



## ANALYSIS

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1994-95, No. 40

An Act to preserve the historic heritage of the Cook Islands, and to establish a Cultural and Historic Places Trust with the necessary powers and functions for the full and proper attainment of the objectives of this Act

(31 July 1995)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Cultural and Historic Places Act 1994-95.

(2) This Act shall come into force on the 1st day of July 1995.

2. Interpretation - (1) In this Act, unless the context otherwise requires -

"Archaeological site", means any place in the Cook Islands which at any material time was associated with human activity which occurred more than 100 years before that time, and which is or may be able through investigation by archaeological techniques to provide scientific, cultural, or historical evidence as to the exploration, occupation, settlement, or development of the Cook Islands;

"Board of Trustees" means the Cultural and Historic Places Board of Trustees established under section 6 of this Act, and "Board" has the same meaning;

"Building" includes a structure and any part of a building or structure;

"Historic area" means an area which contains an inter-related group of pre-historic or historic features which have historical value as a group even though some or all of the features may have little historical value individually;

"Historic place" means a place (including a site, building, or natural object) which is historic by reason of an association with the past and which demonstrates or provides evidence of any cultural, traditional, aesthetic, or other value of the past; and includes -

(a) Archaeological sites;

(b) Traditional sites;

"Minister" means the Minister responsible for the Ministry of Cultural Development;

"Natural objects" include trees, rocks, outcrops, and caves;

"Protection notice" means a protection notice issued under section 30 of this Act;

"Traditional site" means a place or site that is important by reason of its historical significance or spiritual or emotional association with the Cook Islands Maori people or to any group or section thereof;

"Trust" means the Cultural and Historic Places Trust constituted under section 4 of this Act.

3. Act to bind Crown - This Act shall bind the Crown.

## **PART I** **HISTORIC PLACES TRUST AND BOARD OF TRUSTEES**

### **Establishment**

4. Cultural and Historic Places Trust - (1) There is hereby established a Trust called the Cultural and Historic Places Trust.

(2) The Trust shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, and of suing and being sued, and of doing and suffering all other things that bodies corporate may lawfully do and suffer.

5. Functions of Trust - The general functions of the Trust are to -
- (a) identify, investigate, classify, protect, and preserve, or assist therein, any historic place and to keep permanent records thereof;
  - (b) identify, investigate, classify, and record historic areas;
  - (c) foster public interest in historic places and historic areas and in their identification, investigation, and classification, and in the protection and preservation of historic places;
  - (d) to furnish information, advice, and assistance in relation to the identification, investigation, classification, and recording of historic places and historic areas, and in relation to the protection and preservation of historic places.

6. Cultural and Historic Places Board of Trustees - (1) There is hereby established a Board of Trustees to be called the Cultural and Historic Places Board of Trustees.

(2) Wherever this Act or any other enactment provides for the Trust to carry out any function or power, that function or power shall, unless the context otherwise requires, vest in and be undertaken by the Board.

7. Membership of Board - (1) The Board shall consist of -

- (a) five persons to be appointed, having cultural, historical, archaeological or anthropological or other background appropriate to the functions and powers of the Trust, one of whom shall be appointed as Chairman;
- (b) the Secretary for the Ministry of Cultural Development;
- (c) the Financial Secretary of the Treasury.

(2) All members of the Board, other than the member mentioned in paragraph (b) of subsection (1) shall be appointed by the Minister.

(3) The appointed members of the Board, shall be appointed by the Minister or a term not exceeding 3 years but may from time to time reappointed.

(4) Unless a member vacates or is removed from his office under section 9, every member of the Board shall continue in office until his successor comes into office.

8. Advisory Committees - (1) There shall be for every Vaka on the island of Rarotonga a committee to be known as the "(name of Vaka) Cultural and Historic Places Advisory Committee", the membership of which shall be -

- (a) the Secretary for the Ministry, who shall be chairman;
- (b) the Ariki of the Vaka or, if there is more than one Ariki for the Vaka, the Ui Ariki;
- (c) a representative chosen by and from amongst the Aronga Mana of the Vaka;
- (d) a representative chosen by and from amongst any landowners whose land may be affected by any matter before the committee.

(2) There shall be for every island other than Rarotonga, a committee to be known as the "(name of island) Cultural and Historic Places Advisory Committee" the membership of which shall be -

- (a) the Government Representative for the island, who shall be chairman;
- (b) the Mayor for the island, who shall be deputy chairman;
- (c) the Ariki of the island or, if there is more than one Ariki of the island, the Ui Ariki;
- (d) a representative chosen by and from amongst the Aronga Mana of the island;
- (e) a representative chosen by and from amongst any landowners whose land may be affected by any matter before the committee.

