



CABINET

CAB (96) M 8/15

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Minister of Maori Affairs

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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
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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.

Si'aul Wilder

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

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS

Certification by Department:

The Cabinet Office will reject submissions if the necessary consultation does not appear to have taken place. The form which accompanies a submission sent to the Cabinet Office must have the original signatures of the Minister and official.

I certify that the attached submission has implications for the following departments, whose views have been sought and are accurately reflected in the submission:

Treasury, Environment, Office of Treaty Settlements, CCMAC, DoS, Officials of Minister of Environment, Finance and Treaty Negotiations, Maori Affairs

Signature Hauraki Greenham	Name and Title Hauraki Greenham Peter Murray	Date 8/3/96
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Certification by Minister:

Consultation with other parties represented in Parliament on proposed legislation is coordinated by the Leader of the House. Consultation with other parties on matters other than legislation is coordinated by the Prime Minister. The relevant office should be contacted before any such consultation is undertaken [CO (95) 8 refers].

I certify that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the government caucus			
other parliamentary parties ¹			✓
other interested groups ²			✓

(1) List parties which have been/are to be consulted:

(2) List main interested groups:

Signature 	Name and Portfolio John Lusk Minister of Maori Affairs	Date 8/3/96
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