

WHAT DO YOU THINK “INAPPROPRIATE DEVELOPMENT” OF HERITAGE MEANS? A NEW ZEALAND RESPONSE TO THREATS TO HERITAGE CHARACTER AND CITY IDENTITY

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INTRODUCTION

New Zealand’s cultural heritage encompasses a unique assemblage of places of heritage value. The identity of many communities is derived from its form, amenity and heritage values and their relationship to the natural and built environment. Christchurch is one such community, where city identity objectives relate to the City’s early buildings, places of early cultural association and amenity, which are sought to be conserved for the enjoyment of present and future generations.(Fig1)

BACKGROUND – THE RESOURCE MANAGEMENT ACT

In New Zealand, local authority management of heritage falls under the auspices of the Resource Management Act 1991 (RMA). The RMA is New Zealand’s main piece of environmental legislation and provides a framework for managing the effects of activities on the environment.

The RMA considers the “environment” to include:

- a) ecosystems and their constituent parts, including people and communities;
- b) all natural and physical resources;
- c) amenity values; and
- d) the social, economic, aesthetic, and cultural conditions which effect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters

The purpose of the RMA is to promote the sustainable management of natural and physical resources, where Sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable

needs of future generations; and (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.

Recently the Resource Management Amendment Act (2003) elevated the protection of historic heritage by directing all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development, as a matter of national importance.

This “matter of national importance” has been the subject of a wide range of interpretations. The case study considered in this paper gives rise to the question and title of this presentation: **What Do You Think “Inappropriate Development” of Heritage Means?**

BACKGROUND – THE CHRISTCHURCH CITY PLAN

The matters identified in this presentation raise questions regarding inappropriate development, planning decisions, planning controls for heritage protection, the erosion and loss of settings, streetscapes and character areas.

This context is intended to facilitate an appreciation of the nature and scope of threats to heritage protection in Christchurch, New Zealand’s third largest city.

The Christchurch City Plan requires that a resource consent be obtained for any alteration, demolition or removal of a heritage item; the erection of any additional buildings on the site of a listed heritage building; or the subdivision of any heritage property. All of which may have varying degrees of impact on the protection of heritage items and their settings.

As part of this background, it is relevant to appreciate that

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local authorities, when considering the nature and scope of the activities proposed in an application for resource consent, are required to have regard to:

- a) any actual or potential effects on the environment of allowing the activity;
- b) any relevant provisions of a plan; and
- c) any other matters deemed relevant to determine whether consent should be granted for the activities outlined in an application

The provisions of the City Plan related to heritage resources and their settings include objectives, policies and rules, which will be referenced here as appropriate. For example, there are four key **objectives** of the City Plan relating to the built environment:

1. *City Identity*: to promote a distinctive city where form, amenity and heritage values are maintained and enhanced;

2. *City Form*: to promote the maintenance and enhancement of natural and physical features and characteristics contributing to the distinctive form of the City;

3. *Amenity*: to promote those natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and recreational attributes; and

4. *Heritage Protection*: to promote the conservation and restoration of heritage items and values.

There are two relevant **policies**:

- regarding heritage items - *to identify and provide for the protection of heritage items having regard to their significance*; and
- regarding external appearance - *to promote and where appropriate, ensure the harmony and compatibility of buildings* (new buildings should also consider the wider environment by relating new buildings to the amenity values of the surrounding area including heritage items)

There are three relevant rules:

- *Where a site contains multiple listed buildings, these are shown in plan form in Appendix 2*;
- *Any demolition of a Group 4 building, place or object, shall be a discretionary activity* (which means the local authority *may* grant consent and may impose conditions); and
- *Any alteration of a Group 4 building, place or object,*

shall be a controlled activity (which means the local authority *must* grant consent and may impose conditions).

