

Critical Architectural Heritage: Constructing heritage with(out) the Wanganui
Native Land Court Building

by

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A thesis

submitted to the Victoria University of Wellington
in fulfilment of the requirements for the degree of
Master of Architecture

Victoria University of Wellington

2014



Abstract

Critical heritage is a theory and practice where heritage is defined as the active engagement of the past in the present. In critical heritage, building, sites, and places are not objects of heritage in themselves but are cultural tools that facilitate the performance of heritage. If heritage, particularly architectural heritage, is not considered to be a tangible object or building, then the discipline is opened to a wide variety of differing groups and identities, some of whom are currently disadvantaged by conventional practices of heritage.

This thesis examines how the arguments of architectural heritage were performed in a case study of New Zealand heritage practice: the 2013 Environment Court hearing regarding the Wanganui Native Land Court Building. A quantitative content analysis of the hearing revealed the heritage arguments to be composed in five main patterns which emphasised: the significance of identity, built fabric, context, a combination of identity and context, and a combination of the built fabric and context. The patterns show that the significance, and use, of the built form varied in different heritage arguments.

If the performative context of the Environment Court is acknowledged via critical heritage, then the patterns show how arguments of heritage were composed, particularly in relation to the built form. Reference to the Wanganui Native Land Court building was not a significant quantitative component in many of these patterns and, as such, the use of the building was primarily conceptual, rather than material. The Court's decision privileges the built form as a physical resource which is scarce and irreplaceable. The decision is, in some ways, at odds with the lack of reliance on built form in the patterns.

Moutoa Gardens and Whanganui viewed from Durie Hill

March 2013, photograph by author

Acknowledgements

I would like to thank my supervisor, Christine McCarthy for her advice, guidance, and encouragement while writing this thesis. It would not have been possible without her. I would also like to thank Tyson Schmidt for the many discussions on the case study hearing and for providing access to the Wanganui Native Land Court building. Finally, I would like to thank my family and friends for their support and enthusiasm.

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List of Abbreviations

| | |
|---------|--|
| AEE | Assessment of Environmental Effects |
| AHD | Authorised Heritage Discourse |
| Council | Wanganui District Council |
| ICOMOS | International Council on Monuments and Sites |
| NZHPA | New Zealand Historic Places Act |
| NZHPT | New Zealand Historic Places Trust |
| RMA | Resource Management Act |
| Te Puna | Te Puna Mātauranga o Whanganui |
| UCOL | Universal College of Learning |
| UNESCO | United Nations Educational, Scientific and Cultural Organisation |
| WRHT | Whanganui Regional Heritage Trust |





Chapter One

Introduction

The Native Land Court building viewed from Moutoa Gardens

March 2013, photograph by author

Non-western cultures tend to be marginalised in current conceptions of architectural heritage. Conventionally, architectural heritage privileges the retention of the material built form and, in doing so, is seen to perpetuate a Western perspective under the guise of national or universal heritage. Occasionally, non-Western perspectives conflict with the traditional practices of architectural heritage.

Such an example of conflict occurred in the Environment Court hearing regarding the Wanganui Native Land Court building. Te Puna Mātauranga o Whanganui (Te Puna), the iwi educational authority for Te Atihaunui a Pāpārangī, and the Universal College of Learning (UCOL), a tertiary provider in Whanganui, had applied for a resource consent to demolish the Native Land Court building and reclaim the building's site, which had ancestral significance for Māori, with an iwi institute for Māori tertiary education. The Native Land Court building is a registered historic place with the New Zealand Historic Places Trust¹ who argued for the building's retention as a tangible object of New Zealand's heritage.

In the Environment Court hearing, the tangible heritage object reflecting New Zealand's past conflicted with Māori aspirations for the future. As groups, such as Māori, gain greater influence and resources, the conflict of cultures in heritage practices will continue to be brought before adjudicators to determine who has the right to own or control such heritage resources. Additionally, as the right for acknowledgement may be more significant for other groups, such adjudicative processes will also continue to question who has the right to decide such conflicts.

This thesis is an examination of architectural heritage practices in the Environment Court of New Zealand. Specifically, it is a quantitative analysis of the heritage arguments in the 2013 Environment Court hearing regarding the Wanganui Native Land Court building. The thesis takes the hearing as a case study using content analysis to analyse the quantitative composition of the arguments presented at the hearing.

The hearing was assumed to include conflicting heritage perspectives given the application to

¹ Following the passing of the Heritage New Zealand Pouhere Taonga Act in May 2014, the New Zealand Historic Places Trust is now known as Heritage New Zealand Pouhere Taonga. The New Zealand Historic Places Trust is retained in this thesis.

demolish the building. The thesis did not specifically look at the content of the arguments presented by each party and the expert witnesses in the hearing in detail, though examples are given to provide some context to the analysis.

The quantitative composition of heritage arguments was read in relation to critical heritage, an emerging theory in the heritage disciplines. Critical heritage recognises heritage as an active process so as to cater for, and be critical of, different cultural meanings of heritage. Each of the argument compositions demonstrated how aspects of the recent debates in the heritage disciplines were structured and performed in the hearing.

The aims of this thesis are:

1. To understand how heritage arguments were quantitatively composed in the Environment Court case study,
2. To understand how those arguments identified in the hearing relate to recent debates about heritage in academic circles.

This chapter introduces the conventional definitions of heritage and the emergence of critical heritage. Critical heritage is discussed as a performative process by which heritage is actively constructed. The heritage legislation of New Zealand is also introduced to describe the regulatory context of heritage practice in New Zealand. The Environment Court hearing case study is introduced, as is the content analysis methodology. The chapter concludes by outlining the thesis structure.

Heritage

Conventional understandings of heritage practice are summarised by John Carman as consisting of four principles:

- That heritage is finite and non-renewable,
- Heritage is a matter for public concern,
- Heritage is governed by legislation, and
- As not all heritage can be preserved, it must be assessed for its value.²

² Carman, *Archaeology and Heritage*, 22-23. Also reiterated in Pishief, "Constructing the Identities of Place," 76.

According to critical heritage theorists, these principles, and the way they are enacted in heritage discourse and practice, privilege heritage defined as an ‘object’ that has inherent values, qualities, and meanings that must be preserved for future generations.

Critical heritage is a line of thought within heritage disciplines that considers the socio-cultural processes of how heritage is constructed, rather than considering heritage to be either a tangible or intangible ‘thing’ or object. This position follows those of others within the field, including Laurajane Smith, Rodney Harrison, Tim Winter, Emma Waterton, Steve Watson, and New Zealander Elizabeth Pishief. Critical heritage provides a radical departure from traditional and conventional understandings within the heritage field.

The position of critical heritage disagrees with the concept of heritage as an object and instead emphasises heritage as social, cultural, and political processes, especially in relation to the creation and negotiation of contemporary identity. Critical heritage claims that all heritage is constructed in the present for the needs and requirements of that present. In this sense, heritage is defined as a process or performance in which a range of actors, including people, objects, sites, and places, interact. As Harrison states, “thinking of heritage as a creative engagement with the past in the present focuses our attention on our ability to take an active and informed role in the production of our own future.”³ If heritage is a process or performance, then the way heritage arguments are composed can be analysed based on those processes, as this thesis does to understand how heritage arguments were quantitatively composed in the Environment Court case study.

By focusing on the past as a contemporary resource, heritage practice becomes a pivotal tool in creating, negotiating, and expressing contemporary identities and this allows wider issues to be addressed. Harrison states that one way “to become more active in our heritage decision-making is in thinking more sustainably about heritage. This means not only making better connections between heritage and other environmental, social, economic and political issues, but also thinking sensibly and equitably about the pasts we produce in the present for the future.”⁴ Heritage, in this sense is not a

³ Harrison, *Heritage: Critical Approaches*, 229.

⁴ Harrison, *Heritage: Critical Approaches*, 231.

physical resource, object, or ‘thing’ but an active process of thought and practice that provides a tool for addressing and re-thinking broad-ranging contemporary concerns. In this thesis, the concept of heritage as a process or performance provides an understanding of how those arguments identified in the case study hearing relate to recent debates about heritage in academic circles.

Critical heritage is reflective of a wider global shift to a post-Western perspective. As Tim Winter describes, “this is not an intellectual politics that foregrounds the indigenous to counter ‘western rational thought’. Instead, it is an arena of knowledge production that responds to and engages with pressing challenges by moving beyond the limited repertoire of epistemologies currently privileged.”⁵ This post-Western position moves beyond the separation of cultures and the assimilation and compromise of merging cultures to the recognition of the multiple, in which many and various cultures and identities have equal legitimacy.

New Zealand Heritage Legislation

In New Zealand, the primary mechanism for the protection of ‘heritage’ is the Resource Management Act 1991 (RMA). While concepts of heritage are also provided by territorial authorities (e.g. regional and district councils) and the New Zealand Historic Places Act 1993⁶ (NZHPA), it is the RMA that provides the legislative mechanisms for considering heritage. The RMA legislates specifically for ‘historic heritage’ and architectural qualities is one of several qualities that contribute to the definition of historic heritage.

The RMA addresses a broader definition of historic heritage than the concept of architectural heritage which is addressed in this thesis. Although heritage, including architectural heritage, may be comprised of several different qualities, the Act emphasises heritage which are objects and a ‘natural and physical resource’. While the RMA definition is relatively broad and open to legal interpretation, critical heritage suggests how that definition may be interpreted by placing emphasis on the social, cultural, and political implications of how heritage is constructed.⁷ This idea is explored in this thesis

⁵ Winter, “Clarifying the critical in critical heritage studies,” 542.

⁶ The New Zealand Historic Places Act 1993 was under review at the time of writing. The Heritage New Zealand Pouhere Taonga Act replaced the Historic Places Act in May 2014.

⁷ The Environment Court has recognised landscape as a cultural construct in *Mainpower NZ Ltd v Hurunui District Council* [2011] EnvC 384 where, “Landscape, as a concept used by landscape architects and related disciplines, is a cultural

through the case study of the Environment Court hearing of the Wanganui Native Land Court building

Case Study

The case study this thesis examines is the Environment Court hearing in the matter of the direct referral of an application for a resource consent under s87G of the Resource Management Act 1991 between Te Puna Mātautanga o Whanganui and Universal College of Learning (Applicants) and The Wanganui District Council (Consent Authority).⁸ The Environment Court is a specialist court in New Zealand that determines cases on issues of physical resources and the natural environment as specified under the Resource Management Act.

In March 2013, the Environment Court heard the above case in Whanganui⁹, New Zealand to determine a resource consent to “demolish the former Māori Land Court and ancillary buildings and establish, operate and maintain an iwi tertiary institute, Te Whare Mātauranga.”¹⁰ The Māori Land Court, also known as the Native Land Court and Aotea Māori Land Board Building (Former),¹¹ is a Category I registered building—the highest recognition of heritage within New Zealand.¹²

The Universal College of Learning (UCOL) (a polytechnic in the Whanganui area) and Te Puna Mātauranga o Whanganui (Te Puna) (the iwi education authority for Whanganui iwi Te Atihaunui a Pāpārangi) had applied to the Wanganui District Council to demolish the building and replace it with a purpose built iwi institute for tertiary education. The site of the building is in the area of Pākaitore, an historic Māori fishing pā, which, despite being occupied by colonial settlement, still held great ancestral significance for local Māori. For the NZHPT, the Native Land Court is an important and

construct as are ‘justice’, ‘arts’, ‘language’ and ‘nature’. The understanding of landscape therefore may vary according to the culture, and over time as cultural influences change. Further, what is meant by ‘landscape’ may be understood in different ways by different fields of endeavour. What landscape architects mean by landscape may not be the same as say a geomorphologist or ecologist notwithstanding the same term is used.” *Mainpower NZ* at [291].

⁸ Case number ENV-2012-WLG-000075, Decision Number [2013] NZEnvC 110.

⁹ Both ‘Whanganui’ and ‘Wanganui’ are official names of the city. Within this thesis, ‘Whanganui’ is generally used to refer to the city, although ‘Wanganui’ is used to refer to the Native Land Court building because this is its historic spelling.

¹⁰ *Te Puna Mātauranga o Whanganui* at [2].

¹¹ Referred to as the Native Land Court within this thesis. Also see New Zealand Historic Places Trust Register number 7783 “Native Land Court and Aotea Māori Land Board Building (Former).”

¹² There is no legal obligation to protect Category I places as listed by the New Zealand Historic Places Act 1993. The critical protective mechanism is if the building is listed within a heritage schedule under a local territorial authority’s district plan, in which case a resource consent under the RMA is required to change or demolish the building. In this case study, the building was listed as a ‘category A’ (the highest category) building in the Wanganui District Council’s District Plan, and hence a resource consent was required in order to demolish the building.

tangible reminder of aspects of New Zealand's history that needed to be protected and conserved for present and future generations. For UCOL/Te Puna, the building is a symbol of oppression that needed to be demolished so that the site could be reclaimed for Māori and their educational aspirations for the future.

The Court's decision was legislated by the Resource Management Act 1991, that sets both the "relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" and "the protection of historic heritage from inappropriate subdivision, use, and development" as matters of national importance. Generally summarised, the Court was presented with a situation to retain an historic building or allow the demolition of the building for Māori aspiration. The Court decided upon a compromise, in which the building's façade must be maintained in an adaptive reuse of the Native Land Court building, if UCOL/Te Puna decided they still wanted to occupy the site.¹³ The decision retained the building as an object of heritage and, in doing so, privileged Western heritage traditions over Māori aspirations.

The literature of critical heritage argues that a Western European elitist identity is generally propagated within conventional heritage practices. While different identities and groups, especially those of indigenous peoples, have started to be recognised within heritage legislation and practices, in some cases recourse to traditional concepts and practices of heritage continues to disadvantage these groups. In New Zealand, although Māori concepts of heritage are accounted for in the RMA and the NZHPA (through such mechanisms as recognition of wāhi tapu and wāhi tapu areas), Pākehā (Western) understandings of heritage tend to prevail. These Pākehā understandings of heritage usually consider architectural heritage as tangible and fragile objects that must be preserved or conserved if they are to retain any relevance or value. Such a definition overlooks the socio-political aspects of heritage and the way in which architectural heritage is constructed—that the past is used to construct ourselves in the present and how we envision our futures.

Methodology

This thesis uses content analysis of the Environment Court hearing documents (the written evidence

¹³ See *Te Puna Mātauranga o Whanganui* at [121].

and the recorded transcript of cross-examination) to analyse and understand how architectural heritage is validated and challenged during the hearing. The documentation was unitised, coded into separate categories, and counted to produce quantitative results of how the hearing was structured in relation to heritage. The thesis took a broad approach which considered the hearing to be about heritage. These results were then analysed and discussed to show the varying quantitative compositions of heritage within the hearing.

It is evident, from undertaking this process and the analysis, that five main constructions of heritage are present in the hearing, including patterns that emphasise:

- Tangible heritage (as within traditional conceptions of heritage)
- Intangible heritage
- The context of heritage objects
- The built form and fabric
- The identity of people or groups (rather than any notions of physical heritage objects).

Only the tangible heritage composition tended to be favoured by the Environment Court's decision and, in doing so, privileged the evidence of engineering professions and architectural professions who had an interest in retaining the building over other groups and interests with alternative constructions of heritage.

Critical heritage provides a theory in which no composition of heritage is privileged over another. It recognises that the performances of heritage in the Environment Court hearing were equally valid. The significance of heritage is therefore not in the built form itself, but how the built form acts as a cultural tool to facilitate arguments of heritage. The focus is on the active construction of heritage to develop solutions for the needs of the present and which future generations may use to inform their own heritage and identities. The building as a cultural tool legitimises the many uses of the building, including retention and demolition, as ways to actively engage with the past and perform heritage. If demolition of the building was considered an appropriate use of the building to perform heritage, then Māori aspirations could have been fulfilled.¹⁴

¹⁴ In their decision, the Court that “when considering the purposes of the UCOL/Te Puna partnership can be met by adaptively

Such a position of critical heritage is valuable as there is a pressing practical need for such thinking to be developed and implemented. This is relevant in New Zealand under the principles of the Treaty of Waitangi and as Māori gain the resources necessary to implement their own visions of the future.¹⁵

In global terms, the significance of critical heritage is pertinent to an emerging post-Western perspective. Delanty states that:

as a result of the worldwide impact of global forces and the growing importance of societies that have emerged from non-western modernities, a genuinely global assessment of the current day needs to be less confident about the centrality of the West and the equation of globalisation with Westernisation.¹⁶

While this thesis focuses on a New Zealand case study, Delanty's recognition that the issue of equality also operates at a global level where differing and non-Western cultures gain influence and resources to implement their own visions is relevant.

Thesis Structure

The thesis begins with a literature review of critical heritage. The history of critical heritage is summarised, including the construction of the Authorised Heritage Discourse, the development of theories of intangible heritage, and, more recently, the emergence of critical heritage as a theory to rethink heritage conceptions and practices. The literature review frames the theoretical context in which the case study of this thesis is analysed.

