



New Zealand
Historic Places Trust *Pouhere Taonga*

New Zealand Historic Places Trust Prosecution Policy

**Prepared in accord with report on Government
Prosecuting Services 2012**

INTRODUCTION

One of the key objectives of the New Zealand Historic Places Trust (the **NZHPT**) is to promote the protection and preservation of New Zealand's historical and cultural heritage. As part of this objective, the NZHPT has a regulatory role in respect of archaeological sites, including sites of importance to tangata whenua.

The Historic Places Act 1993 provides the NZHPT with certain enforcement powers to perform this role effectively. This policy sets out how the NZHPT exercises those powers to pursue its objectives.

The purpose of this policy is to provide general guidance and is made available as required by the Report on Government Prosecution services by J Spencer. It does not provide a binding set of rules about how the NZHPT will exercise its enforcement powers in particular cases. The touchstone in any case will always be whether the proposed exercise of enforcement powers is likely to further the NZHPT's objectives.

NZHPT'S ENFORCEMENT TOOLBOX

The NZHPT's enforcement toolbox includes:

- The publication of pamphlets, brochures, and other written material to assist organisations and individuals in complying with the Act;
- Site visits and site inspections;
- Dialogue, training or correspondence with parties where a breach of the Act is suspected;
- The execution of heritage covenants; and
- Prosecution of offences in the District Court.

APPROACH TO USE OF ENFORCEMENT POWERS

The NZHPT is guided in its enforcement role by the following enforcement principles:

Proportionality: The NZHPT's enforcement action will reflect its assessment of the seriousness of the breach, including the nature and historical significance of the relevant site, the extent of any damage caused by the breach, the previous record of the person or organisation in respect of the damage of archaeological sites, the level of knowledge of the breach, and the attitude towards the breach.

Consistency: This means treating like cases alike. It does not mean that every case will be treated in the same way; every situation will have its own distinguishing features.

Accountability: The NZHPT undertakes its work on behalf of all New Zealanders, including future generations. Sometimes enforcement action will be informed by legitimate public expectations of accountability.

Prioritisation: The NZHPT may target certain types of offending. The cost of potential enforcement action, relative to the seriousness of the breach, is one relevant consideration.

SOLICITOR-GENERAL'S PROSECUTION GUIDELINES

The Solicitor-General's Prosecution Guidelines provide a framework for the NZHPT's decisions to prosecute under the Act.

Accordingly, the NZHPT will only initiate a prosecution if it is satisfied that:

- the evidence able to be put before the court provides a reasonable prospect of conviction; and
- the prosecution is required in the public interest.

Prosecution is more likely to be required in the public interest when one or a number of the following factors apply:

- The breach is serious (taking into account the factors listed above under the “proportionality” heading);
- The breach is premeditated or blatant;
- The breach relates to a site of significance to iwi, hapu, or other interested groups;
- Breaches of the relevant sort are prevalent (either nationwide or in the particular area);
- There are previous relevant breaches; or
- The breach is likely to be continued or repeated.

THE PROSECUTION PROCESS

The NZHPT will generally take the following steps as part of its prosecution process under the Act:

- Investigation of the suspected breach;
- Correspondence with the person suspected of breaching the Act, during which an opportunity is provided to respond to the allegations;
- Obtaining external legal advice about the merits of prosecution; and
- Where appropriate, laying charges in the District Court.

PUBLICITY

The NZHPT will generally publicise the outcome of enforcement actions for the purposes of education and deterrence (unless such publicity is not in the public interest or is not allowed by law).

ADDITIONAL GUIDANCE

The NZHPT wants individuals and organisations to operate effectively and lawfully when dealing with New Zealand’s historic heritage. HPT encourages stakeholders to:

- Access the NZHPT’s information pamphlets, legislation, and other relevant information;
- Work with the NZHPT’s Regional Archaeologists and other staff to ensure that obligations are complied with;
- Contact the NZHPT as soon as possible if a breach of obligations is suspected; and
- If there has been a breach, discuss potential remedial action as early in the process as possible.