(3) A member of the Board of Trustees appointed by the Board for the purpose, and the Secretary of the Ministry of Cultural Development, shall be entitled to attend and address any meeting of a Cultural and Historic Places Advisory committee.

(4) The Board of Trustees in the exercise of its functions and powers shall, where such exercise is in relation to any island or Vaka, refer such matter to the committee for that island or Vaka and shall give the committee the opportunity to consider the matter and convey its recommendations to the Board.

9. Extraordinary vacancies - (1) The Chairman or any appointed member may at any time resign from office by giving written notice to that effect to the Minister.

(2) The Chairman or any appointed member may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(3) The Chairman or any appointed member shall be deemed to have vacated office if absent from 3 consecutive meetings of the Board without its leave.

(4) Where leave of absence has been given to any member, the Board may with the approval of the Minister co-opt any person to be a co-opted member of the Board.

(5) The term of office of a co-opted member shall cease on the expiry of the leave of absence of the original member or the earlier vacation of or removal from office of that original member.

(6) If the Chairman or any appointed member dies or resigns, or is removed from office, or is deemed to have vacated his office, the vacancy thereby occurring shall be deemed to be an extraordinary vacancy.

(7) Every extraordinary vacancy shall be filled in the same manner as that of the person whose office has become vacant.

(8) Every person who fills an extraordinary vacancy shall hold office for the remainder of the term for which his predecessor was to hold office.

(9) The powers of the Board shall not be affected by any vacancy in the membership thereof.

10. Deputy Chairman of Board - (1) The Board shall elect one of its members to be the Deputy Chairman.

(2) The Deputy Chairman shall hold office while he continues to be a member of the Board until the appointment of his successor in accordance with subsection (1), and may be reappointed.

(3) The Deputy Chairman shall perform all the functions and duties and exercise all the powers of the Chairman -

(a) with the consent of the Chairman, at any time during the temporary absence of the Chairman;

(b) without that consent, at any time while the Chairman is temporarily incapacitated or prevented by illness or other cause from performing the functions and duties of his office;

(c) while there is any vacancy in the office of Chairman.

(4) No act done by the Deputy Chairman or the temporary Chairman appointed under section 11 of this Act acting as the Chairman shall in any proceeding be questioned on the grounds that the occasion for his so acting had not arisen or had ceased.

11. Meetings of Board - (1) The Chairman shall preside at all meetings of the Board at which he is present.

(2) In the absence of both the Chairman and the Deputy Chairman from any meeting, the members present shall appoint one of their number to be the Chairman of that meeting.

(3) In the absence from any meeting of the Secretary for the Ministry of Cultural Development or the Financial Secretary, those persons may authorise any other officer of the Ministry of Cultural Development or the Treasury to attend the meeting in their place. While any such officer is attending a meeting under this subsection such officer shall be deemed for all purposes to be a member of the Board. The fact that any person attends and acts as such a member shall be sufficient evidence of his authority to do so in the absence of proof to the contrary.

(4) Meetings of the Board shall be held at such times and places as the Board or the Chairman may from time to time appoint.

(5) A special meeting of the Board may at any time be convened by the Chairman, and the Chairman shall call a special meeting whenever requested to do so in writing by 2 members of the Board.

(6) At any meeting of the Board, 4 members shall be a quorum.

(7) Every question before any meeting of the Board shall be determined by a majority of the votes of the members present and voting thereon:

Provided that a resolution signed, or assented to by letter or facsimile, of all members of the Board for the time being shall have the same effect as a resolution duly passed at a meeting of the Board.

(8) At any meeting of the Board the person for the time being acting as the Chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(9) Subject to this Act and the rules of the Trust made under section 17, the Board may regulate its own procedure.

12. Proceedings not affected by certain irregularities - No act or proceeding of the Board or of any person acting as a member of the Board shall be invalidated by reason of a vacancy in the membership of the Board at the time of the act or proceeding, or because of the subsequent discovery that there was some defect in the appointment of any person so acting, or that such person was incapable of being a member or had ceased to be a member.

13. Members of Board not personally liable - (1) No member of the Board or of any committee of the Board shall be personally liable for any act done or default made by the Board or any committee of the Board or by any member of it, in good faith and with reasonable care and diligence in the course of its operations.

(2) For the purposes of this clause, an act or default done or made pursuant to a written direction by the Minister shall be deemed to have been done or made in good faith and with reasonable care and diligence.