Chapter three describes the Wanganui Native Land Court hearing. It introduces the legislative context of the hearing in the Resource Management Act 1991, Historic Places Act 1993, Regional Policy Statements, District Planning Provisions, and the 2010 NZ ICOMOS Charter. The hearing is described including a brief history of the case, the parties and expert witnesses involved, the key legal arguments presented, and its significance as an example of architectural heritage practice in New Zealand. The

reusing this building, to demolish it to make space for a new building will be an inappropriate use and development of it, and thus fail to recognise and provide for a matter of national importance, in terms of s6." *Te Puna Mātauranga o Whanganui at [121]*.

¹⁵ It is also relevant in Australia, South Africa and America where indigenous peoples likewise are gaining greater influence and resources.

¹⁶ Delanty, cited in Winter, "Clarifying the critical in critical heritage studies," 542.

Court's decision on the hearing is appended to the thesis in Appendix A.

The fourth chapter describes content analysis. The chapter is structured following the process of content analysis, discussing the reading of content, development of categories of analysis, the coding of data, the counting of data, and the identification of resulting patterns. This chapter gives an understanding of both a case-study approach to research and the methodological process of content analysis, so that the analysis undertaken is transparent and replicable.

Chapter five provides a summary of the results. It describes the overall distribution of the hearing content in the categories. The key patterns of the distributions are identified and discussed in terms of how they relate to the combined evidence of each party, the combined evidence of the professions of expert witnesses, and the role counsel has in framing the patterns of cross-examination. Further results are given in Appendix B.

In chapter six, each of the main patterns identified in Chapter 5 are described and discussed relative to theories of heritage as identified in the literature review. The patterns, and heritage theories, consider (or omit) the built form in different ways. The role of the Native Land Court building is considered in each of the patterns, regarding whether different heritage arguments require the retention of the building. The chapter identifies the demolition of the building as an appropriate heritage use under the performative definition of critical heritage. It also discusses the significance of the results and analysis, the limitations of the research and methodological process, and identifies opportunities for further research.

Chapter seven concludes the thesis and provides a summary of the research undertaken.

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Chapter Two

Literature Review

The Public Office of the Native Land Court building

March 2013, photograph by author

This literature review focuses on recent academic debates on heritage, beginning with the identification of Authorised Heritage Discourse (AHD) in the early- to mid-2000s to contemporary discussions surrounding critical heritage as an interdisciplinary field of heritage studies.

The literature review outlines Authorised Heritage Discourse (AHD) which was coined to identify and describe conventional Western heritage practices that emphasise materiality. A brief history of AHD is given; where the privileging of material fabric, authority of experts, and scientific rationalisation created an idea that heritage was considered a ‘thing’ with universally innate values that must be conserved. Intangible cultural heritage, as a mechanism to challenge the privileging of material fabric and thereby include heritage perspectives of indigenous cultures, is then described in relation to AHD.

The concept of heritage as a cultural process is considered and concerns, such as the active production of heritage, dissonance, identity, and relationships and interconnectedness, are established as the foundations for the emergence of critical heritage. A description of critical heritage is then provided as an approach that potentially addresses wider-picture concerns such as inequality, human rights, sustainability, and conflict resolution. The literature review concludes by connecting critical heritage to concepts of architectural heritage.

The authorised heritage discourse

Authorised Heritage Discourse (AHD) is a constructed heritage discourse. Although multifaceted, it is usually considered to be a singular discourse within most of the literature. In this section, the development of AHD is considered from its historical formation during the industrial revolution and the authorising of a particular heritage practice in the early to mid-twentieth-century. According to recent scholarship, these factors led to a heritage discourse and practice which saw an emphasis on materiality, the privileging of Western heritage perspectives, and the obscuring of the heritage process itself.

Laurajane Smith provides the most comprehensive description of AHD in her text *Uses of Heritage* where it is located as the dominant Western heritage discourse in heritage.¹ Smith’s summary of

¹ Smith, *Uses of Heritage*. Also Smith and Waterton, “‘The envy of the world?’: intangible heritage in England,” and Byrne,

AHD is as a mechanism that rounds up “the usual suspects to conserve and ‘pass on’ to future generations, and in doing so promotes a certain set of Western elite cultural values as being universally applicable.”² Elaborating further, Smith considers AHD as privileging a discrete ‘site’, ‘object’, building or other structure with identifiable boundaries that can be mapped, surveyed, recorded, and placed on national or international site registers.”³

Rodney Harrison later refers to AHD with the term “Official Heritage”, as “what most of us would recognise as a contemporary ‘operational’ definition of heritage as the series of mechanisms by which objects, buildings and landscapes are set apart from the ‘everyday’ and conserved for their aesthetic, historic, scientific, social or recreational values.”⁴ Despite being different terms, AHD and Official Heritage refer to the conventional professional practices of heritage.⁵

Smith’s version of AHD is an underlying ideology that does not privilege the performance aspect of heritage practice and focuses instead on the identification and conservation of heritage objects. Discourse and conservation practices, she argues, “seek to legitimise themselves, and the identities they reflect and construct, through the naturalisation of heritage as something that ‘just is’, which suggests that they are immutable and not open to challenge.”⁶

As such, the conception of AHD is based upon an underlying operation and structure of heritage and, although not every case and detail conforms to a singular interpretation of the discourse, there are three consistent themes within Smith’s commentary. These themes include a privileging of material fabric, the authority of experts, and scientific rationalisation. While emphasis is traditionally placed on the critique of privileging material fabric, all three themes are essential in understanding the workings of AHD.

Smith’s construction of AHD is not without its criticisms⁷ and, to counter these, she argues that

“A critique of unfeeling heritage.”

² Smith, *Uses of Heritage*, 11.

³ Smith, *Uses of Heritage*, 31.

⁴ Harrison, *Heritage: Critical Approaches*, 14.

⁵ Within this thesis, the term Authorised Heritage Discourse is primarily used.

⁶ Smith, *Uses of Heritage*, 300.

⁷ Harrison, for example, states that the focus on the discourse of heritage does not always produce an account that adequately

“discourse is a social action, and this idea of discourse acknowledges that the way people talk about, discuss and understand things, such as ‘heritage’, have a material consequence that matters.”⁸ Without a constructed discourse, it is perhaps unsurprising that authors, including William Logan and Denis Byrne, suggest that cultural heritage values and human rights “remain poorly understood by many heritage practitioners who see their conservation work merely as a technical matter”⁹ and that “on-ground heritage practice is almost exclusively focused on conserving the physicality of architecture and archaeological sites.”¹⁰ Such a technical emphasis is distant from the beginnings of heritage as a distinct discipline at the start of the nineteenth-century.¹¹

A history of the authorised heritage discourse

Craith, Hassard, and Smith all describe the concept of heritage as emerging from Western European upper and middle class elites who “constructed readings of the past that were intended to generate a collective consciousness of a national historical destiny.”¹² Associated with this nationalist trajectory was the intrinsically embedded sense of pastoral care over the material past.¹³ It was Thomas Carlyle, Augustus Pugin and John Ruskin who became “critical voices expressing their concerns for the environment and for the moral and spiritual well-being of humanity, which they believed had been corrupted by a modern secular civilisation dominated by a new metaphysically ‘neutral’ scientific order.”¹⁴

This reaction resulted in what is considered to be the scrape/anti-scrape tradition within, particularly architectural, heritage practice. The strategies, one subtractive and the other additive, produced “two distinct approaches to restoration: one that attempts to take a building (which is valued for its age) back to a perceived earlier or original ‘authentic’ state, the other which concerns putting back those elements that may have been lost due, for example, to neglect or damage caused by mis-repair.”¹⁵

theorises the role of material things. Harrison, *Heritage: Critical Approaches*, 112.

⁸ Smith, *Uses of Heritage*, 14.

⁹ Logan, “Cultural diversity, cultural heritage and human rights,” 231.

¹⁰ Byrne, “A critique of unfeeling heritage,” 243.

¹¹ Smith states “the origins of the dominant heritage discourse are linked to the development of nineteenth-century nationalism and liberal modernity, and while competing discourses do occur, the dominant discourse is intrinsically embedded with a sense of the pastoral care of the material past.” Smith, *Uses of Heritage*, 17.

¹² Craith, “Intangible Cultural Heritages: The Challenges for Europe,” 17.

¹³ Smith, *Uses of Heritage*, 17.

¹⁴ Hassard, “Intangible heritage in the United Kingdom,” 272.

¹⁵ Hassard, “Intangible heritage in the United Kingdom,” 274-275.

It was Ruskin who set the basis for privileging material heritage. According to Smith, “Ruskin argued against the dominant nineteenth-century practice of restoration, where historic buildings would be ‘restored’ to ‘original’ conditions by removing later additions or adaptations. For Ruskin, the fabric of a building was inherently valuable and needed to be protected for the artisanal and aesthetic values it contained.”¹⁶ This position became the basis from which built fabric was assumed to have innate values.

These concerns for the material past were to become enshrined in charters and legislation, beginning with the 1904 Madrid Conference and the 1932 Athens Charter for the Restoration of Historic Monuments. While, as Ruggles and Silverman explain, these were “the earliest declarations articulat[ing] the need for common cause in the preservation of architectural and material fabric,”¹⁷ it was not until the Athens Charter of 1932 that heritage as a discipline was fully established. They also note that “the earliest such proclamations did not conceive of the issue in terms of heritage per se—as is the prevalent view today—but specifically as a problem of architectural conservation.”¹⁸ Harvey likewise states “the often-reported and eulogised 19th-century [sic] development of preservationism and architectural protectionism [...was] simply an important moment within a much longer trajectory of heritage in Britain.”¹⁹

In 1964, these perspectives were again formalised in the International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter); “the canonical text of modern heritage practices.”²⁰ The International Council on Monuments and Sites (ICOMOS) was formed the following year and operates as an advisory body for the United Nations Educational, Scientific, and Cultural Organisation (UNESCO).²¹

Alongside developments in the United States with Natural Heritage Protection, the concept of World Heritage emerged in 1972 with the United Nations Convention Concerning the Protection of the

¹⁶ Smith, *Uses of Heritage*, 19-20.

¹⁷ Ruggles and Silverman, “From Tangible to Intangible Heritage,” 4.

¹⁸ Ruggles and Silverman, “From Tangible to Intangible Heritage,” 3.

¹⁹ Harvey, “Heritage Pasts and Heritage Presents,” 337.

²⁰ Starn, cited in Smith, *Uses of Heritage*, 26.

²¹ ICOMOS International Council on Monuments and Sites. “ICOMOS’ Mission.”

World Cultural and Natural Heritage (World Heritage Convention). As Smith states, “under this convention, heritage *is* not only monumental, it *is* universally significant with universal meaning, and it *is*, ultimately, physically tangible and imposing.”²² Despite commonality across both the Venice Charter and World Heritage Convention, Ruggles and Silverman stress that the Venice Charter “was not without detractors who pointed out that its definition of heritage was based on western models that privileged permanence and narrowly defined the categories of authenticity.”²³

In the 1960s and 1970s there was a general context of political awareness and action. It was an important time for equal rights, especially those for women (feminism) and indigenous peoples. This was also considered to be the beginning of a shift and expansion in the definitions of heritage criteria. According to Harrison, “it was only because the World Heritage Convention was expressed as a universal convention representing universal heritage values that criticism of minorities and marginalised peoples, and the question of representativeness itself, became a problem which it was important for the World Heritage Committee to address.”²⁴

Haig notes that “central to this ignorance [of non-Western cultures] has been the issue of value. We are in the habit of valuing and qualifying cultural heritage as solid, stable, static and having ‘intrinsic values’ as well as qualities of ‘authenticity.’”²⁵ The emphasis of heritage as a tangible, physical thing and the sense of ‘authenticity’ in heritage means that “material culture is understood to not only symbolise, but actually ‘embody’, heritage cultural values.”²⁶

Issues of representativeness, tangibility, and authenticity were gradually addressed by various conventions and charters. For example, the ICOMOS Australia Burra Charter in 1979 incorporated a more localised understanding of place but, as Smith describes:

It has not altered the dominant sense of the trusteeship of expert authority over the material fabric. Nor has it challenged the degree to which experts are perceived as having not only the ability, but also the responsibility for identifying the value and

²² Smith, *Uses of Heritage*, 27. Smith’s emphasis.

²³ Ruggles and Silverman, “From Tangible to Intangible Heritage.” 5.

²⁴ Harrison, *Heritage: Critical Approaches*, 117.

²⁵ Haig, “Reclaiming Intangible Cultural Heritage,” 366.

²⁶ Smith and Waterton, “‘The envy of the world?’” 291.

meanings that are still perceived to be locked within the fabric of a place.²⁷

Changes slowly occurred, as with the 1994 joint UNESCO and ICOMOS Nara Document of Authenticity. The document was useful to Japanese notions of heritage where Ise temples are rebuilt every 20 years and this “acknowledgement of impermanence and renewal had an impact that far exceeded that of monument preservation because it admitted the human being as integral to the construction of meaning and the ongoing creation of material culture.”²⁸ Ruggles and Silverman also note that while the 1982 Florence Charter for Historic Gardens and “the ICOMOS Cultural Tourism Statement had located meaning as emerging from the mind of the observing audience, the primary object of preservation in all of these remained a tangible, physical thing.”²⁹

While these conventions and documents began to account for a human role within heritage, there remained the underlying concept that heritage was a tangible object or ‘thing’. This idea was challenged by the 2003 UNESCO Convention for the Safe-guarding of Intangible Cultural Heritage and saw the introduction of two different interpretations of intangible heritage.

Intangible heritage

According to Harrison in the late twentieth and early twenty-first centuries:

The concept of heritage [was] broadened to accommodate an increasingly large number of objects, places and, perhaps most importantly, practices, and the landscapes in which these occur. It has also seen heritage increasingly shift away from a concern with ‘things’ to a concern with cultures, traditions and the intangible.³⁰

Alivizatou recalls that in “the early 1990s it was thus officially recognised that the cultural heritage of humanity is not only embodied in monuments, sites, and material relics of the past [...] but also in a diverse range of oral traditions, ceremonies and practices that are passed on from one generation to the next.”³¹

²⁷ Smith, *Uses of Heritage*, 24.

²⁸ Ruggles and Silverman, “From Tangible to Intangible Heritage.” 6.

²⁹ Ruggles and Silverman, “From Tangible to Intangible Heritage.” 8.

³⁰ Harrison, *Heritage: Critical Approaches*, 115.

³¹ Alivizatou, “Intangible Heritage and Erasure,” 39.

The UNESCO 2003 Convention for the Safe-guarding of Intangible Cultural Heritage and the 2005 UNESCO International Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions intended “to recognise and manage embodied cultural heritage in societies where perhaps the built heritage was less significant. The push to protect intangible as well as tangible heritage can be seen, therefore, as a further step in recognising cultural diversity.”³²

The recognition of intangible cultural heritage emerged primarily from indigenous groups who did not privilege built or tangible heritage and so their heritage was excluded from representation on the World Heritage list. Subsequently, intangible cultural heritage was commodified and subjected to the same processes of preservation, conservation and classification as more tangible forms of heritage.³³

In many ways, the Convention had an inverse effect to that which many indigenous groups had initially expected. While their forms of heritage were officially recognised, “the category of ‘intangible heritage’ continued the movement away from the conservation of material things towards listing and archiving as an end result.”³⁴ The inclusion of intangible cultural heritage into World Heritage could be viewed as an additional category in the overall concept of heritage. Such an addition was not without criticisms, including the relationship between the tangible and intangible and an accumulation of the past. Both concerns were significant in changing the focus in heritage from heritage objects—be they tangible or intangible—to the understanding of heritage as a cultural process.

Tangible vs. the intangible

Harrison states that classification and categorisation were fundamental to the production of experience in modernity, in which objects, people, plants, animals and other ‘things’ were ordered in such a way that a series of familiar modern, Cartesian dualisms were produced.³⁵ Heritage was no exception to such Cartesian constructions with binaries of Western and non-Western, tangible and intangible often overlooking a more historic understanding of heritage which acknowledged “the values that people give [...] objects, collections, buildings etc. become recognised as heritage when they express the

³² Logan, “Cultural diversity, cultural heritage and human rights,” 235.

³³ Harrison, *Heritage: Critical Approaches*, 115.

³⁴ Harrison, *Heritage: Critical Approaches*, 137.

³⁵ Harrison, *Heritage: Critical Approaches*, 116.

value of *society* and so the tangible can only be understood and interpreted through the intangible.”³⁶

Haig similarly observes that “to be kept alive, intangible cultural heritage must be relevant to its community, continuously recreated and transmitted from one generation to another.”³⁷ According to Pétursdóttir the 2003 UNESCO Intangible Cultural Heritage convention “does not, therefore counterpose intangible to tangible heritage, but underlines the interdependence of the two [...] that valuing or safeguarding one will come with and urge the appreciation of the other,”³⁸ but she appears to contrast the idea of intangible heritage as the process or performance of heritage supported by Harrison, Smith, and Munjeri.

Although termed ‘intangible heritage’ by Smith, this is perhaps better conceived of as the intangibility of heritage, where heritage is considered a process “to construct, reconstruct and negotiate a range of identities and social and cultural values and meanings in the present.”³⁹ Pishief recognises the distinction between intangible cultural heritage and the intangibility of heritage in her PhD dissertation, where “this way of looking at intangible heritage objectifies it. Intangible [cultural] heritage, such as a traditional way of doing things, becomes an artefact; it is bounded and managed and in danger of becoming frozen into a ‘thing’.”⁴⁰ This understanding of intangible heritage was to become a founding concern within critical heritage.

