



New Zealand  
**Historic Places Trust** *Pouhere Taonga*

# **SUSTAINABLE MANAGEMENT OF HISTORIC HERITAGE**

## **Guide No. 8**

### **Overseas Investment Act 2005**



3 August 2007

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# **Sustainable Management of Historic Heritage Guidelines**

## **Guide No.8**

### **Overseas Investment Act 2005**

Author: Robert McClean

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While the NZHPT acknowledges the contribution of other agencies and organisations, the opinions and views expressed in this guide are those of the NZHPT only.

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## **Introduction: The Overseas Investment Act 2005**

New Zealand has many heritage places, areas and significant landscapes. These places may include registered historic places and wahi tapu under the Historic Places Act 1993, archaeological sites, historic homesteads, and places and areas of significance to Maori.

The purpose of the Overseas Investment Act 2005 is to acknowledge that it is a privilege for overseas persons to own or control 'sensitive' New Zealand assets. This is achieved by requiring consent for overseas persons to make an overseas investment in sensitive land (as defined in the Act) and imposing conditions on these investments.

This guidance is designed for overseas persons looking to invest in New Zealand land and outlines procedures in the legislation relating to historic heritage and the NZHPT.

This document is designed to complement guidance prepared by the Overseas Investment Office, in particular, *Guideline to Enhancing and Protecting Historic Heritage Sites*, 25 August 2005. A copy of this guideline is available from the LINZ website:  
<http://www.oio.linz.govt.nz/publications.htm>

## **Protecting or enhancing historic heritage**

Historic heritage is a broad term used in New Zealand to describe places and areas of heritage value. A place or area of historic value may be limited to a small site, a large place or an entire landscape. Historic heritage is defined in the Overseas Investment Act 2005 as follows:

Historic heritage means ‘those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

- (i) archaeological:
- (ii) architectural:
- (iii) cultural:
- (iv) historic:
- (v) scientific:
- (vi) technological; and

includes –

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Maori, including wahi tapu; and
- (iv) surroundings associated with the natural and physical resources.

Historic heritage may involve a wide variety of natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures. Examples of historic heritage include:

- Registered historic places, historic areas, wahi tapu, or wahi tapu area under the Historic Places Act 1993.
- Heritage items listed in district or regional plans prepared under the Resource Management Act 1991 (RMA).
- Archaeological sites.
- Actively managed historic places and other historic resources protected under the Conservation Act 1987.
- Historic reserves, gardens and other heritage places protected under the Reserves Act 1977 or the Local Government Act 2002.
- Maori reservations and traditional Maori buildings, including those set aside for historic and cultural purposes under the Te Turi Whenua Maori Land Act 1993 or other legislation.
- Places and areas of importance to tangata whenua (Maori tribes)
- Historic cemeteries and memorials.

- Properties managed for heritage purposes by agencies such as the NZHPT, government departments and local authorities.
- Places and areas that are subject to a heritage order, heritage covenant or other protective covenant.
- Places and areas considered to have heritage value using best practice criteria and research, including places and areas identified within national or district heritage inventories or heritage policy.

### **Archaeological sites**

New Zealand has many archaeological sites which provide evidence of historical occupation and use going back many hundreds of years. The majority of archaeological sites are associated with Maori occupation and use. These sites may include village sites, pa (fortifications), ovens, midden (rubbish heaps), and gardening areas. There are also other historic archaeological sites associated with early European settlement and other activities such as goldmining sites, whaling stations, timber milling, harbours, and early homesteads. Some archaeological sites are spread over a wide landscape. Information about archaeological sites can be obtained from the New Zealand Archaeological Association: <http://www.nzarchaeology.org/>.

