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## **ART DECO TRUST INFORMATION SHEET 23**

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# **HISTORIC PRESERVATION LEGISLATION IN NZ**

## **NEW ZEALAND HAS YET TO ESTABLISH AN EFFECTIVE LEGISLATION FRAMEWORK FOR PROTECTION OF ITS HERITAGE OF HISTORIC BUILDINGS AND SITES**

**Condensed and adapted, with the assistance of the NZ Historic Places Trust, from  
an article by Noel Cox in "New Zealand Historic Places" magazine, November 1996**

### **HISTORICAL BACKGROUND**

Historic preservation legislation first came into existence in New Zealand in 1954 with the Historic Places Act 1954, the New Zealand Historic Places Trust being established the following year.

The 1954 Act was amended a number of times, and was subsequently replaced by the Historic Places Act 1980 and then by the Historic Places Act 1993. The 1980 Act and the Town & Country Planning Act 1977 each provided some protection for historic places. But there were duplicate procedures, overlapping responsibilities and omissions leading to incomplete and ineffective protection which only applied to some types of historic places.

The previous legislation gave the Historic Places Trust (HPT) the scope to provide direct protection to the most important buildings through protection notice procedures, and also potentially for archaeological sites through an authority and permit process. In other cases, the powers of central government (exercised by HPT) were to identify and make recommendations to appropriate bodies or persons on how these places should be protected. The main responsibility for the preservation of historic places was placed on local authorities through the Town & Country Planning Act, although the coverage given to historic places by District Schemes was often haphazard and incomplete.

The 1980 Act (and the current 1993 Historic Places Act) struck compromises between owners' rights to develop their property as they see fit and the opportunity the public might have to prevent the loss of heritage places.

### **REGISTRATION**

The 1993 Act emphasised the registration process, requiring two newspaper notices in most cases and altered the categories of classified buildings both in type and number. The previous four categories (A, B, C and D which gave the status and specified the protection that should be applied, eg: A - absolute protection, D - recording only) were changed to two (1 and 2). It usefully separated the category of the registration from the Trust's stance on what protection should be afforded the place. For example, the Trust can register in Category One a place that is beyond repair and of which demolition is inevitable.

Similarly, the Trust could fight for the retention of a building which is only registered in Category Two, when it believes that this is justified.

The Trust has the power to apply interim registration for places not already registered, which can buy some time if a place is under threat. Registration in itself does not give any protection.

## **HERITAGE ORDERS**

The Resource Management Act 1991 introduced Heritage Orders (previously Protection Notices), which can be instigated by a Heritage Protection Authority. Groups such as the Art Deco Trust can, once they are incorporated bodies, apply to the Minister for the Environment to become Heritage Protection Authorities, but the Trust has been advised against this because of the legal costs it could incur. Other groups have lodged a requirement for a Heritage Order (with the local Council) and have been successful in preventing the demolition of heritage buildings.

The Heritage Order process has several opportunities for parties to take appeals to the Environment Court and tests such as allowing reasonable use and the effect of the heritage order on the market value come into play. Also, the it may be recommended to a Council that the protection authority pay for any additional costs of upkeep on the place.

A person breaching a Heritage Order, once it is incorporated into a District Plan, and is convicted of an offence, in addition to other penalties may be deprived of the right to develop the land in question for up to five years.

An omission from the 1993 legislation is the Order to Repair, although the Resource Management Act 1991 has enforcement orders which might allow a case to be brought against an owner.

The implementation of Heritage Orders is still cumbersome, and unless action is taken quickly, the building can be lost before an order is in place. Further, to reduce the risk of any compensation, a requirement if placed should be lodged as early as possible, rather than being used as the 'last ditch' mechanism.

The Historic Places Act 1993 has not proved to be as successful as it might have been because -

- The timing of the Historic Places bill missed the 1991 Resource Management Act and has suffered from not being fully integrated with that major legislation. Further the Resource Management Act 1991 affords an insignificant priority to heritage.
- The Act changed the status of the Historic Places Trust to a non-Crown entity without the back-up of a Government Department or Ministry.
- The Trust has faced a steady decrease in funding from 1994 to 1997 both in dollar and in real terms. Further, the recent withdrawal of funding from the Lottery Grants Board for services that the Crown should purchase has placed the Trust in a crisis situation.

On a positive note, under the Resource Management Act 1991, District Councils have upgraded the lists of heritage places in their new district plans. Many have undertaken heritage studies and introduced policies and funds.

For details of the legislation, please refer to Sections 187 - 198, Heritage orders, Resource Management Act 1991 and Part II, Historic Places Act 1993.