The accumulation of the past

A concern with the accumulation of the past was another criticism from the view of heritage as contained in AHD. While such a concern can be viewed in the literature before the emergence of intangible cultural heritage, Smith’s conception of intangible heritage and AHD allowed the issue to be considered as part of the wider concerns in heritage practice. French historian Pierre Nora is notable for considering the accumulation of the past. In his discussion on lieux de mémoire, he compares the role of memory with that of the archive in which:

Modern memory is, above all, archival. It relies entirely on the materiality of the

³⁶ Munjeri, “Tangible and Intangible Heritage: from difference to convergence,” 13.

³⁷ Haig, “Reclaiming Intangible Cultural Heritage,” 369.

³⁸ Pétursdóttir, “Concrete matters: Ruins of modernity and the things called heritage,” 35.

³⁹ Smith, *Uses of Heritage*, 3.

⁴⁰ Pishief, “Constructing the Identities of Place,” 102.

trace, the immediacy of the recording, the visibility of the image. [...] The less memory is experienced from the inside, the more it exists only through its exterior scaffolding and outward signs—hence the obsession with the archive that marks our age, attempting at once the complete conservation of the present as well as the total preservation of the past.⁴¹

Harrison describes it as “a coming ‘crisis of accumulation’ of the past in the present in the early twenty-first century, which will ultimately undermine the role of heritage in the production of collective memory, overwhelming societies with disparate traces of heterogeneous pasts and distracting us from the active process of forming collective memories in the present.”⁴² Heritage lists and, in some cases the retention of the material past, act as an archive for collective memory, in which memories no longer need to be produced but recalled. Smith points out that this construction of memory “often objectifies memory in so far as memories are things that we ‘have’ rather than ‘something we do’.”⁴³ The performance of memory-making echoes the critical heritage idea of heritage as actively produced.

The active production of heritage

Harvey proposes that “since all heritage is produced completely in the present, our relationship with the past is understood in relation to our present temporal and spatial experience,”⁴⁴ while Logan states that “heritage results from a selection process; heritage values are attributed, not inherent.”⁴⁵ Such ideas of the selective spatial and temporal value of heritage were formed from the evolution of art conservation, which Winter argues was indicative of wider trends where “scientific approaches were inherently connected to aesthetics and connoisseurship.”⁴⁶ Smith reiterates that aesthetics and connoisseurship were Western European, middle and upper class constructions.⁴⁷ The result was, as

⁴¹ Nora, “Between Memory and History: Les Lieux de Mémoire,” 13.

⁴² Harrison, *Heritage: Critical Approaches*, 166. Harrison’s emphasis.

⁴³ Smith, *Uses of Heritage*, 59.

⁴⁴ Harvey, “Heritage Pasts and Heritage Presents,” 325. Also see Haig, “Reclaiming Intangible Cultural Heritage,” 368, and Craith, “Intangible Cultural Heritages: The Challenges for Europe,” 67.

⁴⁵ Logan, “Cultural diversity, cultural heritage and human rights,” 236. Also see Rodney Harrison, “Forgetting to remember, remembering to forget,” 580, and Joanne Whittle, “‘Your Place and Mine’ Heritage Management and a Sense of Place,” 66.

⁴⁶ Winter, “Clarifying the critical in critical heritage studies,” 537.

⁴⁷ Smith, *Uses of Heritage*.

Winter describes it, the “consolidation of a *scientistic materialism* of heritage conservation”⁴⁸ which propagates a particularly Western elitist identity within the practice and management of heritage.

According to Harrison, Categorisation, a concept from scientistic materialism, “implies a sense of threat, or at least some vulnerability, and various other qualities that set [heritage objects] apart from the everyday.”⁴⁹ McCarthy discusses threat and risk perception within an architectural heritage context, in which “current built heritage protection strategies privilege the values of a small part of the community because these strategies do not reflect the ways most people perceive risks and make decisions.”⁵⁰

Risk perception, and therefore risk management, as Harrison states, was “calculated and defined by a range of ‘experts’ who produce statistics and data that make risk calculable and hence measurable. Integral to this process of managing risk [...] is the process of identifying and classifying it.”⁵¹ Risk perception was, as Harrison continues, “integral to the conditions of modernity itself [and as such] it follows that classification can be understood as central to the project of modernity. And if it is modernity’s relationship with the past that defines it, then it follows that time must be ordered and organised.”⁵²

The understanding of ordered time, as part of wider modernity, generates a bind in which traditional conceptions of heritage are constrained. Harrison states that time in modernity “is not straightforward, as it involves a complex doubling in which it defines itself simultaneously as both ‘contemporary’ and ‘new’. In doing so, it constantly creates the present as ‘contemporary past’ whilst it anticipates the future as embodied within the present.”⁵³ He, therefore, summarises modern concepts of time in that “the ambiguity of modernity’s relationship with the past produces what appear to be opposing sentiments in the desire to be unshackled from the past, whilst simultaneously fetishising and conserving fragments of it.”⁵⁴

⁴⁸ Winter, “Clarifying the critical in critical heritage studies,” 537. Winter’s emphasis.

⁴⁹ Harrison, *Heritage: Critical Approaches*, 7.

⁵⁰ McCarthy, “Re-thinking threats to architectural heritage,” 633.

⁵¹ Harrison, *Heritage: Critical Approaches*, 28.

⁵² Harrison, *Heritage: Critical Approaches*, 28.

⁵³ Harrison, *Heritage: Critical Approaches*, 25.

⁵⁴ Harrison, *Heritage: Critical Approaches*, 26.

The ‘fetishising and conserving’ of fragments of the past, and the conditions of classification, ordering, and measuring of innate ‘heritage’ values are mechanisms through which Harrison and Smith, as well as Winter, Pishief, Harvey, Hall and McArthur, and Graham et al., critique AHD. In doing so, they propose that all heritage is produced in the present and that heritage cannot exist as a universal absolute.⁵⁵ Graham et al. state “if the people in the present are the creators of heritage, and not merely passive receivers or transmitters of it, then the present creates the heritage it requires and manages it for a range of contemporary purposes,”⁵⁶ and Harvey contends that heritage “has always been produced by people according to their contemporary concerns and experiences.”⁵⁷

If heritage is always created in the present, it follows that heritage is better viewed:

Not as a historical truth (fact) but only as conditional and hypothetical reasoning calculated to explain the nature of things (and people), and not to determine the origins of traditions or practices. If it is assumed that heritage has no empirical reality, then the process of identification is greatly altered and simplified.⁵⁸

As such, a multiplicity of different heritages and interpretations of the past exist.⁵⁹ This condition of interpreting and reinterpreting the past by many cultures and groups often results in dissonance between differing perspectives.

Dissonance

Graham et al. argue that dissonance is a condition that “refers to the discordance or lack of agreement and consistency as to the meaning of heritage [... and] this appears to be intrinsic to the very nature of heritage and should not be regarded as an unforeseen or unfortunate by product.”⁶⁰ Different and incompatible meanings stem from an underlying principal of the ownership of heritage. Conceived traditionally as a ‘thing’ within AHD, “dissonance arises because of the zero-sum characteristics of heritage, all of which belongs to someone and logically, therefore, not to someone else. The creation

⁵⁵ Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 93.

⁵⁶ Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 2.

⁵⁷ Harvey, “Heritage Pasts and Heritage Presents,” 320. This position is similar to that of Whittle, where “reinterpretation of the past is a continuous and healthy cultural and societal process.” Whittle, “‘Your Place and Mine’ Heritage Management and a Sense of Place,” 66.

⁵⁸ Edson, “Heritage: Pride or passion, product or service?” 345.

⁵⁹ Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 3 and 32. Also see Harvey, “Heritage Pasts and Heritage Presents,” 320.

⁶⁰ Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 24 and also 5.

of any heritage actively or potentially disinherits or excludes those who do not subscribe, or are embraced within, the terms of meaning defining that heritage.”⁶¹

Smith considers dissonance with a wider scope in relation to socio-political power in which “the ability to possess, control and give meaning to the past and/or heritage sites is a re-occurring and reinforcing statement of disciplinary authority and identity,”⁶² while Harrison links the consideration of dissonance to the recognition of intangible cultural heritage, where “a recognition that the ownership of heritage confers not only rights to control access to (and income generated by) cultural objects, but also the power to control the production of knowledge about the past.”⁶³

Concerns about physical and tangible fabric, or the production of cultural performance, are also caught up with wider arguments of power and socio-political control. Just as “physical destruction is perceived to injure not only the object, place or practice in question, but also the group of people who hold that as part of their heritage,”⁶⁴ classification operates as a process of inclusion and exclusion, and is a mechanism of power in defining heritage.⁶⁵ Carman states:

Any heritage or heritages we create should enhance our understanding of who we are and what we do, and increase our enjoyment and delight in the world we jointly inhabit. If it serves to separate us from that wider environment—by seeking to mark us out as ‘special’ or ‘different’ or ‘superior’, or indeed as ‘inferior’—then it is failing in its purpose.⁶⁶

For Carman, concepts of heritage are closely related to ideas of identity. Smith observes that “the association between heritage and identity is well established in the heritage literature—material culture as heritage is assumed to provide a physical representation and reality to the ephemeral and slippery concept of ‘identity’.”⁶⁷ Similarly, Pishief describes intangible heritage as “a moving, living, changing

⁶¹ Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 24.

⁶² Smith, *Uses of Heritage*, 51.

⁶³ Harrison, *Heritage: Critical Approaches*, 109.

⁶⁴ Harrison, *Heritage: Critical Approaches*, 27.

⁶⁵ Carman. *Archaeology and Heritage*, 17.

⁶⁶ Carman, *Archaeology and Heritage*, viii-xi.

⁶⁷ Smith, *Uses of Heritage*, 48.

expression of an aspect of identity.”⁶⁸

With a focus on identity and socio-political power in the heritage discourse, especially within intangible heritage, Harrison is critical that this “does not always produce an account that adequately theorises the role of material ‘things’.”⁶⁹ Instead he suggests a dialogical model of heritage, where “the production of heritage emerges from the relationship between people, ‘things’ and their environments as part of a dialogue or collaborative process of keeping the past alive in the present.”⁷⁰

For Harrison this dialogical model implies “an ethical stance in relation to others, and a belief in the importance of acknowledging and respecting alternative perspectives and world views as a condition of dialogue, and provides a way to connect heritage with other pressing social, economic, political and environmental issues of our time.”⁷¹ Smith, while emphasising the intangibility of heritage, has previously proposed heritage as “a cultural process that engages with acts of remembering that work to create ways to understand and engage with the present, and the sites themselves are cultural tools that can facilitate, but are not necessarily vital for, this process.”⁷²

Pishief refers to a similar understanding while discussing Māori heritage in New Zealand. She introduces the concept of the ‘Connect’ or, as she describes, “betweenness, [in] that it unites person and place in intangible networks of emotion and meaning—from physical to spiritual and back again.”⁷³ Such relationship-based approaches tend to be predominant concepts within critical heritage.

Critical heritage

Critical heritage is built on the ideas of identity, dissonance, the active production of heritage, and relationship-based approaches to people, objects, places, and performances. While drawing on many of the issues addressed within AHD, critical heritage radically departs from the structural operation of AHD in considering the production of heritage in the present. Winter states that critical heritage brings

⁶⁸ Pishief, “Constructing the Identities of Place,” 102.

⁶⁹ Harrison, *Heritage: Critical Approaches*, 112.

⁷⁰ Harrison, *Heritage: Critical Approaches*, 216.

⁷¹ Harrison, *Heritage: Critical Approaches*, 9.

⁷² Smith, *Uses of Heritage*, 44.

⁷³ Pishief, “Constructing the Identities of Place,” 175.

“a critical perspective to bear upon the socio-political complexities that enmesh heritage [and tackles] the thorny issues those in the conservation profession are often reluctant to acknowledge.”⁷⁴ Critical heritage is significant as:

it means better understanding [of] the various ways in which heritage now has a stake in, and can act as a positive enabler for, the complex, multi-vector challenges that face us today, such as cultural and environmental sustainability, economic inequalities, conflict resolution, social cohesion and the future of cities, to name a few.⁷⁵

Winter has aligned critical heritage with post-Westernisation⁷⁶ as it is part of a wider shift in rethinking modernism, post-modernism, and the structures of capitalism. Speaking broadly, Jeffery Nealon describes these shifts as “offering tools for thinking differently about the present, rather than primarily either exposing or undermining the supposed ‘truth’ of this or that cultural position.”⁷⁷ As such, in relation to a discussion on the issues of globalisation, Nealon argues that “we now tend to start with the largest post-postmodern whole (e.g. globalisation), of which any particular part [...] is a functioning piece.”⁷⁸ Such a description is useful for understanding critical heritage, which starts by considering and conceptualising the whole, of which any particular part, such as identity, dissonance, place, sites, performances, or buildings, are a functioning, although not dominating, piece.

This position is not consistent within the critical heritage literature. Waterton and Watson state that, with the exceptions of Smith, Croach, and Harrison, “it seems that some theoretical debates, such as those concerned with ‘big concepts’ such as identity, authenticity or dissonance have not adequately addressed the nature of heritage itself, either as a concept or practice.”⁷⁹ Critical heritage is framed by authors such as Winter, Waterton and Watson, and Harrison, as a field that must be conceptualised with self-awareness of wider contemporary issues beyond those traditionally addressed in the heritage sector.

⁷⁴ Winter, “Clarifying the critical in critical heritage studies,” 533.

⁷⁵ Winter, “Clarifying the critical in critical heritage studies,” 533.

⁷⁶ Winter, “Clarifying the critical in critical heritage studies,” 542.

⁷⁷ Nealon, *Post-postmodernism, or, the Cultural Logic of Just-in-time Capitalism*, 88. For example, the construction of AHD exposes a ‘truth’ within traditional cultural positions of heritage.

⁷⁸ Nealon, *Post-postmodernism, or, the Cultural Logic of Just-in-time Capitalism*, 150.

⁷⁹ Waterton and Watson, “Framing theory: towards a critical imagination in heritage studies,” 546.

Witcomb and Buckley argue that critical heritage should address concerns such as:

A commitment to the plurality of stakeholders and a recognition of the power relations between them; a recognition of the constructed nature of heritage production and therefore the politics of representation; an interest in the democratisation of heritage production and access to its products in ways that foster true forms of collaboration and recognises human rights.⁸⁰

From this perspective, Harrison observes that dissonance and “controversy comes to be perceived not as a ‘social’ or ‘political’ problem to be managed, but as a mode of exploration in its own right, which has the potential to generate important new insights and forms of knowledge on issues of critical concern to the various actors involved.”⁸¹

In perceiving the production of heritage as a ‘mode of exploration’, Harrison believes that “a critical interdisciplinary heritage studies is well placed to address itself to some of the most pressing contemporary issues of social, economic, political and environmental concern.”⁸² Critical heritage may be applicable in New Zealand heritage practices, in which such concerns and the needs to address them are recognised in relation to the Treaty of Waitangi, cultural rights, and the concept of partnership between Māori and Pākehā.

Contemporary practices of architectural heritage are characterised by AHD. While the New Zealand context provides recognition for Māori heritage concepts, architectural heritage practices tend to privilege built fabric and materiality. Such recourse to physical, tangible, heritage objects overlooks the socio-political context in which that heritage is constructed and the cultures and groups that heritage privileges. The following chapter describes how these concerns relate to heritage legislation in New Zealand. The Wanagui Native Land Court hearing is also described as an example of architectural heritage practice in New Zealand where concerns of cultural recognition were addressed.

⁸⁰ Witcomb and Buckley, “Engaging with the future of ‘critical heritage studies’,” 575.

⁸¹ Harrison, *Heritage: Critical Approaches*, 244. Also see Graham et al. where “in essence, multiculturalism seems more likely to be defined as a mutual respect for multiple cultures in any one society, rather than the integration of those identities into a new composite culture.” Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, 257.

⁸² Harrison, *Heritage: Critical Approaches*, 231.





Chapter Three

The Wanganui Native Land Court Hearing and New Zealand Legislative Context

The Native Land Court building viewed from Moutoa Gardens

March 2013, photograph by author

This thesis uses a case study approach to examine heritage practice in New Zealand. The case study is the 2013 Environment Court Hearing in the matter of the direct referral of an application for a resource consent under s87G of the Resource Management Act 1991 between Te Puna Mātautanga o Whanganui and Universal College of Learning (Applicants) and The Wanganui District Council (Consent Authority).¹

Case study research is “a *bounded* system.”² Case studies locate research to a specific time and place in order to understand and illustrate wider principles. The bounded nature of a case-study can be either naturally occurring or applied by a researcher. The Native Land Court case study is naturally bounded because “it consists of participants who are together for their own common purpose,”³ and the scope of research is limited to those who have an active interest and involvement in the issue. A case study approach does not account for all factions of New Zealand heritage practice and instead provides a singular example of architectural heritage practice in New Zealand. The case was selected as it demonstrated the conventional legislative mechanism through which issues of heritage are decided within New Zealand and, secondly, because the case explicitly addressed concerns of intangible and critical heritage.

In this chapter, a brief introduction to the legislative context of architectural heritage in New Zealand is given, followed by a description of the case study, the parties and people involved, their positions on granting or declining the resource consent, and the significance of the case study. This chapter provides a description of the case study before analysis is undertaken in chapters 4, 5, and 6.

