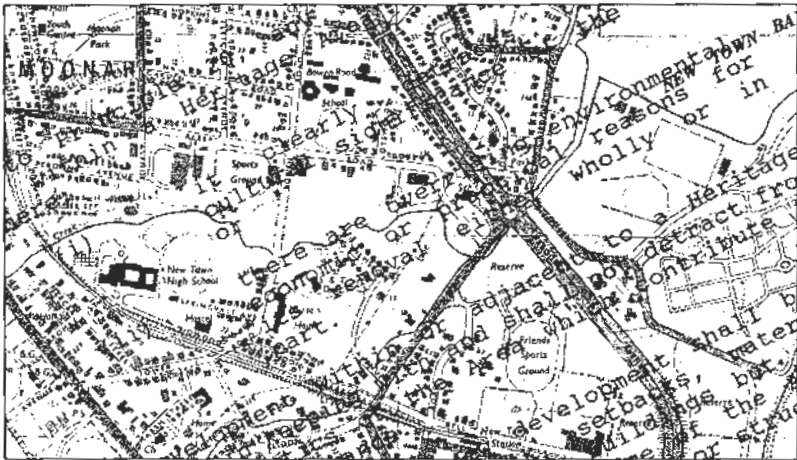


Cultural heritage planning: A new perspective

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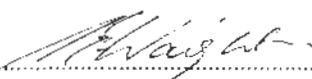
Submitted in partial fulfilment of the requirements for the
degree of Master of Town Planning

University of Tasmania

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Declaration

The material in this project is original except where due acknowledgement is given and has not been accepted for the award of any other degree or diploma.


.....

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Authority of Access

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Acronyms

DELM	Department of Environment and Land Management
HCHA	<i>Historic Cultural Heritage Act 1995</i>
LUPA	<i>Land Use Planning and Approvals Act 1993</i>
RMPS	Resource Management and Planning System
RPDC	Resource Planning and Development Commission
THR	Tasmanian Heritage Register



Figure 1: Planning and conservation. How far can it go?

Peter J. Larkham, *Conservation and the City*, 1996, p 262.

Introduction

Introduction

Introduction

Local government plays a vital role in the conservation of cultural heritage. At one level it has a strategic planning role to develop cultural heritage policy to guide local area responses to heritage issues. It has an educative role to generate activities and programs to promote a greater understanding of cultural heritage. It also has the protective powers of statutory regulations; planning schemes and legislation.

Whereas in principle, planning schemes provide the best opportunity for front line defence against poor cultural heritage practices, the reality is that they do not always provide an adequate level of protection. Some Tasmanian planning schemes have comprehensive provisions and current heritage lists, others are poorly drafted and vague, while some contain no cultural heritage provisions whatsoever.

In recent years, state legislation has strengthened the role of local government to protect cultural heritage places through the introduction of the Resource Management and Planning System (RMPS) in 1993 and the proclamation of the *Historic Cultural Heritage Act 1995* (HCHA) in February 1997. However, it has also introduced additional and complex administrative procedures. Consequently, local government does not always have the best mechanisms for effective cultural heritage planning.

Background

Until the proclamation of the HCHA, Tasmania's cultural heritage could only be protected by planning and building regulations. It became a consideration of the planning process with the *Town and Country Planning Act 1944* and furthered by the subsequent *Local Government Act 1962* and its Seventh Schedule.

Since then, the *Land Use Planning and Approvals Act 1993*, (LUPA) strengthened the capacity of the planning process to consider cultural heritage factors by creating a set of objectives within the planning process. One objective was 'to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value'.¹ Thus

¹ *Land Use Planning and Approvals Act 1993*, Schedule 1, Part 2, p.57.

cultural heritage conservation became a statutory objective of the planning process.

Despite over fifty years of the recognition that the planning process could be used to protect places of cultural heritage value, its implementation and approach has been varied and inconsistent. In addition to those problems previously stated, some heritage lists are incomplete and poorly researched, usually originating from a National Trust list of nineteenth century buildings. Some terminology and approaches are now regarded as outdated and poor practice. These practices will be reviewed in this report and recommendations offered.

On the introduction of the HCHA several local councils publicly renounced it as an additional State government impost without any hint of support. The theory behind the legislation was that there would be a close working relationship with LUPA so that cultural heritage issues could be dealt with at the planning stage.² Under the current framework, it does do that, but it creates a duplication of process, unsynchronised and additional time frames as well as confusion over the precedence of legislation. It is clear that the ties between the legislations are flawed such that amendments to the legislation are necessary to ensure a strong and valid application assessment process.

The expectation has been that the new legislation will provide the much needed protection of Tasmania's cultural heritage, especially with so much of the limelight given to it as a tourism drawcard. Ideally, the process needs to function smoothly to ensure development which compromises or diminishes special places is stopped. It also needs go further; to create a process that encourages ongoing care and maintenance of the State's tourism potential.

Objective

This principle objective of this study is to examine how the statutory mechanisms available to local government in Tasmania can be improved to achieve better outcomes for cultural heritage and an improved administrative process.

The study does not deal with Aboriginal heritage which in itself is worthy of a separate study. This project is limited to non-Aboriginal places of cultural heritage significance. For the purposes of this

²Department of Environment and Land Management (DELM), *Tasmanian Cultural Heritage Places Policy, Ministerial Discussion Paper*, December 1993, p.3.

report the definition of cultural heritage significance is that used in the HCHA. It means places of significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value.³ It applies to places traditionally regarded as heritage; Georgian mansions or Victorian homes as well as those places that exemplify the physical evidence of Tasmania's history since the beginning of European contact. In this sense, cultural heritage may also include cross-cultural sites such as the Risdon Cove site and those places that tell a story about an immigrant group such as the Chinese community in north east Tasmania.

Heritage value, heritage significance, cultural heritage value and cultural heritage significance, are common and interchangeable terms. In this study cultural heritage significance and cultural heritage value are used. The term cultural heritage is used to avoid confusion with heritage places that might have natural significance. The term 'place' is also used in its broadest context and is based on the definition in the HCHA which is:

- (a) a site, precinct or parcel of land;
- (b) any building or part of a building; and
- (c) any shipwreck; and
- (d) any item in or on, or historically or physically associated or connected with, a site, precinct or parcel of land where the primary importance of the item derives in part from its association with that site, precinct or parcel of land; and
- (e) any equipment, furniture, fittings and articles in or on, or historically or physically associated or connected with, any building or item;⁴

A key theme to this study is that of performance based development control. This has been an emergent trend in planning for some years and used successfully both interstate and overseas. In Tasmania, the Premier's *Directions Statement* rekindled a project to develop a model planning scheme along these lines with common definitions, common compliance clauses, a standard format and a standard range of zones.⁵ Performance based planning has been seen as a means to achieve a better integrated planning system and a more positive decision making process. One of the outcomes of this project will be

³Historic Cultural Heritage Act 1995, p.3.

⁴ibid, p.3.

⁵Department of Premier and Cabinet, *Directions Statement, Directions for Local Government*, April 1997, Tasmania, p.1.

to create a model cultural heritage schedule based on this approach which meshes with the *Draft Model Planning Scheme* currently before the Resource Planning and Development Commission (RPDC).

Approach

Heritage planning is new to Tasmania and in a state of flux. This study sets out to progress the means by which change and evolution can be practically achieved. The following chapter outline illustrates how the objectives of this project will be achieved.

Chapter 2 examines the background to cultural heritage conservation through a brief overview of the history of conservation and corresponding legislation in Europe and America. It will concentrate on the mechanisms that have had a major influence on the development of Australian legislation and how important guidelines such as the *Burra Charter* emerged. It also explores the inter-relationship of cultural heritage and planning both overseas, in Australia and how this has occurred in Tasmania. The chapter concludes with a review of the legislative elements common to cultural heritage and planning.

Chapter 3 concentrates on Tasmania's past and present planning and cultural heritage legislative framework. It discusses how cultural heritage protection has been incorporated into past planning legislation with a close look at the current RMPS. The chapter reviews the findings of Tasmania's *State of the Environment Report*, *Review of Cultural Heritage Town Planning Measures* and the level of protection offered through planning schemes as a result of this legislation. This chapter also examines the role and functions of the HCHA and identifies the problems that have arisen in the process of linking LUPA with the HCHA.

Chapter 4 appraises how the legislative mechanisms discussed in the previous chapter have been translated into planning schemes. It examines how definitions are used, general planning provisions, heritage lists and the technique of mapping. It draws on examples from a number of schemes from around the State, but focuses on site specific case studies from the historically significant area of New Town Rivulet; an area which straddles the planning jurisdictions of Glenorchy and Hobart. These case studies illustrate the complex and difficult issues in cultural heritage management and the limitations of the planning process.

Chapter 5 reviews the technique of performance based planning as a response to improving the integration of cultural heritage into development control. It examines three accounts dealing with

cultural heritage planning provisions produced by the Department of Environment and Land Management (DELM). This is followed by a close examination of two recent performance based development heritage schedules for the *Draft Break O'Day Planning Scheme 1996* and the *Draft Sullivans Cove Planning Scheme June 1997*. The chapter concludes with an overview of the *Draft Model Planning Scheme* and its in Tasmania.

Finally, Chapter 6 of this study illustrates how the statutory mechanisms for cultural heritage planning can be improved. It draws together a series of recommendations for legislative change and a model cultural heritage schedule. It concludes by considering the future for protecting Tasmania's cultural heritage and what opportunities are available to audit and report on improvements and change.

'Since, also, urban areas are rarely created and recreated anew but are palimpsests of the achievements of successive generations, accumulations of relict, residual and modern features with earlier features undergoing metamorphosis or partial or total replacement by later developments, there are clear conflicts and unusual juxtapositions in physical built forms. Old lies next to new; new adapts old; new uses old in new ways. or new ignores old.'

Larkham, *Conservation and the City*, 1996, p18.

Agents of
change

Agents of change

Introduction

In Australia, heritage conservation has traditionally focused on the identification of and research into heritage places, ultimately leading to the preservation and retention of those places. As well, there have been numerous public conservation campaigns which have forced political action and change to the Commonwealth and State legislative framework. Correspondingly, there has been a rapid growth in the amount and complexity of the administrative and legal side of heritage conservation over the past twenty years. However, it has only been in recent years that the notion of planning as an instrument for cultural heritage protection and management has emerged and become accepted.

This chapter briefly examines the history of conservation and the growth in cultural heritage legislation in Europe and America as important triggers to these changes in Australia. This will also involve a brief review of relevant pieces of legislation in other States and their influence on Tasmania's planning and cultural heritage legislation.

This chapter will also describe the *Burra Charter*, a document that emerged largely independent of the political, administrative and legal arena, but has had a profound influence on cultural heritage management throughout Australia.

Conservation and change

An historical overview

In his book, *Conservation & the City*, English planning lecturer and author, Peter Larkham, points to a long history of conservation related activities and an underlying number of social changes and official actions in Europe and America. Many of these run parallel with and have influenced developments and attitudes to cultural heritage conservation in Australia.

Larkham discredits those who claim that conservation is a new idea. He provides evidence that the Greeks and Romans, through their actions, respected the past and its people. He goes on to single out the nineteenth century as a key period in the evolution of conservation theory and practice. It was a time in which the current attitude to architecture coloured the perception of historical styles and old buildings. Key figures, John Ruskin and Eugene Viollet-le-

Duc were insistent on looking to the architecture of the past. Viollet-le-Duc claimed that architecture of the present must be derived from that of the past, but should not be mere revivalism.⁶

In England, an era of conservation emerged as a reaction to the industrial revolution. William Morris, in the latter part of the nineteenth century, was of considerable influence with his philosophies and his actions. He was a Socialist with strong ideals of good craftsmanship in architecture based on the mediaeval guild model of social harmony. His foundation of the Society for the Protection of Ancient Buildings in 1877 was a landmark event which led to pressure for conservation from voluntary bodies. Other societies emerged, among them the National Trust, established in 1895, the Council for the Protection of Rural England in 1926 and the Georgian Group in 1937. Groups, such as these, forced the state to take on a responsibility for conservation and heritage.

Other European countries developed legislation in the nineteenth century to protect against the destruction of monuments and important buildings. France appointed an Inspector General of Ancient Buildings in 1831 and allocated money to their preservation; in 1855, Friedrich Wilhelm III of Prussia passed a law allowing authorities to intervene if public buildings of historic significance were under threat; and, in the Netherlands, a government department was established in 1875 to list famous monuments.⁷ These early pieces of legislation were weak because they concentrated on lists of pre-mediaeval monuments rather than buildings and other places of other ages.

Dramatic and strong legislative changes did not occur until this century. One key piece of legislation was a French law which extended the principle that in the public interest, restrictions could be imposed on the free use of private land. This law applied to the protection of beautiful and historic landscapes but was cited in later years in the debate for town and country planning controls.⁸

The two World Wars fractured interest in conservation so it was not until the 1950s that attention returned to legislation. This interest was accelerated by widespread destruction of valuable historic buildings during the war and reinforced by a strong demand amongst the British public for the preservation of historic places. Local protection and amenity groups burgeoned in a period of rapid social, economic

⁶Peter Larkham, *Conservation and the City*, Routledge, London, 1996, p.36.

⁷Larkham, p.38.

⁸Larkham, p.39.

and physical change. Numerous writers have postulated on the psychology behind these developments; however, in general, there was a widespread interest in the past throughout the entire western world and a new post-war era of conservation legislation emerged.

There was a similar upswing in the preservation of old buildings across the United States where the first federal moves for the protection of historic sites came with the *Historic Sites Act 1935*. As with Europe, legislation in the US concentrated on important landmarks and buildings. In the mid-1960s the destructive effects of urban renewal and highway construction became a public issue and accordingly a 'veritable orgy of legislation followed'.⁹

Initially, post war legislation dealt purely with the concept of conservation. It quickly grew to incorporate a range of measures such as financial rewards for heritage conservation. In the US and the UK this was quickly followed by legislation restricting financial benefits.¹⁰ Legislative responses have since switched to economic considerations, in order to minimise the input of government finances and encourage others to support conservation work.

Current conservation practice in the UK

As with Australia, most decisions in the UK about cultural heritage are part of the development control process. One of the major problems is that the system allows small, incremental change which, in total, can have a major and disastrous effect on the heritage values of the place. Many local decisions end up as judicial arguments which set legal precedents over how applications should be treated.¹¹

Peter Larkham has assessed the current legislation and case law and concludes that the United Kingdom's long established planning and judicial system does little to resolve key questions of planning and conservation. Uncertainties exist because of a poor understanding of why a place, including listed buildings and conservation areas are considered important or special and what is meant by terms such as conservation and preservation. Guidance in the form of practice notes or circulars from the State Department of the Environment and Department of National Heritage offer interpretations which change depending on the opinions of influential individuals and upon the political makeup of the time.

⁹J. B. Cullingworth, 1992, 'Historic preservation in the US: from landmarks to planning perspectives' in *Planning Perspectives* 7, p.65-79, quoted in Larkham, p.43.

¹⁰Larkham, p.43-45.

¹¹Larkham, p.276.

However, the complexity of the quasi-legal process is such that people find the outcomes confusing. This in turn leads to complaints. Peter Larkham describes it as negative and largely reactive process and calls for changes to the development control and conservation policy process to 'act in a positive manner to facilitate appropriate development by providing a basis for negotiation.'¹²

Australian conservation legislation

An historical overview

In Australia, the notion of conservation did not become popularised until the 1950s with the arrival of the National Trust ideal. Modelled on the National Trusts of England and Scotland, Australia's National Trust had a 'distinctly genteel image'¹³ and for some time was the only organisation (voluntary or government) concerned with conservation and heritage. The inaugural public meeting of the New South Wales National Trust in 1947 was attended by a member of the English National Trust who forewarned the group of the impending losses of important buildings in a booming era of postwar affluence and development.¹⁴

In Australia what followed was the formation of the National Trust in:

- South Australia (1955)
- Victoria (1956)
- Western Australia (1959)
- Tasmania (1960)
- Queensland (1963)
- The Australian Council of National Trusts (1965)

Initial conservation campaigns of the National Trust involved the saving and restoration of large stately homes, but the 1970s saw the incongruous alignment of the conservative National Trust with the left-wing of the trade union movement. In Sydney this was

¹²Larkham, p.162.