### **Powers of Trust**

14. Powers of Trust - In the exercise of its functions under this Act the Trust shall be empowered to -

- (a) investigate, identify, classify, and record historic places and historic areas;

- (b) acquire, restore, and manage any historic place or to assist any other person or organisation to acquire, restore, and manage any historic place;
- (c) take such measures as it considers necessary to ensure that adequate finance is available to carry out its functions;
- (d) erect suitable signs and notices on historic places and historic areas, subject, in the case of any historic place and historic area not owned by or under the control of the Trust, to the consent of the owner first being obtained;
- (e) enter into agreements with the Crown, an Island Council, corporation, society, individual, or other controlling body for the management, maintenance, and preservation of any historic place or historic area;
- (f) acquire by purchase, lease, exchange, bailment, gift, or otherwise any interest in real or personal property;
- (g) dispose of any of its property as it thinks fit by sale, lease, exchange, or bailment;
- (h) cause such steps to be taken as in the opinion of the Trust are necessary to make historic places accessible to the public, charge fees for admission, or to lease or let, or to use for any suitable purpose, any lands or buildings vested in the Trust or under its control;
- (i) promote or supervise any investigations of historic places or historic areas;
- (j) appoint committees, whether composed of members of the Board or not;
- (k) make grants for the undertaking of studies or investigations approved by the Trust;
- (l) publish books, pamphlets, reports, recommendations, and other information relating to any function of the Trust;
- (m) make grants or advances of money on such terms and conditions as it sees fit (including advances free of interest) to further the functions of the Trust;
- (n) expend any money and generally to undertake any other powers and actions that are necessary for the exercise of or ancillary to any of its functions.

15. Limitations on certain powers of Trust - Except as otherwise provided by this Act, the Trust -

- (a) shall not enter any private land without the prior consent of the owner or lessee; and
- (b) shall not enter any land of the Crown to which the public does not have access without the consent of the body administering the land or the Minister where there is no other appropriate body.

16. Contracts of Trust - (1) Any contract which, if made between private persons, must be by deed shall, when made by the Trust, be in writing under the common seal of the Trust.

(2) Any contract which, if made between private persons must be in writing signed by the parties to be charged therewith shall, when made by the Trust, be either in writing under the seal of the Trust or in writing signed by any person acting on behalf of and under the express or implied authority of the Trust.

(3) The common seal of the Trust shall not be affixed to any document except pursuant to a resolution of the Board, and the execution of any document so sealed shall be attested by 2 members of the Board.

(4) No contract made by or on behalf of the Trust shall be invalid only by reason that it was not made in the manner provided by this section, if it was made pursuant to a resolution of the Board or to give effect to a resolution of the Board.

17. Rules of Trust - The Board may by resolution, make rules not inconsistent with this Act for all or any of the following purposes namely:

- (a) regulating the proceedings of the Board and the conduct of its meetings;
- (b) providing for members, prescribing different classes of members and the subscriptions (if any) payable by members of different classes, and prescribing the manner of keeping a register of members;
- (c) providing for the custody of the property of the Trust and the custody and use of the common seal of the Trust;
- (d) prescribing the duties of the officers and employees of the Trust;
- (e) such other purposes as may be deemed necessary or expedient for duly carrying out the work of the Trust.

18. Appointment of officers and engagement of persons on contract - (1) There shall from time to time be appointed a Director and such other officers and employees as may be necessary for the efficient carrying out of the functions of the Trust.

(2) Subject to subsection (1) of this section, the Trust may from time to time enter into such contracts with persons for services for fixed periods of time and for specified periods as may from time to time be agreed, either generally or in any particular case.

19. Delegation of powers - (1) The Board may from time to time in respect of a specified matter or class of matters, or in respect of a specified area within or beyond the Cook Islands, by writing delegate any of its powers to a member, officer, committee, or agent of the Board.

(2) Notwithstanding subsection (1), the Board shall not delegate to a member, officer, committee, or agent -

- (a) the power of delegation conferred by subsection (1) of this section, unless the Board authorises the member, officer, committee, or agent to whom that delegation is made to delegate that power to other members, officers, committees, or agents; or



- (b) any power to borrow money; or
- (c) the power to classify buildings under section 29; or
- (d) the power to issue a protection notice under section 30; or
- (e) the power to issue a repairs notice under section 35.

(3) Subject to any general or special direction given to him or to it by the Board, a member, officer, committee, or agent to whom any power is delegated under this section may exercise those powers in the manner and with the same effect as if they had been conferred on him or on it directly by this Act and not by delegation.

(4) Every member, officer, committee, or agent purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Board.