Under section 2 of the Historic Places Act 1993, an archaeological site is defined as any place in New Zealand that either – was associated with human activity that occurred before 1900; or is the site of the wreck of any vessel where that wreck occurred before 1900; and – is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand. Under section 9(2) of the Historic Places Act 1993, the NZHPT may declare any post-1900 site to be covered by the archaeological site definition in section 2 by notice in the *Gazette*.<sup>1</sup>

Section 10 of the Historic Places Act 1993 directs that an authority is required from the New Zealand Historic Places Trust if there is “reasonable cause” to suspect an archaeological site (recorded or unrecorded), may be modified, damaged or destroyed in the course of any activity. An authority is required for such work whether or not the land on which an archaeological site may be present is designated, or a resource or building consent has been granted. Information about archaeological authorities can be obtained from the NZHPT: [http://www.historic.org.nz/heritage/archsites\\_intro.html](http://www.historic.org.nz/heritage/archsites_intro.html)

The following table indicates where information may be found about different types of historic heritage.

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<sup>1</sup> In 2004, the NZHPT declared the Napier Prison Wall an archaeological site under section 9(2) of the Historic Places Act 1993.

<b>Examples of Historic Heritage – Information Sources</b>	
Registered historic places, historic areas, wahi tapu, or wahi tapu area	New Zealand Historic Places Trust (NZHPT)
Listed heritage items, regional and district plans	Local authorities
Recorded archaeological sites	New Zealand Archaeological Association
Actively managed historic places and other historic resources, Conservation Act 1987	Department of Conservation
Historic reserves and gardens Reserves Act 1977, Local Government Act 2002	Local authorities Department of Conservation
Maori reservations, traditional Maori buildings	Maori Land Court Te Puni Kokiri Iwi authorities
Places and areas of importance to tangata whenua	Iwi authorities
Historic cemeteries and memorials	Ministry for Culture and Heritage Local authorities
Heritage properties	Ministry for Culture and Heritage NZHPT Local authorities
Heritage orders and covenants	Ministry for the Environment NZHPT
Places and areas considered to have heritage value using best practice criteria and research, including places and areas identified within national or district heritage inventories or heritage policy.	Local authorities Rail Heritage Trust of NZ

**Question. How do I know if there are historic heritage places and areas on land that I am interested in purchasing?**

**Answer.** At the early stages of purchasing a property in New Zealand, a prospective owner should ensure all available information is obtained about the property and historic heritage. This will involve contacting the relevant territorial authorities and obtaining a Land Information Memorandum (LIM). The New Zealand Historic Places Trust and the New Zealand Archaeological Association should also be contacted in relation to registered places and archaeological sites. There may be knowledge about other heritage places on the land that is held by tangata whenua (Maori tribes) or archaeological sites that have not been identified and recorded.

## **Sensitive land and historic heritage**

Section 10(1)(a) of the Overseas Investment Act 2005 provides that consent from the New Zealand Government is required for an overseas person to make an overseas investment in sensitive land. Schedule 1 of the Act defines when land is sensitive. Sensitive land includes:

- Land larger than 0.4 hectares subject to a heritage order, or a notice of requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993.
- A historic place, historic area, wahi tapu, or wahi tapu area larger than 0.4 hectares that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993.

In addition, land is sensitive if it is greater than 0.4 hectares and adjoins:

- Any scientific, scenic, historic or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation (DOC).
- A Maori reservation to which section 340 of the Te Ture Whenua Maori Act 1993 applies
- Land subject to a heritage order, or a notice of requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993.
- A historic place, historic area, wahi tapu, or wahi tapu area larger than 0.4 hectares that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993.

Note that this list only includes sensitive land criteria relating to historic heritage. For the full sensitive land criteria, Schedule 1 of the Overseas Investment Act 2005 should be consulted.

In considering whether or not to grant consent to an overseas investment transaction involving sensitive land, the relevant Ministers must have regard to the criteria in section 16 of the Act. The Ministers must grant consent if they are satisfied that all the criteria in section 16 are met. If the Ministers are not satisfied that all of the criteria in section 16 have been met, the Ministers must decline to grant consent.

Unless an overseas person is a New Zealand citizen, ordinarily resident in New Zealand, or intends to reside in New Zealand indefinitely, the Ministers must be satisfied that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) as determined by the Ministers under section 17 of the Act. If land proposed to be acquired is non-urban and more than 5 hectares, the Ministers must determine that the benefit will be or is likely to be substantial and identifiable.