¹³A. Blake & I. Higgins, 'Role of the National Trust and the voluntary heritage conservation movement' in *Cultural Conservation: Towards a national approach*, ed S. Sullivan, AGPS, Canberra, 1995, p.136.

¹⁴Peter Davison, 'A brief history of the Australian heritage movement' in *A Heritage Handbook*, eds G. Davison & C. McConville, Allen & Unwin, North Sydney, 1991, p.17.

manifested as 'Green Bans' on sites in Hunters Hill, the Rocks, Woolloomooloo and the Glebe.

In Victoria, the environmental politics and battles were also vigorous. It became the first State to enact historic building legislation. Over the following years, a widened support base emerged for action to preserve places of historic merit and people's understanding of what was worth protecting. Slowly, concerns emerged about humble timber structures such as farm buildings, the homes of the working classes, streetscapes and whole historic environments rather than individual examples of an architectural style. In response, new and emerging legislation was amended to provide for this broader understanding and classification of heritage.

In 1974, the Federal Government released the Hope Inquiry, a report which recommended the need for the Commonwealth to take deliberate steps in becoming involved in protecting places of natural and cultural heritage. Mr Justice Hope recommended the establishment of a Heritage Commission and under the leadership of the Whitlam government, the *Australian Heritage Commission Act 1975* came into being. This piece of legislation established the Australian Heritage Commission and the Register of the National Estate. Such legislation signalled the first move by the Federal Government to become involved in heritage issues, by listing places and providing sponsorship for the conservation of these listed places. This was the first time heritage listing spanned land tenure. The Act was also significant because it signalled a broader definition of cultural heritage to include places, precincts and items, not just buildings.

Under the Act, listed places are afforded some protection. However, it is only the Federal Government that is bound by the legislation. A listed place 'does not provide any legal constraints or controls over the actions of State or Local Government, or of private owners.'¹⁵ From a broader perspective it is recognised that listing gives a place public recognition that it has heritage values which are worthy of greater protection.

Much of Australia's legislation protecting cultural heritage places exists because of the common legal inheritance from the United Kingdom and United States of America. For Commonwealth heritage legislation, Australia owes much to the models of heritage legislation

¹⁵ Australian Heritage Commission, *Australian Heritage Commission*, brochure, 1989, no page number.

in the United States.¹⁶ In contrast the State governments which enacted legislation early, looked toward European models.

Australia also followed the UK in the bureaucratisation of cultural heritage. With the emergence of cultural heritage legislation and statutory processes, the volunteers of the conservation movement became the new breed of heritage professionals; planners, conservation architects and heritage administrators. Even groups such as the National Trust were forced to become more bureaucratic and efficient in the management of their properties. Cultural heritage had become an industry firmly entrenched in administrative processes and legislation.

State heritage conservation and planning legislation

Most States up until the 1970s, had within their planning acts the ability, at the most, to restrict or control the development of heritage places, or at the very least, a requirement to consider places of beauty or architectural merit in the same process. The 1970s were key years for the emergence of State heritage legislation as a separate entity. Tables 1 and 2 show how many States overhauled their planning and heritage legislation in the 1990s.

The section following the tables summarises the evolution of State and Territory planning and heritage legislation.

¹⁶Peter James, 'Where is legislation appropriate and what form should it take?' in *Cultural Conservation: Towards a national approach*, p.8.

Date	State/Territory	Legislation
1974	Victoria	Historic Buildings Act 1974
1977	New South Wales	Heritage Act 1977
1978	South Australia	South Australian Heritage Act 1978
1981	Victoria	Historic Buildings Act 1981
1990	Western Australia	Heritage of Western Australia Act 1990
1990	Queensland	Heritage Buildings Protection Act 1990
1991	ACT	Part III of the Land (Planning and Environment) Act 1991
1991	ACT	Heritage Objects Act 1991
1991	Northern Territory	Heritage Conservation Act 1991
1992	Queensland	Queensland Heritage Act 1992
1993	South Australia	Heritage Act 1993
1995	Tasmania	Historic Cultural Heritage Act 1995, (not proclaimed until February 1997)

Table 1: Recent & current State heritage legislation.

(current legislation marked in bold)

Date	State	Legislation
1928 (as amended)	Western Australia	Town Planning & Development Act 1928
1979	New South Wales	Environmental Planning and Assessment Act 1979
1987	Victoria	Planning & Environment Act 1987
1991	ACT	Land & (Planning & Environment) Act 1991
1993	Tasmania	Land Use Planning & Approvals Act 1993
1993	Tasmania	Local Government, Building and Miscellaneous Provisions Act 1993
1993	Northern Territory	Planning Act 1993
1993	Queensland	Planning & Environment Act 1993
1993	New South Wales	Local Government Act 1993
1993	South Australia	Development Act 1993

Table 2: Current State and Territory planning legislation

Victoria

Victoria was the first State to introduce heritage legislation with the *Historic Buildings Act 1974* (repealed and amended in 1981). It set up the Register of Historic Buildings of Victoria where the final approval on the registration of a building or development rests with the Minister. There are no appeal rights, except to the Minister.

Heritage matters were also accommodated within the *Town and Country Planning Act 1974*, (later to become the *Planning and Environment Act 1987*) which, more importantly, introduced the idea of the conservation of buildings and areas by prohibiting, restricting or regulating the use or development of land. This led to a concerted effort to incorporate heritage provisions into planning schemes and wider control over historic sites, buildings and precincts. The planning scheme became the basic mechanism for protecting places of local importance and has gained widespread acceptance across the State. However, most practitioners recognise that there is a need for a model situation with comprehensive statutory wording.¹⁷

New South Wales

New South Wales was the second State to introduce heritage legislation with the *Heritage Act 1977*. It established the Heritage Council which became an advisory body to the State Government. This was an important piece of State legislation because it identified cultural heritage as being more than individual buildings. The Act aimed to conserve the environmental heritage, buildings, works, relics or places of significance to the State.

The *Environmental Planning and Assessment Act 1979* provides for the conservation of heritage places at a local, regional and State level. Local planning decisions have to be consistent with State and regional plans and policies. The New South Wales legislative model is regarded as the most comprehensive system of all States, however, according to a recent study, the overlapping legislation and complex controls have increased the difficulty of decision making and devolved a lot of extra conservation responsibility to local councils.¹⁸

¹⁷Sheridan Burke, 'Heritage conservation and the environmental planning process' in *Cultural Conservation: Towards a national approach*, p.164.

¹⁸Urban Consulting Group, *Economic Effects of Heritage Listing*, July 1995, Appendix B, table 2, p.i.

South Australia

South Australia is regarded as having some of the best legislation, with a focus that is practical and effective. Replacing an earlier piece of legislation called the *South Australian Heritage Act 1978*, the *Heritage Act 1993* establishes a very different development control process to that of other States. When a place is registered on the heritage register, a heritage agreement is entered into between the property owner and the Minister. It may contain a broad range of heritage restrictions, requirements for work, financial assistance and rate and land tax remissions. The agreement is attached to the title instrument. In practice much of the process is overseen by the State Heritage Authority but with a growing devolution to local authorities which have heritage expertise.

Western Australia

The *Heritage of Western Australia Act 1990* is the model on which Tasmania's heritage legislation is based. It has a heritage council, registration process, appeal process through the Town Planning Appeals Tribunal, scope for heritage agreements, stop work orders, penalties for contravention of the Act and a heritage fund. It differs from Tasmania's legislation in that it provides scope for the compulsory acquisition of heritage places if a particular place is in jeopardy.

Under the planning system, heritage conservation is a matter which may be dealt with by a planning scheme. The planning and heritage legislations are inter-related so that anyone wishing to make changes to a heritage place must gain a permit from a local authority. The Heritage Council is a referral agency.

Northern Territory

The Northern Territory heritage act has much broader objectives than other States. It is a system to identify and protect places of prehistoric, historic as well as scientific places such as plant communities and ecosystems. It too, establishes a Heritage Council although works on heritage places are advertised and laid before the Legislative Assembly. Appeals to register a place are made through the local courts.

Local authorities have no planning powers. Administration is done by the Territory government, with application being made directly to that tier of government. The *Heritage Conservation Act 1991* overrides the *Planning Act 1993*.

Queensland

The *Queensland Heritage Act 1992* is also akin to the Tasmanian and Western Australian model. It provides for a Heritage Council which can approve or refuse development applications, with a right of appeal through the Planning and Environment Court. Through the development approval process, development of a listed place must be lodged with the relevant local authority which can, determine the application if they have the powers. If not, it is referred to the Heritage Council. This legislation also provides for heritage agreements which are placed on the title instrument and for enforcement measures, including stop work orders. The legislation also provides for the issuing of Restoration Orders and Non-Development Orders.

Under the *Planning and Environment Act 1993* local authorities are not obliged to protect heritage places through their planning schemes. In spite of this, a few councils do have places listed in their schemes, but it is generally regarded that protection offered through the planning process in Queensland is not strong enough.

ACT

The *Land (Planning and Environment) Act 1991* requires decisions to be made by the Minister on the advice of the Heritage Unit with the agreement of ACT Planning Authority and Conservator of Wildlife. It has been claimed that the development approval process for heritage listed places is lengthy and overly consultative.¹⁹ According to a recent report on the economic effects of heritage listing, the ACT legislation is under review.²⁰

Tasmania

In Tasmania, there has been a relationship between heritage conservation and the planning process at a local government level since the 1940s. It began with the *Town and Country Planning Act 1944*, was strengthened marginally through the Seventh Schedule of the *Local Government Act 1962* and again through the current *Land Use Planning and Approvals Act 1993*. Unlike other States, Tasmania has only recent experience with heritage legislation, namely the *Historic Cultural Heritage Act 1995*. This piece of legislation, modelled on the legislation of Western Australia and Queensland, creates a Heritage Council, a register or list of places and links the approval of works into the planning process. It also allows for enforcement, financial

¹⁹ *ibid*, p.55.

²⁰ *ibid*, p.v.

assistance and heritage advice. In general, the implementation and approach to planning and heritage conservation has been varied and inconsistent across the State. Today, much of the State's heritage and tourist assets remain as a result of a lack of development pressure rather than good management or legislative or administrative mechanisms. Full details of the Tasmanian legislative framework are outlined in Chapter 3.

The Burra Charter

Although not legislation, the *Burra Charter*, also known as the *Australia ICOMOS charter for the conservation of places of cultural significance*, has evolved in parallel to Australia's cultural heritage legislation. The origins of the *Burra Charter* date back to 1964 in Venice at the second International Congress of Architects and Technicians of Historic Monuments. At that congress it was decided to set up a permanent association called the International Council on Monuments and Sites (ICOMOS). An earlier document (dating back to 1931) was reformulated, revised and enlarged becoming the *Venice Charter*. In Australia in 1976, a national committee was established. It became known as Australia (ICOMOS). The diverse group represented professions such as architects, planners, archaeologists, historians, tradespeople and engineers.²¹

In 1979 members of Australia ICOMOS met in the South Australian town of Burra Burra and formally adopted what is commonly known as the *Burra Charter*. This represented a high point of professional development for those in the heritage field. It has since been revised and has had guidelines added. It is currently under review, ten years since its last review. Today, the Charter is widely accepted and adopted as the standard for heritage conservation practice. In essence the Charter is a set of guidelines which defines principles and procedures to be observed in the conservation of significant places of heritage value.

The Charter advocates the preparation of a written document called a conservation plan which describes how the conservation of a place should occur. The questions heritage practitioners must ask when putting together a conservation plan according to the Charter are:

- is a place important?
- why is a place important?

²¹Peter Marquis-Kyle & Meredith Walker, *The Illustrated Burra Charter*, Australia ICOMOS, ACT, 1996, p.7.

- how do we keep the heritage values of the place and still make it useful?
- how do we put all this into place?

Thus, the *Burra Charter* can be a useful supporting document in a planning application. For this reason, some planning schemes refer to the *Burra Charter* in their provisions and may even require a conservation report prepared according to the guidelines of the Charter. The *Burra Charter* is a widely recognised and respected document. Despite not having the same status of legislation it is a powerful tool in that it sets a professional standard in conservation research and practice. It is a requirement that a conservation plan must be prepared by a qualified practitioner, in much the same way as a planning scheme may require a geo-technical report or the advice of a 'suitably qualified engineer'.²² There are good reasons for the *Burra Charter* to have a more prominent role in planning schemes.

Conclusions

This chapter has briefly examined the history of conservation and change and how the actions of several countries in this field, most notably the United Kingdom and the America, have influenced Australia's current conservation and planning legislative framework. While the history of conservation and change is not necessarily evolutionary, it does show that the UK, America and Australia have basic common legislative elements in managing cultural heritage. The legislation has common strengths and weaknesses that are irrespective of their jurisdiction, the political complexion of the country and the intricacies of the legislative connections.

The concept of integrating the heritage approval process into the planning process has been shown to be firmly established in the United Kingdom, all States of Australia including Tasmania. This chapter has shown that despite the variations within heritage legislation there are common elements.

- A heritage body such as the Tasmanian Heritage Council, State Heritage Authority of South Australia or the Department of National Heritage in the United Kingdom.
- A heritage list or register of heritage places such as the Heritage Places Register and Heritage Objects Register in the ACT.

²²Glenorchy Planning Scheme 1992, p.52.

- Legal and administrative mechanisms to determine how the registration or listing of a places can occur.
- Legal and administrative mechanisms to determine how development is controlled through the planning process.
- Practical mechanisms such as the heritage agreements in the *Tasmanian Historic Cultural Heritage Act 1995*, *Queensland Heritage Act 1992* and the *Heritage of Western Australia Act 1990*.
- Enforcement mechanisms such as stop work orders and fines.
- Compensation and financial assistance.
- Appeal rights through an appeals body such as the Planning Appeal Tribunal in Tasmania.

The analysis of this chapter has also shown that cultural heritage protection is a function of culture, and translating those values into legislation or planning schemes is not straightforward. This is emphasised by the wide variety of legislation in Australia, the US and the UK where different sorts of places are protected.

In Australia, the practical application of the legislation is well defined in States like New South Wales and South Australia. South Australia has had a tradition of and long experience in dealing with heritage matters through the provision of advice at a local and State level. Cities such as Adelaide have developed an active and well resourced cultural heritage section within the Corporation's Planning Department with initiatives such as financial assistance schemes. The *Burra Charter* is also widely recognised and has the potential to play a greater role in the planning process.

However, in spite of the similar objectives of each piece of State legislation, no two pieces of legislation are the same. This is largely due to politics and the will of governments to enact conservation measures. The result is that property owners, developers and real estate agents have a poor understanding and lack of awareness of heritage and planning controls and the differences between different sorts of heritage lists.²³

The following chapter examines the mechanisms of Tasmania's *Historic Cultural Heritage Act 1995* and relevant cultural heritage provisions in the *Land Use Planning and Approvals Act 1993*.

²³Urban Consulting Group, p.57.

Heritage planning process 'confused'

A MUNICIPAL council planning manager says the new process provided under the Tasmanian Historic Cultural Heritage Act 1995 provides for confused double handling of its best.