There are two relevant **assessment matters**:

- *The relative impact on the city's heritage values of the loss, alteration or removal of heritage resources and the extent to which such loss or alterations would have an irreversible effect on the heritage form or features of the city* (Christchurch City Plan, Volume 3, Ch 10, 1.4.1 (b), May 1999).
- In the case of any additional buildings, whether these would detract from the setting or quality of the listed item, or reduce the visibility of that item from any road or public place.

CASE STUDY – CASHEL CHAMBERS

1 Project Description

This project involved an application for the demolition of a coherent group of two and three-story commercial buildings within the central city of Christchurch. The half city-block of heritage buildings that comprised the former Farmer's Co-operative were also known as Cashel Chambers, and were listed as Group 4 heritage items in the City Plan (1995).

Group 4 listed heritage items constitute 34% of Christchurch's protected heritage items and includes *buildings, places and objects, which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council.*

2 Heritage Significance

The first buildings of the Cashel Chambers complex were designed by Christchurch architect TS Lambert in 1882 in a simple commercial classical style, with a row of round-headed windows on the first floor, which are paired and flanked by pilasters above the point of the original entrances. Lambert was a prolific architect during the relatively short time he was practicing in Christchurch and he designed a large number of commercial buildings in the city. (Fig2)

From 1882 – 1919, a number of additional buildings were designed by three prominent Christchurch architects, in a compatible style, producing a visual continuity that was reflected in the rhythms of fenestration, surface modulation, cornices, parapets and decorative elements. Such a richness in the urban streetscape is noticeably absent in contemporary

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architectural design in the City.

The historical significance of these buildings is in their long association with the New Zealand Farmers Co-operative Association of Canterbury Ltd. Architecturally, the Cashel Street frontage, perceived as the principal or public face of the complex, depicts the various stages of construction through the period 1882-1919. Such a cohesive block of buildings of similar style, design, materials and scale spanning the Victorian and Edwardian periods is not common in this eastern area of the central city. The complex is particularly unique because of its size and the manner in which all of the buildings have been connected over time to form one complex.

3 The Planning Argument

In this case, the thrust of the planning argument was supportive of the proposed development. The assessment of effects on the environment that informed the final decision reported: “the City Plan policy makes it clear that this is a balancing exercise. In favour of building retention is that the heritage fabric of the buildings has significant value. Factors supporting demolition are the cost of retention, the needs of the applicant to accommodate proposed tenants, and the public risk posed by the buildings. Considered in its totality, and in light of the heritage fabric of these buildings being a small part of the entire complex, and being of the lowest significance in terms of the City Plan, the adverse effect of the loss of the heritage fabric is outweighed by other factors in this case, and consequently that consent should be approved, subject to appropriate conditions.”

This particular interpretation of what constituted the “appropriate development” of heritage was qualified by the following planning argument:

“Sustainable management is about enabling people and communities to provide for their social, economic and cultural well-being. At the same time, decisions should sustain the potential of resources to meet the needs of future generations and address adverse effects. While the loss of heritage fabric will have adverse effects that cannot be mitigated and which deny future generations access to that resource, demolition will enable the owner to provide for his economic well-being. In this particular case, demolition is not inappropriate in terms of s6 (f) and will satisfy the purpose of the Act.”

Such an assessment of effects, makes no mention of the heritage values associated with setting, the effects on inner city streetscape values; the scale, character and spatial

qualities; the effect of the loss of social and historical values associated with the place; and the effects on the City’s long-term objectives of retaining and revitalizing the red-brick character of Bedford Row, which should have been considered as part of the setting.

While considerable weight was placed on a commercial valuation of the property, which projected a \$10m loss to the owner if the heritage buildings had to be retained, there was no statutory or regulatory requirement to explore alternatives. Alternatives that would enable a major development to occur on the site while retaining important heritage values were considered beyond the scope of the application. For example, the cost to retain heritage values and an appropriate setting by way of a different option was estimated to cost an additional \$1.7m more than the owner’s budget of \$33.2m.