New Zealand Architectural Heritage

The focus of architectural heritage practice in New Zealand has been the enabling and facilitating of legislative requirements and thus has resulted in a lack of critical literature in the field. As Pishief observes, “there is unfortunately a shortage of critical literature in the New Zealand context, [...] which is in part caused by the small scale of a heritage profession dominated by archaeologists and

¹ Case number ENV-2012-WLG-000075, Decision Number [2013] NZEnvC 110. Referred to in this thesis as the Native Land Court case study.

² Putney, “Case Study.” 116. Putney’s emphasis.

³ Putney, “Case Study.” 116.

conservation architects concerned with the details of the management of heritage and its material fabric, particularly excavation and conservation.”⁴

There are five significant documents relating to architectural heritage in New Zealand: the Resource Management Act 1991 (RMA), the New Zealand Historic Places Act 1993 (Historic Places Act)⁵, the Regional Policy Statements of Regional Councils, the District Plan of local territorial authorities, and the non-regulatory 2010 ICOMOS NZ Charter. The regulatory and practical emphasis in New Zealand means that heritage disciplines are “quite explicitly anti-academic and anti-theoretical.”⁶

The Resource Management Act 1991

The Resource Management Act 1991 is the legislative protection mechanism for heritage in New Zealand. Pishief states “the RMA is the legislation that protects and regulates *all* historic heritage through the heritage policies, objectives and rules in regional and district plans.”⁷

Since a 2003 amendment, the Act has defined historic heritage and positioned it as a matter of national importance. Section 6(f) protects “historic heritage from inappropriate subdivision, use, and development”⁸ and defines historic heritage as:

(a) those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

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

⁴ Pishief, “Constructing the Identities of Place,” 25-26.

⁵ The Historic Places Act was under review at the time of writing. The new Heritage New Zealand Pouhere Taonga Act passed in May 2014.

⁶ Pishief, “Constructing the Identities of Place,” 26.

⁷ Pishief, “Constructing the Identities of Place,” 73.

⁸ Resource Management Act 1991, s 6(f).

(b) includes—

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Māori, including wāhi tapu; and
- (iv) surroundings associated with the natural and physical resources⁹

Heritage orders¹⁰ provide a mechanism to protect historic heritage. Greg Vossler states that heritage orders, “are a powerful tool to aid protection of historic heritage, [but] they are generally perceived as a means of ‘last resort’ (for example, when a building or site is under threat of demolition or destruction). This, in large part, may be attributable to ‘the clear rights to compensation spelt out in Section 198 of the RMA’.”¹¹ The rights of compensation mean limited use of heritage orders within heritage practice.¹²

Similar to historic heritage, Māori cultures and traditions are recognised as a matter of national importance in the Act. Section 6(e) recognises and provides for “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.”¹³ It is section 6(e) that accounts for Māori concepts of natural and physical resources.

Pishief states that “Māori see people, nature and the land as inextricably intertwined. Their view of history and heritage is based on a shared whakapapa in which ‘all things are from the same origin and the welfare of any part of the environment determines the welfare of the people.’”¹⁴ Additionally, Ngawini Keelan criticises the:

unwillingness of power structures to recognise Māori sovereignty over Māori resources. To this extent, Māori have been largely undermined and ignored in matters relating to environmental planning and management [and] this freezing-out

⁹ Resource Management Act 1991, s2 Historic Heritage

¹⁰ See the Resource Management Act 1991, ss 187-198M.

¹¹ Vossler, “Sense or Nonsense?” 61. A heritage order may require the compulsory acquisition of a site or property and hence the applicant may be required to compensate for the acquisition.

¹² Butts, “Institutional Arrangements for Cultural Heritage Management,” 172.

¹³ Resource Management Act 1991, s 6(e).

¹⁴ Pishief, “Constructing the Identities of Place,” 130. Citing Trapeznik.

process has been detrimental to health of the tangata whenua and to the resources.¹⁵

Conflicts between section 6(e), Māori cultures, and section 6(f), historic heritage, occasionally occur, in which consent authorities must balance the weight of such matters in making a determination.¹⁶

Such a conflict occurred in the Wanganui Native Land Court hearing.

The New Zealand Historic Places Act 1993

The New Zealand Historic Places Trust (NZHPT)¹⁷ is enabled by the New Zealand Historic Places Act 1993 as a Crown entity responsible for the protection of historic places and sites within New Zealand. The NZHPT is tasked, under the purposes of the Act, to promote “the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.”¹⁸ The NZHPT is legislated to hold the position that “historic places have lasting value in their own right and provide evidence of the origins of New Zealand’s distinct society”.¹⁹

The NZHPT registers historic places, sites, areas, and wahi tapu as category I or II, based on the significance of the site, building, or area. Significance is considered using the categories defined in section 23 of the Act, including aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value.²⁰

Registration does not provide legislative protection of historic places.²¹ The NZHPT primarily serve an advocacy role which Vossler explains “with respect to the registration of historic and wahi tapu areas, the Trust can make recommendations to a territorial local authority or regional council regarding the measures they should take to assist in the production and management of areas under their jurisdiction.”²²

¹⁵ Keelan, “Māori Heritage,” 99.

¹⁶ For example, the Court stated in the hearing decision that “in some situations there can be a tension between matters of national importance under s6, and it was suggested that could be so here.” *Te Puna Mātaraunga o Whanganui* at [75].

¹⁷ In May 2014 the NZHPT changes its name to *Heritage New Zealand Pouhere Taonga*. This thesis uses the previous name of the New Zealand Historic Places Trust.

¹⁸ Historic Places Act 1993, s 4(1).

¹⁹ Historic Places Act 1993, s 4(2)(a).

²⁰ Historic Places Act 1993 Section 23(1).

²¹ Legislative protection is provided under the Act for archaeological sites but not historic places, unless they are also meet the criteria for an archaeological site.

²² Vossler, “Sense or Nonsense?” 63.

Registration identifies historic places, historic areas, wāhi tapu, and wāhi tapu areas but legislative protection occurs under the RMA or within the District Plans of local territorial authorities.

Regional Policy Statement

A Regional Policy Statement is a document that outlines the resource management use of a region governed by a Regional Council. It is produced by the Regional Council and determines the direction and provisions for historic heritage that must be included in the District Plans of that region. For this case study, the Horizons (Manawatu-Wanganui) Regional Council's 'One Plan' contained the relevant Regional Policy Statement.

District Plans

District Plans provide the protective mechanism for historic heritage in a regional context. Different regions have different provisions for historic heritage as determined by Local and Regional Councils and the communities they represent. For this case study, the Wanganui District Plan contains the provisions for historic heritage and is written and enforced by the Wanganui District Council.

The District Plan provides the primary protective mechanism for buildings and places identified as historic heritage within the Plan. If any change or demolition of historic heritage was outside of what was permissible under the rules of the Plan, a resource consent would need to be applied for and granted before any changes or demolition could occur. The resource consent would be subject to the Resource Management Act and determined by a consent authority, such as a District Council or Environment Court.

2010 ICOMOS New Zealand Charter

The 2010 ICOMOS New Zealand Charter is a document guiding the conservation of places of cultural heritage value developed by the New Zealand National Committee of the International Council on Monuments and Sites. The Charter has no regulatory status, although the Charter suggests that it "should be made an integral part of statutory or regulatory heritage management policies or plans, and

should provide support for decision makers in statutory or regulatory processes.²³

Jeremy Salmond states that the Charter:

accommodates cultural attitudes to historic heritage which are not universally shared with other countries. It reflects a history of development which has been to some extent shared between Māori and Europeans, and historical attitudes to buildings which are not always shared with other countries of similar backgrounds.²⁴

While accounting specifically for a New Zealand context, the Charter follows the spirit of the International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter - 1964)²⁵ which emphasises material conservation practices.

The RMA, Historic Places Act, District Plans, and ICOMOS NZ Charter are the key documents legislating or guiding heritage practice in New Zealand. They form the heritage context in which the case study of the Native Land Court hearing was set.

The Native Land Court building

The Native Land Court building is located in Whanganui, a town on the Western Coast of the North Island of New Zealand. The building is located in the 'old town' district of Whanganui on the corner of Rutland Street and Market Place. The prominent corner site is opposite the UCOL Whanganui campus along Rutland Street and, across Market Place, overlooks Moutoa gardens and out to the Whanganui River, as shown in Figure 3.1.

The site is also located in the area of Pākaitore, an historic fishing pā once centred on the contemporary location of Moutoa Gardens. The site is of ancestral significance to Māori, which David Armstrong states was "probably a 'neutral' place where all the river iwi might converge for fishing,

²³ ICOMOS New Zealand, "ICOMOS New Zealand Charter," preamble.

²⁴ Salmond, "From Dead Ducks to Historic Buildings." 51.

²⁵ ICOMOS New Zealand, "ICOMOS New Zealand Charter," preamble.



Figure 3.1. Map of the Native Land Court building and surrounds. Image taken in 2005 before the construction of the UCOL campus in 2007. Image adapted from Google, Digital Globe, Horizons Regional Consortium, Imagery March 2005.

trading and the discussion of important events.”²⁶ Māori maintain the site as significant and in 1995 staged a 79 day protest to restore the Mana of Whanganui people over the site.²⁷

The Native Land Court is a single storey, unreinforced brick masonry building in the Art Deco Moderne style designed by John Campbell, Government Architect, along with Llewellyn Richards and Claude Paton. Campbell’s plan for the building was approved by the Native Department in 1917, but construction did not begin until 1921 due to the austerity of the First World War. The building officially opened the following year. Alison Dangerfield describes that the “interior of the building included a court room and public and private office space for the Native Land Court and Aotea Māori Land Board judiciary and staff.”²⁸ The building also contained two strong rooms and ancillary buildings in a court yard along Rutland Street.

The building was constructed for the use of the Native Land Court. The Native Land Court was established under the Native Lands Act 1862 and, as Grant Young states, “the Court would investigate [land] title through judicial process, decide who owned or did not own a piece of land whose boundaries were set out in a survey plan and maintain a record of the owners so the Crown or private purchases would know who to negotiate with to alienate the land.”²⁹ David Armstrong summarises that

the main role of the Court was to transform collective customary Māori land rights into a form of tradable individual title, and thereby facilitate land alienation. By around 1900 the vast majority of Māori land in the Whanganui district has passed through the Court. The impact on Māori was profound. By 1910 around 60% of Māori land in the Whanganui district had been sold, and by 1936 this figure had risen to around 80%.³⁰

By the time the Native Land Court began sitting in the building at 11 Rutland Street, the vast majority of Māori land in the area had already been alienated.

The building was used by the Native Land Court and the Native Department until 1952, when the

²⁶ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Armstrong at [21].

²⁷ Ministry for Culture and Heritage, “Moutoa Gardens protest.”

²⁸ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Dangerfield at [15].

²⁹ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Young at [6].

³⁰ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Armstrong at [8].

Land Boards were disestablished and the building was inherited by the Māori Trustee.³¹ The building continued to be used by the Māori Affairs Department until 1982 when it was purchased by two Māori incorporations: Morikaunui and Atihau-Whanganui. The building was then sold to UCOL in 2006³² as part of a land accumulation exercise by UCOL for their ‘Campus Converge’ project, in which UCOL was to consolidate a number of sites in Whanganui into a single campus.³³

In the same year, a Memorandum of Understanding was signed between UCOL and Te Puna Mātauranga o Whanganui, the education authority for Whanganui iwi Te Atihauunui a Pāpārangi. The Memorandum included the establishment of an Iwi Tertiary Institute. Paul McElroy states that “the shared objectives of the parties are [...] to assist in the establishment of [...] the Iwi Tertiary Institute in close proximity to the UCOL campus development, not only to meet Whanganui iwi aspirations [but] also for mutuality of services for student support.”³⁴

The site of the Native Land Court building was jointly chosen by UCOL and Te Puna as the location to construct the Iwi Tertiary Institute. An attempt to prepare the site for construction occurred in 2008, when UCOL and Te Puna applied for a resource consent to “demolish the former Māori Land Court and ancillary buildings in order to establish and maintain a recreational green space within the UCOL campus.”³⁵ This consent was heard and declined by the Wanganui District Council. UCOL subsequently appealed the decision and this was heard in the Environment Court in late 2009 and early 2010. The appeal was declined because the consent was for the establishment of a green space rather than a resolved proposal for an iwi tertiary institute. The 2010 Environment Court decision stated that

heritage interests do not *trump everything else*. It may be that the promotion of sustainable management requires the social advancement (through education) of Whanganui iwi to take precedence over historic heritage in this case, particularly in the light of our reservations as to the heritage significance of the Māori Land Court building.³⁶

³¹ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Armstrong at [102].

³² *Te Puna Mātauranga o Whanganui* Evidence in Chief, Young at [51].

³³ *Te Puna Mātauranga o Whanganui* Transcript at 94.

³⁴ *Te Puna Mātauranga o Whanganui* Evidence in Chief, McElroy at [25].

³⁵ *Universal College of Learning* at [1].

³⁶ *Universal College of Learning* at [148].

The declined outcome of the 2010 decision and the inclusion of critical heritage perspectives in that hearing³⁷ were key influences in selecting the Wanganui Native Land Court building as a case-study for research. The 2013 hearing was chosen as a case-study, firstly, because it was more recent and the hearing was to occur during the time this research was undertaken and, secondly, because it was anticipated that similar heritage discussions would occur in the 2013 resource consent application.

The Native Land Court hearing

The Environment Court hearing was heard in March 2013 to determine a resource consent under the Resource Management Act (RMA) to “demolish the former [Native] Land Court and ancillary buildings and establish, operate and maintain an iwi tertiary institute, Te Whare Mātauranga.”³⁸

The proposed iwi tertiary institute, Te Whare Mātauranga, was a joint venture between the applicants to provide “a place that provides student support, whānau support for students and a meeting place for kāumatua of the community to participate in, and positively influence, the lives of the Māori students enrolled at UCOL and in other tertiary learning.”³⁹ A significant factor in the application was the philosophy behind the iwi tertiary institute where it was of:

fundamental agreement that, rather than Māori education being subsumed within the UCOL infrastructure and facility, a separate but supportive relationship is envisioned. Each entity will offer the particular expertise, knowledge and infrastructure respectively to allow iwi to operate as an independent entity.⁴⁰

The applicants initially lodged the application for resource consent with the Wanganui District Council (Council) on 10 April 2012 and requested full public notification of the application. Two submissions were received on the application, one from the New Zealand Historic Places Trust Pouhere Taonga (NZHPT) and the other from the Whanganui Regional Heritage Trust (WRHT).⁴¹ As both parties

³⁷ Elizabeth Pishief gave evidence at the 2010 hearing, in which she stated “the issues are not about the Native Land Court building but about identity – about whose heritage will take precedence.” Pishief’s comment was clearly positioned within critical heritage. See *Universal College of Learning* at [112].

³⁸ *Te Puna Mātaraunga o Whanganui* at [2].

³⁹ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Voice at page 39.

⁴⁰ *Te Puna Mātaraunga o Whanganui* Evidence in Chief, Voice at page 38.

⁴¹ The Whanganui Regional Heritage Trust was originally a regional branch committee of the NZHPT. With the expected passing of the Heritage New Zealand Bill, some branch committees of the NZHPT were disestablished and the WRHT became an independent entity to promote the historic, cultural, and architectural heritage of the Whanganui region.

submitted on the resource consent application, both were entitled to participate in the Environment Court hearing as section 274 parties under the Resource Management Act.

Conventionally, resource consent applications are heard and determined by local government, in this case the Wanganui District Council. In this application, the applicants requested that the resource consent be directly referred to the Environment Court under section 87G of the RMA, given that the earlier application to develop the site had been declined by the Environment Court.

The 2013 hearing was held over three days, beginning 25 March, in the current Māori Land Court in Whanganui. The hearing was between the applicants and the Wanganui District Council but, as the resource consent was a direct referral, the Council also played an advisory role to assist the Court, primarily with understanding the planning provisions in the Wanganui District Plan. Due to the advisory role of the Council, the opposing parties were constructed as Te Puna and UCOL versus NZHPT, as a section 274 party, and much of the content of the hearing was produced by these two groups. All of the parties involved called expert witnesses to assist in establishing their respective cases before the Court, and are described in Table 3.1.

The key positions taken by each party can be generalised as follows:

Te Puna and UCOL

The site of the Native Land Court building was in the wider area of Pākaitore⁴², which was of ancestral and historical significance to Whanganui iwi and broader Whanganui Māori. The Native Land Court was the body responsible for the alienation of Māori land between the 1860s and 1920s. Whanganui iwi, Te Atihaunui a Pāpārangi, want to reclaim their identity within Pākaitore by demolishing the Native Land Court building and replacing it with a new building that represents Māori values to be used for an iwi tertiary institute to promote Māori educational involvement and success at a tertiary level.