Brighton Council planning manager David Shield said 'duplicated no work allowed on later times which may their historic heritage sign less they we to the Tasmanian Council'.

Any at works at the relic council planning on application.

Mr Shield said the new process would not have to bear the cost of implementing the Historic Cultural Heritage Act.

However, with huge rises in administrative costs because planning applications for heritage-listed places now must

allowing which there is a 40 day appeal process to the tribunal (the Resource Management and Planning Appeal Tribunal).

'Council is again faced with a system of duplication of the planning potential for two different of con-

Heritage costs too rich for HCC

HOBART City Council last night backed away from absorbing the administration costs of projects covered by new heritage legislation. Lord Mayor John Freeman said the State Government would promised that councils would not have to bear the cost of implementing the Historic Cultural Heritage Act. However, with huge rises in administrative costs because planning applications for heritage-listed places now must

Figure 2 & 3: Tasmania's cultural heritage legislation received a cool reception from local government when it was introduced in 1997.

Community Express, 30 Oct. 1997, p.12.

Mercury, 28 Oct. 1997, p.9.

Legislative
tools

Legislative tools

Introduction

As illustrated in the previous chapter, the combination of cultural heritage and planning mechanisms is relatively new to Australia, and has become increasingly sophisticated and consequently more complex. Complexity in legislation is not in itself a problem because it can be well resourced and administered by a team with a good understanding of the legislation. However, in the case of Tasmania's legislation, the complexity is accompanied by duplication of process and the delegation of tasks to local government. It is timely to consider, as this project does, how the complexity of process can be ameliorated.

This chapter sets out to briefly examine past planning regulations in Tasmania, followed by a review of the *Land Use Planning and Approvals Act 1993* as it relates to cultural heritage. This chapter also concentrates on the functions of the *Historic Cultural Heritage Act 1995* and the problems that have emerged since its proclamation. The review of legislation provides the means to identify the practical solutions.

Land use planning and cultural heritage

In Tasmania there has been a long but tenuous relationship between heritage conservation and the planning process at a local government level. As stated in the previous chapter, the *Town and Country Planning Act 1944* introduced the capacity for planning authorities, through their planning schemes, to consider the preservation of objects of historical interest or natural beauty.²⁴ In later years with the passing of subsequent planning legislation, the *Local Government Act 1962* introduced the Seventh Schedule which stated that 'the preservation of objects of historical interest or natural beauty' are matters which may be dealt with in the town and country planning scheme.²⁵ Very few planning authorities took up heritage protection in their schemes and those that did, only listed historic buildings.

In 1993 came a new suite of planning legislation, the *Land Use Planning and Approvals Act 1993*, *Resource Management and Planning Appeals Act 1993* and the *State Policies Act 1993*. The new planning

²⁴Ian Sansom, Lesley Gulson & Peter Newton, *Provisions for Conservation of Places of Cultural Significance*, DELM, 1992, p.7.

²⁵*Local Government Act 1962*, Schedule 7, p.537.

legislation altered the capacity of the planning process to consider cultural heritage factors. The Seventh Schedule was superseded and Schedule 1 was created stating the objectives of the planning process. For heritage it became, 'to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value'.²⁶

This was an important stage in heritage planning because it signalled that heritage *had* to be considered in the planning process and that new planning schemes had to be consistent with the new objectives and therefore incorporate cultural heritage planning provisions.

It also marked a legislative response to the broader acceptance of cultural heritage being places and not just buildings and that they could be valued for many reasons—scientific, aesthetic, architectural, historical or special cultural reasons. In 1995, the HCHA added another definition to what constituted cultural heritage. Table 3 on the following page illustrates the differences between the definitions that are currently in use. For example, The HCHA does not recognise aesthetic values. These variations extend to planning schemes; a topic explored in Chapter 4.

Section 60 of LUPA states that a planning authority must consult with relevant agencies as specified by the RPDC.²⁷ The National Trust of Tasmania (Australia) was the appointed referral agency for cultural heritage matters. This meant that if a property owner wished to obtain a permit for the use or development of any place listed on a heritage list of a planning scheme *and* the National Trust's list, the application had to be referred to the Trust's Assessment Committee. This was an interim measure until State Policies provided local authorities with the necessary policy framework for decision making. Since less than a handful of State Policies have been formulated and as a cultural heritage policy is not likely, it has been necessary to extend the life of the referrals process until at least December 1998. Thus, under the current planning and heritage legislation, a Council may have to refer a development application to the National Trust for comment *and* the Tasmanian Heritage Council for a works permit as well as advertise it publicly.

²⁶*Land Use Planning and Approvals Act 1993*, Schedule 1, Part 2, p.57.

²⁷*ibid.*, S.60.

Table 3: Cultural heritage terminology

	Definition of the physical elements of cultural heritage	Definition of significance of cultural heritage
Land Use Planning & Approvals Act 1993 - Objectives	"buildings, areas and other places"	"scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value"
Historic Cultural Heritage Act 1995	"(a) a site, precinct or parcel of land; (b) any building or part of a building; and (c) any shipwreck; and (d) any item in or on, or historically or physically associated or connected with, a site, precinct or parcel of land where the primary importance of the item derives in part from its association with that site, precinct or parcel of land; and (e) any equipment, furniture, fittings and articles in or on, or historically or physically associated or connected with, any building or item;"	"significance to any group or community in relation to the archaeological, architectural, cultural, historical, scientific, social or technical value of the place;"
The Burra Charter	"site, area, building or other work, group of buildings or other works together with associated contents and surrounds."	"aesthetic, historic, scientific or social value for past, present or future generations"

In spite of these problems, the new planning legislation provided a greater impetus for the consideration of cultural heritage issues in the planning process. Unfortunately, most Tasmanian planning schemes lagged behind the standards enshrined under the legislation. The following section shows the degree of protection offered through Tasmania's planning schemes.

State of cultural heritage

The *State of the Environment Report, Review of Cultural Heritage Town Planning Measures* was commissioned in 1995 to examine how many of Tasmania's 67 planning schemes reflected the objectives of the planning legislation by incorporating cultural heritage planning measures. Results showed that 78% of planning schemes had some reference to cultural heritage conservation.²⁸ This meant that 22%

²⁸Barry McNeill, (coordinator) Claire Scott, Lyndal Byrne, Scott Wilson, *State of the*

had no reference in any form to cultural heritage assets, no lists, no maps, no indication that cultural heritage issues had to be considered in the planning process.²⁹ The study showed just how optional cultural heritage was to some planning authorities.

This study also showed that of those with provisions, only 55.2% had a specific list of places of cultural significance and 35.6% had maps showing the location of places or buildings of significance.³⁰ The scheme for Battery Point, for example, contains substantial and extensive measures, while Glenorchy only incorporated cultural heritage provisions into its 1992 planning scheme. Prior to this cultural heritage did not rate a mention.

The review concluded that there were 'inconsistencies in approaches taken by local government organisations towards the protection and management of cultural heritage' which placed unreasonable barriers on users of the scheme.³¹

It should be stated that the presence or absence of cultural heritage planning mechanisms does not necessarily lead to better or worse planning decisions. Other factors rein in. These include: the level of development pressure in an area; the level of commitment and political will within local government and the community to value places of heritage significance; and perhaps most importantly, the judgment of staff in assessing applications.

Tasmania's cultural heritage legislation

Background

The history of the oft-promised but elusive cultural heritage legislation is a story in itself that goes back decades. This paper omits the near tries and failed attempts to concentrate on the emergence of the *Historic Cultural Heritage Act 1995*.

In December 1993, the Tasmanian Government released the *Tasmanian Cultural Heritage Places Policy, Ministerial Discussion Paper*. It firmly stated the Government's commitment to conserving Tasmania's cultural heritage. More importantly, it established a policy direction that 'heritage protection should be looked upon as

Environment Report, Review of Cultural Heritage Town Planning Measures, 31 May 1995, p.2.

²⁹*ibid*, p.8. (Only 58 of the 67 planning ordinances were available at the time this study was prepared.)

³⁰*ibid*, p.8-9.

³¹*ibid*, p.42.

part of the overall planning system.³² As a consequence, local government, through the development assessment process of LUPA, was identified as having a central role in cultural heritage protection. In 1994, the legislation was drafted and in the following year, after redrafting, the legislation was passed and given Royal Assent on 8 December 1995. Tasmania had become the last Australian State to enact cultural heritage legislation.

However, the Act was not proclaimed by the State Government until February 1997. It did not become effective until August 1997 after a six month period (s.97) had passed, while places on the existing Register of the National Estate, the National Trust Register and the sealed planning schemes of Hobart and Launceston were entered onto the newly created Tasmanian Heritage Register (THR) by the Heritage Council.

Outline of legislative framework

The HCHA is described as 'An Act to promote the identification, assessment, protection and conservation of places having historic cultural heritage significance and to establish the Tasmanian Heritage Council.'³³

The legislation attempts to bring a degree of certainty to the development process for owners of historic places. It creates links with the land use planning system, like that of Western Australia, Queensland and South Australia and utilises an existing appeal system (Resource Management & Planning Appeal Tribunal) for appeals on registration, enforcement and decisions on works permits. The structure and components of the HCHA are set out in Table 4.

The reality is that certainty is not guaranteed because the HCHA and LUPA differ in small but significant ways. Details of the discrepancies in the development control process are summarised in Table 5.

³²DELM, *Tasmanian Cultural Heritage Places Policy*, p.6

³³*Historic Cultural Heritage Act 1995*, p.1.

Table 4: Summary of the *Historic Cultural Heritage Act 1995*

Legislative elements	Summary of function and relationships
Tasmanian Heritage Council (Part 2)	This body is established with a membership drawn from representatives of various organisations such as the Local Government Association, National Trust, Tasmanian Chapter of the Australian Tourism Industry Association the Tasmanian Council of Churches and individuals appointed because of their experience and expertise in areas such as architecture or surveying.
Heritage Fund (Part 3)	The legislation allows for and defines how financial provisions through this fund can be applied. To date, the Heritage Fund is not available.
Tasmanian Heritage Register THR (Part 4)	This is a list of all places deemed to meet the criteria of historic cultural heritage significance. The criteria are defined in the Act, as is the process of entry onto, and removal from the Register.
Heritage Areas (Part 5)	Heritage Areas are much like individual places listed on the Heritage Register, except, listing only lasts for a period of between two to five years.
Approval for Works (Part 6)	This part defines the process involved in obtaining a permit to undertake work on a place listed on the Tas. Heritage Register. The process is similar to that of obtaining a permit through LUPA, in that it takes place at the same time, however there are also numerous inconsistencies. Details are outlined in table 5.
Heritage Agreements (Part 7)	These agreements are new to Tasmania although they are similar to Part 5 Agreements in LUPA. The parties involved in heritage agreements are the property owner and the Minister, and/or the National Trust and/or a planning authority. Agreements can provide for financial incentives, benefits for undertaking work or maintenance or a range of other matters. As the name suggests, they require the agreement of all parties.
Stop Work Orders (Part 8)	There are provisions within the Act to issue an order to stop work if the historic cultural significance of a place is under threat. Penalties for non compliance or illegal actions are included, the fines being substantial and a realistic deterrent. There are also mechanisms to order certain works to occur or other procedures.
Shipwrecks (Part 9)	This part of the legislation is designed to be coordinated with the Commonwealth Historic Shipwrecks Act, thus protecting those wrecks not covered by the Commonwealth Act. Shipwrecks are listed on the Heritage Register.

It has been argued that Tasmania has developed the best of all the State legislations by seeing what has worked for other States.³⁴ However, Part 6 of the HCHA has been heavily criticised for the inconsistencies in its drafting and the burden it places on local government which remains under-resourced in carrying the bulk of the administrative work. The Heritage Council is itself under resourced in undertaking its key functions of compiling the THR and assessing works applications. Many of the problems that have arisen in the processing of applications are summarised in the following Table 5.

Table 5: Comparison between LUPA and HCHA

Land Use Planning & Appeals Act 1993	Historic Cultural Heritage Act 1995	Summary of problem/discrepancy
Development application (DA) form lodged with local planning authority.	Works application lodged with local planning authority.	The current system requires different forms to be completed, one for works and one for development because the definitions differ.
A discretionary DA has to be advertised and advertising fees paid by the applicant.	Generally, all works applications have to be publicly notified. No additional fees paid by applicant.	A planning authority is responsible for all additional advertising costs. A change to council bylaws would be necessary to make fees payable. Some regard the removal of fees a good incentive for owners of heritage listed places.
Submissions relating to a DA can be lodged during a 14 days from the date notice is given	Submissions relating to a works application can be lodged during a 14 days after notice is given	Under LUPA, the period in which a submission can be received is one day less than under HCHA. Both Acts allow for a further period of time, not exceeding 14 days.
All development applications must be dealt within 42 days from the day the application is received. Under the referral process, a period of 60 days is allowed.	All works applications (unless planning authority has delegation) are referred to the Heritage Council during the advertising period. They have 42 days after the application was lodged to deal with it.	Again, the HCHA allows for an additional day to deal with an application. Some Councils set their own internal time limits in which permits should be processed i.e. 30 days. Waiting on the Heritage Council could extend these time frames. The HCHA does not state if the Heritage Council is required to notify a local authority.

³⁴DELM, *Tasmanian Cultural Heritage Places Policy*, p.10 & p.24.

Land Use Planning & Appeals Act 1993	Historic Cultural Heritage Act 1995	Summary of problem/discrepancy
The legislation allows for a person to make a representation.	All submissions received must be referred to the Heritage Council which considers them.	The onus is on local authorities to refer copies of representations to the Heritage Council. The legislations use different terms for the same thing, i.e. representation and submission.
A planning authority can refuse an application, or approve it with or without conditions.	Heritage Council can refuse a works application or approve it with or without conditions	According to the practice notes prepared by the Heritage Council, the two Acts must be considered separately. "The Heritage Council may approve works which a planning authority might refuse on planning grounds. The Heritage Council may refuse works which might otherwise be approved by a planning authority under LUPA. In this instance the approval under LUPA would be of no effect." ³⁵
A place listed on a heritage schedule in a planning scheme that is also listed with the National Trust must be referred to them under s.60. Therefore a 60 day time frame applies.	Most National Trust listed places are also on the THR. These works application have to be lodged and referred to Heritage Council for consideration.	Process is duplicated especially when the National Trust and the Heritage Council look at the same application. In reality, National Trust provides a prompt response as does the Heritage Council and works permits are issued before planning permits. However, there is potential for approval/refusal and comments of one body to contradict the other.
After a decision is made, representors have within 14 days to lodge an appeal with the Appeal Tribunal after the day notice was given.	Any person can appeal against a decision by the Heritage Council within 40 days after the day notice was given.	In reality an applicant with a DA permit and a works permit cannot start work until after 40 days. Also anyone, not necessarily a representor can appeal against a works permit. Can open the process up to new issues.

The following list summaries the problems and implications of the problems with Part 6 of the HCHA and the corresponding parts of LUPA.

1. **Summary:** The HCHA does not require a works application for a change of use, whereas under LUPA, an application is required. Although situations are rare, there may be occasions where a

³⁵Tasmanian Heritage Council, *Practice Note No. 1*, p.3.

change of use is seen as inappropriate. For example, in Victoria there have been cases of applicants wishing to change the use of a de-consecrated church to a brothel or a place for youth concerts, creating a public outcry.

Implications: The public notification process of the HCHA is designed to provide an opportunity for the public to comment on proposals. Because a change of use is not defined by the HCHA, the public are denied the right to comment under this process, although they can under LUPA. There is no reason why a planning authority could not obtain the delegation from the Heritage Council to deal with use applications, perhaps referring on the controversial ones to the Heritage Council which has members from many organisations including the Tasmanian Council of Churches.