At the beginning of the public hearing for this case, the proponent sought to change the scope of the application from complete *demolition*¹ to an *alteration*² by removing the essential character-defining aspects of fifteen buildings through an aggressive combination of substantial demolition, complete demolition and new construction.

This change enabled virtually all of the buildings to be demolished under the definition of alteration, which had the effect of changing the status of the application and thus the planning control, from *discretionary*³ to *controlled*⁴. (Fig3)

¹ *Demolition* - means destruction in whole but not in part. The *demolition* of a Group 4 heritage item is classified as a *discretionary* activity in the City Plan, whereas its *alteration* is a *controlled* activity.

² *Alteration* – in relation to protected heritage means any work by way of construction, modification or partial demolition, which may have the effect of altering the heritage fabric of the protected building.

³ *Discretionary Activity* – a consent authority may grant resource consent with or without conditions or decline the application.

[Note: While the RMA specifies that discretionary activities may or may not be consented by a local authority, the Courts have interpreted discretionary to mean that there is a presumption that such activities are acceptable. The difference between *discretionary* activities and *non-complying* activities, is that the local authority, when considering the latter, must be satisfied that either

a) the adverse effects of the activity on the environment will be minor; or

b) the application is for an activity that will not be contrary to the objectives and policies of the district plan.]

⁴ *Controlled Activity* – the consent authority has no power to decline the application but may impose conditions, however such conditions are limited to those matters over which it has reserved control.

VULNERABILITIES & THREATS

This project raises a number of important matters related to the vulnerabilities and threats facing the conservation of heritage resources and their settings in New Zealand. In no particular order of significance, the key threats to the protection of heritage items and their settings in Christchurch are as follows:

1. Language

The RMA confirms that the language used in a district plan is to be given its ordinary plain meaning, the test being what would an ordinary reasonable member of the public examining the plan have taken from the planning document. It is underscored that such interpretation should not produce absurdity, anomaly or contradiction of its purpose.

2. Interpretation of District Plans (Bottom up approach)

The courts have held that rules in a District Plan have the force and effect of regulations and that such rules therefore take precedence over the objectives and policies of the District Plan, which do not have legislative effect. Fortunately, however, the High Court has raised objection to this premise (Atkins, 2004), holding that the “bottom up approach” was inconsistent with modern methods of interpreting legislation and that the RMA was intended to work from the most general to the particular, the top down approach.

3. Interpretation of the ‘environment’ and ‘effects’

Much of our work in the broader environment or shall we say the ‘setting’ of heritage resources, does not register on the radar of planners, architects, developers and decision-makers. Consideration of the extent of the environment is often limited to the physical the fabric itself.

In this case, the applicant’s heritage consultant who assessed the effects, focussed on the effect that the proposed new development would have on those portions of the heritage facades offered to be retained by his client, rather than assessing the effects that the proposed demolition and new construction would have on the existing environment. The former approach raised fundamental issues related to the interpretation of “the environment” and thus the setting.

Identifying and ranking the ‘effects’ of proposed activities on heritage values is of fundamental importance for robust analysis and decision making.

4. Permissiveness

The courts have held that the balance between “enabling” and “managing” natural and physical resources is not about achieving a balance between benefits occurring from an activity and its adverse effects, rather, that adverse effects must be avoided, remedied or mitigated irrespective of the benefits which may accrue.

In this case, the perceived benefits were elevated above the adverse effects, and these effects were not avoided, remedied or mitigated. It is presumed throughout the planning process that discretionary activities are more likely than not to be permitted, regardless of their effects.

5. Definitions

The definition of *Alteration* – in relation to protected heritage means *any work by way of construction, modification or partial demolition, which may have the effect of altering the heritage fabric of the protected building*. This definition places no limits on the extent of alteration or when such alteration ought to be considered demolition.

