officials (DOSLI to lead) to report to the Cabinet Committee on Treaty of Waitangi Issues (TOW) with recommendations on a case by case basis on those surplus sites of significance which are at risk of having their heritage value destroyed;

f noted that Maori can seek to have their sacred sites protected by applying under current statutory mechanisms (whether or not they have a claim) or by using the protection mechanism and the claims resolution process (if they have a claim);

g agreed that for the purpose of the protection of sites of significance the criterion of "discrete site" be interpreted as "having definable boundaries";

GOOD GOVERNMENT

h agreed that as an objective of good government the Crown's policies should continue to provide mechanisms for protecting the following categories of sites of significance to Maori, being those discrete sites which are:

i burial places;

ii rua koiwi;

iii sacred shrines;

iv underwater burial places and caverns;

v waiora or sources of water (springs) for healing;

vi sources of water (springs) for death rites;

i agreed that where Maori or non-Maori seek to have surplus sites of significance (for Maori, as defined in paragraph (h) above) protected, each application should continue to be considered on its merits, and may pursue methods of protection including:

i retention of Crown ownership with applicant management (using existing mechanisms);

ii return of the site (using existing mechanisms);

iii release for sale after establishing an appropriate measure (using existing mechanisms);

j agreed in principle, pending the outcome of the implementation report back outlined in paragraph (k) below, that where a site of significance (as defined in paragraph (h) above) is identified on surplus Crown land or land owned by CHEs or CRIs, and Maori applicants have exhausted all other avenues of protection, that officials should report to TOW on a case by case basis whether further options for protection should be pursued;

k directed officials (TPK to lead) to report back to the Cabinet Strategy Committee (CSC) by 17 April 1996 on an implementation plan for the proposal in paragraph (j) above, including:

i elaboration of criteria to be applied in deciding upon appropriate protection of sites;

ii designation of an officials' committee to consider applications and to verify significant sites; and

iii identification of administrative and legal costs;

l directed officials (TPK to lead) to report back to TOW on the outcome of the Parliamentary Commissioner for the Environment's report (paragraph (d) above refers) and any issues that the report may have identified, within one month of the report being released;

m agreed in principle, pending the outcome of the implementation report back outlined in paragraphs (j) and (k) above, that the responsibilities of good corporate citizenship which the Government expects of CHEs, CRIs and Government departments include protecting (including returning) sites of significance (as defined in paragraph (h) above) and bearing minor costs associated with this protection (including return) where all other avenues of protection have been exhausted;

n agreed in principle, pending the outcome of the implementation report-back referred to in paragraphs (j) and (k) above, that where the cost of protecting (including returning) a site of significance (as defined in paragraph (h) above) on surplus Crown land or land owned by CHEs or CRIs would have a more than minor impact on the balance sheet, operating statement, or operations of the CHE, CRI or Government department, Cabinet will, on a case by case basis, decide whether to reimburse the agency;

o noted that, with respect to CRIs and CHEs, a Cabinet decision that a site of significance (as defined in paragraph (h) above) on surplus Crown land or land owned by CHEs or CRIs be protected (including return) will not necessarily be effective because there are legal impediments to Ministers directing those agencies;

p noted that where sites are returned outside the Treaty process and under existing statutory and administrative mechanisms, costs of compensating vendor agencies will continue to be met from outside the settlement envelope;

TREATY SETTLEMENT PROCESS

q noted that Maori claimants can choose either good government statutory heritage protection mechanisms or the Protection Mechanism through the Treaty claims process to protect sites of significance;

r noted that, if sites are returned through the Treaty claim process, costs should continue to be met from the Settlement Envelope.

Diane Willers

for Secretary of the Cabinet

Chair
Cabinet

Office of the Minister of Maori Affairs

PROTECTION MECHANISM: SITES OF SIGNIFICANCE

As a result of Cabinet Strategy Committee's consideration of CSC (96) 30 on 6 March, 1996 I wish to submit a set of revised recommendations for Cabinet's consideration on 11 March, 1996. These follow:

It is recommended that Cabinet:

a. **note** that the Crown has an obligation derived from the Treaty of Waitangi to protect sites of significance to Maori, but that this obligation is not absolute and needs to be balanced against the broader public interest;

b. **note** that apart from its obligations under the Treaty of Waitangi the Crown should as a matter of good government actively protect sites of significance to both Maori and non-Maori;

c. **note** that there are a number of existing statutory mechanisms which may be used to protect sites of significance to Maori and non-Maori. These mechanisms include:

   i. The establishment of a reservation under sections 338, 339 and 340 of Te Ture Whenua Maori Act 1993.

   ii. The issuance of a Heritage Protection Order by the Minister of Maori Affairs as provided for in s187 of the Resource Management Act 1991.

   iii. The transfer of powers or delegation of management functions to kaitiaki from local authorities or tangata whenua under sections 33 and 34 of the Resource Management Act 1991.

iv. The registration of a site with a territorial authority when a plan, or an amendment to a plan, is proposed under part I of the First Schedule of the Resource Management Act 1991.

v. Registration of a wahi tapu site on the Historic Places Trust national register.