2. **Summary:** The definition of works under LUPA is not as specific as the definition under HCHA.

Implications: For a planning authority with delegation and assessing an application under LUPA, some works that have a detrimental affect on the heritage significance of a place may be excluded.

3. **Summary:** Under LUPA and the HCHA, an applicant is required to fill out two different forms, although they both ask similar questions. The two applications have to be advertised separately and the planning authority is responsible for the HCHA costs.

Implications: The system creates unnecessary duplication and adds to the administration cost. For the applicant, the process must be perplexing, destroying their confidence in the system. There is no reason why the separate applications and advertisements cannot be one.

4. **Summary:** Presently, some applications are permitted under planning schemes but still need to be publicly advertised and referred to the Heritage Council.

Implications: A system that is not coordinated creates uncertainty and confusion for the public. It also detracts from the value of the planning and heritage permit processes. All development, work/use of a heritage listed place could be made discretionary under the planning scheme. Alternatively, an agreement could be reached by the Heritage Council and councils as to what development, work/use can be exempt, permitted or

discretionary under a planning scheme and the HCHA. The latter would be preferable.

5. **Summary:** The process of dealing with applications by a planning authority under the HCHA (s.33 & s.37) is not defined in the same way as the process is under LUPA.

Implications: A common end that is arrived at by two different means creates unnecessary confusion and duplication of process for the administrators and undermines the community's confidence in both systems. There is no reason why the HCHA cannot adopt the LUPA process with the necessary modifications to allow for the delegation of powers from the Heritage Council to planning authorities.

6. **Summary:** None of the time frames in LUPA and the HCHA match. Again it would be possible to redraft the HCHA to accommodate LUPA times.

Implications: For some councils, the processing of applications within a certain time frame is a measure of their performance. Additional time frames can add to processing times and destroy the public's confidence in the system.

7. **Summary:** There is no time frame specified in which a planning authority (if it does not have delegation) must refer an application to the Heritage Council.

Implications: All steps in development control under LUPA are strictly defined by time frames. If one is not specified it detracts from the basic planning principle that applications will be dealt with within statutory time frames. Time frames must be specified.

8. **Summary:** There are no provisions under HCHA for a planning authority or the Heritage Council to request additional information, although this is part of LUPA. A request of this type 'stops the clock'. Works applications may require additional documents such as conservation plans.

Implications: A planning authority or the Heritage Council needs all information before it can make a proper assessment of an application. If that information is not supplied, a decision could be made that could have a detrimental affect on the heritage significance of a place.

9. **Summary:** The process of a planning authority giving notice differs between HCHA and LUPA. They are the same process and need to be defined as such.

Implications: Again, a process that follows two different paths for the same end creates unnecessary confusion and duplication. It undermines the community's confidence in both systems.

10. **Summary:** Under LUPA any person may make a representation when the application is discretionary. However, under HCHA it is called a submission and the time frame is different. There is no consistency in this and in any subsequent appeal process.

Implications: While the principle that the public can have input into the decision making process is good, there is no reason why the two should be different. Again, it creates confusion and works against the public understanding the system.

11. **Summary:** If a planning authority does not have delegation, there is no time frame specified in the legislation in which the Heritage Council must notify others of its decision.

Implications: The Heritage Council is not bound by a time limit. It can be seen as one rule for some and not for others. Without a framework the public loses confidence in the system.

12. **Summary:** The HCHA is not clear on what happens if the Heritage Council refuses an application. A planning authority is obliged to continue to assess a planning application even though it will be refused.

Implications: Again, certainty is essential for both the community and the administrators. Being left in limbo, undermines confidence in the planning system.

13. **Summary:** The deemed approved clauses of LUPA and HCHA are different.

Implications: Both pieces of legislation are dealing with the same concept. Different approaches can be confusing for the public and planning authorities. There is no reason why the two cannot be the same.

14. **Summary:** The appeal period under HCHA is 40 days as opposed to 14 days for LUPA. Also under the HCHA, any person can appeal, not just an applicant or representor.

Implications: An applicant is left waiting 'just in case' there is an appeal. It creates frustration and has the potential to affect the reputation of the Heritage Council and the planning authority. Allowing a new party into the appeal process is unwarranted.

Conclusions

The consideration of cultural heritage in the planning process is an approach most other States in Australia have adopted. In Tasmania, it has only operated for about 18 months and is still in a formative and confused state. For local government, there has been little support from the Heritage Council accompanying the changed responsibilities and situation. Admittedly, resources are limited and the uncertainty of a drawn out process for local government reform has not helped.

The discussion in this chapter has shown that Part 6 of the heritage legislation is not well integrated with the planning system. Certainty is not provided and in fact, the new process has created confusion for local government. There are, however, some simple legislative changes which could improve the process to match time frames and terminology and to streamline administrative processes. These include:

- amend the HCHA to incorporate the term 'aesthetic' into the definition for cultural heritage significance and then amend LUPA to incorporate the cultural heritage definitions adopted by the HCHA,
- remove duplication of process by eliminating the referral of cultural heritage applications under s.60 of LUPA,

The State Government could assist in the following ways:

- prepare, review and trial a model cultural heritage schedule,
- provide local authorities with the resources and guidance to administer the HCHA,
- prepare a Cultural Heritage State Policy to give local authorities a policy framework for decision making,
- provide the Heritage Council with the resources to help local government understand the cultural heritage legislation, to give support and heritage advice as it is needed and to carry out ongoing monitoring of the process to ensure cultural heritage protection is improving,
- encourage the delegation of powers from the Heritage Council to local authorities to enable them to deal with applications and, therefore, keep processing times and administrative costs down.



"This is Mr Trump from the Town and Country Planning Department. He's here to demonstrate the proposals for the old town"

Figure 4: Planners and planning.
Do they have the answers?

Larkham, *Conservation and the City*, 1996,
p.265.

Planning
tools

Planning tools

Introduction

The previous chapter examined Tasmania's cultural heritage and planning legislation and the mechanisms within them. This chapter discusses the outputs of the planning legislation in terms of the cultural heritage provisions in planning scheme. It will examine a selection of schemes prepared under previous and current planning legislation from around the State by discussing the attributes and failings of the mechanisms. This chapter also examines the use of terminology in planning schemes.

It also takes a close look at the historically significant area around New Town Rivulet through illustrated case studies. They show the everyday dilemmas, constraints and opportunities for change in cultural heritage management.

The chapter concludes with a set of objectives to improve cultural heritage planning provisions.

Planning mechanisms for cultural heritage

Under LUPA, a planning scheme can 'regulate or prohibit the use or development of any land' and 'apply, adopt or incorporate any document which relates to the use, development or protection of land'.³⁶ For these reasons, planning schemes contain provisions such as heritage lists and provisions which establish under what circumstances a permit may be issued. In addition under the Act, a planning authority is required to 'keep its planning scheme or schemes under regular and periodic review for the purpose of ensuring the objectives set out in Schedule 1 are ... achieved ...'.³⁷ Most planning authorities fail to update their heritage lists regularly and therefore do not meet the objectives.

Most planning schemes have common elements. These are; definitions, provisions, listings or schedules and mapping.

Definitions

Some planning schemes contain definitions relating to cultural heritage. Table 6 illustrates the variety of terminology used within

³⁶LUPA, s.20, p.12-13.

³⁷LUPA, s.44, p.27.

planning schemes and the confusion it creates for council officers, developers and the community. Arriving at a definition for cultural heritage and for what makes a place significant is an important resolution in the development of a model heritage schedule.

	Definition of the physical elements of cultural heritage	Definition of significance of cultural heritage
The Burra Charter	"site, area, building or other work, group of buildings or other works together with associated contents and surrounds."	"aesthetic, historic, scientific or social value for past, present or future generations"
Hobart City Council Planning Scheme, 1982	as for The Burra Charter	as for The Burra Charter
Glenorchy City Council Planning Scheme, 1992	"any important historic or architectural features or items of cultural heritage significance on the site or within the locality."	not stated
Northern Midlands Council Planning Scheme, 1995	"all historic buildings or sites or other objects..."	"... of cultural or historic significance"
Launceston Planning Scheme, 1996	"buildings, areas or other places"	"... of scientific, aesthetic, architectural or historical interest or otherwise of special cultural value;"
Huon Planning Scheme 1979	"buildings and places"	"of historical or architectural interest or of special beauty"
Draft Break O'Day Planning Scheme 1996	"place means site, area, building or other work, group of buildings or other work together with associated contents and surroundings."	"means aesthetic, historic, scientific or social value for past, present or future generations."
Draft Sullivans Cove Planning Scheme 1997	"of identified heritage places, including spaces, buildings and objects, and conservation of patterns of continuing or historic use."	"the historic, aesthetic and social significance of Sullivans Cove. It includes social value, archaeological values, architectural values and values as a record of various aspects of history. It is synonymous with the term cultural significance."

Table 6: Cultural heritage terminology in planning schemes

Provisions

Cultural heritage protection is most commonly referred to in the ordinance—the written planning scheme document. These can be simple provisions such as the following example from the *Huon*

Planning Scheme 1979. Schedule 5 is a list of buildings in the local area.

7.6 HISTORIC BUILDINGS

The buildings and places listed in Schedule No. 5 hereto are buildings of historical or architectural interest or of special beauty and shall not be demolished or altered or extended without the planning approval of the Council.

- (i) In considering any application in respect of any of the places listed in Schedule No. 5 the Council may confer with the National Trust of Australia (Tasmanian Branch) or any other relevant person or body prior to determining such application.
- (ii) Generally, development involving any building listed shall conform to and be in character with the existing architectural design, and the external walls and roof therefore where not required to be preserved shall be constructed of materials which match the existing building.³⁸

In general, older schemes have brief provisions which refer to outmoded ideas of cultural heritage protection. For example, the idea of a development being 'constructed of materials which match the existing building' is overly prescriptive and not regarded as ideal conservation practice.

A recently developed heritage schedule for the *Launceston Planning Scheme 1996* introduces a new level of detail. For example, a permit is required if 'paint or otherwise permanent blanking out of any glass or similar external window' is to occur.³⁹ The Council must consider a number of factors before issuing a permit such as 'if the land is to be landscaped or planted with trees, shrubs and gardens so as to harmonise with the character and appearance of the heritage streetscape.'⁴⁰ It must be questioned if this level of detail is necessary across an entire city rather than at a heritage precinct level or in precise situations where the necessity is identified.

Other provisions call for the appointment of a committee such as the Battery Point Advisory Committee or the Richmond Planning Advisory Committee. The *Review of Cultural Heritage* concluded that

³⁸*Huon Planning Scheme 1979*, p.44.

³⁹*Launceston Planning Scheme 1996*, p.210

⁴⁰*ibid*, p.212.

64% of those planning schemes with heritage provisions made reference to an advisory committee. Of those, 16% stated that matters *may* be referred, the remaining 84% *shall* be referred to the advisory committee.

The *Northern Midlands Interim Order 1995* states that an advisory committee can be appointed by Council. It is very clear about who shall be appointed and for how long, what the quorum shall be and matters relating to the absence of members. However, it fails to state the role of the committee.

Provisions can also refer to other organisations such as the National Trust or Parks & Wildlife Service. The *Review of Cultural Heritage* showed that of those schemes with heritage provisions, 20% required matters to be referred to the National Trust. Other planning schemes may contain mechanisms to refer heritage applications to a heritage professional or adviser.

In general, current cultural heritage provisions are the weakest part of a planning scheme. Table 7 on the next page summarises the positive attributes and failings of current provisions.

Lists, registers and schedules

As shown in Chapter 2, listing is a technique that has been adopted since the inception of heritage legislation. Today it is used by bodies such as the National Trust, the Office of the National Estate (Register of the National Estate) and the Heritage Council (THR). All use databases which hold information relating to heritage places. Heritage lists are commonly found in planning schemes. It is a list of places, addresses and a description or identifier for each property. Some lists are more sophisticated than others containing more information. In most planning schemes, the places listed are the only ones covered by the heritage provisions.

Table 7: Current cultural heritage provisions

Positive qualities	Negative qualities
<ul style="list-style-type: none"> • Gives councils the opportunity to consider heritage issues in the assessment of an application for a permit, by referring to a heritage list or map. • Can introduce an alternative mechanism to catch unlisted places. e.g. <i>Glenorchy Planning Scheme 1992</i> says that heritage values of a place, listed or not, must be considered in assessing an application. • Can help to promote heritage conservation and development by establishing the philosophical approach of the assessment e.g. "in accordance with the Burra Charter". • Usual for the provisions to make heritage listed places discretionary and therefore given due consideration in the planning process. • Provisions are the key/central element of all heritage mechanisms. • Provisions can include definitions of terms used in conservation, e.g. restoration, adaptation etc. <p>Provisions can refer applications to special committees or individuals with specialised knowledge which can be useful in situations when Councils have limited expertise.</p>	<ul style="list-style-type: none"> • Provisions vary from schemes to scheme, some are vague, difficult to interpret. overly restrictive of development or lead to poor outcomes. • Provisions are neglected at the expense of the list.. • Terminology can dictate development trends that may encourage historicism or mimicry. e.g. 'historically correct' or 'sympathetic to', 'does not detract from'. • Interpretation of the provisions can be at odds with its intent. e.g. Battery Point historical mimicry is discouraged and innovation encouraged, but historical copies are still approved. • Reference to committees or those with specialised knowledge may result in differing viewpoints or conflicting advice. • May encourage too much focus on the detail of a building at the loss of the context or setting of the new development. • Heritage value can be used as a way of preventing unwanted change, when it is not a significant value.

Confusion abounds about the precedence of lists and their statutory standing. For example, National Trust lists, although best known by members of the public have no statutory standing unless they are incorporated into a heritage schedule within a planning scheme. Research shows that at least 20 of Tasmania's current planning scheme lists originated from the National Trust lists while at least 13 are sourced from the Register of the National Estate.⁴¹

Some schemes show what other lists a place is on. Other lists have been compiled by a council as a result of a heritage study or inventory. Like provisions, the lists are of variable quality, ranging

⁴¹McNeill, foldout, no number.

from the minimalist (*Huon Planning Scheme 1979*) to the more comprehensive (*Launceston Planning Scheme 1996*).

Despite the many negative features of heritage lists, they remain an important and key part of cultural heritage conservation. Table 8 on the following pages summarises the positive attributes and failings of the cultural heritage lists.

Table 8: Heritage lists

Positive qualities	Negative qualities
<ul style="list-style-type: none"> Listed places are afforded good protection. Listing helps with informed decision making. They are an effective net to catch unwanted development to heritage places. Lists work in conjunction with other planning provisions. There are a tried and tested mechanism in heritage management. If done properly, lists can be a comprehensive analysis of the heritage of a local area and a useful reference. Lists are an accessible and understandable summary of heritage places. Each place can be readily identified by street address or property number. Lists can contain any type of place or information. Lists in planning schemes can be amended, added to or subtracted from. These amendments are publicly advertised and the process is open for public comment before formal adoption. Lists can promote heritage values, add to a place's status and can improve the quality of its care. Listing can be essential for an owner to receive funding such as through the Commonwealth Tax Incentives Scheme. Listing is not prompted by the development approval process. It is independent of development interests. 	<ul style="list-style-type: none"> Non-listed places may be equally important but not protected. Lists are rarely comprehensive or complete. Lists in planning schemes are rarely updated, information is scant and often unreliable. Lists reveal the bias of the source i.e. National Trust lists focus on 19th C. architecture or buildings of historical interest. Lists contain places that under current assessment criteria might not reach the threshold for listing. Consequently, lists can be too long and unrepresentative. Most lists contain only buildings, usually 19th C ones, rarely other types of places. Lists concentrate conservation efforts toward individual buildings, rather than its context. Lists can promote over-protectiveness. Method for deeming how a place becomes listed is rarely spelt out, nor is the source of any information. Some people regard listing as a negative and frivolous provision that inhibits the rights of property owners, i.e. 'you can't do anything to a heritage listed building' or 'you've got to get permission to paint the fence'. There are many myths associated with listing. Not enough is done to educate the community about the meaning of heritage listing. Amendments to planning schemes are done under LUPA, a lengthy process which does not respond to urgent circumstances.