6. Level of planning control

Case law interpretation of discretionary activities has implied that such activities are generally acceptable and are therefore generally approved, often regardless of their effects. It has been suggested that if a local authority does not consider certain development activities to be generally acceptable, then they should be assigned a non-complying or prohibited status. Controlled activity status (i.e. alteration of a Group 4 heritage item is a controlled activity) means the local authority must grant consent, but it can impose conditions.

7. Display of Listed Heritage Items

In most cases, heritage items have been identified by name, address, legal description and certificate of title, and occur in the appendix that *lists* the protected item. In this instance, while there were clearly multiple buildings, they were treated as one building because they were not displayed as multiple buildings in the appendix that identifies the various protected buildings or settings in *map form*.

8. Grouping of Heritage Items

The threat faced by protected heritage items increases from Group 1 to Group 4. The language used to delineate the significance of each group has not been complimentary to the broader objectives and policies of heritage conservation and have resulted in undesirable adverse effects.

The heritage value of a collection of Group 4 commercial

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heritage buildings is significant to city identity, overall character, human scale and visual amenity. I consider this to be a different type of significance than that which is found in the Christchurch Cathedral, as an example. There is however, a view that heritage items in Group 1 are untouchable and that those in Group 4 are dispensable.

9. Alternatives

The proponent submitted that the adverse effects of the proposed development on heritage values would not be significant and therefore, no alternatives were considered. The decision-maker accepted this conclusion.

There are no statutory requirements to provide any more than a description of alternatives where the adverse effects were deemed to be significant. If the applicant deems that the effects are insignificant, and if the decision-maker should agree, there is no statutory or regulatory obligation whatsoever to consider meaningful alternatives.

10. Plan Changes

The present City Plan was publicly notified in 1995. No changes can be made to the Plan until all appeals to any proposed provisions have been heard by the courts. It is anticipated that this process will be completed by the end of 2006. Any gaps in the plan, such as conflicting rules, definitions, documentation or levels of planning control, which can produce ill or unintended effects are a threat to best practice heritage management until the Plan provisions can be amended.

11. Education, Advocacy and Awareness

Once the regulatory matters have been addressed, there is still a great deal of effort that is and will continue to be required in the area of non-regulatory measures such as education, advocacy and awareness. Matters such as the degree of acceptance of heritage values is a particular threat.

APPROPRIATE RESPONSES TO THREATS

Having identified a number of threats and particular vulnerabilities to the conservation of heritage values and their settings, the following appropriate responses are being considered for the next plan change.

In response to the threats described, we have conducted a robust review of every heritage provision and the language required to support the best outcomes in the City Plan, while being cognisant that each measure must gain a high degree of public, political, administrative and stakeholder support.

1. Language

Identifying and removing weaknesses and conflicts; introducing clarity that links to objectives and policies.

2. Interpretation of District Plans (Bottom up approach)

Education & awareness; developing plan provisions that support heritage protection regardless if interpreted from top down or bottom up (i.e. greater links between rules and definitions and the objectives and policies).

3. Interpretation of the 'environment' and 'effects'

Education & awareness; promoting case studies that illustrate interpretations consistent with heritage conservation principles; greater emphasis on context, setting, streetscapes and spatial values that contribute to the sense of place. Capacity building of professionals through tertiary training will be a key response to some of the identified threats.

4. Permissiveness

Education & awareness; promoting case studies that illustrate interpretations consistent with heritage conservation principles and raising awareness of those examples whereby the permissive approach to discretionary activities results in conflict with objectives, policies and best practice heritage management.

5. Definitions

Introducing clarity and establishing stronger links between definitions, objectives & policies and heritage values.

6. Level of planning control

Introducing threshold tests, which are based on objectives, policies and heritage values that link the potential effects of an activity to the degree of planning control.

7. Display of Listed Heritage Items

Identification of settings through mapping and clarifying multiple buildings through individual site maps.

8. Grouping of Heritage Items

Use of language that recognizes that heritage items may have 'different' qualities while taking care to minimize opportunities for conflict between objectives, policies and rules.