Benefit to New Zealand is determined by the relevant Ministers as guided by section 17. This section outlines a range of factors for assessing benefit such as the creation of job opportunities, greater efficiency or productivity, additional investment and enhanced domestic services.

Factors for assessing benefit outlined in section 17 also include natural heritage factors such as the protection and enhancement of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Section 17(2)(b) states 'whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, for example, any 1 or more of the following:

- i. conditions for conservation (including maintenance and restoration) and access:
- ii. agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993:
- iii. agreement to execute a heritage covenant:
- iv. compliance with existing covenants.'

## **Methods to protect and enhance Historic Heritage**

The protection and enhancement of historic heritage is a national priority. To achieve protection and enhancement, a conservation approach should be adopted that is based on legislation and best practice guidance, including the principles of the Historic Places Act 1993, the *ICOMOS New Zealand Charter for the Conservation of Places of Cultural Value*, 1993, and the *Policy for Government Department's Management of Historic Heritage 2004*.<sup>2</sup> The NZHPT promotes principles for appropriate subdivision, use and development as part of this guidance series (see Discussion Paper No.1 Principles and Issues).

### **Registered historic places, historic areas, wahi tapu and wahi tapu areas**

The Historic Places Act 1993 provides for the establishment and maintenance of a Register of historic places, historic areas, wahi tapu and wahi tapu areas. The purposes of the Register are:

- a To inform members of the public about historic places, historic areas, wahi tapu, and wahi tapu areas:
- b To notify owners of historic places, historic areas, wahi tapu and wahi tapu areas where necessary for the purposes of this Act:
- c To assist historic places, historic areas, wahi tapu, and wahi tapu areas to be protected under the Resource Management Act 1991.<sup>3</sup>

The Register is maintained by the NZHPT and is made available to the public from the regional and area offices of the NZHPT. As at April 2007, there were 5,419 items on the Register. These entries comprise a large variety of heritage places including historic buildings, historic roads, gardens, gold mining sites, whaling stations, pa sites, and recorded archaeological sites. Information about the Register is available from the NZHPT website: [www.historic.org.nz](http://www.historic.org.nz)

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<sup>2</sup> Ministry for Culture and Heritage, *Policy for Government Department's Management of Historic Heritage*, 2004

<sup>3</sup> Sec 22(2) Historic Places Act 1993

It is advised that inquiries relating to overseas investment consult hard copies of the Register. These are held at regional and area offices of the NZHPT and by all local authorities. An additional option is to purchase a copy of the Register if you are a regular user. Copies of the Register are available for purchase at cost by contacting the Registrar, NZHPT, PO Box 2629, Wellington.

Registration is a public procedure that involves the public notification of proposed registrations and the opportunity for public submissions. Notice in writing of proposed registrations is provided to the landowners, every person having a registered interest in the place and the relevant local authority. In the case of wahi tapu, the appropriate iwi is also provided a notice in writing.

As indicated above, information about the Register is available from the NZHPT website: [www.historic.org.nz](http://www.historic.org.nz)

***Question. What if the land I am interested in purchasing contains a registered historic place, wahi tapu area, wahi tapu, or wahi tapu area?***

***Answer. If the land you are interested in purchasing contains a registered historic place, historic area, wahi tapu, or wahi tapu area, then the New Zealand Historic Places Trust should be contacted early in the process. While registration does not provide legal protection, it is likely the place will be listed in a regional or district plan under the Resource Management Act 1991 and the NZHPT would be treated as an affected party. It pays to discuss any development proposals with the NZHPT at the early planning stages.***

***Question. How do I go about arranging for registration to promote the values of a significant heritage place?***

***Answer. Any person may nominate a place for registration as a historic place, historic area, wahi tapu or wahi tapu area under the Historic Places Act 1993. This will involve completing a nomination form and providing information about the values of the place. Contact the NZHPT or see the NZHPT's website: [www.historic.org.nz](http://www.historic.org.nz)***



D'Urville Island, Marlborough Sounds, 2004.