Positive qualities	Negative qualities
	<ul style="list-style-type: none"> • Listing may offer status to improve real estate values. The real understanding for listing is rarely recognised. Recorded places from the National Trust list are 'second class citizens' and yet they can be elitist and unrepresentative of the heritage of an area. • There is a lack of co-ordination between lists: a place can be on one and not another. • Confusion exists about what different lists mean and the degree of protection afforded. Lists give false hopes that any and every 'old place' can be protected. • The value of lists is over-emphasised and is not the answer to public reaction against change.

Mapping

Mapping is a less commonly used technique for identifying heritage listed places in Tasmania. One study found that only 38% of Tasmanian schemes used the technique.⁴² It usually involves numbering or identifying individual properties or, in the case of the *City of Hobart Planning Scheme 1982*, identifying a heritage area on maps within the ordinance. Table 9 summarises the attributes and failings of the mapping system.

Table 9: Mapping

Positive qualities	Negative qualities
<ul style="list-style-type: none"> • Mapping offers the same degree of certainty as a list because it is often based on the list. • Maps can identify heritage precincts, streetscapes and heritage areas. • They can work as an overlay to a zoning map and can help to identify heritage places quickly and easily. • They can exist independently of zoning and other planning mechanisms. 	<ul style="list-style-type: none"> • Is often only as good as the list but it may be unnecessary duplication. • If the scale of map is inappropriate, identifying heritage places can be difficult. • As a tool can be over-valued, when it shows no more than the list. • In mapping or delineating heritage areas the rationale for boundary definition can be unclear. It may also need to be accompanied by a physical description.

⁴² *ibid*, foldout, no number.

Case studies

Introduction

The previous section has shown the positive and negative attributes of cultural heritage mechanisms. While recent changes to the mechanisms have made the process more effective, there are many examples of development that are testimony to past practices and our changing values. The following case studies cover the period of time from when cultural heritage was not a consideration through to the current era in which local authorities have an array of cultural heritage provisions.

Why New Town Rivulet?

It is widely recognised and believed that change and the evolution of our cities must occur, but not at the expense or loss of the treasures of our past. Hobart has seen a growing pressure and outcry from active and vocal members of the public for good conservation. In some urban areas, the voice has spoken long and loud. Battery Point is one such case. Sullivans Cove is another.

This section looks at another area of greater Hobart—New Town Rivulet—also historically significant, but largely unrecognised as such. This was the area first permanently settled by Europeans in Tasmania outside Hobart Town. It existed as a discrete settlement and community until the 1860s and contains a cross section of culturally significant places, especially those associated with European settlement.

Also it incorporates a range of land uses and zones of the City of Hobart and Glenorchy City Council. (See figure 5 on the following page) It encompasses two differing philosophies and approaches to heritage planning which show the varying standards and techniques employed in dealing with cultural heritage.

The area has undergone immense change. The result is what Peter Larkham would describe as 'Old lies next to new; new adapts old; new uses old in new ways and new ignores old.'⁴³

⁴³Larkham, p.18.

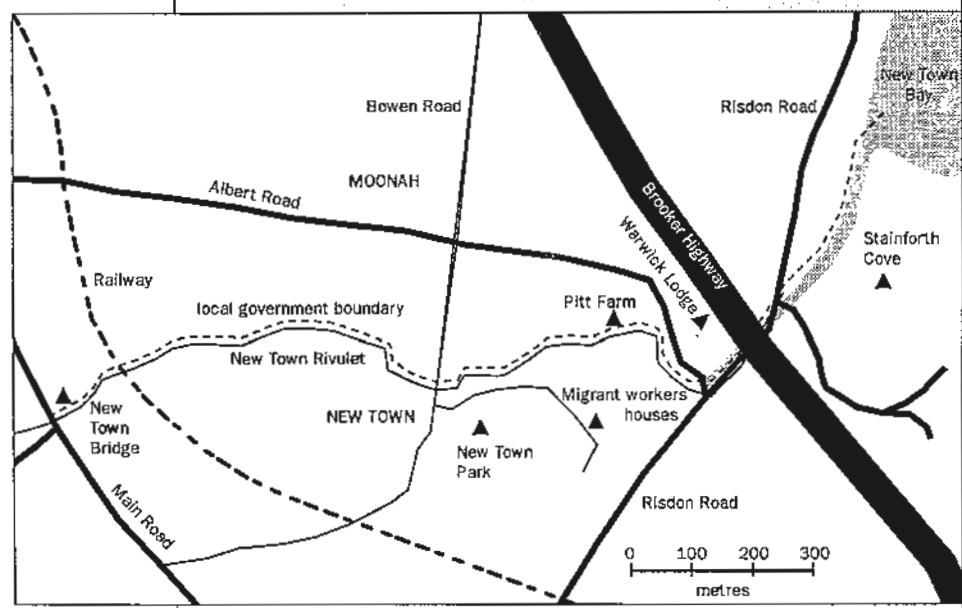


Figure 5: New Town Rivulet – The boundary between Hobart and Glenorchy

Case Study 1: 'Warwick Lodge', Albert Road, Moonah

Warwick Lodge no longer stands. It was built in 1824 on land granted in 1804. It was described in the 1820s as 'a very superior handsome looking house with delightful gardens and shrubbery.'¹ (see fig. 6)

It was used as a school, boarding house and by the Education Department as an establishment for disabled children. It was demolished in 1964 without any discussion to make way for a new purpose-built facility.

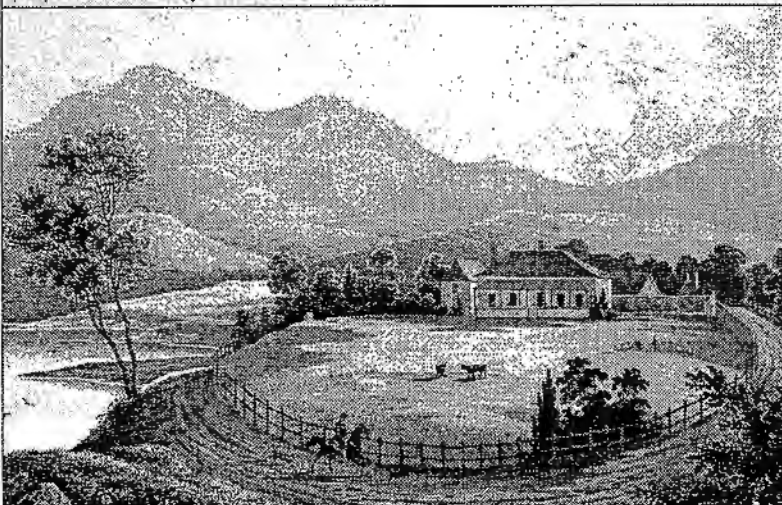
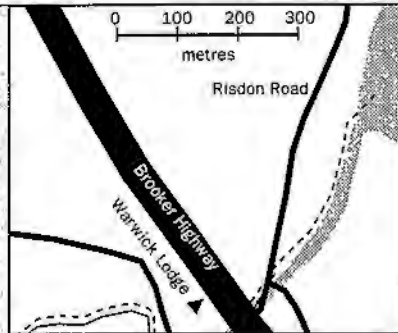


Figure 6: Lithograph from 1830 of Warwick Lodge in an Arcadian setting. (Alport Library and Museum of Fine Arts)

This example illustrates:

- Many places of importance were demolished in a booming era of postwar affluence and development.
- Our appreciation of historic places has changed over time. Today, we would not consider it appropriate to demolish a place built in the 1820s. Society's changing values are embodied in our cultural heritage legislation.
- Heritage places do always suit users. Planning schemes should encourage and provide the incentives for conservation and development to prevent their loss.

¹Lindy Scripps, *The New Town Rivulet Historical Study*, Hobart City Council, 1993, p.31.

Case Study 2: Pitt Farm, Albert Road, Moonah

Pitt Farm has a fascinating history. The house belonged to Richard Pitt, one of the first and only successful free settlers granted land in 1804 along New Town Rivulet. (see fig. 7) Possibly built in the 1820s, it is one of Australia's oldest farm houses. It is listed on the National Trust register, Register of the National Estate, Tasmanian Heritage Register and *Glenorchy Planning Scheme 1992 Heritage Schedule*.

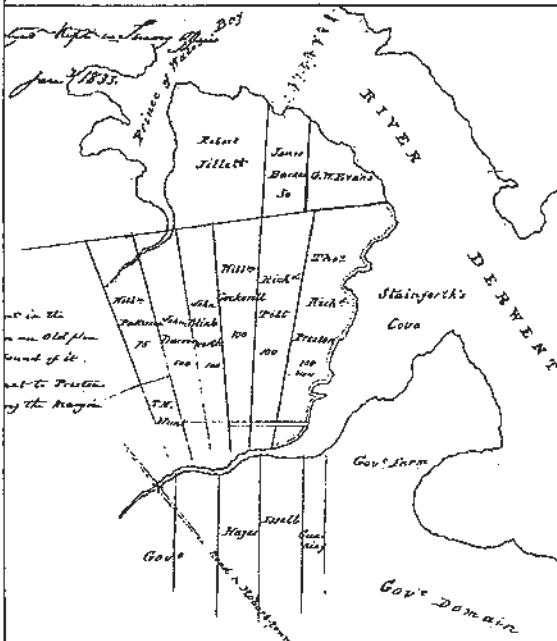
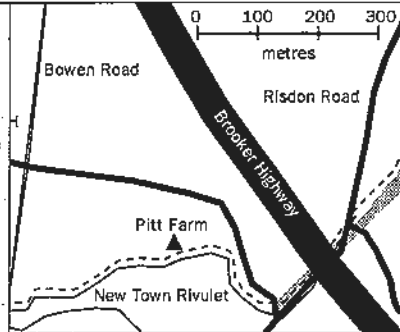


Figure 7: Land grant map of Prince of Wales Bay and Stainforth Cove, showing the 100 acres granted to Richard Pitt in December 1804. (DELM LSD 1/93/447)

The story of the survival of the Pitt Farm buildings cannot be put down to good planning or cultural heritage management. It remains standing because it has been occupied by the one family for many generations who have had a high regard for its history. However, there is another story to the land around it.

Until the 1960s much of the Glenorchy side of New Town Creek, including Pitt Farm, was used for agricultural purposes. From 1964 onwards, the Glenorchy Planning Scheme 1964 gave Pitt Farm the zoning 'light industrial'. It was seen as having the potential for development and so the subdivision push

began. With the support of the planning system, the house and land were subdivided and commercial and light industries moved in. The result is that today, the heritage and residential values of Pitt Farm have been eroded by the encroachment of poorly designed, unattractive businesses. Access is poor as is the design and size of the curtilage. (see fig. 8)

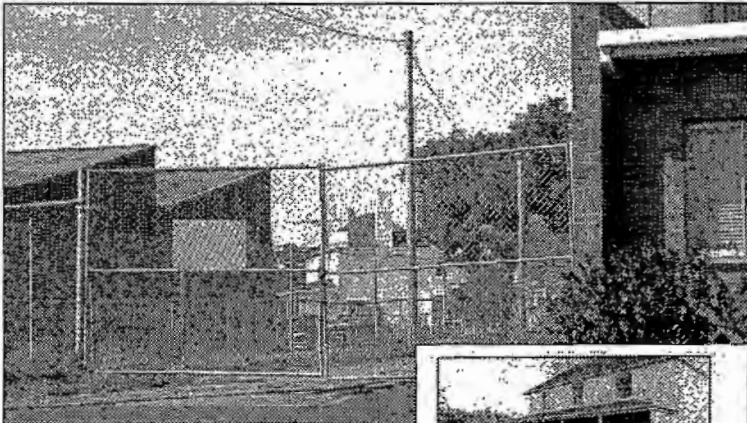


Figure 8: Pitt Farm, with its distinctive curved chimneys, is well hidden from the street by encroaching light industrial buildings. (author's photo)

Figure 9: The future of Pitt Farm is unknown. The property is currently on the market. (*The Star Real Estate Guide*, 4-10 June, 1998, p.21.)



**FOR SALE NOW "PITT'S FARM"
BY EXPRESSIONS OF INTEREST**

MOONAH: Offers over \$67,000. Second-oldest farmhouse in Australia, the oldest building being 'Elizabeth Farm' in Sydney. A precious piece of Australian history in need of an entrepreneur. A fine 2-storey house with four bedrooms, dining room, scullery, study, verandah and servants quarters. Under Australian National Trust listing - needs restoration. Ideal as a tourist attraction.

Until recently the *Glenorchy Planning Scheme 1992* contained no provisions in the industrial zone for Council to consider cultural heritage issues. An amendment in 1996 required the 'protection of any important historic and architectural features on the site or within the streetscape'.² Thus, subdivision and development occurred unhindered in this zone. Today it is still zoned light industrial and the house is firmly surrounded by warehouses and manufacturing industries.

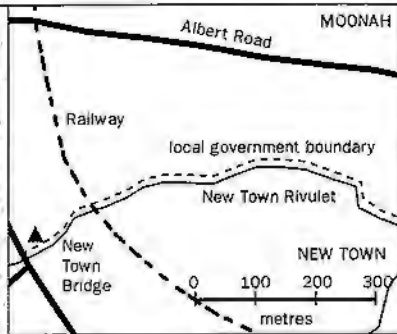
This example illustrates that:

- community values about what is important about a place have changed. Now, we value the setting as well as the building or historic structures on the land,
- heritage listing can come too late and may not guarantee a place will remain standing. For example, a National Trust listing alone does not place any statutory obligations on a planning authority,
- planning practice and the structure of a planning schemes can result in heritage provisions not always applying to some zones or places,
- traditionally, heritage places within industrial areas have not been highly regarded. Today, we have a broader view but planning schemes do not always reflect this,
- industrial areas are still seen as places for growth and change, with heritage, an obstacle to this development,
- the introduction of heritage provisions into a planning scheme cannot remedy existing problems, they only apply to new development.

²*Glenorchy Planning Scheme 1992*, p.43.

Case Study 3: New Town Bridge, Main Road

This sandstone bridge was built between 1839 and 1841 by convict labour in a government push to create transport links across the colony. On the main road north is New Town Bridge, one of the finer examples of convict stonework. (see fig. 10) The road was widened in the 1960s to accommodate greater volumes of traffic, the sandstone bridge left standing but hidden underneath.



Heavy flooding in 1995 and 1996 caused severe erosion and damage along the length of New Town Rivulet. The boundary of one Glenorchy property adjacent to New Town Bridge was badly damaged.

Gabion retaining walls (wire mesh frames filled with stone) were installed by a property owner to rebuild the damaged bank of his property. The reconstruction also included a high fence, stone wall and fill abutting the sandstone bridge. (see fig. 11) The result was an aesthetically inappropriate and intrusive development.

