TO: Local Government and Environment Select Committee

FROM: Historic Places Canterbury

SUBJECT: Heritage New Zealand Pouhere Taonga Bill – Submission on SOP

DATE: 29 November 2012

Historic Places Canterbury (HPC) is the successor to the Canterbury Branch Committee of the NZHPT. Historic Places Canterbury has already submitted on the Heritage New Zealand Pouhere Taonga Bill. This additional submission relates to the Supplementary Order Paper on the Bill released by the Government on 16 October 2012.

Major Changes introduced by the Supplementary Order Paper are:

- A review of the registration provisions including a change of name from Register to Record
- Removal of interim registration
- Introduction of a National Historic Landmark List
- A new registration type to be called wahi tupuna

HPC fully supports the addition of wahi tupuna to the types of heritage place which can be listed.

The following submission relates to the other changes proposed to Part 4, including Subpart 2.

The Regulatory Impact Statement (RMI) makes it clear that the changes have been driven by 4 underlying problems:

- confusion about the legal effect of registration
- a perception of duplication and costs to owners
- confusion about registration types in relation to Maori heritage (dealt with by the newly proposed wahi tupuna category)
- inadequate national priority setting.

Confusion about the legal effects of registration

Under the present system registration has no significant regulatory impact (with the exception of short term protection if interim registration is invoked). Protection depends upon listing by local Councils but they have no legal obligation to list registered historic places in their District Plan. The RMI notes that about 90% of registered heritage places are listed in District Plans and that the total number of listed buildings District Plans greatly exceeds the number in the Register. The implication from these figures is that the split system of evaluation and protections is working satisfactorily. The main problem cited in the RIS is that 77% of people surveyed believe registration means protection. To deal with this the Ministry looked at 3 alternative options:

1. combining evaluation and regulatory roles at a national Level under New Zealand Heritage

2. combining them at a local level
3. clarifying the purpose of Registration by changing the name to Record and undertaking better public education.

Option 1
The Ministry rejected option 1 on the grounds that although it would remove confusion and would allow for national prioritization it would increase costs to Heritage New Zealand (in other words costs would shift from local government to central government) and it would impose additional costs on property owners in situations where they required resource consents for non-heritage reasons. By separating heritage issues from wider resource management decision making processes it would also go against recent efforts to streamline and simplify resource consenting. HPC is in general agreement that this option is likely to impose additional costs because of parallel processes. There will be few situations in which a change to a registered building which is sufficient to invoke Heritage New Zealand's regulatory powers would not also require a resource consent from the local authority.

Option 2
The Ministry rightly rejected option 2 because even though it would resolve perception difficulties it could not address concerns about the inadequacy of national priority setting. HPC agrees that it is vital to have a national perspective on what is important and that this could not be effectively achieved with both evaluation and regulation at the local level. HPC does not consider it a problem that District Plans give some form of recognition to more historic places than there are on the Register. There will always be places of local heritage significance that are not of sufficient importance to be recognised on a National Register which a local authority may choose to protect. However, many local authorities find it difficult to employ heritage experts and as the Ministry has identified, this option would lead to a wide range of identification practices, which would inevitably vary from highly competent to unacceptable. Equally importantly, local authorities are simply not well placed to determine what are the best representative examples of a particular types of heritage place or indeed whether particular types of heritage places are recognised elsewhere and which ones should have the highest priority for protection.

Option 3
Given that 90% of registered historic places are included in District plans according to the RMI, it may seem on the face of it, that the Enhanced Status Quo option which has been adopted in SOP No 135, is indeed the best option. At most in 10% of cases there is no protection. Property owners rights are strengthened because Interim Registration will be abolished and "there is nil direct regulatory impact because registration does not impose regulatory control." But does this enhance heritage protection? Aside from the 10% of registered buildings which are likely to remain unlisted and about which the RMI presents absolutely no evidence as to whether they are Category 1 or 2 buildings), there is also no evidence presented about the level of protection which is given to those which are listed in District plans. The survey by Ministry of Culture and Heritage quite specifically did not look at levels of protection but the adequacy of the proposed option cannot be fully evaluated without that information. Listing in the plan may mean no more that a building must be photographed before it is demolished, which would be completely unsatisfactory for a Category 1 building. Although there are a few cases where a local authority gives a building a higher rating than the Register (and this is not a problem) there will be many more cases where the protection is minimal. In no real sense can it be claimed that this option deals with the issue of national priority setting. By leaving the decision completely to local communities (apart from the proposed 50 National Historic Landmark sites) there can be no assurance whatever that there is adequate protection. Some of our areas of major Maori settlement as well as of earliest European settlement are in districts with limited and impoverished rating bases. They are therefore more likely to see listing heritage places as a luxury they cannot afford.

