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the architectural centre inc.
PO Box 24178 Wellington

Architectural Centre
submission on
The Heritage New Zealand Pouhere Taonga Bill

To The Local Government and Environment Committee

This submission is from the Architectural Centre, an incorporated society dating from 1946 which represents both professional and non-professionals interested in architecture and design, and in the promotion of good design.

1. The Architectural Centre welcomes the opportunity to comment on the Heritage New Zealand Pouhere Taonga Bill.

2. We support the alignment of archaeological authority processes with the RMA.

3. We support the use of Heritage, rather than Historic, to reflect the broader cultural reference of heritage which the term "historic" excludes, but we recommend that the new name of the New Zealand Historic Places Trust be New Zealand Heritage Pouhere Taonga to retain continuity of the use of NZHPT and its abbreviation HPT.

4. We support the strengthening of the NZHPT as a Crown entity and acknowledge the recent establishment of Historic Places Aotearoa which has formed with the aim of undertaking the role that NZHPT membership formerly delivered, and which, at times, conflicted with NZHPT's Crown entity responsibilities.

5. We query the need for an archaeological authority to confirm whether or not an archaeological site exists because conventional archaeological practice for establishing the presence of an archaeological site involves minor subsurface examination, which will cease when it is established that an archaeological site exists. We consider that the requirement for an archaeological authority in this situation would result in additional cost and administration which would have little value.

6. We support the New Zealand Archaeological Association observation that the separation of the former "archaeological investigation" under the Historic Places Act into "exploratory" and "scientific" investigation will reduce the involvement of Māori in decisions relating to their heritage, as there is no requirement to gain the consent of the relevant iwi authority for exploratory investigation (unlike "scientific" investigation), and propose the deletion of the category "exploratory investigation."

7. We support the new inclusion of a section in the Bill to address Emergency Authorities. This is important to ensure that a clear process is in place prior to natural disasters and to prevent the situation which has arisen in the current context of the Canterbury earthquakes. We make three specific comments regarding emergency situations. (i) We question whether in a post-disaster context whether the proposed timeframe (3 days) is plausible and suggest extending this to 5 days. (ii) We are aware that difficulties in the post-earthquake context of Christchurch were exacerbated by the inability to access building records which prevented full evaluation by local authorities of heritage sites. We strongly recommend that provision is made in the Bill for registration information to be stored (electronically) in at least two geographically distinct regions. (iii) The Christchurch earthquake also demonstrated the lack of structural knowledge that exists about heritage buildings. We recommend that a specified level of structural information about buildings forms part of the registration requirements and acknowledge

that this will have resource implications (financial and time) which will need to be anticipated.

8. We support the increase to penalties for causing harm to an historic place, historic area, property, or thing or to an archaeological site (Pt 5 §82(2), §83(2), §84(2), §88(3)) and to breaching conditions or authority and/or refusing access etc. (Pt 5 §85(2), §86(2), §87(2), §89(2)). We consider that an increase in penalties is overdue and suggest that a mechanism be introduced to ensure an annual change in penalty in accordance with inflation.

In addition we recommend that the Bill make a statement with regard to negligence through deferred maintenance. We propose this because the lack of penalty for negligent lack of maintenance can enable an owner, who does not agree with the registration of an historic place, to cause sufficient decline in a building to threaten its heritage significance, and so bring about removal from the register. We make these statements regarding maintenance with specific reference to Pākehā building acknowledging that different cultural understandings of material and immaterial culture may apply to wahi tapu and wahi tapu areas.

9. We note that the use of 1900 to define an archaeological site remains unchanged from the Historic Places Act 1993. We recommend that a definition of 100 years old be used to define an archaeological site. Related to this, we note that the Bill would require archaeological authorities for any internal alterations to buildings defined as archaeological sites, and that it would be difficult to enforce this because many such modifications will not require Resource Consent under the RMA.

We support the New Zealand Archaeological Association recommendation to amend the definition of archaeological site to emphasis the date the wrecked vessel was built, rather than the date of the ship-wreck.

10. The explicit acknowledgement of heritage (c.f. historic) places suggests that this legislation ought to acknowledge the significance of intangible heritage. Intangible heritage is acknowledged by organisations such as UNESCO and ICOMOS, and legislative precedents include South African law (National Heritage Resources Act 1999).

11. In addition to the above we support the following comments and recommendations made in the Law Society submission (19 June 2012) http://www.lawsociety.org.nz/__data/assets/pdf_file/0007/53377/Heritage_New_Zealand_Pouhere_Taonga_Bill-190612.pdf:

> (a) "7. There are many reasons why private archaeological sites might require modification, or “harm”, from routine maintenance through to the need to meet current regulatory requirements such as compliance with earthquake resistance standards under the Building Act 2004. This latter example is of particular importance outside of Christchurch (such as in Dunedin) where there is no present emergency, but strengthening of large numbers of 19th century buildings is nevertheless required. In each case, an archaeological authority is required to modify such buildings." (p. 2)
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> (b) Recommendation: "26. ... Assuming that the intention is that the Māori Heritage Council will support Heritage New Zealand by providing a Māori cultural viewpoint, then it is recommended that clause 24(c) is amended to read: "to assist Heritage New Zealand Pouhere Taonga to develop and reflect a bicultural view in the exercise of its powers and functions by providing it with a Māori cultural view." (p. 6)
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> (c) Recommendation: "34. Clause 42(1) provides for applications for an authority to undertake an activity that will or may harm the whole or any part of an archaeological site. This clause, together with clauses 43 and 44, establishes different processes for applications relating to (a) an archaeological site within a specified area whether

or not the site is recorded (clause 42(1)(a)); and (b) a recorded archaeological site if the effects of the activity on the site will be no more than minor (clause 42(1)(b)). ... there is no logical reason for this difference in process, and that it is appropriate for the same level of assessment to be required when an authority is sought to undertake an activity on any archaeological site that will or may be harmed, regardless of whether the application involves minor effects to a site which is a recorded archaeological site. " (p. 8)

(d) Recommendation: "54. The Bill does not provide any guidance as to circumstances in which it would be appropriate to determine that an application is without merit. Grounds for such a determination could include, for example, that the application is frivolous or vexatious, is not made in good faith or is clearly inconsistent with registration provisions in the Act." (p. 11)

(e) Recommendation: "56. In addition, where it has been considered that an application has “no merit”, it is suggested there should be an obligation on Heritage New Zealand or the Māori Heritage Council to provide written notification to the applicant, outlining the reasons for declining the application." (p. 11)

(f) "63.1 The hearing and determination of prosecutions under the new Act should be aligned with what is required by the RMA, in that they should be required to be determined by a District Court Judge with an Environment Court warrant." (p. 13)

Thank you again for this opportunity to make a submission on the Heritage New Zealand Pouhere Taonga Bill.

Yours faithfully

Christine McCarthy
President
The Architectural Centre
arch@architecture.org.nz