Over the next year a multifaceted and farcical battle ensued involving the Glenorchy and Hobart City Councils, local residents, aldermen and the property owner. Many issues and side



Figure 10: New Town Bridge before road widening. (Archives Office of Tasmania)

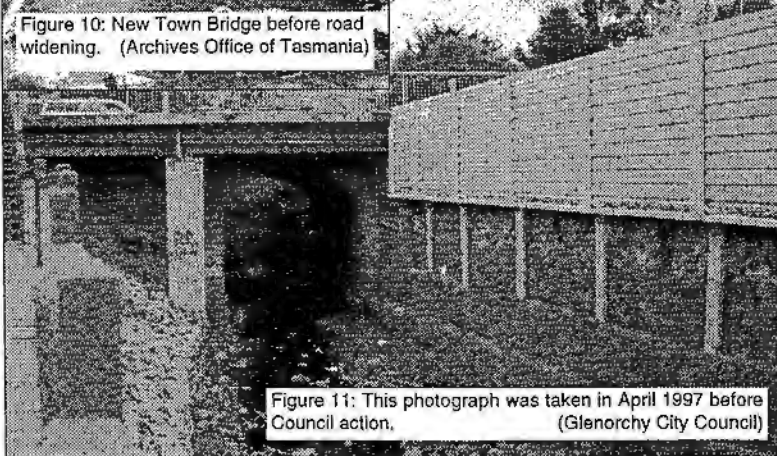


Figure 11: This photograph was taken in April 1997 before Council action. (Glenorchy City Council)

issued were raised, such as 'who owned the land?' 'is the bridge of heritage value?' 'if it is, why isn't listed?' 'which planning jurisdiction was the construction work in?' 'where exactly were the city boundaries?' 'was the work legal or not?' 'was it development or works or neither under LUPA?' 'who had rights of appeal?'. There was no end to the claims and counter claims.

Eventually, a development application was lodged with Glenorchy City Council for a modified wall and fence design. The application was deemed discretionary, but not because of heritage values. It was found that the bridge was not on either planning authority's heritage list. The application was approved subject to conditions and an appeal was lodged by Hobart City Council. Mediation occurred and a solution was agreed to by all parties. The main solution was that vegetation would be planted to hide the fence. The result can be seen in fig. 12.

This example illustrates:

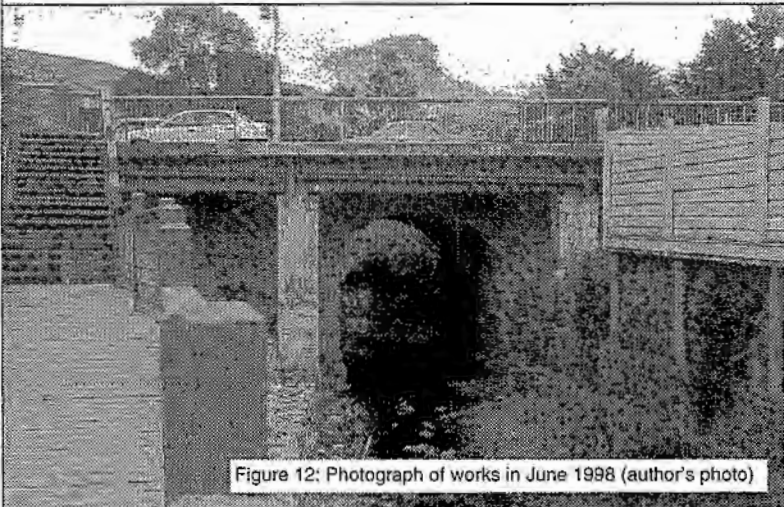
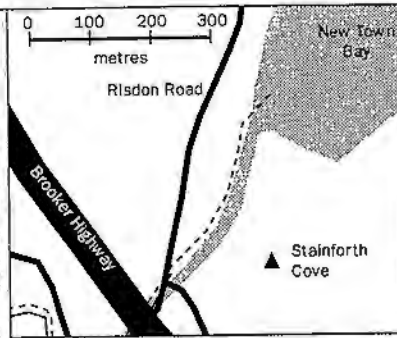


Figure 12: Photograph of works in June 1998 (author's photo)

- the fundamental questions of an undetermined boundary and debate about which authority is responsible, can be subject to interpretation, intense debate and take up an enormous amount of time,
- an application for a structure that is already built is rarely refused although modifications may be required.
- a structure, in this case the bridge, can be overlooked for listing because each authority presumes it is on the other authority's list.
- the process of mediation concentrates on ameliorating a problem whereas a full appeal questions whether Council's approval was right.
- after a lengthy dispute, any resolution is seen as better than none at all, even though the result may not be ideal.

Case Study 4: Stainforth Cove, New Town Bay

Stainforth Cove, later to be known as New Town Bay, was first sighted and charted by Sir John Hayes in 1793. After the settlement of New Town it became a popular place for boating and fishing. The New Town Regatta, a successful recreational event, was held until the First World War. The reclamation of New Town Bay was proposed in 1908 and eventually the site became a tip in the 1920s aiming at eventual conversion to a recreation reserve. (see fig. 13) In the meantime, flying debris and odours led to it being called 'Stink Bay'.³ It was not popular with local residents.



Today, the bay has an accumulation of sediment and for local users this has resulted in a loss of amenity and continual visual and odour problems. It has been described as aesthetically poor, the sediments contaminated with heavy metals.

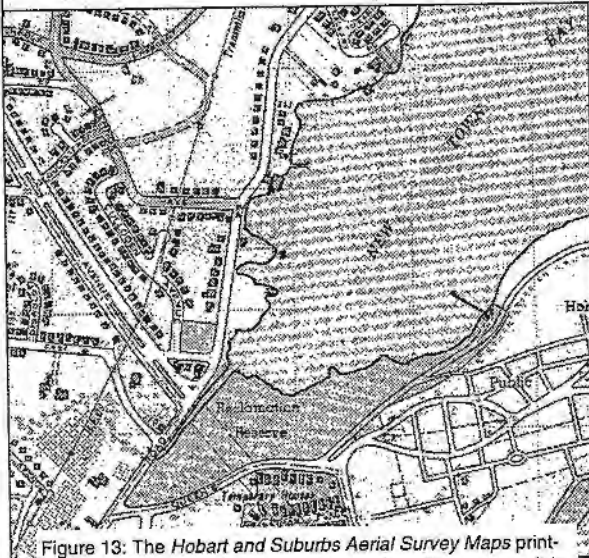


Figure 13: The Hobart and Suburbs Aerial Survey Maps printed in 1954 illustrates the extent of the reclamation reserve. It is worth comparing this map to the land grant map of early last century in case study 2 on page 48. (Glenorchy City Council)

In addition, what was once an attractive people place has been severed from the rest of New Town by the construction of the Brooker Highway.

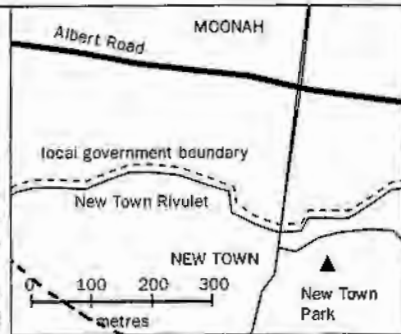
Although this example predates planning schemes or legislative mechanisms it illustrates that even if these events were to occur today, any cultural association the community may have with a place is difficult to justify and even harder to protect through legislation.

Cultural heritage provisions in planning schemes are better at dealing with physical structures such as buildings. While places may have social value, the arguments for protection are harder to gather and harder for decision makers to accept.

³Scripps, p.29.

Case Study 5: New Town Park, Tower Road, New Town

The residence, stables and granary date back to between the 1820s and 1840s. The residence is now vacant, the entire complex now part of Hobart's private Rehabilitation Hospital. Numerous additions and modifications have been made to the historic building complex over the years and in general the sandstone buildings are all in need of maintenance and repair. (see fig. 14)



Separate buildings on the site have been constructed in recent decades to accommodate the hospital's full range of services.

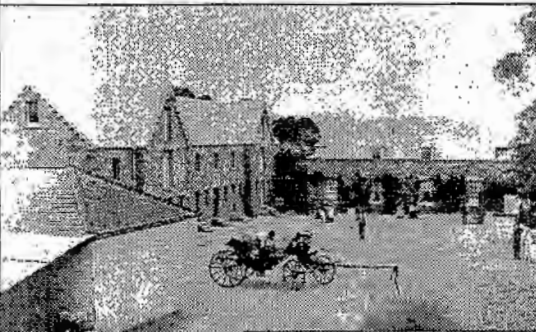


Figure 14: New Town Park in the 1890s
(Archives Office of Tasmania, 30/5144)

Figure 15: New Town Park in January 1998.
(author's photo)

This example illustrates the following:

- the heritage values of an important historic building can be diminished by poorly designed additions,
- there may be no incentive to maintain and use heritage buildings, the alternative is to move out, lock the door and leave it to deteriorate slowly through neglect,
- there are limited financial incentives for organisations to engage professional staff, to undertake major conservation studies and works,
- an organisation or individual cannot be compelled to undertake conservation work.



**Case Study 6: Site
migrant workers houses,
Wilmslow Avenue, New
Town**

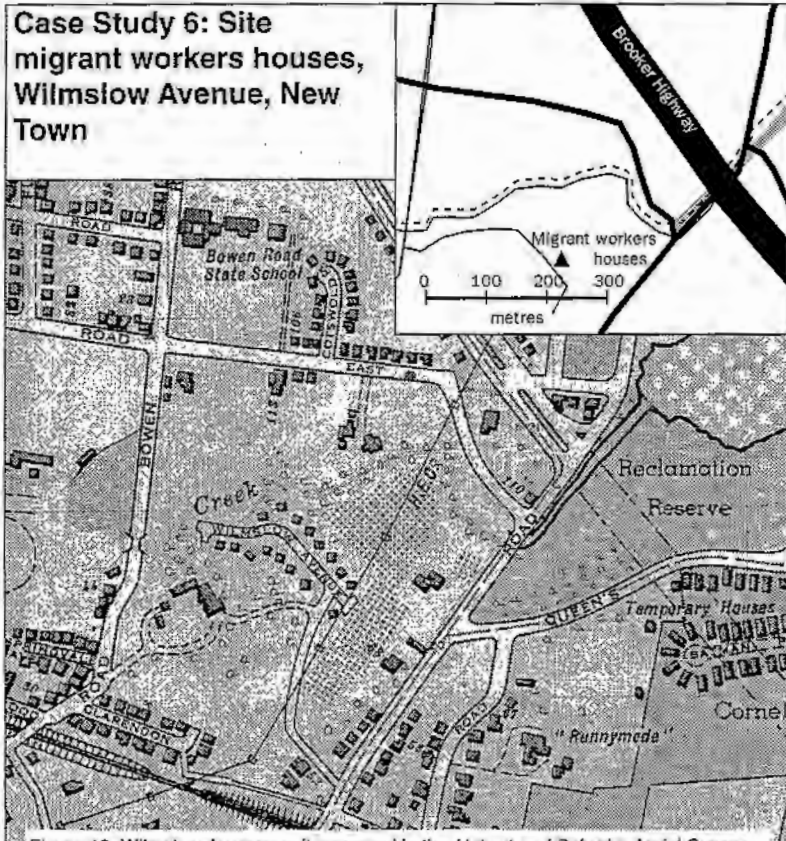


Figure 16: Wilmslow Avenue as it appeared in the *Hobart and Suburbs Aerial Survey Maps* in 1954. (Glenorchy City Council)

After the Second World War, the State Government through the Agricultural Bank, built 16 home units to accommodate master builders who emigrated from the United Kingdom. (see fig. 16) They were regarded as temporary dwellings and demolished to make way for home unit development a few years ago.

This example illustrates that:

- our recent history, and the evidence of it, is difficult to accept as important and worth keeping,
- appreciation of our recent history may only come with time,
- protecting places of this type through statutory means is hard to justify,
- if it were to happen it may undermine the entire heritage conservation process,
- places that appear mundane, ordinary or irrelevant to today's society are lost in the change of our cities,
- often places associated with our migrant history are not recognised as being worthy of protection.

Conclusions

It can be concluded that legislative changes and planning schemes provisions have helped to curb the proliferation of mismanagement and poor cultural heritage practice. However, there remains an enormous potential for change and improvement.

The case studies show the complexity of cultural heritage management and how society's attitude has changed so quickly and markedly. It must be acknowledged that many of the circumstances in the case studies would probably not arise today. For example, it is highly unlikely that government or the community would allow a tip to be located on the foreshore of the Derwent River or for Warwick Lodge to be demolished. In addition, had the protective powers of the HCHA and LUPA existed, many of the case studies would have had very different outcomes.

There is no doubt that cultural heritage should remain a consideration in the planning process, that local government must continue to play a role in its administration and that a model cultural heritage schedule be advanced and tested.

The following suggestions would improve the cultural heritage planning process.

- There needs to be a mechanism by which the degree of cultural heritage protection offered through local government is measured. This would determine any level of change or improvement and how local authorities are responding to the HCHA and the model planning scheme requirements.
- There is a need for planning authorities without a current or comprehensive heritage list to incorporate clauses within their heritage schedule for the lodgment of discretionary applications for all places of heritage value, either listed or not. While it may seem overly dogmatic, there has to some pressure for councils to prepare a heritage study and incorporate new listings. There is also no reason why exemptions to permit requirements cannot be specified.
- There needs to be simpler mechanisms within LUPA (Division 2 Amendment of a Planning Scheme) to streamline the amendment process to make heritage listing less of an obstacle.

- The assessment of a cultural heritage amendment within the RPDC should be done by an officer with some cultural heritage background or experience.

There is the potential for a model cultural heritage schedule to:

- Concentrate on better provisions which require the applicant to meet an acceptable standard through 'performance-based' planning whilst local authorities develop more informative and comprehensive lists.
- Incorporate a dual list which includes those places already on other lists, usually of State or regional significance, as well as places of local value. Both would be covered by the same provisions.
- Include exemptions so that some minor works and development such as kitchen modifications or internal alterations are permitted and exempt from the provisions of the Heritage Council.

'The use of the planning system and development of heritage registers offers the opportunity to diffuse potential confrontation by setting out conservation ground rules and objectives in advance.'

Sheridan Burke, 'Heritage conservation and the environmental planning process', in *Cultural Conservation: Towards a national approach*, 1995, p.177.

A new
technique

A new technique

Introduction

The previous chapters have looked at the problems of current heritage provisions and their use in assessing development applications. As stated previously, the *Preliminary Draft Model Planning Scheme* is being reviewed by the RPDC in the move toward performance based development control. The aim is to make the process more positive, integrated and less complex. This chapter critically examines how cultural heritage conservation fits within the context of performance based development control.

This chapter includes a review of three earlier DELM in-house reports on model cultural heritage provisions. The remainder of this chapter looks at the heritage provisions for the draft planning schemes of Sullivans Cove and Break O'Day—both of which use the performance based approach. At the time of writing, both schemes were before the RPDC for consideration for final approval. Because they are not operational, it remains too early to judge their effectiveness.

Towards model cultural heritage provisions

The 1992 Model Ordinance

In 1992, a report titled *Provisions For Conservation of Places of Cultural Significance* by Ian Sansom was commissioned by the former Commissioner for Town and Country Planning. It recognised that statutory control was the basic mechanism for the protection of places of cultural significance.⁴⁷ It made recommendations as to what cultural heritage provisions should be included in the 1992 Model Ordinance to achieve this end. However, this project faded with the introduction of the 1993 RMP5, returning cultural heritage to the wilderness.

Sansom identified that cultural heritage lists in Tasmanian planning schemes were of a poor standard and recommended that a policy be implemented to require a planning authority to prepare a heritage study, a list of heritage places and the necessary planning scheme amendments.

⁴⁷Sansom, p.8.