Islands such as D'Urville contain many archaeological sites and places and areas of significance to Maori. Photo, R McClean, NZHPT

#### **NZHPT Contact Details**

**Northland Area Office** - *Office for Northland Region*  
62 Kerikeri Road (above ANZ Bank), PO Box 836, KERIKERI  
Ph: 09 407 4443; Fax: 09 407 3454  
Email: [spark@historic.org.nz](mailto:spark@historic.org.nz)

**Mid-Northern Office** - *Office for Auckland Region, including Thames-Coromandel and Hauraki*  
Premier Buildings, 2 Durham Street East, Private Bag 105-291, AUCKLAND  
Phone 09 307-8896, Fax 09 303-4428  
Email: [infonorthern@historic.org.nz](mailto:infonorthern@historic.org.nz)

**Lower Northern Area Office** - *Office for Gisborne, Waikato (excluding Thames-Coromandel and Hauraki) and Bay of Plenty regions*  
28 Wharf Street, PO Box 13339, TAURANGA  
Ph: 07 5781219; Fax: 07 5781141  
Email: [infolowernorthern@historic.org.nz](mailto:infolowernorthern@historic.org.nz)

**Central Region Office** - *Office for Taranaki, Hawkes Bay, Manawatu-Wanganui, Wellington regions and Marlborough, Nelson and Tasman districts*  
Tadix House, Level 1, 1 Blair Street, P O Box 19173  
Wellington  
Ph: 04 801 5088, Fax 04 802 5180  
Email: [infocentral@historic.org.nz](mailto:infocentral@historic.org.nz)

**Canterbury/West Coast office** - *Office for Canterbury and West Coast regions, including Kaikoura district*  
1<sup>st</sup> Floor Gough House, 90 Hereford Street, PO Box 4403, CHRISTCHURCH  
Phone 03 377 3968, Fax 03 374 2433  
Email: [infosouthern@historic.org.nz](mailto:infosouthern@historic.org.nz)

**Dunedin Area Office** – *Office for Otago and Southland regions*  
Level 4109 Princes Street PO Box 5467, DUNEDIN

## **Agreement to execute a heritage covenant and compliance with existing covenants**

Covenants are a restriction on the use of land and are registered pursuant to the Land Transfer Act 1952. Covenants can be an excellent method of protecting a site for future generations. Their success depends to a large extent on the good will and understanding of the current and future landowners. Different types of covenants include:

1. Heritage Covenants (sec 6 Historic Places Act 1993)
2. Open Space Covenants (sec 22 QE II National Trust Act 1977)
3. Protective Covenants (sec 18 Crown Forest Assets Act 1989)
4. Conservation Covenants (sec 77 Reserves Act 1977/sec 27 Conservation Act 1987)
5. Protected Private Land Agreements (sec 76 Reserves Act 1977)
6. Nga Whenua Rahui Kawenata (sec 77A Reserves Act 1977/sec 27A Conservation Act 1987)

Heritage covenants, under the Historic Places Act 1993, are designed to provide for the protection, conservation and maintenance of any historic place, historic area, wahi tapu and wahi tapu area. Heritage covenants are prepared to meet the needs of particular properties and owners. They are a voluntary legal agreement between the NZHPT and the landowner which binds all subsequent owners of the land. All proposals to enter into a heritage covenant require the approval of the NZHPT Board.

Heritage covenants provide for the long-term protection of a heritage place by regulating activities such as repair and maintenance, alterations and additions, relocation, demolition, new buildings and subdivision. Normally these activities involving a heritage place would require the prior approval of the NZHPT under the provisions of a heritage covenant. Heritage covenants can also provide for chattel management and public access.

To obtain further information about heritage covenants, contact the Legal Team at the NZHPT.