⁴² Pākaitore was a traditional fishing settlement and marketplace centred on Moutoa Gardens. The size and extent of Pākaitore varied throughout its history.

| Court | |
|--|--|
| Judge C J Thompson | Environment Judge |
| Judge C L Fox | Deputy Chief Māori Land Court Judge |
| D J Bunting | Environment Commissioner |
| Te Puna Mātauranga o Whanganui and Universal College of Learning (Applicants) | |
| J W Maassen | Counsel – Cooper Rapley, Lawyers |
| N Jessen | Counsel – Cooper Rapley, Lawyers |
| David Armstrong | Expert Witness - History |
| Bruce Dickson | Expert Witness - Architecture |
| David Forrest | Expert Witness - Planning |
| Frances Goulton | Expert Witness – Education |
| Rau Hoskins | Expert Witness – Architecture |
| Paul McElroy | Expert Witness – Education |
| John Silvester | Expert Witness - Engineering |
| Esther Tinirau | Expert Witness – Heritage (Whakapapa) |
| Wanganui District Council (Consent Authority) | |
| P Drake | Counsel |
| Rochelle Voice | Expert Witness – Planning |
| New Zealand Historic Places Trust Pohere Taonga (s274 party) | |
| P J Page | Counsel – Gallaway Cook Allan, Lawyers |
| K E Krumdieck | Counsel – Gallaway Cook Allan, Lawyers |
| Sylvia Allan | Expert Witness – Planning |
| Winston Clark | Expert Witness – Engineering |
| Alison Dangerfield | Expert Witness – Architecture |
| Jeremy Salmond | Expert Witness – Architecture |
| Te Kenehi Teira | Expert Witness – Heritage (Māori) |
| Dean Whiting | Expert Witness – Heritage (Māori) |
| Grant Young | Expert Witness – History |
| Whanganui Regional Heritage Trust (s274 party) | |
| Wendy Pettigrew | Expert Witness – Heritage |

Table 3.1. People involved in the 2013 Environment Court hearing.

The UCOL/Te Puna argument consisted of the following main points:

- UCOL and Te Puna have a Memorandum of Understanding for developing an iwi tertiary institute to meet Māori educational needs.
- There are significant costs in renovating the existing building to meet current building regulations.
- The current Native Land Court building is not appropriate to be used for Māori needs as an iwi tertiary institute.
- Māori education requires a purpose designed building to represent Māori identity.
- The historic heritage provisions in the District Plan are Eurocentric and do not account for Māori conceptions of heritage.
- The current building does not afford the heritage significance it currently is given, as it is not the only purpose built Native Land Court building in the region.⁴³
- The site is of historical significance to Māori.
- Building the institute on the site maintains and reclaims what mana whenua believes is rightfully theirs.
- Māori should have a right to self-determination over their resources.
- The resource consent application should be granted.

Wanganui District Council

The Council held a neutral stance on the demolition of the building while recognising both the importance of Māori cultural heritage and identity within the town, as well as the need to retain and conserve the colonial historic heritage of the Whanganui township.

Their position was guided by the District Plan which, at the time of the Native Land Court resource consent application, contained Chapter 4 on Cultural Heritage Conservation and Chapter 19 on the Old Town Conservation Zone (Overlay Zone). These chapters specified the rules of the District Plan

⁴³ A community hall in Upokongaro, 10km out of Whanganui, was considered to be built for the purposes of the Native Land Court in 1881. The building still exists today and therefore UCOL/Te Puna considers there to be two purpose built Native Land Court Buildings in the region.

regarding Whanganui's heritage. Rule 19.5 in Chapter 19 stated:

The following are discretionary⁴⁴ activities in the Old Town Conservation Zone (Overlay Zone):

- a. demolition of structures⁴⁵

The purpose of Chapter 19 and the Old Town Conservation Zone (Overlay Zone) was to “protect all of the buildings within the zone; including buildings that individually were assessed as having their own cultural heritage values and the part those buildings play in creating an environment that equals more than the sum of the individual parts.”⁴⁶ The Native Land Court building was not individually identified in the Old Town Conservation Zone (Overlay Zone). Instead it was protected due to its contribution to the values of the zone as a collective.

A discretionary activity would require permission through a resource consent from a consent authority. As the Native Land Court building was in the geographical area of the Old Town Conservation Zone (Overlay Zone), the building was protected from demolition unless a resource consent was granted. The Wanganui District Plan was guided by the partly operative⁴⁷ Horizons (Manawatu-Wanganui) ‘One Plan’ as the Regional Policy Statement that guides resource management practice in the region. The One Plan has three provisions relating to historic heritage:

- Objective 7-3 protects historic heritage from activities that would significantly reduce heritage qualities
- Policy 7-10 requires District Plans to include provisions to protect historic heritage
- Policy 7-11 requires that territorial authorities must include a schedule of known

⁴⁴In the RMA there are both Discretionary and Restricted Discretionary activities. A Discretionary activity is one where a consent authority can, if granting the resource consent, impose conditions in relation to any matters that help control the activity's effects. A Restricted Discretionary activity limits the imposed conditions, if the consent is granted, to only matters specified in the District Plan. In the hearing, the activity status was argued by the parties. UCOL/Te Puna considered it to be a Restricted Discretionary and the NZHPT considered it to be a Discretionary Activity. The Court decided that it should be considered as a Discretionary activity.

⁴⁵ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Voice at 256. Also recorded as Rule 181 in the electronic version of the Wanganui District Plan following the implementation of Plan change 20 to amend the rule referencing of the plan for electronic use.

⁴⁶ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Voice at 242-243.

⁴⁷ The ‘One Plan’ was partly operative as the proposed policy statement had proceeded past the stage at which all submissions and appeals relating to historic heritage and tangata whenua aspects had been dealt. In the hearing, the ‘One Plan’ applied as the Regional Policy Statement.

historic heritage for their region in the District Plan.⁴⁸

The operative Wanganui District Plan considered historic heritage in the Old Town Conservation Zone collectively and did not provide a definitive schedule of historic heritage as required by the One Plan. Proposed Plan Change 29 for the Wanganui District Plan would introduce a schedule of heritage items that the Wanganui District Council has identified as being of heritage significance. The Native Land Court building would be considered a 'Class A' building, the highest heritage significance and the only building in this class. Plan Change 29 would recognise the building as having greater individual significance in the District Plan. Although the plan was proposed, rather than operative, the Court was required to take this plan change into account in its decision.

NZHPT

The NZHPT stated that the building must be retained and conserved due to its architectural significance, uniqueness, and historical significance, and because it provides a tangible reminder of the past for both present and future generations. The NZHPT also advocated that the building could be adaptively reused to meet the functional requirements of Te Whare Mātauranga or, that if a new building were required, there were alternative sites available that do not require the demolition of historic heritage.

The NZHPT argument consisted of the following main points:

- The building cannot be demolished as it is a tangible reminder of the past.
- The Historic Places Act and the District Plan require the retention of historic heritage.
- The ICOMOS charter favours the option of adaptive reuse of historic heritage.
- The building can be adaptively reused to meet the purposes of the iwi tertiary institute.
- There are precedents for adaptively reusing Native Land Court buildings to meet Māori needs.

⁴⁸ *Te Puna Mātauranga o Whanganui* at [61].

- With some expenditure, the building can be brought up to the current building code.
- Other sites of lesser or no heritage value are available to construct the iwi tertiary institute.
- The building is of high heritage value and has historic and architectural significance.
- The building is the only example of a purpose-built Native Land Court building in the region.
- The site and building are of historic importance to both Māori and Pākehā.
- The site (and building) are also significant for Māori outside of the Whanganui region and their views should have been considered.
- The resource consent application should be declined.

Whanganui Regional Heritage Trust

WRHT took a deliberately neutral position on the demolition or retention of the building. The WRHT position was, if the building should be demolished, that the history of the building and site be recorded and memorialisation of the history and the building be provided within any new building upon the site.

Decisions in the Environment Court are generally reserved, in that they are released in writing following the hearing. On 17 May 2013, the Court released the decision declining the application for resource consent. The decision is included in Appendix A.

Significance of the Case Study

The case study is significant as it demonstrates a conflict of Māori and Pākehā cultural identities as articulated through an object of historic heritage. In other words, larger conflicts of identity came to rest on the specific site of the Native Land Court building.

The role of the built form, both existing and proposed, raised questions regarding its use in constructions of architectural heritage. The approach of UCOL/Te Puna, and to some extent that of the NZHPT, blurred the boundaries between tangible and intangible heritage values and how they

relate to, or are represented in, material fabric. The arguments of each party were more complex than a simple binary of Māori vs. Pākehā heritage aspirations and traditions.

Despite the position of the argument put forward by each party, many of the expert witnesses discussed the built form in similar ways. For example, the fabric of the Native Land Court building represented a colonial identity and the fabric of the proposed building was to express a Māori identity. In both arguments, the material fabric was thought to convey identity.

In the following chapters, the case study is analysed using content analysis. The results do not qualitatively describe the content of each argument, but instead reveal how each argument was quantitatively composed in relation to the arguments of other witnesses and an applied context. The quantity is assumed to reflect significance in the hearing process. In analysing the construction of each argument, the role of the built form within those arguments is revealed and provides insight into the function of the built form in architectural heritage within the case study.

ALL ENQUIRIES

PLEASE





Chapter Four

Methodology

The Entrance Hall of the Native Land Court building

March 2013, photograph by author

In this chapter the case study methodology used to analyse the Wanganui Native Land Court case is presented. Content analysis as a research methodology is first described before outlining how the methodology was undertaken in this thesis, including: the reading of the case study content, the development of coding categories, the process for coding the data, and the process for counting the data. This chapter acts as the instruction set for producing the results. The identification of the resulting patterns and key findings are discussed in Chapter 5 and a full set of results is presented in Appendix B.

Content Analysis

Content analysis is “a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use.”¹ Content analysis is, therefore, the detailed analysis of the content of a text in order to understand its relationship to the wider context in which that text was produced or may be used.

Krippendorff explains that there are three definitions of content analysis used by researchers. These definitions include:

1. Definitions that take content to be *inherent* in a text
2. Definitions that take content to be *a property of the source* of a text
3. Definitions that take content to *emerge in the process of a researcher analysing a text* relative to a particular context.²

While the first two definitions rely on a text having inherent meanings or examine the intended context of a text, the third definition provides a model for understanding texts in a context different to that which they may have been intended. These distinctions parallel the distinction between critical heritage and Authorised Heritage Discourse, where AHD assumes values to be inherent in the property of the built fabric of heritage buildings and where critical heritage creates contextual values of heritage buildings.

In the third definition of content analysis, the meaning and understanding of a text is derived from

¹ Krippendorff, *Content Analysis*, 18.

² Krippendorff, *Content Analysis* 19. Krippendorff's emphasis.

the context of the text. The researcher has an active role in constructing the context in which the text is read, in order to test and analyse the applicability of the text to the context. The third definition supports an ethnographic approach to content analysis, in which the conceptual contributions of reading a text are specifically recognised and “does not ignore the contributions that analysts make.”³ An ethnographic approach is used in this thesis.

While an ethnographic approach allows flexibility for taking into account new concepts that emerge during involvement with the text,⁴ all forms of content analysis follow a similar methodological process. This includes:

1. the reading of content,
2. development of categories of analysis,
3. the coding of data,
4. counting of data, and
5. the identification of resulting patterns.⁵

Each section of this chapter follows these sequential steps and describes how they were undertaken in this project. The identification and discussion of the results and the analysis is contained in the following chapter.

1. Reading of Content

Satu Elo and Helvi Kyngäs describe the initial phase of content analysis where “researchers should allow themselves simply to read through each [text] as many times as necessary to apprehend its essential features, without feeling pressured to move forward analytically.”⁶ As part of this process, I firstly attended the Environment Court hearing held in Whanganui. At this time, access to the Court documents was restricted so it was an exercise in understanding the case and the processes of the Environment Court through the performance of the court hearing. Before this time, I was only aware of the case history, having read the outcome of the 2010 hearing and having had informal discussions with those involved in the previous hearing.

³ Krippendorff, *Content Analysis*, 21.

⁴ Krippendorff, *Content Analysis*, 21.

⁵ The identification of resulting patterns is not included in this chapter. See Chapter 5.

⁶ Elo and Kyngäs, “The qualitative content analysis process,” 113.

Once the hearing was completed and the decision was released, a request to the Environment Court was made for the documentation of the case, particularly the written statements of evidence and the hearing transcript. The Court provided all but one written statement of evidence (that of Pettigrew for the WRHT). Other data not provided included the opening and closing submissions of Counsel and the written questions from the Court to Mr. Dickson, who was not in attendance at the hearing. This omitted information was also unavailable by other means.

It is a limitation of content analysis in that it may only examine already recorded messages.⁷ Had the omitted information been available, or the project repeated with the information included in analysis, different findings might have resulted.

Once the documentation was acquired, it was initially read to develop an understanding of the data. A second reading was then undertaken and a list of themes was generated during the reading process. These themes included:

- threats,
- opportunities,
- individual identities,
- group identities,
- comments on other identities,
- relationships between individuals and buildings,
- relationships between groups and buildings,
- comments on the relationships of others to buildings,
- the current building,
- the proposed building,
- a proposed alternative building,
- the historical context,
- the wider site,
- the legislative context,
- the hearing itself,

⁷ Berg, *Qualitative Research Methods for the Social Sciences*, 259.

- positive changes,
- negative changes, and
- neutral changes.

Some of these themes, such as positive and negative changes, or the lack of change, are inherent to the resource consent application and are identified in an Assessment of Environmental Effects. Other themes instead emerged as commonalities across the Court hearing documentation.

These themes were continually developed throughout the reading process. As reading was undertaken in the order in which witnesses appeared within the hearing, it was possible that themes within the documentation of earlier witnesses were overlooked in comparison to the later witnesses. For this reason, a third reading was undertaken to preliminary check the developed themes against all of the hearing documentation and to ensure a comprehensive understanding of the hearing.

The initial themes of enquiry identified in the reading process were formalised in preparation for undertaking a structured coding of the data. This structured coding is primarily for two reasons. Firstly, “every content analysis requires a context within which the available texts are examined. The analyst must, in effect, construct a world in which the texts make sense and can answer the analyst’s research questions.”⁸ While the above themes were developed during the reading process based on the aims of this thesis, they needed to be formalised to construct the context of analysis.

Secondly, any application of categories would need to be replicable. Described by Bruce Berg, “the criteria of selection used in any given content analysis must be sufficiently exhaustive to account for each variation of message content and must be rigidly and consistently applied so that other researchers or readers, looking at the same messages, would obtain the same or comparable results.”⁹ In other words, any process and categories must be explicit to allow for replication by other researchers and the categories must account for all data.

⁸ Krippendorff, *Content Analysis*, 24.

⁹ Berg, *Qualitative Research Methods for the Social Sciences*, 240-241.

2. The Development of categories of analysis

Replicability of the methodology requires consistent unitisation of the data into smaller units for analysis and the establishment of categories that reflect the main concerns of the data. The existing format required by the Environment Court allowed for the consistent unitisation of data.

The Environment Court requires written statements of evidence to be submitted in sequentially numbered paragraphs. Although Berg explains that paragraphs are “infrequently used as the basic unit in content analysis chiefly because of the difficulties that have resulted in attempting to code and classify the various and often numerous thoughts stated and implied in a single paragraph,”¹⁰ the format of the Environment Court is unlike other examples of text, in which paragraphs generally address a singular topic, idea, or concern. The transcript of the hearing was also adequately formatted for unitisation. The hearing, as it was performed, involved a question being asked by Counsel or the Judges and answered by the expert witness. The transcript is therefore a written record of question and answer sets. Each set can be unitised within the coding process.

Different unit sizes could have been used in the project, but these were discounted primarily for practical reasons. Larger unit sizes, such as the documentation per expert witness or the collection of paragraphs per subheading within the written statements of evidence, contained too much variation in topics and would have reduced the sample size of units analysed. The data collected from a larger unit size would not have given the detail and complexity of the hearing in the results. Smaller unit sizes, such as per sentence, were considered and this would have increased the sample size, potentially allowing for greater detail and complexity in the results. This increase in detail needed to be balanced against pragmatic concerns and, given that the hearing was coded manually by the author, time and resource constraints meant that a smaller unit size was not feasible. Resourcing and time constraints also limited the data that could be analysed in the coding process. Several witnesses provided, often voluminous, appendices to their written statements of evidence providing additional contextual information for the benefit of the Court, for example, the Wanganui District Plan, the ICOMOS Charter, and the Wanganui UCOL Education Plan. These appendices were not analysed in the coding process.

¹⁰ Berg, *Qualitative Research Methods for the Social Sciences*, 247.

An exception to this rule was that two appendices to the written evidence were included in order to provide consistent data with the other witnesses. These appendices were:

- Appendix 2 of John Silvester’s evidence as it contained his evidence from the 2009/2010 hearing, which he used as the basis of his 2013 evidence rather than conducting a new inspection of the building.¹¹
- David Forrest’s Assessment of Environmental Effects (AEE)¹² contained in the Resource Consent Application from David Forrest. The other planning witnesses provided the AEE in their written statements of evidence, therefore the resource consent application was included in the evidence of Forrest.¹³

Following unitisation, the data was coded into categories. It was these categories that test the content of the hearing by measuring and analysing the ways in which heritage was constructed at the hearing. Six main categories were identified from the reading process: threat, identity, bridge, building, context, and change and are defined in Table 4.1.

| Category | Definition |
|----------|---|
| Threat | A statement of threat or opportunity for the weakening or strengthening of an identity. |
| Identity | A statement of identity or an aspect of identity. |
| Bridge | A statement that bridges identity to an object or the built form. |
| Building | A statement about the object or built form. |
| Context | A statement about the context of the object or built form. |
| Change | A statement about the change the witness wished was implemented in the built form. |

Table 4.1. Category definitions identified from the reading process of content analysis.