### Financial Provisions

20. Funds of Trust - The funds of the Trust shall consist of -

- (a) all money received by the Trust out of money appropriated by Parliament for the purpose;
- (b) all money lawfully contributed or donated or bequeathed to the Trust or otherwise lawfully payable to the Trust;
- (c) all money received by the Trust by way of fees, rent, or otherwise in respect of any real or personal property vested in or controlled by the Trust or in respect of the exercise of any of the functions or powers of the Trust;
- (d) all money received by the Trust from the sale or other disposal of any real or personal property of the Trust;
- (e) all accumulations of money belonging to the Trust.

(2) All money belonging to the Trust shall be deemed public money for the purposes of the Public Money and Stores Act 1987 and shall as soon as possible after the receipt thereof by the proper officer of the Trust, be paid into the Cook Islands Government Account.

21. Accounts and audit - (1) The Trust shall keep in a manner satisfactory to the Financial Secretary, full and correct accounts for all money received and expended by it.

(2) The Trust shall, as soon as possible after the end of every financial year, cause its accounts for that financial year to be balanced, and cause to be prepared a statement of the assets and liabilities of the Trust as at the end of that financial year, together with an account of income and expenditure showing the financial transactions of the Trust for that financial year.

(3) The balance sheet, statement, and other accounts of the Trust shall be submitted to and audited by the external Audit Office of the Cook Islands appointed pursuant to Article 71 of the Constitution.

22. Exemption from income tax and turnover tax - The Trust shall be exempt from the payment of income tax and turnover tax.

23. Annual report - (1) The Trust shall as soon as practicable after the end of each financial year, furnish to the Minister a report of the proceedings and operations of the Trust for that financial year, together with a copy of its accounts for that financial year certified by the Audit Office.

(2) A copy of the report (including the accounts so certified attached thereto) shall be laid before Parliament as soon as practicable after it has been received by the Minister.

24. Fees and travelling allowances - There may be paid to the members of the Board and committees of the Board out of money appropriated by Parliament for the purpose, such remuneration by way of fees, salary, or allowances and expenses as may be prescribed.

## PART II CLASSIFICATION AND PROTECTION OF HISTORIC PLACES AND HISTORIC AREAS

### Buildings

25. Classification of buildings - (1) The Trust may from time to time classify buildings according to their historical significance or architectural quality, as follows -

- (a) those buildings having such historical significance or architectural quality that their permanent preservation is regarded as essential;
- (b) those buildings which merit permanent preservation because of their very great historical significance or architectural quality;
- (c) those buildings which merit preservation because of their historical significance or architectural quality;
- (d) those buildings which merit recording because of their historical significance or architectural quality.

(2) The classification of any building may from time to time be varied or removed.

(3) Neither the Trust nor any committee of the Trust shall consider any proposal regarding the classification of a building under paragraph (a) or paragraph (b) of subsection (1), or the removal of a building from either of those classifications, unless the owner and occupier of the building have at least 3 months previously been notified of the proposal and given the opportunity to make representations thereon, and the representations, if any, shall be considered with that proposal.

(4) As soon as practicable after any classification has been confirmed, varied, or removed, the Trust shall notify the owner and occupier of the building in writing accordingly.

(5) The Trust shall hold a list of all classified buildings, and shall supply copies to all persons interested therein on payment of such fee (if any) as it sees fit.

26. Protection of buildings - (1) Where the Trust has classified a building under paragraph (a) or paragraph (b) of section 25(1) as having such historical significance or architectural quality as to justify its permanent preservation, it may at any time with the approval of the Minister, issue a protection notice declaring that building and all or part of its associated land to be protected for the purposes of this Act.

(2) Where the Trust considers that a protection notice is no longer necessary, it shall cancel the protection notice.

(3) Every protection notice shall continue in effect until such time as it is cancelled by the Trust.

27. Content of protection notice - A protection notice issued by the Trust shall provide that the building subject to the notice shall not be demolished, altered, or extended, and shall specify -

- (a) the legal description of the land that is subject to the protection notice;
- (b) particulars of the building; and
- (c) the conditions and restrictions that apply in respect of the land and the preservation and protection of the building.

28. Work contrary to protection notice prohibited - (1) After any protection notice issued pursuant to section 26 has been served on the owner and occupier of the land, no person shall, without the consent of the Trust, carry out any works for the demolition, alteration, or extension of the building subject to the protection notice, until the protection notice has been cancelled by the Trust.

(2) The Trust may grant or refuse its consent, and in granting consent may impose such conditions, restrictions, and prohibitions as it thinks fit.

(3) Any body or person whose application for consent is refused or is granted subject to conditions, restrictions, or prohibitions may within one month after advice of the decision, appeal to the Minister against the refusal of consent or against any of the conditions, restrictions, or prohibitions subject to which the consent was granted.

(4) In determining any such appeal the Minister may grant or refuse consent or confirm, modify, or revoke any such condition, restriction, or prohibition, as the case may be.