HPC proposal
The options which have been presented omit another possibility which gives effect to the public's expectation that the Register has protective force but would not interfere with the established scheme of using the Resource Management Act for enforcement; that is to treat the register as a designation which must be implemented at the local level. This is effectively what happens in

the UK where the listings and appropriate levels of protection are determined on a national basis but implementation is left to the local level. This removes the public's misconception, it ensures national priority setting without involving significantly more cost at a central level. It would avoid the difficulty of option two, which as has been noted, could involve doubling up of costs for owners for resource consents. It would also remove two other possible sources of duplication in costs. At present owners who are opposed to listing may need to obtain professional assistance to challenge both listing on the Register and and then again in the majority of cases where the property is listed in some way on the District Plan. Similarly, it would avoid any duplication of research effort by the local authority. Against this it will be argued that we would be removing the right of decision from the community most directly affected. However, if we accept the importance of the national setting of priorities, consistency of approach and recognise the expertise built up by a national organization, then it is logical to give effect to a nationally established Register. That would not preclude Heritage New Zealand from also having the sort of recording role envisaged by DOC (undertaking thematic studies of types of heritage places, for example places associated with the dairy industry or coal mining) Indeed, we would expect Heritage New Zealand to carry out such studies because it is only by doing so that it will be able to achieve a robust list of representative types to include in the Register. Not every site uncovered by such an investigation would necessarily end up on the Register. In many cases recording would be sufficient or a covenant entered into with the landowner would suffice.

Although HPC is firmly of the belief that a national policy is vital, it may be that we need further national debate around the issue and that certainly cannot be said to have taken place on the basis of an obscure Supplementary Order Paper which requires those submitting to look at 3 legal documents, the existing legislation, the Bill as well as the SOP. Clearly if our submission is accepted that the Register should have the effect of a designation, it would be necessary to have further debate around the forms and levels of protection. Because at present the Register is not a regulatory instrument, it does not give any guidance on forms of protection and as the proposal for a Landmark register indicates, there is also a need to revisit the levels of protection. By accepting the modified status quo solution any real national debate around these issues is brushed aside and the protection of those historic places which have been identified as nationally important through the registration process continues to be left to the vicissitudes of local authority protection. An opportunity for genuine re-evaluation of our heritage protection has been lost.

Debate is also needed around possible policy instruments to assist the owners of heritage properties, particularly in the light of need for urgent earthquake strengthening. Examples might include rate or tax rebates, or possibly carbon credits in recognition of the contribution of heritage buildings to a reduction in our carbon footprint.

In summary HPC believes that Part 4 should not be implemented in its current form; that it is preferable for the Register to be given regulatory force but before this happens there needs to be greater investigation and consultation around forms and levels of protection. For consistency with the RMA there would also need to be appeal provisions. Given the proposed introduction of a National Landmark List, it is much better to take more time and explore all the ramifications more carefully. Reading the RIS it is difficult to avoid the conclusion that the driving factor behind these reforms and the option chosen has little to do with enhancing heritage outcomes but is more about saving money and protecting property rights.

Removal of Interim Registration

In view of our belief that the Register should have regulatory force there is still an important role for interim registration and it should be retained. If Part 4 is adopted as set out in the SOP then HPC accepts that Interim Registration serves little purpose but there needs to be an equivalent power at a local level.

National Heritage Landmarks List

HPC is in full agreement that the Canterbury Earthquake has established a very clear need for an assessment of heritage priorities at a national level and it has no problem with the concept of a National Heritage Landmarks list as the highest ranking for protection. However we do strongly question the logic and validity of setting a limit of 50 sites. We also question the value of a list which requires the owner to consent. We believe that the proposal in its current form will lead to many problems and unresolved difficulties. HPC believes that along with the remainder of Part 4, Subpart 2 should be rejected until there has been further opportunity to explore the options and issues around levels of protection with a much wider level of consultation than has been undertaken to date (as indicated in the RIS).

Comment on Specific provisions

Clause 4
HPC is disappointed that an opportunity has not been taken to insert government departments into the list in clause 4 (c).

Clause 11
HPC supports the inclusion of clause (f) and (g) but also recommends the inclusion of an additional function of working collaboratively with other bodies, organisations and individuals concerned with New Zealand's historical and cultural heritage.

Part 4 Record or Register
HPC considers that there is a place for both terms. Register is the term widely used in the English speaking world for statutory lists of protected buildings and we believe the term should be retained. The term Record is appropriate for sites which have been researched but not given protection or which have been removed from the register.

Cl 64 A and B
HPC believes there is merit in the appointment of independent assessors, especially if the Register is to be given regulatory effect but it would like to see more definition around the criteria for appointment and the numbers to be appointed.

Part 4 cl.75
HPC supports the reinstatement of the word "particular" (when local authorities must have particular regard to recommendations of Heritage New Zealand or the Maori Heritage Councils) but this should be viewed in light of the overall opinion expressed in this submission that the Register needs to be given regulatory force. If it is not then HPC believes the requirement to give "particular regard" should not be limited just to historic areas or wahi tapu areas.

If the Register is not given regulatory force HPC also believes that a new Clause should be inserted that requires the director or CEO of any Government Department, Crown Entity or State Owned Enterprise with direct or indirect jurisdiction over a project which may affect a property listed on the Register to take into account the effect of the undertaking on the property and also to report to Heritage New Zealand and give it an opportunity to comment on the project.

Part 4 Cl 80 and 81 Removal from the Register
HPC believes that this section needs to make it clear that though a site may be removed from the Register, the information which has been gathered for the registration must still be made available to the public. In this situation the term Record could appropriately be used to distinguish it from the Register. Record is a term that is widely used for documentation of buildings whereas Register implies an official list with some sort of regulatory status.

Clause 88 Interim Register

HPC believes this clause (and all consequential changes) should be reinstated in view of our submission that the Register must have regulatory force

Historic Places Canterbury may wish to be heard on this submission if there is an opportunity to do so.

Yours faithfully

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Secretary Historic Places Canterbury

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