Once coding began, issues emerged from using these categories and they were subsequently revised

¹¹ Silvester states that “my most recent inspection of the building was in preparation for the 2009 hearing, so I am not aware of any further structural damage beyond that observed in my previous inspections which were brought to the attention of that division of the Court.” *Te Puna Mātauranga o Whanganui* Evidence in Chief, Silvester at [11].

¹² An Assessment of Environmental Effects is a required document with any resource consent application. It outlines the effects a proposed activity may have on the environment.

¹³ The Resource Consent Application was first submitted to the Wanganui District Council as the consent authority, requesting that the consent be directly referred to the Environment Court under s87G of the RMA. As the consent was directly referred to the Court, the Council provided a summary of the application to assist the Court in its decision. As such, the Resource Consent Application was attached as an appendix to the evidence of Rochelle Voice (planning witness for the Council). Since the Resource Consent Application was written by Forrest’s planning company, Good Earth Matters Consulting, it was considered to be the evidence of Forrest.

before further coding was undertaken. For example, the category of ‘bridge’ was the only category to measure a mechanism linking one category to another. While the other categories measured types of paragraphs or question sets, this category measured *how* categories were connected, and so was a different type of classification to the other categories. The category was subsequently removed.

Another issue to arise was that the categories of ‘building’ and ‘context’ were relatively broad, and much of the detail of the hearing was reduced. These categories were segmented to contain subcategories to allow the results to better reflect the complexity of the data. Missing from the categories was an ‘other’ category for information that was not directly relevant to the heritage arguments. For example, the administrative issues raised in the cross-examination were recorded in the transcript but not relevant to arguments of heritage. An other category was included for the coding of administrative issues, but this data was not included in any analysis. The categories and subcategories shown in Table 4.2 were used to code the data.

3. The coding of data

To unitise the data a photocopy was made of all the Court documents and divided into discrete individuals, i.e. each expert witness. Each photocopy of written and transcript evidence was then literally cut into paragraphs and question sets. This process unitised the data for each witness. The data for each witness was then coded in the following order:

1. David Armstrong (History witness for UCOL/Te Puna)
2. Te Kenehi Teira (Māori heritage witness for NZHPT)
3. Frances Goulton (Education witness for UCOL/Te Puna)
4. Grant Young (History witness for NZHPT)
5. Rau Hoskins (Architecture witness for UCOL/Te Puna)
6. Win Clark (Engineering witness for NZHPT)
7. Rochelle Voice (Planning witness for UCOL/Te Puna)
8. John Silvester (Engineering witness for UCOL/Te Puna)
9. Jeremy Salmond (Architecture witness for NZHPT)
10. Paul McElroy (Education witness for UCOL/Te Puna)
11. Alison Dangerfield (Architecture witness for NZHPT)

| Category | Subcategory | Definition | Example |
|----------|-------------------------|--|--|
| Threat | | A statement identifying a threat or opportunity for the weakening or strengthening of an identity. | “Whanganui Māori experiences with the Native Land Court – the principle agency of their economic and social marginalisation – was far from positive on multiple levels. It would be deeply ironic if the efforts of UCOL and Te Puna to create a centre for Māori education on the site of the Land Board building were somehow stymied by a perceived need to preserve this vestige of the Land Court for heritage reasons.” Te Puna Mātauranga o Whanganui Evidence in Chief, Armstrong at [19]. |
| Identity | | A statement of identity or aspect of identity. | “Mason Durie, in his book Te Mana Te Kawanatanga, describes the Māori relationship with land at page 115 as follows: ‘Though its ownership may change, land itself cannot be made to disappear nor can it be separated from the lives and deaths of the people from whom it has been home, or for whom it should have been home. ... A Māori identity is secured by land; land binds human relationships, and in turn people learn to bond with the land. Loss of land is loss of life, or at least loss of that part of life which depends on the connections between the past and the present and the present with the future.’” Te Puna Mātauranga o Whanganui Evidence in Chief, Voice at [8.4]. |
| Building | Current Building | A statement about the current, existing Native Land Court building. | “The building is in a condition of neglect but it is not in an irreversible condition. When it was vacated, it was not cleaned or cleared out properly. It was used as a construction store and site office. Since then, the roof needs attention to be fully watertight. It is dirty, dusty and somewhat smelly. All buildings need regular maintenance. Without it they deteriorate. So, the condition that the Native Land Court is in is entirely comprehensible and to be expected. It could be worse – and yet its excellent qualities remain apparent.” Te Puna Mātauranga o Whanganui Evidence in Chief, Dangerfield at [58]. |
| | Proposed iwi institute | A statement about the iwi tertiary institute building as proposed by UCOL/Te Puna in the resource consent application. | “A lift allows for disabled access to the upper level which includes a secondary flexible teaching area, research office, seminar/board room as well as further toilet facilities.” Te Puna Mātauranga o Whanganui Evidence in Chief, Hoskins at [33]. |
| | Other proposed building | A statement about another proposed building upon the site. For example, a proposal for adaptive reuse that maintained the building façade. | “The concept does not provide a welcoming space facing directly towards Pakaitore: rather, this occupies the existing yard area at the south end of the building. It does, however, provide a high level of amenity, and could be argued as having a better relationship with the facilities of the other partner in the project (UCOL/Te Puna). It provides also significantly greater potential for expansion.” Te Puna Mātauranga o Whanganui Evidence in Chief, Salmond at [7.3]. |

Table 4.2a. List of categories and subcategories used for the coding process, including an example for each category.

| Category | Subcategory | Definition | Example |
|----------------|----------------------------|--|---|
| Context | Historic | A statement about the historic temporal context. | “The intention was to make more Māori land available for settlement, preferably by lease either from the board or from the Crown. The recommendations of the Native Land Commission addresses such concerns too. Land was to be made available for general settlement (that is, sold out of Māori ownership) or for settlement by lease to Māori and Pākehā (and the commission’s recommendations distinguished the two). The Native Land Settlement Act 1907 was designed to give effect to the commission’s initial recommendations to settle Māori land.” Te Puna Mātauranga o Whanganui Evidence in Chief, Young at [23]. |
| | Site | A statement about the physical, geographic site. | “Q. Because at the moment the frontage of the UCOL/Te Puna campus that faces towards the river is a carpark? A. Correct.” Te Puna Mātauranga o Whanganui Transcript (cross-examination of Hoskins) at 26. |
| | Legislative | A statement about the legislative or regulatory context. | “As noted, this is the Zone which has recently replaced the Outer Commercial Zone for the area shown on the District Plan Map, which is bounded (roughly speaking), by Taupo Quay, Market Place, Queens Garden and the line of the service lane off Taupo Quay continued through to Watt Street.” Te Puna Mātauranga o Whanganui Evidence in Chief, Allan at [126]. |
| | Other/contrasting contexts | A statement about another context not categorised as historic, site, or legislative. | “Other sites, structures and monuments in New Zealand that are considered taonga of national significance include the Whare Runanga at Waitangi as well as various war memorials throughout the country. The definition of taonga may also pertain to places of an uncomfortable nature such as the Rangiriri and Te Porere Redoubts as well as other New Zealand War sites that are of national significance.” Te Puna Mātauranga o Whanganui Evidence in Chief, Teira at [24]. |
| Future Context | | A statement about the future the witness wished was implemented in the built form. | “It is my view that heritage buildings should be retained where possible but only if there is a viable, sustainable use and the integrity of the building architecture can be retained. In this instance, there is not and my opinion is that memorialisation is the appropriate conservation response.” Te Puna Mātauranga o Whanganui Evidence in Chief, Dickson at [21]. |
| Other | | Statements irrelevant to the heritage arguments in the hearing. For example, the administrative statements of the Court. | “Q. Now the ICOMOS New Zealand Charter is an appendix to your evidence, is that correct? A. Yes it is.” Te Puna Mātauranga o Whanganui Transcript (cross-examination of Dangerfield) at 234. |

Table 4.2b. List of categories and subcategories used for the coding process, including an example for each category.

12. David Forrest (Planning witness for UCOL/Te Puna)¹⁴
13. Dean Whiting (Māori heritage witness for NZHPT)
14. Bruce Dickson (Architecture witness for UCOL/Te Puna)
15. Sylvia Allan (Planning witness for NZHPT)
16. Esther Tinirau (Heritage witness for UCOL/Te Puna)
17. Wendy Pettigrew (Heritage witness for WRHT)

The coding process for each witness was undertaken by having five envelopes laid out on a table, each labelled with one of the different categories as shown in Figure 4.1. Each paragraph and question set was read individually in turn and coded into the category of best fit (Figure 4.2). If a statement could fit into more than one category, it was included in both categories by photocopying and labelling the statement with each of the categories to which it related. Each photocopy was then placed in the respective category envelopes, with a record kept that the data was recorded under multiple categories.

4. Counting the data

The data was then counted to produce quantitative results. Each category and sub-category was counted for each expert witness with separate counts for written paragraphs and question sets. The counts were recorded in an excel spreadsheet. The counting exercise was repeated twice to ensure that the initial counts were correct. If the two counts differed, subsequent counts were undertaken until the count was consistent. Repeating the counting process ensured that errors in counting were removed or minimised in the process.

In some cases, paragraphs and questions related to multiple categories. Consequently the counts produced a number greater than the hearing total for each witness and hence repetition of counting provided an assurance that the counts were correct. Once counted, the Excel spreadsheet provided numerical data from which resulting patterns could be identified.

The numerical data from each expert witness was also used to compile the results for each party and each profession, where the counts in each category were added across the expert witnesses

¹⁴ Although Forrest's AEE was attached as an appendix to Rochelle Voice's evidence, it was coded as the evidence of Forrest.

representing a party or across expert witnesses in the same profession. Additionally, both the number of paragraphs and question sets for each expert witness, profession, and party were calculated as percentages so that they were directly comparable. The main percentage results are discussed in Chapter 6, with all results given in Appendix B.



Figure 4.1. Envelope layout for coding the data

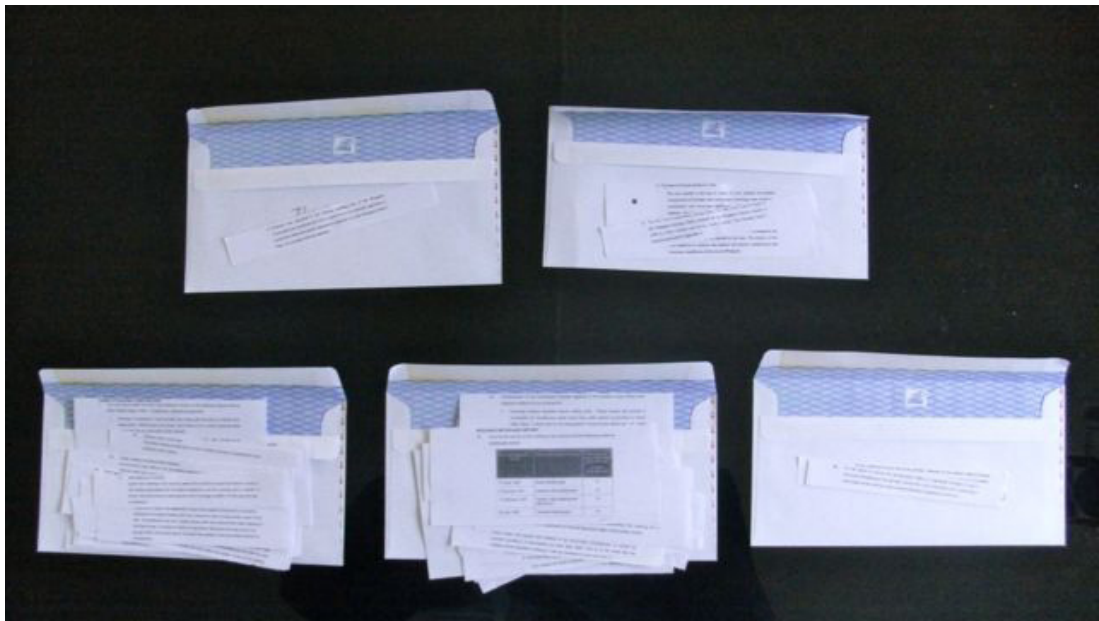


Figure 4.2. Coding the data into the categories





Chapter Five

Results

The Native Land Court building and Keepa Te Rangihwinui memorial

viewed from Moutoa Gardens

March 2013, photograph by author

In the previous chapter, content analysis methodology was described. In this chapter, the key results of the research are presented. Firstly, the percentages of the paragraphs from the written statements of evidence and question sets from the cross-examination transcript are shown for the hearing as a whole. The results are then presented for

- (a) each expert witness,
- (b) the combined results of expert witnesses in a party, and
- (c) the combined results of expert witnesses with similar expertise.

The distribution of content in the categories varies for the different witnesses, professions, and parties. From this variation, five patterns were identified that account for the different distributions of content within the categories. These patterns are then discussed with respect to how they relate to the parties, the professions, and the expert witnesses, and how the patterns differ between the written statements of evidence and the cross-examination transcript.

Interpreting the results

The full set of results is presented as graphs in Appendix B. The results include:

1. A comparison of the percentage of paragraphs from the written statements of evidence in the main categories and subcategories between the:
 - (a) Parties,
 - (b) Professions,
 - (c) The expert witnesses with the same expertise.
2. A comparison of the percentage of question sets from the cross-examination between the:
 - (a) Parties,
 - (b) Professions,
 - (c) The expert witnesses with the same expertise.

The parties were composed of the expert witnesses called by a party's counsel. The professions were composed of the expert witnesses who shared a similar expertise, regardless of which party they were called by. The composition of the expert witnesses in each party and expertise is shown in Table 5.1.

| Expertise | Party | | | |
|---------------------|---------------------------------|--------------------------------------|----------------|-----------------|
| | UCOL/Te Puna | NZHPT | Council | WRHT |
| Architecture | Rau Hoskins Bruce Dickson | Jeremy Salmond Alison Dangerfield | | |
| Engineering | John Silvester | Win Clark | | |
| Planning | David Forrest | Sylvia Allan | Rochelle Voice | |
| History | David Armstrong | Grant Young | | |
| Education | Frances Goulton Paul McElroy | | | |
| Heritage | Esther Tinirau | Te Kenehi Teira Dean Whiting | | Wendy Pettigrew |

Table 5.1. The witnesses of each party and profession.¹

The results from the cross-examination transcript were recorded for each expert witness. Therefore, the party results under cross-examination refer to the party of the expert witness, rather than the party of counsel who were cross-examining the witness. For example, the cross-examination results of David Armstrong, (history witness for UCOL/Te Puna) show the percentage of question sets answered by Armstrong. Therefore, for the party results, Armstrong's question sets contribute to the UCOL/Te Puna party as he was called by, and represented, that party. In other words, the question asked by the counsel and the answer given by the expert witness were coded as one set in the results under the expert witness, and the party who called the expert witness.

Overall results

The combined results of the hearing are shown in Table 5.2, presenting the percentage of paragraphs and question sets in each of the categories and subcategories for the written statements of evidence and the cross-examination transcript for the whole hearing.

The key arguments of UCOL/Te Puna and the NZHPT identified in Chapter 3 relate to the coding categories. The arguments that primarily related to the categories were:

¹ Esther Tinirau appeared as the Manager of Te Puna and gave evidence from the perspective of local Māori and the heritage significance of the site through whakapapa.

| Category | Threat | Identity | Building | | | Context | | | | Future context |
|-------------------------------|--------|----------|------------------|------------------------|-------------------------|----------|------|-------------|-------|----------------|
| Sub category | — | — | Current building | Proposed iwi institute | Other proposed building | Historic | Site | Legislative | Other | — |
| Written statement of evidence | 5% | 7% | 25% | | | 58% | | | | 5% |
| | | | | | | | | | | |
| Cross-examination transcript | 4% | 14% | 19% | | | 19% | 5% | 23% | 11% | 1% |
| | | | | | | | | | | |
| | | | 10% | 4% | 5% | 10% | 12% | 21% | 19% | |

Table 5.2. Average percentage of written statements of evidence and cross-examination per category and subcategory for the whole hearing.

Threat

- Building the institute on the site maintains and reclaims what mana whenua believes is rightfully theirs (opportunity identified by UCOL/Te Puna).
- The building cannot be demolished as it is a tangible reminder of the past (NZHPT)

Identity category

- UCOL and Te Puna have a memorandum of understanding for developing an iwi tertiary institute to meet Māori educational needs (UCOL/Te Puna).
- Māori should have a right to self-determination over their resources (UCOL/Te Puna).
- The site and building are of historical importance to both Māori and Pākehā (NZHPT).

Building category

- There are significant costs in renovating the existing building to meet current building regulations (UCOL/Te Puna).
- The current Native Land Court building is not appropriate to be used for Māori needs as an iwi tertiary institute (UCOL/Te Puna).
- With some expenditure, the building can be brought up to the current building code (NZHPT).
- The building can be adaptively reused to meet the purposes of the iwi tertiary institute (NZHPT).