vi. The three tiered system of protection for significant sites on lands to be transferred to SOEs under the State Owned Enterprises Act 1988.

vii. Covenants for the protection of sites having spiritual, cultural or emotional significance under section 18 of the Crown Forest Assets Act 1989.

viii. Conservation and management of wahi tapu sites on reserve land managed by the Department of Conservation.

d. **note** that the Parliamentary Commissioner for the Environment has begun a review of the allocation of functions to, and linkages between, public authorities involved in historic and cultural heritage protection, and the identification and listing procedures for protection of historic and cultural heritage, which is expected to be completed by the end of June 1996;

e. **agree** that officials (DOSLI to lead) report to TOW Committee with recommendations on a case by case basis on those surplus sites of significance which are at risk of having their heritage value destroyed.

f. **note** that Maori can seek to have their sacred sites protected by applying under current statutory mechanisms (whether or not they have a claim) or by using the protection mechanism and the claims resolution process (if they have a claim);

g. **agree** that for the purpose of the protection of sites of significance the criterion of "discrete site" be interpreted as "having definable boundaries";

**Good Government**

h. **agree** that as an objective of good government the Crown's policies should continue to provide mechanisms for protecting the following categories of sites of significance to Maori, being those discrete sites which are:

A burial places;
B rua koiwi;
C sacred shrines;
D underwater burial places and caverns;
E waiora or sources of water (springs) for healing;
F sources of water (springs) for death rites;

i **agree** that where Maori or non-Maori seek to have surplus sites of significance (for Maori as defined in h above) protected, each application should continue to be considered on its merits, and may pursue methods of protection including:

retention of Crown ownership with applicant management (using existing mechanisms);

return of the site (using existing mechanisms);.

release for sale after establishing an appropriate measure (using existing mechanisms);

j **agree** in principle, pending the outcome of the implementation report back outlined in recommendation k, that where a site of significance (as defined in recommendation h above) is identified on surplus Crown land or land owned by CHEs or CRIs, and Maori applicants have exhausted all other avenues of protection, that officials should report to the Committee on Treaty of Waitangi Issues (TOW) on a case by case basis whether further options for protection should be pursued;

k **direct** officials (TPK to lead) to report back to CSC by 17 April on an implementation plan for recommendation j, including:

(i) elaboration of criteria to be applied in deciding upon appropriate protection of sites;
(ii) designation of an officials committee to consider applications and to verify significant sites; and
(iii) identification of administrative and legal costs;

l **direct** that officials (TPK to lead) report back to TOW on the outcome of the Parliamentary Commissioner for the Environment's report and any issues that the report may have identified, within one month of the report being released;

m **agree** in principle, pending the outcome of the implementation report back outlined in recommendation k, that the responsibilities of good corporate citizenship which the Government expects of CHEs, CRIs and Government departments include protecting (including returning) sites of significance (as defined in recommendation h above) and bearing minor costs associated with this protection (including return) where all other avenues of protection have been exhausted;

n **agree** in principle, pending the outcome of the implementation report back outlined in recommendation k, that where the cost of protecting (including returning) a site of significance (as defined in recommendation h above) on surplus Crown land or land owned by CHEs or CRIs would have a more than minor impact on the balance sheet,

operating statement, or operations of the CHE, CRI or Government department, Cabinet will, on a case by case basis, decide whether to reimburse the agency;

o **note** that with respect to CRIs and CHEs a Cabinet decision that a site of significance (as defined in recommendation h above) on surplus Crown land or land owned by CHEs or CRIs be protected (including return) will not necessarily be effective because there are legal impediments to Ministers directing agencies;

p. **note** that where sites are returned outside the Treaty process and under existing statutory and administrative mechanisms, costs of compensating vendor agencies will continue to be met from outside the settlement envelope;