Other types of covenants can provide significant protection to historic heritage. For example, open space covenants, prepared under section 22 QE II National Trust Act 1977, can provide protection to a large variety of historic places, especially in the rural environment. Information about open space covenants can be obtained from the QE II National Trust: <http://www.nationaltrust.org.nz/>

### ***Question. What if the land I am interested in purchasing contains a heritage covenant?***

***Answer.*** *If the land you are interested in purchasing contains a heritage covenant, then the New Zealand Historic Places Trust should be contacted early in the process. A copy of the heritage covenant should be obtained. This covenant will contain restrictions on the use of the land and may provide for repair and maintenance works. It may also provide for public access provisions in respect of the land.*

***Question. How do I go about arranging for heritage covenant to protect the values of a significant heritage place?***

***Answer.*** Any owner or lessee of land containing a historic place, historic area, wahi tapu or wahi tapu area may approach the NZHPT to negotiate a heritage covenant. The process will require NZHPT Board approval. Contact the NZHPT or see the NZHPT's website: [www.historic.org.nz](http://www.historic.org.nz)

### **Conditions for conservation (including maintenance and restoration) and access:**

Under section 25 of the Overseas Investment Act 2005, the Minister may grant consent subject to conditions. As outlined in section 17, these consent conditions may relate to the conservation (including maintenance and restoration) of historic heritage and provisions for access.

There are a wide range of conditions that may relate to conservation of and access to historic heritage. The conditions should be designed for the particular consent on a case-by-case basis. Examples of possible consent conditions for historic heritage include:

- Preparation of a conservation plan (see below) and for works to proceed according to a conservation plan.
- Preparation of specialist reports, such as an archaeological assessment or engineering assessment.
- Repair, maintenance and restoration works.
- Structural repairs, including earthquake strengthening.
- Matters relating to materials and design (i.e. specifying a particular type of roofing material).
- Matters relating to standards of workmanship.
- Heritage covenants (see below).
- Supervision by a conservation architect or other heritage professional.
- Use of heritage colour schemes.
- Monitoring.
- Consultation with heritage organisations such as the NZHPT.
- Provision of interpretation and signage.
- Public access strips.

In relation to archaeological sites, conditions of consent to overseas ownership could include restoration works such as fencing, tree planting, site stabilisation, and vegetation management.

Any restoration works should be signalled in the archaeological assessment and discussed in detail with the regional archaeologist of the NZHPT. An archaeological authority from the NZHPT may be required for restoration works.

Conditions relating to public access to historic places require careful consideration. Issues such as visitor management, security and interpretation should be managed to ensure any access provision does not result in damage to historic places.

## Heritage orders

Heritage orders are provisions made in district plans to give effect to a requirement by a heritage protection authority made under the Resource Management Act 1991 (RMA). The purpose of a heritage order is to protect a place of heritage significance. When land is subject to a heritage order, the prior written consent of the relevant heritage protection agency (usually the NZHPT or a local authority) is required to do anything that would wholly or partly nullify the effect of a heritage order including –

- Undertaking any use of land
- Subdividing any land.
- Changing the character, intensity, or scale of any use of any land<sup>4</sup>

Section 5 of the Historic Places Act 1993 empowers the NZHPT to give notice of a requirement for a heritage order in accordance with the RMA to protect:

- (a) The whole or part of any historic place, historic area, wahi tapu or wahi tapu area; and
- (b) Such area of land (if any) surrounding that historic place, historic area, wahi tapu, or wahi tapu area is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of it.

Information about heritage orders is available from the Ministry for the Environment website: <http://www.mfe.govt.nz/rma/central/heritage/index.html>

Also, the NZHPT maintains a list of heritage orders issued under the Historic Places Act 1993 as part of its Register (see details above).

The heritage order procedures are very closely related to designations. Information about designations is available from the Quality Planning website:

<http://www.qualityplanning.org.nz/plan-development/requirements.php>

***Question. What if the land I am interested in purchasing is subject to a heritage order?***

***Answer. If the land you are interested in purchasing is subject to a heritage order, then the relevant heritage protection authority should be contacted early in the process to see what restrictions to the land apply. Normally, the prior permission of the heritage protection authority is required before any changes are made to the land such as earthworks or alterations and additions.***

***Question. How do I go about arranging for a heritage order to protect a significant heritage place?***

***Answer. If you wish to arrange for a heritage order, you can contact any heritage protection authority (for example, the NZHPT or a territorial authority). Information will need to be prepared in relation to the significance of the place, the extent of its boundaries and the restrictions that will apply. Any body corporate having an interest in the***