Context category

- The current building does not afford the heritage significance it currently is given, as it is not the only purpose built Native Land Court building in the region (UCOL/Te Puna).
- The historic heritage provisions in the District Plan are Eurocentric and do not

account for Māori conceptions of heritage (UCOL/Te Puna).

- The building is the only example of a purpose-built Native Land Court building in the region (NZHPT).
- There are precedents for adaptively reusing Native Land Court buildings to meet Māori needs (NZHPT).
- The Historic Places Act and the District Plan require the retention of historic heritage (NZHPT).
- The ICOMOS charter favours the option of adaptive reuse of historic heritage (NZHPT).
- The building is of high heritage value and has historic and architectural significance (NZHPT).

Future Context

- The resource consent application should be granted (UCOL/Te Puna).
- The resource consent application should be declined (NZHPT).

Most arguments were in the Context category and this was reflected in the results, with the Context category having a higher percentage of the hearing content. The arguments in the Context category were generally ‘two sides of the same coin’ in which the parties took opposing viewpoints on the same context. For example, in assessing the rarity and uniqueness of the Native Land Court Building, David Armstrong, historian for UCOL/Te Puna, argued that a Court building “erected at Upokongaro by Kennedy in 1881 was the first purpose-built Native Land Court in the Whanganui district.”² Grant Young, historian for the NZHPT, refuted that claim, instead arguing that “it does not appear that the hall was used solely for Court sittings or that it was purpose built – indeed, it appears to have been a general purpose building used for community events.”³

In conventional heritage practices, the building would be considered to be of greater heritage significance if it were unique, i.e. if it were the only purpose built Native Land Court building in

² *Te Puna Mātauranga o Whanganui* Evidence in Chief, Armstrong at [60].

³ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Young at [52(g)].

the region. Both witnesses used the historical context to either prove or disprove the building's uniqueness. In both cases, categorisation of the content was in the Context category.

A quantitative analysis assumes that the presence (or absence) of paragraphs or question sets in a category or categories reflects the significance of the category. This significance could include the contested nature of that category. The strength of such an approach is the way in which the arguments of the hearing were coded to a basic unit. As with the previous example of the historians, a quantitative analysis goes beyond what the argument entailed and examined instead the quantitative composition of those arguments. As Berg describes, the content is, for the most part, "actually irrelevant to the coding process,"⁴ except for how the content fits in the determined categories.

Such an approach is also a weakness because the qualitative aspects of the hearing are removed from the results. While the coding process had a qualitative element in the way the content was interpreted and categorised, the results of the process provided a quantitative description of how those arguments were composed, not what those arguments were.

What the results therefore present is the percentage quantity of the hearing content in the applied categories. The different percentages of content in the categories were an indication of the exposure the categories were given in the hearing, both in the written statements of evidence and in cross-examination.

Key patterns

Analysing the percentage of paragraphs and question sets identified five main patterns of the distributions of paragraphs or question sets across the categories. These patterns were determined from the percentage of paragraphs or question sets in a category relative to the percentage of paragraphs and question sets for the hearing overall. The five patterns are shown in Table 5.3.

⁴ Berg, *Qualitative Research Methods for the Social Sciences*, 251.

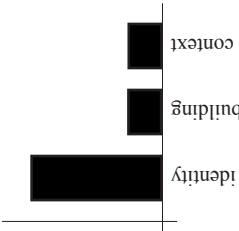
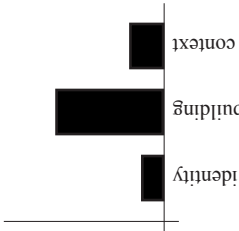
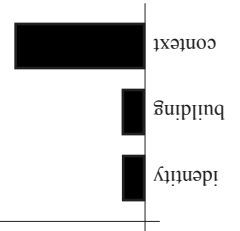

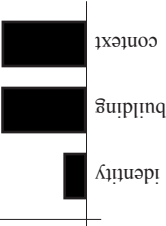
| Pattern | Written statement of evidence | | | | Cross-examination transcript | | |
|--|-------------------------------|--|---|----------------------------------|--|---|--|
| | Parties | Expertise | Expert witnesses | Parties | Expertise | Expert witnesses | |
|  Identity Pattern | — | — | — | — | — | Esther Tinirau | |
|  Building Pattern | — | Engineering | John Silvester Win Clark Dean Whiting | — | — | John Silvester | |
|  Context Pattern | | Planning History Education Heritage | David Forrest David Armstrong Frances Goulton Paul McElroy Te Kekehi Teira Grant Young Sylvia Allan | UCOL/Te Puna NZHPT Council | Architecture Planning History Education | David Forrest Paul McElroy Jeremy Salmond Alison Dangerfield Dean Whiting Sylvia Allan Rochelle Voice | |

Table 5.3a. The patterns identified in the hearing and the parties, professions, and expert witnesses displaying each pattern in their written statements of evidence and in cross-examination.

| Pattern | Written statement of evidence | | | Cross-examination transcript | | |
|---|----------------------------------|--------------|--|------------------------------|-------------|--|
| | Parties | Expertise | Expert witnesses | Parties | Expertise | Expert witnesses |
|  <p>Identity/Context Pattern</p> | — | — | — | WRHT | Heritage | Te Kenehi Teira Grant Young Wendy Pettigrew |
|  <p>Building/Context Pattern</p> | UCOL/Te Puna NZHPT Council | Architecture | Rau Hoskins Bruce Dickson Jeremy Salmond Alison Dangerfield Rochelle Voice | — | Engineering | David Armstrong Frances Goulton Rau Hoskins Win Clark |

Key:

- UCOL/Te Puna
- NZHPT
- Council & WRHT

Table 5.3b. The patterns identified in the hearing and the parties, professions, and expert witnesses displaying each pattern in their written statements of evidence and in cross-examination.

Identity pattern

The characteristic of the Identity pattern was a significantly greater percentage in the Identity category. This pattern was the least common of the five patterns. The only witness to display this pattern was Esther Tinirau (heritage witness for UCOL/Te Puna) in cross-examination.

Building Pattern

The Building pattern contained a significantly greater percentage in the Building category compared to the other categories. This pattern was common with the engineering expert witnesses and also Dean Whiting (heritage witness for NZHPT) in the written statements of evidence.

Context Pattern

The Context pattern contained a significantly greater percentage in the Context category than in the other categories. This pattern was consistent for the professions of planning, history, and education in both written statements of evidence and under cross-examination. Additionally three of the four parties displayed this pattern under cross-examination, with the exception of WRHT. This result reflected that the majority of the content discussed in the hearing was the contexts of the Native Land Court building.

Identity/Context pattern

The Identity/Context pattern had a significantly greater percentage in both the Identity and Context categories, with a significantly smaller percentage in the Building category. This pattern was displayed by the WRHT and the witnesses with heritage expertise under cross-examination. This pattern was significant for the heritage profession, in which the evidence of Wendy Pettigrew (heritage witnesses for WRHT) was included, as it demonstrated the main arguments of:

- The site is of historic significance to Māori (UCOL/Te Puna).
- Māori should have a right to self-determination over their resources (UCOL/Te Puna).
- The site (and building) are also significant for Māori outside of the Whanganui region and their views should have been consulted (NZHPT).

These arguments tended to incorporate issues of cultural identity and the wider contexts of the Native Land Court building, without significantly including the content of the Building category in the

compositions of those arguments.

Building/Context pattern

The Building/Context pattern had a significant percentage in the Building and Context categories.

This pattern was most common for three of the four parties in the written statement of evidence, the exception being WRHT. The pattern was also common with the architectural witnesses in their written statements of evidence. Unsurprisingly then, the main arguments relating to this pattern were those that tended to focus on the role of the building, for example:

- Māori education requires a purpose designed building to represent Māori identity (UCOL/Te Puna).
- The current building does not afford the heritage significance it currently is given, as it is not the only purpose built Native Land Court building in the region (UCOL/Te Puna).
- The building can be adaptively reused to meet the purposes of the iwi tertiary institute (NZHPT).
- The building is the only example of a purpose-built Native Land Court building in the region (NZHPT).

The five patterns show the distribution of content for the different ways evidence was composed in the hearing, and are considered in terms of the current heritage theory in the following chapter. The remaining sections of this chapter discuss the similarities and differences of the patterns for each party, expertise, and the influence of counsel in cross-examination.

Patterns of the parties

As shown in Figure 5.1, all parties had a similar percentage distribution across the different categories of threat, identity, building, context, and change for the written statements of evidence, with a Building/Context pattern distribution.

The differences between the parties largely emerged in the building and context subcategories, as shown in Figure 5.2 and Figure 5.3 respectively. While all parties were similar in the Current Building

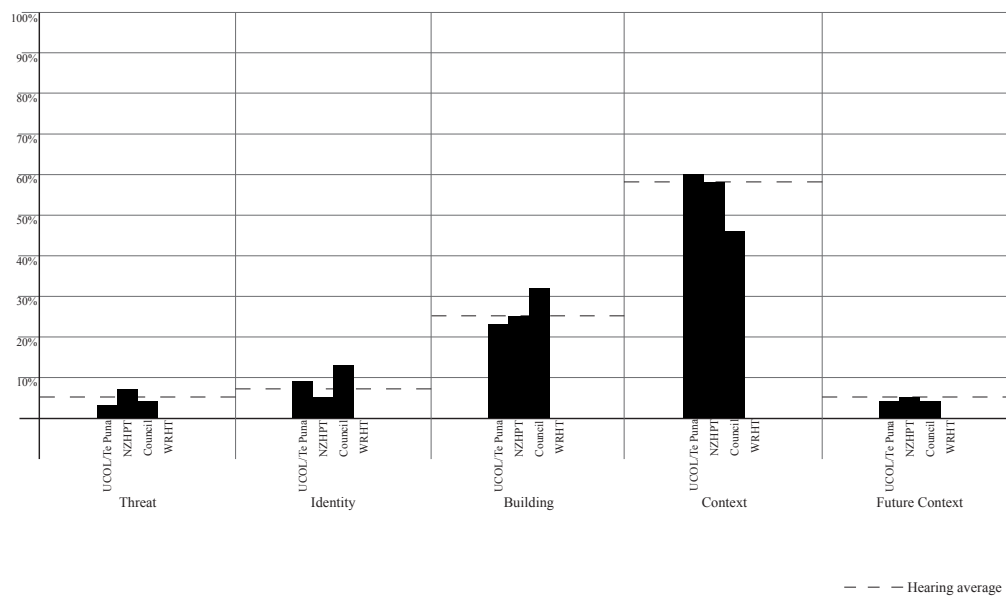


Figure 5.1. Percentage of paragraphs from the written statements of evidence for each party.

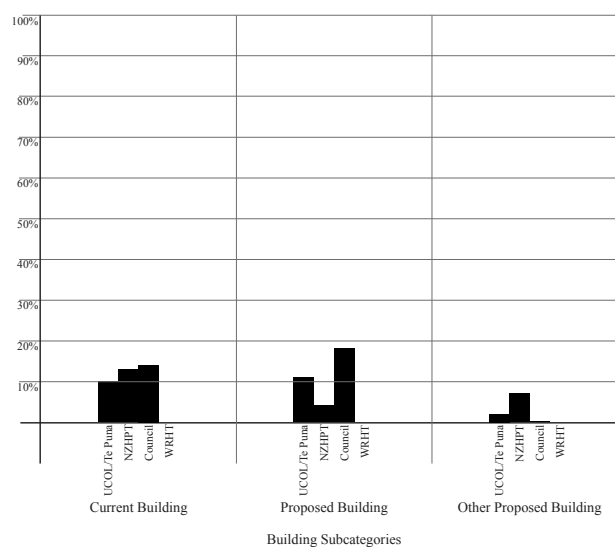


Figure 5.2. Percentage of paragraphs from the written statements of evidence for each party in the building subcategories.

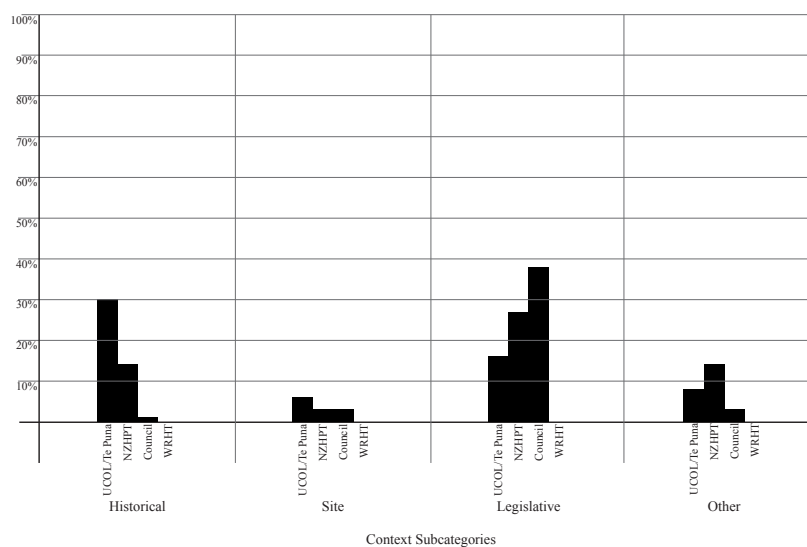


Figure 5.3. Percentage of paragraphs from the written statements of evidence for each party in the context subcategories.

subcategory (within 5%), UCOL/Te Puna and the Council had a greater percentage of written paragraphs than the NZHPT in the Proposed Building category. This difference may have occurred because UCOL/Te Puna, as the applicants, provided information regarding the proposed iwi tertiary institute through the evidence of Rau Hoskins (architecture witness). For example, he states that “the building has been designed to be flexible and responsive to changing educational uses while speaking to the histories, cultural narratives, tikinga and educational aspirations of Whanganui iwi.”⁵

Similarly, the Council provided an assessment of the application (including the proposed building) through the evidence of Rochelle Voice (planning witness), where, for example, “the Applicants propose to erect a two storey building, set back off Market Place by approximately 15 metres at its closest point and approximately 2 metres off the Rutland Street frontage. The application proposes that the building will have a maximum height of 9.3 metres.”⁶

The NZHPT, on the other hand, had a greater percentage in the Other Building subcategory, as the evidence of Jeremy Salmond (architecture witness) presented an alternative adaptive re-use design that did not require the demolition of the building. For example, Salmond states “I have shown that the existing building *is* readably able to provide every feature set down in the brief for the proposed facility, with a level of amenity at least equivalent to that shown in the drawings for a new building on the site.”⁷

The different positions of the parties may be seen in the building subcategories, where UCOL/Te Puna favoured the iwi tertiary institute (Proposed Building subcategory) and hence the demolition of the Native Land Court building, and the NZHPT favoured alternative designs (Other Building subcategory) which did not require demolition. As the Council played an advisory role to the Court, their description of the resource consent application contained a higher percentage of paragraphs in the Proposed Building subcategory (and on demolition), as similar to the applicants UCOL/Te Puna.

Differences also occurred in the Context subcategories where UCOL/Te Puna had a greater percentage

⁵ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Hoskins at [26].

⁶ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Voice at [4.4].

⁷ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Salmond at [10.3].

in the Historic subcategory and the NZHPT and Council had a greater percentage in the Legislative category. A possible reason for the differences between the parties in the Historic Context subcategory was the influence of the historian expert witnesses. David Armstrong (history witness for UCOL/Te Puna) contributed 34% of the total written paragraphs⁸ for that party due to his indepth discussion of Māori association with the site between 1839 and the construction of the Native Land Court building in 1919. Grant Young (history witness for the NZHPT) only contributed 11% of the total paragraphs⁹ for the NZHPT, and therefore the Historic Context subcategory was less emphasised in the party's evidence.

That three of the parties displayed the same Building/Context pattern in their written statements of evidence is unsurprising given that each party would select their witnesses to provide a comparative case to the opposing party. Each witness therefore was a component in the overall case for a party. The exception was that the NZHPT did not provide educational experts to counter the other party.

Patterns of the professions

The pattern a profession displayed tended to follow the focus of its expertise, as shown in Figure 5.4. The engineering profession displayed the Building pattern, reflecting their professional emphasis on the built form. Similarly, the architectural profession displayed the Building/Context pattern. The planning, history, education professions, and interest groups all displayed the Context pattern in their written statements of evidence. The expertise of these professions is reflected in the subcategories of the Context category, with planning witnesses having a significantly greater percentage in the Legislative Context subcategory, history witnesses having a significantly greater percentage in the historic subcategory, and the education and interest group witnesses having a significantly greater percentage in the other subcategory, reflecting their emphasis on education and precedents of heritage practice.

The difference between the parties, professions, and expert witnesses was one of scale. The results of each witness in a party were combined to obtain the overall evidence of that party. The parties had a

⁸ Armstrong had 108 out of the total 322 paragraphs of written statements of evidence for UCOL/Te Puna.

⁹ Young had 66 out of the total 581 paragraphs of written evidence for the NZHPT.