29. Grants in respect of building subject to protection notice - (1) The Trust may on such terms and conditions as it thinks fit, make grants or advances of money or render any other assistance to the owner of a building subject to a protection notice for the protection, maintenance, and preservation of that building.

(2) An owner of a building subject to a protection notice may apply to the Trust for a grant or advance of money or other assistance pursuant to subsection (1), where any refusal of consent or condition, restriction, or prohibition imposed under section 28 -

- (a) involves an applicant in expenses which would not otherwise be incurred; or
- (b) is impracticable for the applicant to undertake on his own behalf.

30. Trust may acquire land in certain circumstances - The Trust may take or otherwise acquire any land on which there is a building subject to a protection notice, as for public purposes under Part X of the Cook Islands Act 1915.

31. Repairs notice - (1) Where a building subject to a protection notice is in need of urgent works in order to be maintained or preserved, the Trust may in writing draw the matter to the attention of the owner of the building, outlining the work that the Trust considers may be necessary, and requesting the owner to advise the Trust of the steps the owner proposes to take in the matter.

(2) If, after the Trust has written to him in accordance with subsection (1) the owner of the building fails to satisfy the Trust that he is doing all that is necessary to maintain or preserve the building, the Trust may with the approval of the Minister, issue a repairs notice to the owner of that building requiring work to be undertaken within 3 months of receipt by the owner of the repairs notice or such other longer period of time as the Trust may specify.

(3) Any approval of the Minister under subsection (2) may be given in respect of any particular case of any class or classes of cases.

(4) The repairs notice shall -

- (a) specify the works which the Trust considers to be urgent for the proper maintenance or preservation of the building; and
- (b) explain that if the works are not undertaken then the Trust may undertake the works and recover the cost from the owner.

(5) The Trust may at any time withdraw a repairs notice; and if it does so it shall forthwith give notice of the withdrawal to the person who was served with the repairs notice.

(6) Where an owner has not undertaken works to be done pursuant to a repairs notice, then the Trust may execute the works specified in the repairs notice, after giving the owner of the building not less than 1 month's notice in writing of its intention to do so.

(7) The Trust may give notice to the owner of the building requiring him to pay, subject to subsection (8), the expenses of any works executed under subsection (6) of this section, and the amount shall be recoverable by the Trust from the owner as a debt.

(8) Within 1 month of the receipt of a notice under subsection (7) the owner may appeal to the Minister on the grounds that -

- (a) some or all of the works were unnecessary for the preservation or maintenance of the building; or
- (b) the amount specified in the notice is unreasonable; or
- (c) the recovery of the amount specified in the notice would cause him hardship -

and thereupon such appeal shall be made and determined by the Minister.

(9) The Minister, in determining such appeal, shall confirm the amount payable by the owner under subsection (7) or reduce it to such amount as it considers fair and reasonable in the circumstances.

32. Power of entry in relation to a building subject to a protection notice - (1) Where any Judge of the High Court is satisfied on oath that there is probable cause to suspect that a building subject to a protection notice is in need of urgent works in order to be maintained or preserved and that the owner of that building has refused to allow an officer or employee of the Trust or any person authorised by the Trust to enter and inspect the building to determine whether or not the owner is doing all that is necessary to maintain or preserve that building, that Judge may, by warrant under his hand, empower any officer or employee of the Trust or person authorised by the Trust to enter that building during the daytime for the purpose of inspecting that building to determine whether or not the owner is doing all that is necessary to maintain or preserve that building, but no such warrant shall continue in force for more than 14 days from the date thereof.

(2) Where a repairs notice has been issued under section 31 and the owner of the building in respect of which the repairs notice was issued has refused to allow any officer or employee of the Trust or any person authorised by the Trust to enter and inspect the building to determine whether or not the works specified in the repairs notice are being undertaken, the Trust may apply to any Judge who may, by warrant under his hand, empower any officer or employee of the Trust or person authorised by the Trust inspecting that building to determine whether or not the works specified in the repairs notice are being or have been undertaken, but no such warrant shall continue in force for more than 14 days from the date thereof.

### Archaeological Sites

33. Register of archaeological sites - (1) The Trust shall establish and maintain a register of archaeological sites and in doing so may make such arrangements with such persons and institutions as it thinks fit for the purpose of obtaining and recording the required information.

(2) Where any archaeological site is entered in or removed from the register, notice shall be given to the owner and occupier of the land on which the archaeological site is situated.

34. Scientific investigation of archaeological sites - (1) Except as provided in this section, it shall not be lawful for any person or institution to undertake any archaeological investigation which may destroy, damage, or modify any archaeological site.

