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Submission of Historic Places Wellington on the Planning Bill

Historic Places Wellington (HPW) is an incorporated society which aims to identify and protect heritage places in the Wellington region.

Purpose of the Bill

The purpose, “to establish a framework for planning and regulating the use, development and enjoyment of land.” does not recognise the need to **protect** some land and features from inappropriate use and development. The Natural Environment Act may do this for the natural environment but **historic heritage** and sites of significant to Māori fall between the cracks of the two Acts.

Remedy: include protection of the items listed in the definition of “specified topic” in the purpose of the Bill clause 4

Restricting the definition of historic heritage to be protected

“**Historic heritage**” is defined as in the Resource Management Act (RMA), but the provisions of the Bill apply to “significant historic heritage” without defining this. E.g. clause 11 Goals refers to (g) protection from inappropriate development the identified values and characteristics of iii) “sites significant historic heritage”.

Unless national direction is produced in advance of the first tranche of plans, there will be various interpretations of “significant” across New Zealand. This potential variability does not help owners, and it could mean a narrow definition is used and district councils move to remove historic heritage from plan heritage schedules, if say it is not a Category 1 NZ Heritage List site. Or Category 2.

Many heritage sites throughout New Zealand won’t be protected as “significant historic heritage” simply because they have not yet been assessed and formally recognised.

Significance changes over time: for example, a selection of the buildings on the main street of Masterton were identified as historic heritage in the 1970s. Subsequently many have been demolished, and the heritage values of the remaining buildings have increased as the last remaining buildings of their era. Neither Masterton District Council nor Heritage New Zealand is sufficiently resourced to reassess these buildings in the foreseeable future so they remain unprotected.

It is very difficult to comment on the Bill in the absence of national policy direction, as the Bill is generic and enabling not specific. It would have been useful to have draft national policy direction available when the Bill was tabled.

Remedy: remove the qualifier “significant” from “historic heritage” wherever this appears in the Bill.

Remedy: Produce national policy direction and national standards on historic heritage as a matter of urgency: specify in Subpart 4 that national instruments (national policy direction and national standards) covering historic heritage must be made within specified timeframes.

Remedy: require territorial authorities to take account of the NZ Heritage List.

No requirement on territorial authorities to identify historic heritage

Clause 144 (2) requires a territorial authority to regulate and manage significant historic heritage, but there is no requirement to **identify** historic heritage.

Remedy: include a requirement in clause 184 to identify historic heritage

Removal of the Heritage Order provisions

The RMA provided for heritage protection authorities to issue notices of requirement for heritage orders. Many were carried over from the Town and Country Planning Act but there were few new heritage orders after 1991: the process was based on the designations process, and was unnecessarily complex when applied to individual properties and there was a risk of having to compensate owners. Policy was developed by a cross-agency working group on a less onerous way of providing a system to protect heritage. There was also talk of national direction for historic heritage. Neither has progressed, and outside of the requirement for territorial authorities to “protect from inappropriate development the identified values and characteristics of significant historic heritage” [Goals: 11(1)(g)(iii)]

Remedy: resurrect the policy work undertaken in 2021-22 and include a simple workable heritage order provision in the Bill

Regional spatial plans not covering historic heritage

The Regional Spatial Plan is going to be an important feature of the new framework, The purpose relates to development and investment priorities, integration with and implementation of the Natural Environment Act, implementing national instruments providing for use and development within environmental limits, and approaches to infrastructure planning and investment. This leaves no room for identifying areas of high heritage values. It would be useful for these to be taken into account at a strategic level in planning development and infrastructure, to avoid conflicts down the track.

Clause 3 of Schedule 2 sets out the matters a regional spatial plan must provide for, largely development, infrastructure, and climate adaptation, incompatible activities. Addressing constraints on the use and development of land does not include for protection of historic heritage, but should.

Likewise, the purpose of the land use plans, to enable and regulate the use and development of land leaves little room to prioritise protection of significant values, even if they are mentioned later.

Remedy: Explicitly require consideration of historic heritage in Regional Spatial Plans Schedule 3 clause (1)(a) and in Land Use Plans

Alterations that could affect historic heritage values

Clause 14(1)(a) requires anyone exercising functions etc under the Act to disregard “the internal and external layout of buildings on a site, and e) the visual amenity of a building in relation to its character, appearance, and the effect of setting a precedent: BUT that section does not restrict the management of 14(2)(c) sites of significant historic heritage and (d) sites of significance to Māori.

It is not clear the extent to which territorial authorities will be able to manage historic heritage sites by regulating relocation of buildings on the site, and significant alterations to the internal layout. These factors are important to retaining significant historic heritage values, and are regulated in most district plans now, usually as controlled or restricted discretionary. **It needs to be clear that 14(2) definitively overrides 14(1).**

The removal of the ability to regulate character and aesthetic qualities is of concern for both managing retention of historic heritage values and preserving attractive liveable cities and towns. As with the example given here of the main street of Masterton, a lot of as yet unidentified historic heritage is located within areas currently designated as “special character areas”. This is also true of inner-city suburbs like Mount Victoria, where the TA has yet to schedule and protect identified local heritage.