Some of his other ideas for a model cultural heritage schedule which remain relevant today are:

- A clearly phrased objective to conserve places of heritage value.
- The definition of cultural heritage terms that are consistent with those in the provisions.
- Statements to ensure conservation processes and council considerations are consistent with the objective and the definitions. For example, a council may require that the principles and practices of the *Burra Charter* be met.
- An objective to stimulate conservation based development and a set of principles that complement this objective.
- Mechanisms to deal with significant places not identified in the scheme.
- A council conservation strategy or policy.
- A statement of 'Conservation Intent' for each place and heritage area on a cultural heritage list.
- Provisions to allow councils to request more information with a development application such as a conservation plan or a statement of cultural significance.
- Mechanisms to gain input and/or advice from a special cultural heritage committee, heritage advisor or person with the relevant expertise, if a council does not have the necessary professional expertise.
- Mechanisms that encourage developers to undertake relevant conservation studies as part of project development.
- The explicit statement of any design guidelines in a heritage schedule.⁴⁶

DELM draft guidelines and provisions

Two years after Ian Sansom's report came the following unpublished DELM documents:

⁴⁶ *ibid*, p.4-6.

1. Draft Guidelines for Making Provision for Conservation of Places of Cultural Significance in Planning Schemes and Interim Orders, November 1994.
2. Draft Planning Note Number 8, Standard Heritage Planning Provisions For Planning Schemes and Interim Orders, November 1994.

The Draft Guidelines differs in only one major respect from the Planning Note. It provides comprehensive background notes to the cultural heritage provisions suggested. Both documents attempted to offer planning authorities basic and standard mechanisms for protecting cultural heritage within new and existing planning schemes and interim orders.

They offered the following format:

- Definitions,
- Heritage aims and objectives,
- Heritage items,
- Development in the vicinity of heritage items,
- Heritage conservation areas,
- Conservation incentives,
- Development of a site or place of potential or known archaeological significance,

and four schedules:

- Schedule (A) Heritage Items,
- Schedule (B) Heritage Conservation Areas,
- Schedule (C) Potential Archaeological Sites,
- Schedule (D) Heritage Items - Interiors.

They went further than the 1992 report but took a backward step in a number of areas. It used out of date terminology, was overly complex and protective and developed provisions that were negative and prescriptive. For example, 'The planning authority must not grant consent to a permit application ... ' and 'A person must not ... damage or remove the relic'.⁴⁹

⁴⁹DELM, Draft Planning Note No. 8, November 1994, p.3.

Conservation legislation and planning regulations in their present form, encourage conflict by restricting and controlling while mechanisms which promote and encourage conservation by incentive and agreement achieve better outcomes in a more positive way. Ian Sansom's 1992 report raised this point, arguing there are better ways of developing working relationships between the administrators of the legislation and the community. The performance based approach focuses on appropriate outcomes rather than adhering to the prescriptive technique of the planning authority dictating the terms.

For one reason or another, but most likely because of the impending introduction of the HCHA, both documents only ever remained as drafts.

Model planning scheme resurfaces

A year later, DELM commissioned the Budge Report to review the new RMPS. It recommended a series of outcomes which would create a more effective planning system including a format for planning schemes leading to Statewide consistency as well as a focus on performance based approach.⁵⁰ This triggered Hobart City Council and Break O'Day Council to develop planning schemes along these lines. A review of the heritage schedules of these two schemes follows.

The model planning scheme project gathered political momentum and in the Premier's *Direction Statement* of 10 April 1997 it was stated that there would be one planning scheme for each council and there would be common definitions, common compliance clauses and a standard format. A *Preliminary Draft Model Planning Scheme* was developed and released for comment in July 1997. The framework is now completed and being reviewed by the RPDC. Should the scheme be endorsed the next step will involve the preparation of schedules, such as a cultural heritage schedule.

As with all planning schemes, the process of preparing and developing a new planning is slow. The two current examples that follow illustrate how issues can arise even after lengthy consultation and examination.

⁵⁰DELM, *Preliminary Draft Model Planning Scheme*, July 1997, p.1. (in reference to Trevor Budge & Associates Planners Pty Ltd, *Integrated System of Planning Instruments for the Tasmanian Resource Management and Planning System*, 1996)

Draft Sullivans Cove Planning Scheme 1997

Description

The *Draft Sullivans Cove Planning Scheme 1997* uses the performance based approach to development control which recognises the pre-eminence of heritage values in this precinct. It identifies cultural heritage conservation as one of the key objectives.

The scheme recognises that there are a number of ways in which development and land use can satisfy desirable standards. It outlines a range of values and strategic planning principles including cultural resource principles.

They are as follows:

To facilitate development which is compatible with conservation of the Cove's cultural heritage values.

To encourage the recycling of existing buildings through the promotion of new uses, particularly in buildings of identified cultural heritage value.

The recognisable historic character of Sullivans Cove is not to be compromised by new development which overwhelms the historic spaces and buildings, or by new development which reduces the apparent authenticity of the historic places by mimicking historic forms.⁵¹

Part E of the planning scheme, Schedule 1 - Conservation of Cultural Heritage Values contains the mechanisms to ensure heritage values are protected.

It incorporates a set of objectives (clause 22.2) and a section defining terms used in the Schedule (clause 22.3). It includes performance criteria for the assessment of proposals to undertake buildings and works on places of heritage significance for permitted, discretionary and exempt status applications (clause 22.4). The Schedule also incorporates controls which apply to the construction of buildings and works on other land (clause 22.5). Together these two sets of controls deal with heritage listed places and those adjacent to or adjoining heritage listed places. The Schedule also deals with sites of archaeological sensitivity on all land (clause 22.6). Table 1 in the

⁵¹*Draft Sullivans Cove Planning Scheme June 1997*, p.11.

Schedule is a list of places of heritage significance, and Figure 4 a map of places of heritage significance. Details of the key clauses in the scheme are as follows.

Clause 22.4

Conservation of places of heritage significance

The relevant provisions for heritage listed places cover the following.

- Exemptions from the clause, namely construction covered by the Wapping Local Area Plan and routine repair and maintenance.
- The requirement that all applications include a Conservation Plan prepared in accordance with the *Burra Charter*.
- The referral to the National Trust of all applications and consideration of their views in determining an application.
- If the work is undertaken with an approved conservation plan and done by a suitably qualified professional the 'deemed to comply' provisions apply. This means the applicant will have a permitted application.
- All other applications which do not meet the 'deemed to comply' provisions are treated as discretionary. The criteria for considering these applications are detailed. They include clauses such as 'new buildings and works must complement and contribute to the cultural heritage significance, character and appearance of the historic place and its setting,' and 'new buildings and works must not reduce the apparent authenticity of historic places by mimicking historic forms.'³²

Clause 22.5

Building and works on other land

For all other building and works on land within the planning area the following provisions apply.

- The exemption of those places dealt with in clause 22.4, buildings and works covered by the Wapping Local Area Plan, the Macquarie Point Wharf Activity Area and all routine repair

³² *ibid*, p.63.

and maintenance to buildings and works which do not change the external appearance of a building.

- The requirement that all submissions include an appropriate report stating that the building does not have heritage value or a conservation plan. Other information which shows the impact of the new development must be supplied. This includes street elevations and a schedule of materials and finishes of the building exterior.
- The requirement that 'deemed to comply' applications meet provisions such as, 'the proposed buildings and works are internal and cannot be viewed from outside' and 'the colour and finishes of new buildings and works adjacent to a place of heritage significance must not be lighter than any adjacent or nearby stone or unpainted brick building'.⁵³
- The requirement that discretionary development must take into account criteria such as 'new buildings and works must not be as or more prominent in the street than any adjacent place of heritage significance,' and 'buildings and works must complement and contribute to the specific character and appearance of adjacent historic places and the historic character of the Cove generally'.⁵⁴

Clause 22.6

Sites of archaeological sensitivity

For sites of archaeological sensitivity the following provisions apply.

- The exemptions for the Macquarie Point Wharf Activity Area (Hobart's working port).
- The requirement that a 'deemed to comply' application contains an Archaeological Sensitivity Report with specified information and procedural matters.
- Discretionary applications will be assessed against a series of details criteria such as 'the likelihood of the proposed works resulting in the removal or destruction of items of archaeological significance,' and 'the need to undertake an archaeological

⁵³ *ibid*, p.64.

⁵⁴ *ibid*, p.64-65.

'watching brief' to be required during the carrying out of works'.⁵⁵

Strengths & weaknesses

The *Draft Sullivans Cove Planning Scheme* 1997 is comprehensive. It has been framed to address the competing and conflicting interests of land holders and business interests in the Cove by separating out the working port and transport zone from the historic and tourist precincts where heritage conservation has top priority.

However, its structure is overly complex such that the connections between other parts of the scheme, especially the Activity Areas are not well stated. This makes it difficult to use.

It may be said that the provisions in this scheme are still too subjective and provide little certainty. For example, the meaning of the criterion that 'New buildings and works must complement and contribute to the cultural heritage significance, character and appearance of the historic place and its setting'⁵⁶ could be debated at length. In some instances if a performance measure is not quantifiable, it becomes immeasurable.

However, planning authorities cannot account for every interpretation of the wording in a scheme and if certainty is required then the generous 'deemed to comply' provisions are available.

In addition, the scheme uses terminology that is current and applied consistently. The definitions are well thought out and comprehensive, especially that of 'heritage value'. It considers the context of a heritage listed place as well as the place itself.

Draft Break O'Day Planning Scheme 1996

Description

The *Draft Break O'Day Planning Scheme* 1996 also uses the performance based approach, such that 'any use or development must demonstrate that it is able to occur without adversely affecting the achievement of the intent and objectives of the Scheme'.⁵⁷

⁵⁵ *ibid*, p.66.

⁵⁶ *ibid*, p.65.

⁵⁷ *Draft Break O'Day Planning Scheme* 1996, p.2.

The Scheme outlines a number of general objectives for sustainability and specific objectives. For cultural heritage the general objective is to:

- 1.3.1(m) 'Protect the Planning Area's cultural heritage and ensure that places of archaeological, architectural, historic, cultural, social, scientific or technical significance are conserved for the benefit of the present community and future generations.'⁵⁸

This objective is in part the definition of cultural heritage significance from the *Historic Cultural Heritage Act 1995*.

The specific objective for cultural heritage is:

- 1.4.1 (n) 'This Scheme is to provide a high level of protection for cultural and built heritage.'⁵⁹

The planning area is divided into five zones: urban, commercial, industrial, rural and coastal and resource management.

In accordance with performance based principles, an applicant must show that the development can meet the performance criteria set out in the code.⁶⁰

For cultural heritage the performance criteria are outlined in a section called a Heritage Code. However, the Heritage Code only applies to three of the five zones; urban, commercial and coastal and resource management. The rationale for this is unclear, as there is no reason why a heritage listed place cannot exist in an industrial or rural zone. Until recently, this same situation existed in Glenorchy, where heritage provisions did not apply in an industrial zone. This has since been rectified.

The Break O'Day Heritage Code contains the following sections:

- intent of the code,
- planning requirements,
- advisory committee,

⁵⁸ *ibid*, p.2.

⁵⁹ *ibid*, p.4.

⁶⁰ *ibid*, p.43.

- definitions (of heritage terminology),
- table 5.1-items and places of heritage significance.

The Code requires that development must not occur without a permit. This clause is similar to s.32.(5) of the HCHA which requires a decision to be made as to whether or not the heritage values or the ability of the place to meet the required listing criteria is affected. In this sense an application is neither permitted nor discretionary.

The Code requires the Council to either refer the application to an advisory committee (as defined by the Heritage Code), nominee of the committee or to the Tasmanian Heritage Council. This is a curious provision because councils under the HCHA are not required to refer development applications of places not listed on the THR to the Heritage Council. Therefore, for places in the scheme not on the THR, it would fall on the advisory committee or their nominee to make a decision about the effect of the development on the heritage values. As a consequence, there is little certainty for an applicant because an application may take any one of a number of paths.

The Code also defines the makeup of the advisory committee. However, it must be questioned if it is possible for a remote rural council in Tasmania to be able to assemble the requisite qualified and experienced staff or be able to assemble a quorum of 4 members at regular meetings.

Strengths & weaknesses

In general, the Code has a clear, simple structure and format. However, it lacks the precision and comprehensiveness of the *Draft Sullivans Cove Planning Scheme 1997*. For example, it is not clear why applications should be referred to the Tasmanian Heritage Council when it may not be necessary.

It also lists definitions from the *Burra Charter*, words such as restoration, fabric and maintenance. Why this is done is not clear because they are not used elsewhere within the Code. Terms, such as 'item of historic cultural significance' are interchanged with 'buildings, places or objects of cultural significant' (sic). It must be questioned that, if the Scheme goes to the length of defining terms, why not use terms consistently. Just as planning schemes are always precise about terms such as 'development', 'use', and 'height', the same consistency must be introduced for heritage provisions.

It does not provide certainty for applicants through the permitted or discretionary process. An application can be lodged with the council

but, it may be some days or weeks before the advisory committee or Heritage Council can decide if it needs to be advertised or not.

Finally, the Code does not require a permit to be issued for the change of use of a heritage listed place. As already stated in chapter 3 there are instances when the change of use would be worth considering.

Conclusions

The DELM reports discussed in this chapter have shown that there is the framework and the potential for planning schemes to contain standard heritage provisions. The two planning schemes studied also show this. They illustrate too that the subjective nature of cultural heritage planning ensures there will always be a limitation on the provisions, including performance measures.

The discussions have also shown that there is scope for a schedule to have a simple structure and use straightforward and precise language. A model cultural heritage schedule should also include:

- objectives,
- principles of development and use,
- development control, permitted and discretionary permits,
- a local conservation strategy/policy or even a set of design guidelines,
- definitions of terms,
- reference to the *Burra Charter*,
- a heritage list.

'... the production and management of the changing urban landscape are processes in which conflicting ideologies are deeply embedded, and the common depiction of tension as a simple dichotomy of retain or redevelop is a gross over-simplification.'

Larkham, *Conservation and the City*, 1996, p.3.

'Legislation is not a recipe for heritage place management; it is an expression of the community's wish for such management, and, if properly written or used, is a useful tool.'

Michael Pearson & Sharon Sullivan, *Looking After Heritage Places*, 1995, p.37.

A new
perspective

A new perspective

Introduction

This project has set about to progress the means by which change and evolution to cultural heritage planning can be practically achieved.

Chapter 2 examined the background to cultural heritage conservation to illustrate how Australian legislation developed in the post war era. It has shown how, in later years Tasmania followed other States to create the current legislative framework. Chapter 3 reviewed Tasmania's Resource Management and Planning System and the *Historic Cultural Heritage Act 1995* to identify the problems that local government face. Chapter 4 showed how planning authorities in Tasmania have addressed cultural heritage in their planning schemes, the results being a varied and often flawed array of mechanisms. It also looked at six case studies to illustrate the complex and contradictory nature of cultural heritage management. Chapter 5 reviewed the technique of performance based planning through two current planning schemes with integrated cultural heritage provisions.

In this final chapter, all the recommendations for statutory reform are drawn together into practical solutions, including a model cultural heritage schedule. The following solutions recognise the potential and also the limitations of what local government can achieve through the tools it has available. This chapter is divided into three sections.

Legislative tools - general directions and amendments

Planning tools - model cultural heritage schedule

Future

Legislative tools

General directions

This section summarises a series of recommendations that would assist local government in using their statutory powers.

1. **Response:** Provide the Heritage Council with the resources to; prepare a Cultural Heritage Policy to provide local authorities with a policy framework for decision making; help planning authorities understand the new legislation; give support and

heritage advice as it is needed and carry out ongoing monitoring of the process to ensure cultural heritage protection is improving.

Reason: Planning authorities have accepted the delegation of responsibilities under the HCHA without additional resources or assistance. Much more guidance in the form of workshops and practice notes is needed to ensure planning authorities continue to meet the requirements of the legislation and see it as less of a State Government impost.