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<sup>4</sup> Section 193, RMA 1991

*protection of any place may apply to the Minister for the Environment to become a heritage protection authority.*



Historic Stone walls, Highcliff Farm, Otago, June 2005. Photo, K McClean

### **Historic reserves**

Historic reserves are established under the Reserves Act 1977 'for the purpose of protecting and preserving in perpetuity places, objects and natural features that are of historic, archaeological, cultural, educational or other special interest.'<sup>5</sup> Examples of historic reserves include Government Buildings Historic Reserve, Wellington; Kawau Island Historic Reserve, Hauraki Gulf; North Head Historic Reserve, Auckland; Cook Landing Site National Historic Reserve, Gisborne; and Bendigo Historic Reserve, Otago.

Information about the Reserves Act 1977 is available from the Department of Conservation website and inquiries about historic reserves should contact the Department of Conservation.<sup>6</sup>

### **Maori reservations**

Maori reservations are established under Part 17 of the Te Ture Whenua Maori Act 1993. They may be issued for a range of purposes, including for cultural, historical or scenic interests. They may also provide for a wahi tapu, being a place of special significance according to tikanga Maori.

Maori reservations are established by the Chief Executive of Te Puni Kokiri on the recommendation of the Maori Land Court/Te Kooti Whenua Maori. Information about Maori reservations can be obtained from the Maori Land Court:

<http://www.justice.govt.nz/maorilandcourt/reservations.htm>

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<sup>5</sup> Section 18, Reserves Act 1977

<sup>6</sup> <http://www.doc.govt.nz/templates/page.aspx?id=41983>

Information about Maori land generally is also available from Te Puni Kokiri: [www.tpk.govt.nz](http://www.tpk.govt.nz)

## **Conservation Plans<sup>7</sup>**

A conservation plan sets out a general strategy for the long life of a place. It is a document that contains all the reasonably accessible information that can be found about a heritage place.

A conservation plan would normally include (where appropriate) title information about the land; maps, sketches and plans; recent photographs; original architectural drawings and specifications; materials used in its construction; historical photographs; information about the people who designed, built and used the building and changes to the place over time. From this base of information, an assessment of the reasons why the heritage place is important should be undertaken. For buildings and structures, a hierarchy of importance of the various parts of it can be established; this is particularly relevant if the place has been added to and altered over a long period of time. Policies to ensure the preservation of the essential qualities of the place, and for the future development that define the limits of acceptable change, can then be established.

### *Content*

Typically, a conservation plan will include:

- A history of the heritage place and people associated with it.
- Description of the place.
- Assessment of significance, both of the place as a whole and in its various components, features or spaces.
- Matters that should be taken into account in the conservation policy, including such things as the district plan, Building Act 2004, and Historic Places Act 1993 requirements.
- Conservation policy. By taking into account a) the heritage significance of the place, b) all other factors affecting the fabric, contents and setting of the place, and c) options for use, conservation policies should be developed which state how the conservation of place will best be achieved, both in the long and short term.
- Recommendations.
- A repair specification, unless deemed unnecessary at a particular place.

### *Skills for conservation planning*

Skills that may be needed in the preparation of a conservation plan may include those of archaeologist, historian, conservation architect, structural and services engineer, fire

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<sup>7</sup> This section has been reproduced from Ministry for Culture and Heritage, *Heritage Management Guidelines*, November 2005, prepared by Four Decades Conservation.

engineer, quantity surveyor, horticulturalist, and specialist materials conservators such as those dealing with stained glass, carvings, or wallpaper and paint finishes.

See *Guidelines for Preparing Conservation Plans*, Greg Bowron and Jan Harris, NZHPT, 2000. See also *The Conservation Plan, A Guide to the Preparation of Conservation Plans for Places of European Cultural Significance*, JS Kerr, National Trust of Australia. This can be purchased from National Trust, NSW:

[www.nsw.nationaltrust.org.au/conservationbooks.html](http://www.nsw.nationaltrust.org.au/conservationbooks.html)