This proviso is also included in the proposed transitional arrangements for the RMA, in amendments to section 104(1)

Remedy: make it very clear that territorial authorities CAN regulate “the internal and external layout of buildings on a site, and e) the visual amenity of a building in relation to its character, appearance for historic heritage sites

Narrowing options for input to consent applications

The Bill proposes to streamline consenting processes by requiring fewer consents, making more activities permitted, and ruling consideration of character out of scope. It also significantly narrows the scope for involvement in resource consent decisions.

Most councils outside the main centres, particularly smaller councils, do not have heritage specialists and rely on information provided by special interest organisations during the consenting process. It needs to be clear what “**an interest beyond the general public**” means, and ensure that this doesn’t preclude such groups. The way the Bill is written only a “qualifying resident” can submit on resource consent applications and opportunities to submit on proposed plans notified for targeted submissions is even more limited. It needs to provide, for example, for an organisation such as Historic Places Wellington as a “person, other than a natural person, that has an office, or operates, in the district or **an interest greater than the general population**”. Otherwise national organisations with valuable specialist input, such as DOCOMOMO, may be excluded from having input to a publicly notified consent application under section 131.

Remedy: Extend the definition in the Interpretation section of “qualifying resident” to include “a person, other than a natural person with an interest greater than the general population” similar to the wording in Schedule 3 Clause 17(1)(b)

As section 16 Schedule 3 is written at present, it would preclude any professional body, even Crown entities like Heritage New Zealand Pouhere Taonga, from being notified of relevant proposed plans notified for targeted submissions.

Remedy: Amend Schedule 3 clause 16, notification, to require a local authority to notify a proposed plan for targeted submissions to include, as above “a person, other than a natural person with an interest greater than the general population”

Trade-offs between protection and development

Clause 184 introduces a trade-off -section 91) requires a TA to enable and regulate the use and development of land, but section (2) requires regulating and managing (f) significant historic heritage. No guidance is given with the Bill on how these functions will be reconciled, or exactly what “regulating and managing” covers.

Remedy: include in the Bill advice on trade-offs within section 91 AND require that national direction on historic heritage be produced as a matter of urgency, to the timeframes set out in Schedule 1

Monitoring and reporting

Section 185 (1)(b)(iii) requires monitoring the implementation and effectiveness of the regulatory (land use) plan. This is a requirement currently, but very few local authorities monitor and report on the effectiveness of their plan’s heritage provisions. This clause would be more effective if it set out minimum requirements for reporting – 195 (2) is too generic to be any use. Likewise, clause 186 sets out the instruments whose effectiveness should be monitored, but not how, nor minimum requirements. The monitoring provisions will not require territorial authorities to report on the state of the stock of significant historic heritage.

Remedy: make requirements to report on the following in relation to historic heritage explicit in the Bill:

- **The effectiveness of plan provisions and consenting in managing historic heritage**
- **The state of historic heritage in the district, including the condition of heritage sites**

Regulatory relief

Part 4 of Schedule 3 sets out requirements for the local authority to provide a mechanism for relief if a rule in a plan has a significant impact on the reasonable use of land. A relief framework must be included in a proposed plan (Sched 3 66(2)). This may make local authorities cautious about making rules in plans to protect heritage values from inappropriate activities. Councils are already facing the prospect of rates capping, new measures to recover the infrastructure costs of growth (development levies), reorganisation and having to prepare and notify regional spatial plans and district plans, collection of consent levies to fund MfE make national direction, ageing infrastructure suffering deferred maintenance and very public failures such as sewage spills. They are going to be very cautious about making any plan rules to protect heritage values that could impose relief costs.

Further, the prospect of having to provide relief to owners of heritage places to which rules apply may provide some territorial authorities with an incentive to slash their current heritage schedules.

Remedy: restrict the circumstances in which councils are required to provide relief.

The parts retained or enhanced:

Support: Retaining that rules relating to significant historic heritage have immediate legal effect when a plan is notified. [clause 58(2)(b)(i)]. This preserves the status quo, but for “significant” historic heritage rather than “historic heritage”. It should apply to rules relating to any historic heritage.

Support: Retaining the waiver of subdivision consent requirements if land is gifted to Heritage New Zealand Pouhere Taonga.

Support: greater use of permitted activities, IF this makes it easier for owners to maintain, strengthen and adaptively reuse heritage sites, but there need to be sufficient controls on activities that could reduce heritage values, including obtaining a certificate from a qualified person that the activity complies with requirements (clause 38(2)(b)).

Support: requirements that the Planning Tribunal and Environment Court have heritage expertise available.

Support: clause 25, overall duty to avoid, minimise or remedy adverse effects.

Transitional provisions

The comments and suggested remedies above relate to all similar provisions to amend the RMA in Schedule 1