(2) The Trust may conduct a scientific archaeological investigation of any archaeological site or may permit in writing any person or institution to undertake any such investigation (whether or not pursuant to section 36(2) of this Act) subject to such conditions as it thinks fit to impose:

Provided that no such investigation shall be carried out except with the concurrence of the owner and occupier of the land on which the site is situated.

(3) The Trust, in considering any application to conduct any scientific archaeological investigation of any archaeological site, shall take into account the purpose of the investigation and the adequacy or otherwise of the institutional and professional resources available to the applicant to enable the investigation to be satisfactorily carried out.

35. Right of entry - (1) Any Board member, officer or employee of the Trust, or any person authorised by the Trust may enter from time to time during the daytime, on any land with such assistants as he thinks fit, for the purpose of locating, recording, or inspecting any archaeological site, and may do all such things necessary for such locating, recording, or inspecting, including the affixing of any pegs, marks, or poles.

(2) Before entering on the land, the officer or employee, or the person authorised by the Trust, shall, where practicable, give reasonable notice to the owner or occupier of the land of the intention to enter thereon, and shall, if required by the owner or occupier, produce and show the authority under which he claims to enter, or has entered, on the land.

36. Protection of archaeological sites - (1) It shall not be lawful for any person to destroy, damage, or modify, or cause to be destroyed, damaged, or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site, whether or not the site is a registered site.

(2) Notwithstanding subsection (1), any person wanting to destroy, damage, or modify the whole or any part of any archaeological site, shall first apply to the Trust for an authority to do so, and the Trust may grant an authority subject to such conditions as it sees fit, or may decline to grant an authority.

(3) Any officer or employee of the Trust, or any person authorised by the Trust, with such assistants as he thinks fit, may from time to time and during the daytime enter land after giving the owner or occupier thereof 24 hours previous notice of the intended entry, for the purpose of carrying out an investigation for the purpose of obtaining information to decide whether to grant an authority pursuant to subsection (2).

(4) Where the Trust has reasonable cause to believe that work that will destroy, damage, or modify any archaeological site will proceed and where no application for an authority has been made, the Trust may carry out an investigation for the purpose of obtaining information on whether or not an archaeological site exists and whether an authority is necessary, and may recover an amount not exceeding the cost of such investigation from the owner or occupier of the land on which there is believed to be a site.

(5) All archaeological work done pursuant to subsection (3) or subsection (4) shall conform to accepted archaeological practice and the land shall be returned to its former state as near as possible, unless otherwise agreed with the owner.

(6) Where the Trust imposes the condition that a scientific archaeological investigation shall be carried out by or on behalf of the Trust, before any authority is given to any person to carry out such destruction, damage, or modification, that person shall pay the Trust an amount equal to the cost of carrying out the investigation, except where the Trust is satisfied that such destruction, damage, or modification is solely for farming or agricultural purposes.

(7) In the case of hardship or other special circumstances, the Trust may reduce the amount payable under any subsection of this section to such amount as it considers equitable or waive the requirement altogether.

37. Rights of appeal - (1) There shall be a right of appeal by any person directly affected against any decision of the Trust or any condition imposed by it under section 34 or section 40 of this Act to the Minister, and the Minister may, after seeking such advice (if any) as he considers necessary, confirm, vary, or reverse the decision so made or condition so imposed, and the decision made or the condition imposed by the Trust shall, unless confirmed by the Minister, be deemed for the purposes of this Act to be modified accordingly.

(2) Every decision of the Minister under subsection (1) with regard to any appeal shall be final.

(3) Any appeal under this section shall be forwarded to the Minister within 1 month after the date on which the decision of the Trust or the conditions imposed by it are made known to the appellant.

### Historic Areas

38. Historic areas - (1) Where the Trust considers an area has historical value it may classify it as a historic area and such areas may be further classified into precincts or conservation areas or any other category as the Trust sees fit.

(2) Where the Trust classifies an area or any part of an area as an historic area it shall give notification in writing thereof, and of any other category into which it is further classified, to the local authority (if any) in whose district the historic area is situated.

(3) The Trust may recommend proposals to any appropriate body or person for the preservation and enhancement of any historic area.

(4) Where any area is for the time being classified as a historic area, the local authority in whose district the historic area is situated shall take into account the desirability of preserving or enhancing its character or appearance.

(5) The classification of an area as a historic area may from time to time be varied or removed and, as soon as possible after that variation or removal, the Trust shall notify in writing the local authority in whose district the historic area is situated.

### Traditional Sites

39. Traditional sites - (1) An application may be made to the Trust to have a place or site declared to be a traditional site.