9. Alternatives

Development of current assessment matters to give greater weight to conservation principles, best practices and

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the importance of considering alternatives, where a lower degree of adverse effect is achievable. Introducing a wider range of incentives for options that satisfy objectives and developing disincentives for activities that would result in adverse effects.

10. Plan Changes

Complete review of the City Plan heritage provisions and preparation of a robust analysis including the consideration of internationally-recognized best practice measures and forming particular responses to the way in which heritage provisions have been interpreted.

11. Education, Advocacy and Awareness

Education & awareness; promoting case studies that illustrate interpretations consistent with heritage conservation principles; increased access to heritage information through media releases and the internet.

CONCLUSION

By revisiting the matter of what might constitute “inappropriate development” of heritage resources as raised in the title to this paper, consider the definition of *adaptation* as provided in the *ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value*; the definition of *rehabilitation* as provided in the US’s *Secretary of the Interior’s Standards for the Treatment of Historic Properties*; Articles 15 and 21, *Change and adaptation*, as provided for in the ICOMOS Australia’s Revised Burra Charter (2004); and the explanation of *alterations* as provided for in *Guidance on Alterations to Listed Buildings*, and the United Kingdom’s Planning & Policy Guidance 15: Planning and the Historic Environment (PPG15). All such guidance enables considerable flexibility and opportunity for the appropriate integration of new development with heritage resources and their settings.

We now know that certain activities have resulted in unintended adverse effects, due in large part to interpretation. By recognizing the importance of what are essentially checks and balances in planning policy and regulations, we have identified, assessed and proposed amendments in time for the first post-operative City Plan variation since it was publicly notified in 1995. These proposed amendments will respond to, and go so far as to anticipate similar threats in the future. We acknowledge that there will continue to be threats and unexpected interpretations, and we acknowledge that our efforts are only a small part of the overall planning process.

However, these initiatives have the potential of being instrumental as Christchurch seeks to ‘manage’; and ‘enable’ development and heritage conservation along with its other statutory and regulatory functions. These measures should yield a level of effectiveness that is in accordance with the various types and degrees of threats discussed herein. It would be safe to say, therefore, that improving both the non-regulatory and regulatory methods, as well as the administrative and management measures to address the needs for protection and adequate control of heritage resources and their settings, is amongst our greatest priorities.

Abstract

In New Zealand, local authority management of heritage falls under the auspices of the Resource Management Act 1991 (RMA). The RMA is New Zealand's main piece of environmental legislation and provides a framework for managing the effects of activities on the environment. The purpose of the RMA is to *promote the sustainable management of natural and physical resources*. Recently, the Resource Management Amendment Act (2003), elevated *the protection of historic heritage from inappropriate subdivision, use and development to a matter of national importance*.

Also of importance is an appreciation that some planning decisions have actually reduced the effectiveness of planning controls for heritage protection, resulting in a more permissive attitude to the enabling heritage provisions of the RMA. In addition, an emphasis on the protection of individual buildings has resulted in the erosion and loss of settings, streetscapes and character areas. This paper submits that the level of public, planning and legal appreciation of heritage conservation principles and the degree of understanding as to what constitutes inappropriate subdivision, use and development of historic heritage, is a prominent threat.

This paper will identify the nature and scope of threats to heritage protection in Christchurch, New Zealand’s third largest city, and outline the efforts to better reflect the statutory provisions for heritage protection. It will illustrate the development of proactive regulatory heritage

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management measures by reference to a recent case study that raises issues regarding the management of change. It will cause you to think about clarity in planning language that is intended to support the retention of heritage values associated with city identity, setting and sense of place.

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Fig.1 Lichfield Street is an example of the type of form and features associated with heritage buildings, their scale and streetscape setting that make a significant contribution to Christchurch's city identity.



Fig.2 The buildings which make up Cashel Chambers were constructed between 1882-1919, and made a significant contribution to the streetscape setting of Cashel Street and Bedford Row behind.



Fig.3 The proponent's illustrated development.