2. **Response:** Encourage the delegation of powers under s.33-(1)(a) of the HCHA from the Heritage Council to planning authorities with the relevant expertise.

Reason: To reduce double handling of applications and reduce the time taken to process applications.

3. **Response:** Create consistency in the definitions within LUPA and the HCHA. This would involve an amendment to the HCHA definition of historic cultural heritage significance to include places of 'aesthetic' significance. Also required is an amendment to objective (h) in Part 2 of LUPA and other related planning legislation to reflect the above definition in the HCHA. This would mean incorporating the values 'archaeological', 'social' and 'technical'. Finally, an amendment of s.5 of the HCHA is needed so that objective (h) of the RMPS is included as the stated reason for the establishment of the Heritage Council.

Reason: Places can be valued for many reasons. At present none of the definitions mesh and it should become a priority to introduce consistency and ensure all parties are clear about what constitutes cultural heritage.

4. **Response:** Create incentives to encourage planning authorities without a current or comprehensive heritage list to prepare heritage studies, lists and planning scheme amendments.

Reason: At present, few local councils have taken the initiative to prepare heritage studies. Consequently, heritage lists in planning schemes are inadequate and places of importance are being lost because they are not listed.

5. **Response:** Eliminate s.60 referral process for cultural heritage applications under LUPA.

Reason: To remove duplication of process, reduce administrative costs and cut the time frame in which decisions are made.

6. **Response:** Create a simpler process within LUPA (Division 2 Amendment of a Planning Scheme) to streamline the amendment process to make heritage listing less of an obstacle.

Reason: Processing a planning scheme amendment is a drawn out and convoluted process. A simpler process reduces administrative costs and creates a more responsive process. At the very least, the certification process could be eliminated.

7. **Response:** Ensure cultural heritage amendments are assessed by an officer in the RPDC with some cultural heritage background or experience.

Reason: An understanding of the philosophy and current thinking behind cultural heritage would streamline the amendment process and ensure that the RPDC were receiving sound advice.

Amendments

The following recommendations are solutions to the lack of integration between Part 6 of HCHA and related Part 4 provisions in LUPA as already identified in chapter 3 pages 32 to 35.

1. **Response:** Include use, as defined by LUPA, in Part 6 of the HCHA. However, allow planning authorities to deal with all use applications but allow for the opportunity to seek comment on any application from the Heritage Council.

Reason: There may be instances where it is inappropriate for a particular use to proceed without the scrutiny of the Heritage Council.

2. **Response:** Amend the definition of works under LUPA to reflect the broader definition under the HCHA.

Reason: There is the potential for some works to have a detrimental affect on the significance of a place. Again there should be consistency.

3. **Response:** Amend s.32 and s.34 of the HCHA to allow councils to create a single development/works application form and to advertise a works and development application together.

Reason: Such an arrangement would achieve the same end but reduce time and administrative costs.

4. **Response:** Clarify s.32 of the HCHA to allow the Heritage Council to be able to identify and allow exemptions for minor works. Under a model heritage schedule, a planning authority would have the matching authority to allow these exemptions.

Reason: A coordinated response to dealing with minor works and exemptions will create a less bureaucratic system..

5. **Response:** Redraft s.33, s.36 and s.37 of the HCHA so that works permits are dealt with in the same way as s.51, s.52, s.53, s.54, s.55,

s.56 and s.57 of LUPA with the necessary modifications to allow for the delegation of powers from the Heritage Council to planning authorities. This would bring all time frames into line. A model heritage schedule would have to accommodate the idea of discretionary and permitted applications.

Reason: Common processes simplify the system for administrators and reduce the time taken for processing development and works applications.

6. **Response:** The general problem that none of the time frames in LUPA and the HCHA match would be solved by the above response to point 5.

Reason: as above

7. **Response:** Amend s.33 of the HCHA to incorporate a seven day period in which a planning authority must refer an application to the Heritage Council.

Reason: Many planning authorities aim to meet tight deadlines. Without one specified, times could blow out leaving an applicant uncertain about the future or status of an application.

8. **Response:** A planning authority with delegation from the Heritage Council would have the authority to request further information under s.54 of LUPA because they would now be dealing with an application under LUPA. Planning authorities which do not have delegation need an amendment to s.33 of the HCHA to enable them to request information by themselves or under the direction from the Heritage Council. That information must be supplied to the satisfaction of the Heritage Council.

Reason: If sufficient information is provided with an application, the assessment process can take less time, offer more certainty and lead to better outcomes.

9. **Response:** The inclusion of the s.57 process of LUPA as mentioned in point 5 would automatically redefine the process of giving notice under s.34 of the HCHA.

Reason: Combining the two processes will improve administration and eliminate unnecessary confusion.

10. **Response:** Again, the inclusion or reference to s.57 of LUPA in the HCHA would redefine the process of making a representation. This would alter s.34 of the HCHA and in the process give councils the ability to charge fees for advertising under their own by-laws if they so wished.

Reason: A double system create confusion for everyone. The 14 day period for public comment under LUPA works well and should be incorporated into the HCHA.

11. **Response:** Modify s.40 of the HCHA to give the Heritage Council 3 days to notify a planning authority of its decision on a works application.

Reason: All authorities should be bound by time frames for each step of the process. A weak link could bring the system down.

12. **Response:** Modify s.40 of the HCHA to allow a planning authority to defer the serving of the Heritage Council's decision until it has had the opportunity to fully assess a development application on other planning grounds. Then the two decisions can then be issued to the applicant at the same time and appeal rights explained.

Reason: This would enable an applicant to decide if they wished to appeal either the council's or the Heritage Council's decision with all the information in front of them.

13. **Response:** Amend s.42 of the HCHA so that reference is made to s.59 of LUPA and gives a deemed approved application. This also gives an applicant appeal rights.

Reason: A coordinated process works for the community and administrators rather than against them.

14. **Response:** Amend s.43 so that a only the applicant or representor can appeal a decision (including conditions) within 14 days after the planning authority gives notice of the Heritage Council's decision. The appeal period correlates with s.61 in LUPA.

Reason: This creates a uniform and coordinated appeal system.

Planning tools

Discussion

There will always be the need for local councils to develop planning provisions that reflect the character of their area. The following schedule provides an opportunity for a planning authority to incorporate specific policy statements or provisions that it feels are appropriate. (see clause X.6) However, the model schedule is designed so these statements cannot be contrary to any other provisions.

There are also the provision within this schedule to 'catch', through the development control process, applications for development and use that might affect the heritage value of an unlisted places. Although it may be regarded as adding uncertainty, it should be regarded as the incentive for a local authority to prepare a heritage study, inventory and planning scheme amendment. After that, a planning authority would be able to omit those provisions.

This schedule brings together the features discussed in previous chapters. These include:

- a simple structure with straightforward wording and limited cross referencing to other clauses and sections,
- the potential for a planning authority to deal with applications (both discretionary and permitted) of places listed on the THR under delegation from the Heritage Council,
- the ability for a planning authority to deal with significant places that are unlisted as well as listed,
- the incentive for an applicant to prepare an application which meets the permitted criteria,
- a cultural heritage list that includes places of local value as well as of regional and State significance,
- stated general and specific objectives of cultural heritage conservation,
- the inclusion of special cultural heritage definitions that are used consistently,

- the requirement that the principles and practices of the *Burra Charter* are met,
- an objective to encourage conservation based development and a principle of development and use that complements the objective,
- the potential to incorporate a council conservation strategy, policy of set of guidelines,
- a statement of 'Conservation Intent' for each place or heritage area,
- the ability for a council to request further information,
- the mechanisms for a committee to be formed and for them, or a heritage advisor to make comment on a development application,
- a mechanism which creates a permitted application if a conservation plan is prepared.

Part X Model cultural heritage schedule

X.1 Introduction

X.1.1 All development and use of places of cultural heritage significance within the Planning Area shall be in accordance with the provisions contained within this Schedule.

X.1.2 This Schedule applies to all places either listed in *Table XYZ* as having cultural heritage significance. This Schedule also applies to places that the council considers to have cultural heritage significance but are not listed in *Table XYZ*.

X.2 General objective

X.2.1 To conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;

X.3 Specific objectives

X.3.1 To prevent development/use which is likely to detract from the heritage value of places of cultural heritage significance.

X.3.2 To ensure that matters relating to places of cultural heritage significance are dealt with according to recognised professional standards.

X.3.3 To ensure other places of cultural heritage significance not listed in *Table XYZ* are given adequate protection against inappropriate development or use.

X.3.4 To encourage conservation based development or use within and adjacent to places of cultural heritage significance.

X.3.5 To continue the process of identifying and protecting places of cultural heritage significance.

X.4 Principles of development and use

X.4.1 Any development or use of a place of cultural heritage significance shall be assessed in accordance with the criteria of this Schedule.

X.4.2 The assessment of all applications and the development, use and management of places of cultural heritage significance shall be carried out in accordance with the *Burra Charter*.

- X.4.3 The fact that a place is not listed in *Table XYZ Cultural Heritage List* does not mean that it does not have cultural heritage significance.
- X.4.4 Applications for development which may affect the cultural heritage significance of a place registered on the Tasmanian Heritage Register or a place within a heritage area (as defined by Part 5 of the *Historic Cultural Heritage Act 1995*) shall be referred to the Heritage Council.
- X.4.5 Provision X.4.4 shall be varied if the planning authority has the delegated power from the Heritage Council to deal with an application for development under s.33 of the *Historic Cultural Heritage Act 1995*.
- X.4.6 If further information is required in order to assess the cultural heritage significance of any place or to determine the effects of any proposed use or development on the cultural heritage significance of a place, the onus shall be on the applicant for such use or development to provide that information.
- X.4.7 The provisions of other parts of this Scheme may be varied to allow the development or use of a place listed in *Table XYZ* provided the variation does not unreasonably prevent the compliance with the objectives of the RMPS, local strategic statements, values, intent or objectives of the planning area.
- X.4.8 The definition of terms in *Table XYZABC Definitions* shall apply in the assessment of an application unless they are inconsistent with the context or subject matter.
- X.4.9 In considering an application for development or use under clause X.5, Council shall consider the recommendations of an advisory committee established for the purpose of assessing applications for development or use. That committee may appoint a nominee or nominees for that same purpose.
- X.4.10 Any use or development designated as prohibited in the Planning Area must not be approved by Council.

X.5 Development Control

X.5.1 Permitted applications

The use or development on land within the planning area is permitted in respect of places listed in *Table XYZ* where it can be demonstrated the application meets any of the following criteria.

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- X.5.1.1 That the use or development of a place listed in *Table XYZ* is to be undertaken in accordance with an approved conservation plan prepared by a suitably qualified professional.
- X.5.1.2 That the development involves routine maintenance and general repairs which do not change the external appearance or affect the cultural heritage significance of a place listed in *Table XYZ*.
- X.5.1.3 That the development is;
1. within a church listed on the Tasmanian Heritage Register,
 2. is solely for liturgical purposes, and
 3. that the Heritage Council is notified in accordance with s.32(4)(b) of the *Historic Cultural Heritage Act 1995*.

X.5.2 Discretionary applications

The use or development of places of cultural heritage significance which cannot satisfy the criteria of clause X.5.1 may be approved at the discretion of the planning authority.

The following provisions shall apply to any place listed in *Table XYZ*, any place listed on the Tasmanian Heritage Register and any place which in the opinion of the Council may have cultural heritage significance to justify its retention and conservation in accordance with clause X.4.3 and its listing in *Table XYZ*.

In determining an application for development or use the Council shall consider the following criteria:

- X.5.2.1 whether the new development is in compliance with the policies of an approved conservation plan.
- X.5.2.2 whether the new development is recognisable as new unless it is in accordance with the policies of an approved conservation plan.
- X.5.2.3 the impact new development will have on the cultural heritage significance of a place and whether that impact is reversible.
- X.5.2.4 whether the new development or use adjacent to a place listed in *Table XYZ* adequately accounts for the cultural heritage significance of that listed place and the protection and enhancement of those values.

X.5.2.5 any other provisions within X.6, provided these provisions are not contrary to the development control criteria contained in clauses X.5.3 and X.5.4.

X.5.2.6 the advice of any person or body qualified to make recommendations on matters of cultural significance.

X.6 Conservation strategy or policy

(insert here a Council's conservation strategy or policy. If none, delete heading)

X.7 Heritage Areas

(insert here maps and/or descriptions of the heritage area to be protected)

X.8 Table XYZ: Cultural Heritage List

(insert here Council's list of cultural heritage places using this format)

suburb or town	street address	other place name	place type	property ID number/easting - northing	other listings / local value	conservation intent
in alphabetical order	street number, odds & evens, should equate to Council's own property address	Runnymede, Austins Cottage, Parliament House etc.	building, bridge, garden, front fence, archaeological site etc.	UPI number as used by the Lands Titles Office or when specific reference to a site is required, use eastings and northings	Tasmanian Heritage Register, Register of the National Estate etc. (see key) and places identified as having local value	description of what features, elements, qualities are to be protected

Key to abbreviations

THR - Tasmanian Heritage Register

RNE - Register of the National Estate

C - National Trust of Australia (Tasmania) - Classified

R - National Trust of Australia (Tasmania) - Recorded

IOE - Institution of Engineers Australia

X.9 Table XYZABC: Definitions

The following definitions shall apply to this planning scheme, unless inconsistent with the context or subject matter:

adjacent:	means alongside, in front, behind or diagonally behind
Burra Charter:	is the Australia ICOMOS Charter for the Conservation of Places of Cultural Significance and all guidelines.
conservation:	means all the processes of looking after a place so as to retain its cultural heritage significance.
conservation plan:	<p>is a document prepared in accordance with the guidelines provided by J. S Kerr's <i>The Conservation Plan</i> which identifies the following:</p> <ul style="list-style-type: none"> • why a place is important (cultural heritage significance), • how to keep that importance (conservation policy), • how to implement it (policy implementation).
cultural heritage significance:	means the archaeological, architectural, cultural, historical, scientific, social, aesthetic or technical significance or value attributed to a place by any group or community. It is synonymous with heritage value, cultural heritage value and cultural significance.
demolition:	means the damaging, defacing, destruction, pulling down or removal of any building or works, in whole or in part.
heritage area:	is an area declared as such under Part 5 of the <i>Historic Cultural Heritage Act 1995</i> .
place:	<ul style="list-style-type: none"> • any site, precinct or parcel of land, • any building or part of a building, • any item in or on, or historically or physically associated or connected with, a site, precinct or parcel of land where the primary importance of the item derives in part from its association with that site, precinct or parcel of land, • any shipwreck, • any equipment, furniture, fittings and articles in or on, or historically or physically associated or connected with, any building or item.
suitably qualified professional:	is a person or organisation which is recognised by the Council as having the necessary skills, expertise and training to prepare and provide advice on cultural heritage matters.

Future

What of the future of cultural heritage planning?

While this project goes some way to address how we may deal with cultural heritage planning issues in the present and immediate future, it is worth considering further. The case studies presented in chapter 4 highlight clearly the dramatic change in the community's attitude to the protection of our cultural heritage. What if community attitudes were to shift in another direction, such that places like Pitt Farm were regarded as a blight and drain on our economy? What if in twenty years time professional debate had transformed our ability to deal with places from our recent history, such as the migrant houses in Wilmslow Avenue in New Town? Hypothetical questions maybe, but worth asking.

The conservation profession has actively debated the theory and practice of its work for many years, as has the planning profession. Unfortunately, cultural heritage planning has been the forgotten factor. As the planners of today we must keep an ear open to community and professional discussion and ensure that our practice reflects how best to safeguard Australia's cultural heritage assets into the future.

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