(2) If the Trust is satisfied that the place or site is or may be a traditional site, it shall consider the importance of the place or site and the action (if any) that should be taken to protect it, and may -

(a) refer the application to the Minister who shall refer the matter to the House of Ariki with the recommendation that the application be considered;

(b) refer the application to the Koutu Nui or any other appropriate authority who shall consider the importance of the place or site and what action, if any, should be taken in regard to the place or site.

(3) The House of Ariki, Koutu Nui or other authority, on receiving an application referred to it under subsection (2), shall advise the Trust as to whether or not in its opinion the place or site should be set aside as a traditional site and the Trust shall have regard to that advice.

(4) Where the Trust considers that the boundaries of a traditional site can be sufficiently defined, it may recommend proposals to any appropriate body or person for the recognition and preservation of the traditional site.

(5) Where any place or site is declared a traditional site, the territorial authority in whose district the traditional site is situated shall take into account the desirability of protecting or preserving the traditional site.

### General Provisions

#### 40. Registration of interests - (1) Where -

(a) the Trust is satisfied that any archaeological site, whether registered or not, is of sufficient cultural or historical importance; or

(b) a building is subject to a protection notice;

the Trust shall notify the Registrar of the Land Division of the High Court and the Registrar shall note the certificate of title of any land affected accordingly.

(2) Where the notice affects part only of the land in any certificate of title, the Registrar may call for such plans or other documents as he may require.

(3) Where the Trust is satisfied that it is no longer necessary for any archaeological site to continue to be so noted, the Trust shall notify the Registrar of the district concerned accordingly, and the Registrar shall thereupon cancel the note on every relevant certificate of title.

(4) Where a protection notice is cancelled, the Trust shall notify the Registrar accordingly, and the Registrar shall thereupon cancel the note on every relevant certificate of title.

41. Agreements for preservation of historic places - (1) If the Trust is satisfied that any place should be preserved and maintained as an historic place, and that this may be achieved without acquiring the ownership of the place, or, as the case may be, the lessee's interest in the place, it may treat and agree with the owner or lessee for the execution of a historic places agreement to provide for the protection, preservation, and maintenance of that place as a historic place, subject to such terms and conditions as the parties think fit, including provision for public access where appropriate.

(2) In the case of any private land, where the person with whom the Trust is treating is a lessee of the land, the consent of the lessor of the land shall be required to the execution of the agreement, and any such consent may be given subject to the inclusion in the agreement of any conditions that the person giving his consent thinks necessary.

(3) The effect of a historic places agreement shall be to require the land to which it applies to be maintained as an historic place in accordance with the terms of the agreement and subject always to those terms in accordance with the other provisions of this Act relating to land to which historic places agreements apply.



(4) A historic places agreement may notwithstanding section 469 of the Cook Islands Act 1915, be executed to have effect in perpetuity or for any specified term, according to the nature of the interest in land to which it applies and the terms and conditions of the agreement between the Trust and the owner, or as the case may be, the lessee.

(5) Notwithstanding any rule of law or equity to the contrary, every historic places agreement shall run with and bind the land that is subject to the burden of the agreement and shall be deemed to be an alienation of the land for the purposes of the Cook Islands Act 1915 and the Land (Facilitation of Dealings) Act 1970.

(6) The Registrar, on application by the Trust, shall enter in the appropriate register relating to the land that is the subject of the burden of the agreement, a notification thereof.

(7) Where the burden of the agreement applies to land comprising part of the land in a certificate of title, the Registrar may require the deposit of a survey plan.

(8) Where the Trust is satisfied that it is no longer necessary for any historic places agreement to continue to be so noted, the Trust shall notify the Registrar accordingly, and the Registrar shall thereupon cancel the note on every relevant certificate of title.

(9) The parties to the historic places agreement may by consent in writing agree to a particular dealing as to the whole or any part of the land affected, notwithstanding the existence of the agreement.

### **PART III**

#### **GENERAL PROVISIONS**

42. Offences - (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 and to a further fine not exceeding \$100 for every day during which the offence continues who -

- (a) wilfully destroys, damages, or modifies, or causes to be destroyed, damaged, or modified any historic place, property, or thing vested in or under the control of the Trust without the authority of the Trust or any person or body authorised by the Trust in that behalf;
- (b) wilfully destroys, damages, or modifies, or causes to be destroyed, damaged, or modified any archaeological site or demolishes, alters, or extends or causes to be demolished, altered, or extended any building subject to a protection notice, without the authority of the Trust or any person or body authorised by the Trust in that behalf pursuant to section 28;
- (c) is in breach of any condition imposed by the Trust under section 34 or section 38.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 and to a further fine not exceeding \$50 for every day during which the offence continues who, without the authority of the Trust or any person or body authorised by the Trust in that behalf -