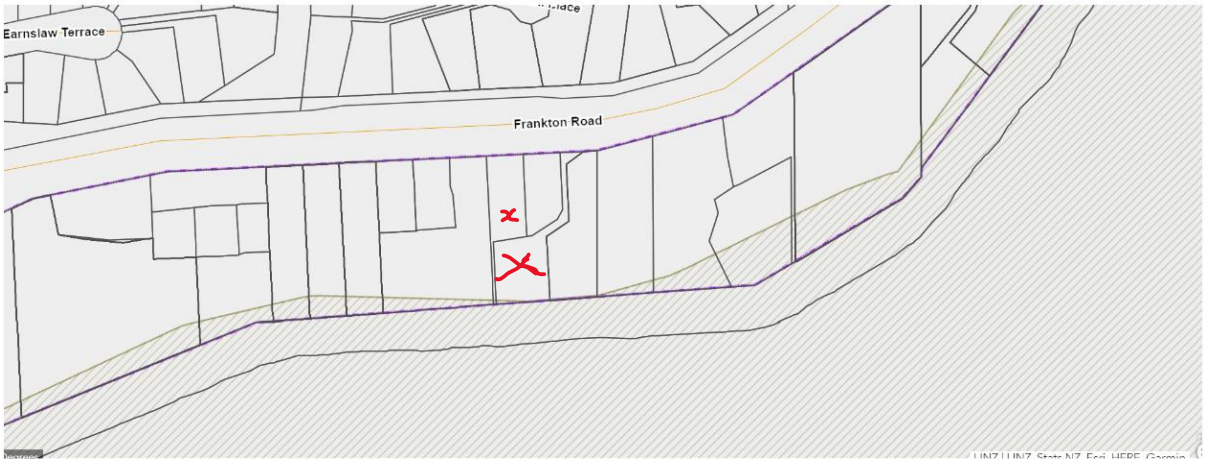
**Treaty Settlement Process**

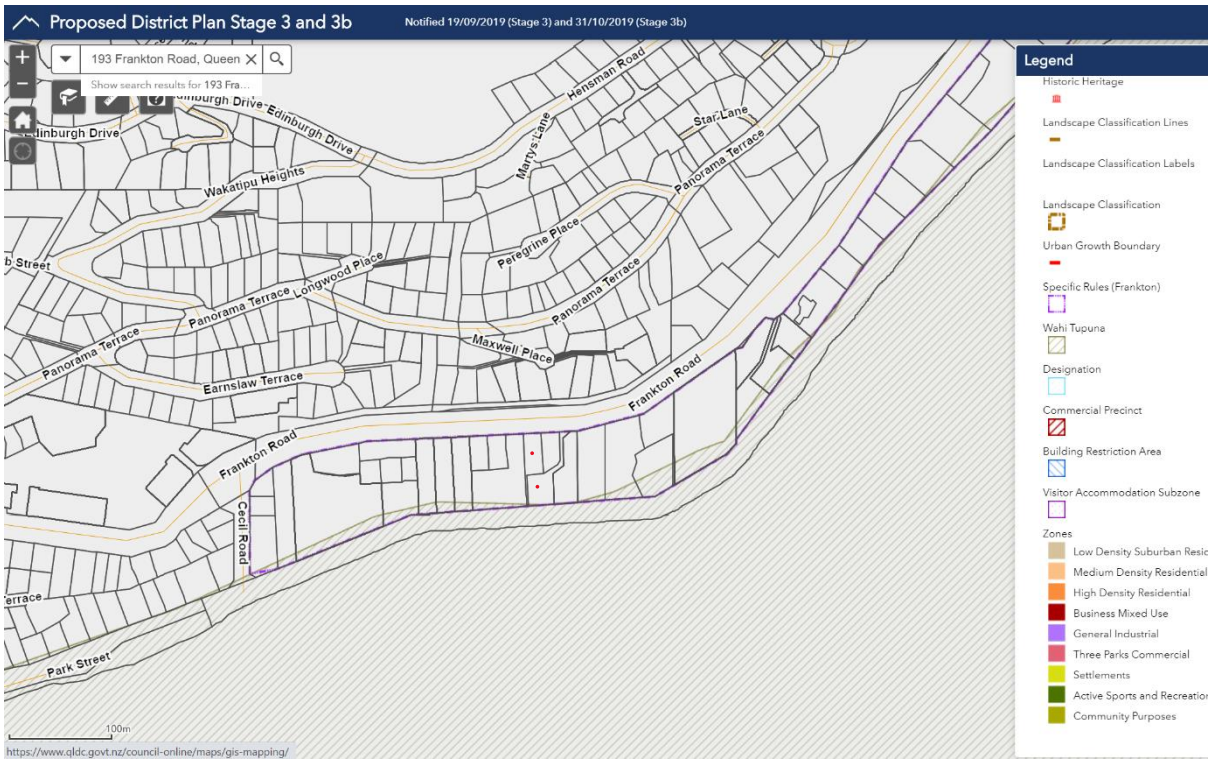
q. **note** that Maori claimants can choose either good government statutory heritage protection mechanisms or the Protection Mechanism through the Treaty claims process to protect sites of significance;

r. **note** that if sites are returned through the Treaty claims process costs should continue to be met from the Settlement Envelope.

for Hon John Luxton
Minister of Māori Affairs

Annexure IV


Earnslaw Terrace
Frankton Road


Proposed District Plan Stage 3 and 3b
Notified 19/09/2019 (Stage 3) and 31/10/2019 (Stage 3b)
193 Frankton Road, Queen
Show search results for 193 Fra...
Edinburgh Drive
Wakatipu Heights
Hensman Road
Mary's Lane
Star Lane
Panorama Terrace
Peregrine Place
Longwood Place
Maxwell Place
Earnslaw Terrace
Frankton Road
Cecil Road
Park Street
100m
https://www.qldc.govt.nz/council-online/maps/gis-mapping/
Legend
Historic Heritage
Landscape Classification Lines
Landscape Classification Labels
Landscape Classification
Urban Growth Boundary
Specific Rules (Frankton)
Wahi Tupuna
Designation
Commercial Precinct
Building Restriction Area
Visitor Accommodation Subzone
Zones
Low Density Suburban Resic
Medium Density Residential
High Density Residential
Business Mixed Use
General Industrial
Three Parks Commercial
Settlements
Active Sports and Recreatio
Community Purposes