- (a) lights any fire on any land vested in or under the control of the Trust otherwise than in accordance with any regulation made under this Act in respect of such land; or

- (b) wilfully lights or causes or permits to be lit on any land, other than land vested in or under the control of the Trust, a fire which he knows or ought to have known to be likely to spread into, and which spreads into and damages and destroys, any property or thing vested in or under the control of the Trust; or
- (d) unlawfully alters, obliterates, defaces, pulls up, removes, or destroys any boundary mark, plaque, sign, or poster on any land vested in or under the control of the Trust; or
- (d) alters, obliterates, defaces, pulls up, removes, or destroys any plaque or sign supplied and erected by the Trust on any land or building, other than any land or building vested in or under the control of the Trust, and where the consent of the owner of the land or building has not first been obtained; or
- (e) wilfully takes or removes, or causes to be taken or removed, from any land or building vested in or under the control of the Trust, any property or thing vested in or under the control of the Trust; or
- (f) receives any property or thing vested in or under the control of the Trust knowing the same to have been removed unlawfully from any land or building vested in or under the control of the Trust; or
- (g) restrains, or in any way interferes with any officer or employee of the Trust or any person authorised by the Trust who is claiming to enter, or is entering, or has entered a building pursuant to a warrant issued under section 32; or
- (h) restrains, or in any way interferes with any officer or employee of the Trust or any person authorised by the Trust who is lawfully claiming to enter, or is entering, or has entered on any land pursuant to section 35(1) of this Act or removes any peg, mark, or pole affixed by any such officer or person or who interferes with or prejudices any authorised investigation which is being carried out by any such officer or person.

(3) Any person convicted of an offence under this Act in relation to an historic place may, if the Court thinks fit, be ordered to pay, in addition to any penalty for which he is liable for the offence, a sum not exceeding the cost of repairing or restoring the destruction, damage, or modification done to the historic place as assessed by the Court.

43. Offender to give name and address - (1) Where any person is found offending against this Act, it shall be lawful for any officer or employee of the Trust or any person authorised in writing in that behalf by the Trust or any employee of the Ministry of Cultural Development authorised in writing in that behalf by the Secretary for that Ministry or any constable, to require the offender forthwith to desist from the offence and also to give his name and address.

(2) If the offender, after being so required, fails to give his name or address, or gives a false name or address, or wilfully continues the offence, he commits a further offence against this Act.

(3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$500.

(4) The Trust may apply to the Court for a writ of injunction to restrain any person other than the Crown from breach of any duty or obligation imposed upon him by this Act, which he has threatened or already commenced to commit.

44. Time within which information may be laid - Any information in respect of any offence against this Act or any regulation made under this Act may be laid at any time within 12 months from the time the offence was committed.

45. Buildings, etc., erected without approval of Trust - All buildings, signs, hoardings, or apparatus erected on any land vested in or under the control of the Trust without the consent in writing of the Trust, shall be deemed to be forfeited to the Trust and shall be disposed of by the Trust in such manner as it thinks fit.

46. Members and employees not in service of Crown - No person, by reason only that he is a member of the Board or a member of a committee of the Board or a contract worker employed pursuant to section 18(2), shall be deemed to be employed in the service of the Crown for the purposes of the Public Service Act 1975 or the Government Superannuation Fund Act 1956.

47. Persons may transfer land to Trust - Notwithstanding anything in any enactment, any person may, without further authority than this section, convey or transfer any land (not being a national park or public reserve under any other enactment) to the Trust and the Trust may accept such land to be held for the purposes of this Act.

48. Rights to compensation preserved - Nothing in this Act shall affect the right of any person from whom any property or any right or interest in any property is taken possession of or acquired compulsorily, from any right that person may have pursuant to Article 40 or Article 64(1)(c) of the Constitution -

- (a) to payment within a reasonable time of adequate compensation therefor; and
- (b) to a right of access for the determination of his interest in the property and the amount of compensation, to the High Court; and
- (c) generally accorded to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

49. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made in respect of any land or historic place vested in the Trust or under its control -

- (a) prescribing rules to be observed by any person entering upon such land or place;

- (b) prohibiting or controlling the lighting of fires on such land or in such place;
- (c) prohibiting or controlling the taking of any animal or vehicle upon such land, and prescribing rules to be observed by any person taking any animal or vehicle upon such land;
- (d) providing generally for control of the use, management, and better preservation of such land or historic place, and of any erection or thing thereon or therein;
- (e) prescribing the remuneration of members of the Board and committees;
- (f) prescribing offences and penalties for such offences not exceeding \$1,000.

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This Act is administered by the Ministry of Cultural Development