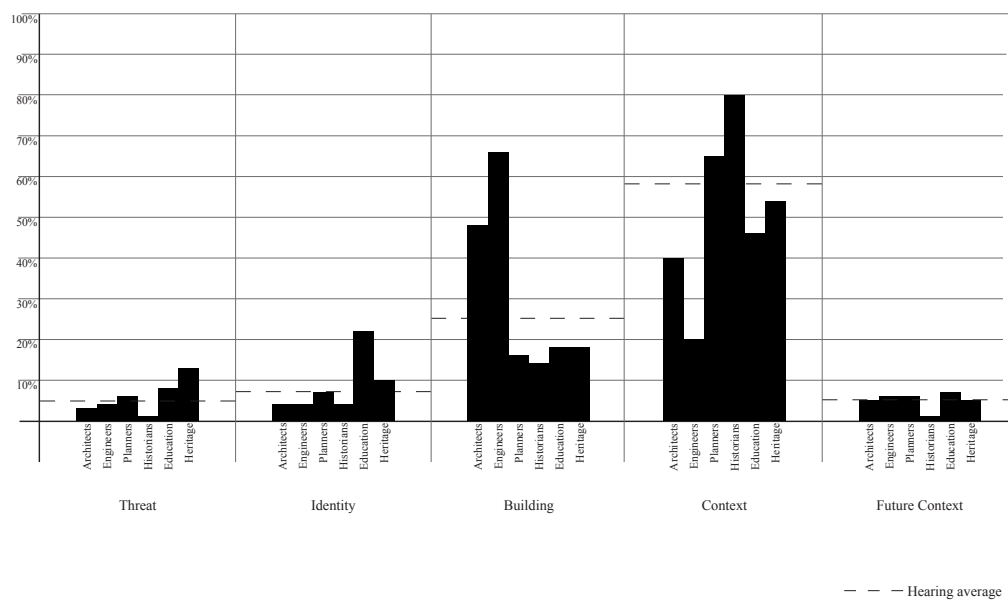


Figure 5.4. Percentage of paragraphs from the written statements of evidence for each profession.

similar composition of expert witnesses in the different professions which, in this case, accumulated to display the Building/Context pattern. The patterns for the professions on the other hand, were composed of a smaller number of expert witnesses with a singular expertise and, as expertise was relevant to the categories discussed in the hearing, differing patterns resulted for the professions—particularly the engineering and architectural professions.

The role of the counsels in cross-examination

The patterns of the parties and professions were influenced by the way each counsel framed the discussion in cross-examination. The coding of the question sets from the cross-examination transcript for each party showed that the parties of UCOL/Te Puna, the NZHPT and WRTH all displayed the Context pattern, as shown in Figure 5.5, as opposed to the Building/Context pattern in their written statements of evidence. This difference between the patterns in the written statements of evidence and the cross-examination might be due to the role each counsel had in framing the cross-examination, and the way the witness was cross-examined. In the hearing, counsel would ask a question which the expert witness would answer. Thus it was the counsel who controlled the topic a question addressed and the topic of information provided in an expert witness's answer. The varying results for the parties under cross-examination suggest that the counsels may have had a significant influence in the way a party's argument was framed. A qualitative analysis would be required to ascertain this result.

Figure 5.6 shows that, under-cross examination, some of the professions displayed different patterns to their written statements of evidence. The key similarities and differences between the written statements of evidence and cross-examination include:

- A change for the engineering experts from the Building pattern to the Building/Context pattern, indicating an increased emphasis on the Context category for the engineers under cross-examination.
- A change for the architecture experts from the Building/Context pattern to the Context pattern, indicating a decreased focus on the Building category in favour of the Context category.
- A change for the heritage experts from the Context pattern to the Identity/Context pattern, indicating an increased emphasis on the Identity category under

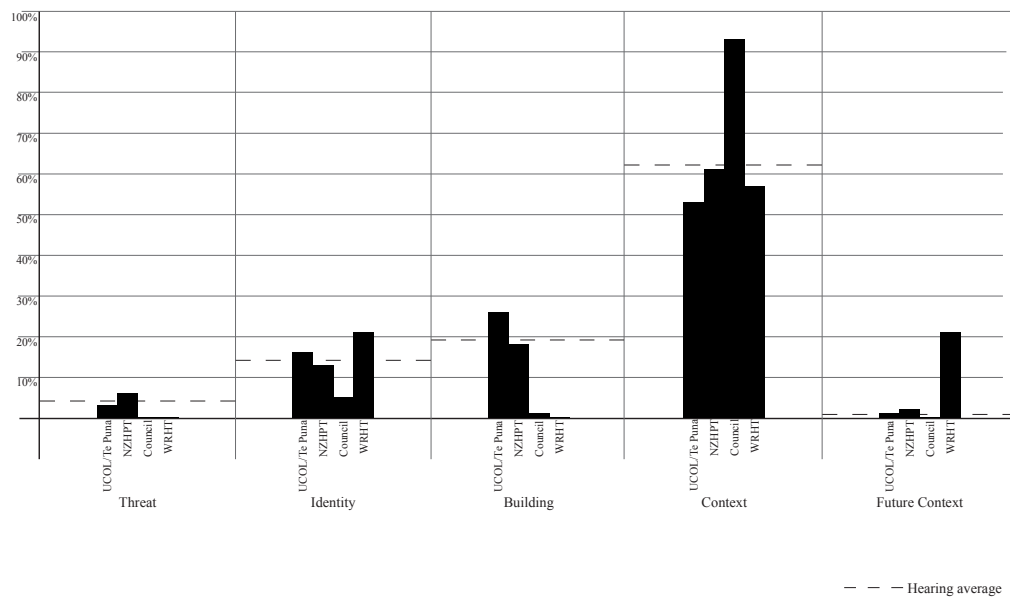


Figure 5.5. Percentage of question sets from the cross-examination of each party.

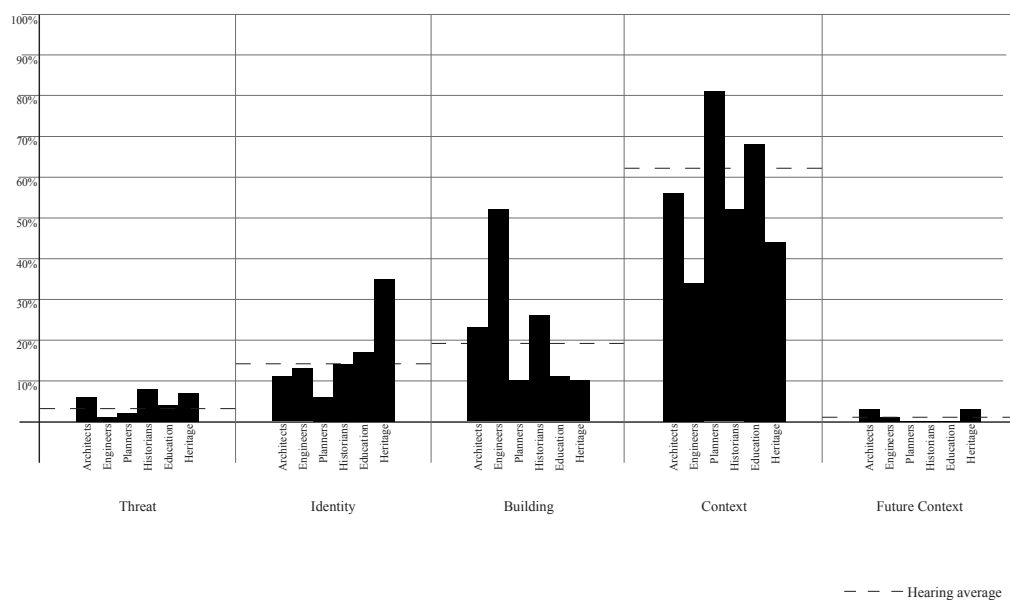


Figure 5.6. Percentage of question sets from the cross-examination of each profession.

cross-examination.

- No change was observed for the history, planning, and education experts, as all presented the Context pattern in both written statements of evidence and cross-examination.

The change in pattern for the engineering, architecture, and heritage professions might have occurred because, similar to the party results of the cross-examination transcript, the questioning of each counsel limited the topics discussed by an expert witness so that were not always consistent with the topics addresses in the witness's written statement of evidence. For example, in cross-examination Alison Dangerfield, NZHPT witness for architecture, was restricted from discussing the significance of other buildings designed by John Campbell¹⁰ by the UCOL/Te Puna counsel:

“Q. Sorry, Ms Dangerfield –

A. Mmm.

Q. – I’m going to have to ask you to pause.

A. Oh. Oh.

Q. Because I know you’re an enthusiast in the subject, but you’ve got to stick to the question.”¹¹

The role of the counsels is further shown in Figures 5.7 where the patterns of the expert witnesses in their written statements of evidence are compared with their patterns under cross-examination. The differences suggest the strategies the counsels used to frame evidence under cross-examination.

There was a clear strategy from each of the two main counsels to reframe the evidence given by the expert witnesses of the opposing party. For the UCOL/Te Puna counsel, the strategy was to reframe the evidence of the NZHPT witnesses into either the Context pattern or the Identity/Context. This meant that the UCOL/Te Puna counsel tended to avoid asking questions in cross-examination that related to the Building category, instead requiring witnesses to discuss the Identity and/or Context categories, although this would require qualitative analysis to ascertain. The only NZHPT witness to significantly

¹⁰ These buildings included the Public Trust Head Office in Wellington (1909) and the Collingwood Courthouse (1901).

¹¹ *Te Puna Mātauranga o Whanganui* Transcript at 242. Despite this restriction from the UCOL/Te Puna counsel, Dangerfield still displayed the Context pattern in cross-examination due to the quantity of other questions asked of Dangerfield in the Context category.

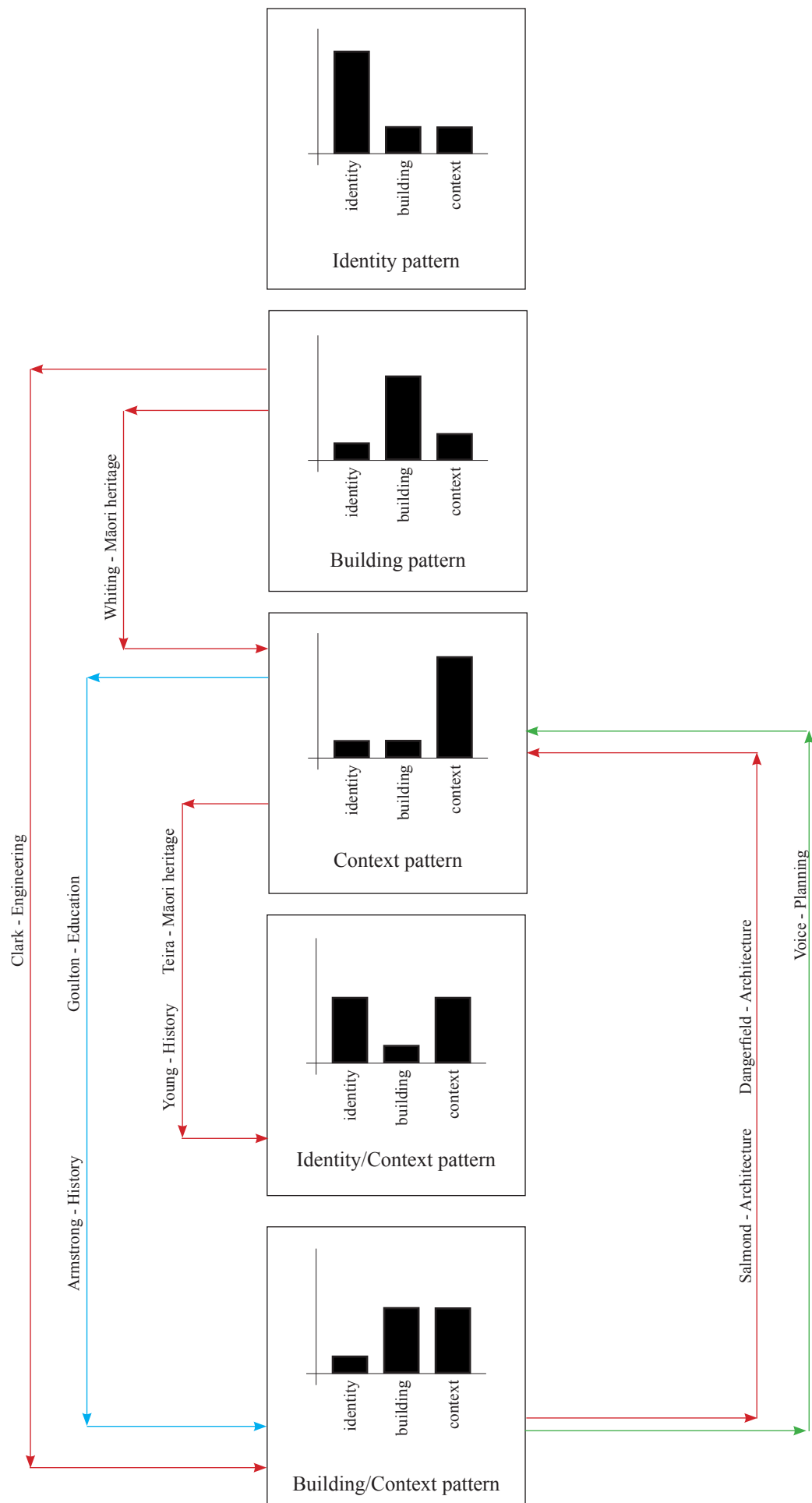


Figure 5.7. The different patterns for the expert witnesses in their written statements of evidence and the cross-examination transcript. Only those witnesses with differences are shown.

discuss the Building pattern under cross-examination was Win Clark (engineering witness).

For the NZHPT counsel, the strategy appears to have been was to reframe the evidence of UCOL/Te Puna expert witnesses into the Building/Context pattern. This only occurred for witnesses David Armstrong (history witness) and Frances Goulton (education witness), showing that counsel required these witnesses to discuss the Building category to a greater extent than they did in their written statements of evidence.¹² Under cross-examination John Silvester (engineering witness) retained the Building pattern, Rau Hoksins (architecture witness) retained the Building/Context pattern, and Paul McElroy (education witness) retained the Context pattern.

The underlying strategies of each party appear to be that, for the UCOL/Te Puna counsel, the questioning of the NZHPT witnesses was a way to reduce the significance of the Building category in favour for the Identity and Context categories. The strategy for the NZHPT party appeared to question witnesses to increase the significance of the Building category.

The results show an expert witness's profession had the greatest influence on how the content of the written statements of evidence was composed yet, under cross-examination it appears the counsels had a greater influence in how the content of the hearing was composed. In the following chapter, these findings and the significance of the patterns are related to the heritage literature, as well as exploring the performance of the patterns in the Environment Court setting.

¹² Again, a qualitative analysis would be required to ascertain this finding.





Chapter Six

Discussion

The Native Land Court building and ancillary buildings as viewed from Rutland Street

March 2013, photograph by author

In the previous chapter, the five key patterns of the quantitative compositions of heritage arguments were identified. In this chapter, those patterns are related to heritage literature. Each pattern is discussed in turn to show how they relate to the different aspects of critical heritage literature, beginning with the Building/Context pattern, then the Identity/Context pattern, Context pattern, Building pattern, and finally the Identity pattern. The chapter concludes by describing the performative role of heritage in the Environment Court hearing and discussing how a performance-based definition of heritage might frame the patterns to allow for multiple heritage outcomes in the Court.

Definitions of heritage

The analysis of the Environment Court hearing of the Wanganui Native Land Court building identified the ways heritage was performed in the Court. In the analysis, the quantity of paragraphs of written statements of evidence and the quantity of question sets from the cross-examination transcript described the composition of categories referred to at the hearing. The thesis assumes that the distribution across the categories for each expert witness had a consequence in legal arguments that matters to the way in which heritage was argued in the hearing.

It appears from the results that the categories of Threat and Future Context were not quantitatively significant to the heritage arguments as they did not appear as significant in any of the patterns. These categories appear to code the explicit positions of the expert witnesses on the resource consent application. For example, Paul McElroy (CEO of UCOL) stated an identified threat where “if the Native Land Court building is not able to be demolished and a new facility constructed, the benefits of an Institute for local iwi are unlikely to be realised.”¹ The statement shows McElroy’s position in favour of granting the resource consent. Similarly, Alison Dangerfield (architecture witness for the NZHPT) indicates her position in the Future Context category where she states “it is my opinion that the Native Land Court should not be demolished and replaced by new building.”² For Dangerfield, the Future Context is one where the Native Land Court is retained. The significance of the Threat and Future Context category might be more relevant in a qualitative analysis, but were not significant in a quantitative analysis.

¹ *Te Puna Mātauranga o Whanganui* Evidence in Chief, McElroy at [46].

² *Te Puna Mātauranga o Whanganui* Evidence in Chief, Dangerfield at [92].

The results produced five compositional patterns. Each pattern showed a different way that the arguments of heritage were quantitatively composed at the hearing. The patterns describe an aspect of how heritage arguments were performed through the written statements of evidence and cross-examination of the expert witnesses. This thesis assumes that each pattern can be viewed as exemplifying aspects of the heritage literature. The patterns and their relationship to heritage are discussed in the following sections.

Building/Context Pattern

The Building/Context pattern contained a significant percentage of paragraphs and question sets in the building and context categories, as shown in Figure 6.1. The pattern was most common for the parties and the architectural profession in their written statements, and the engineering profession under cross-examination. The pattern showed that the Building category and Context category, and hence the built form and context of the built form, were significantly discussed in the hearing.

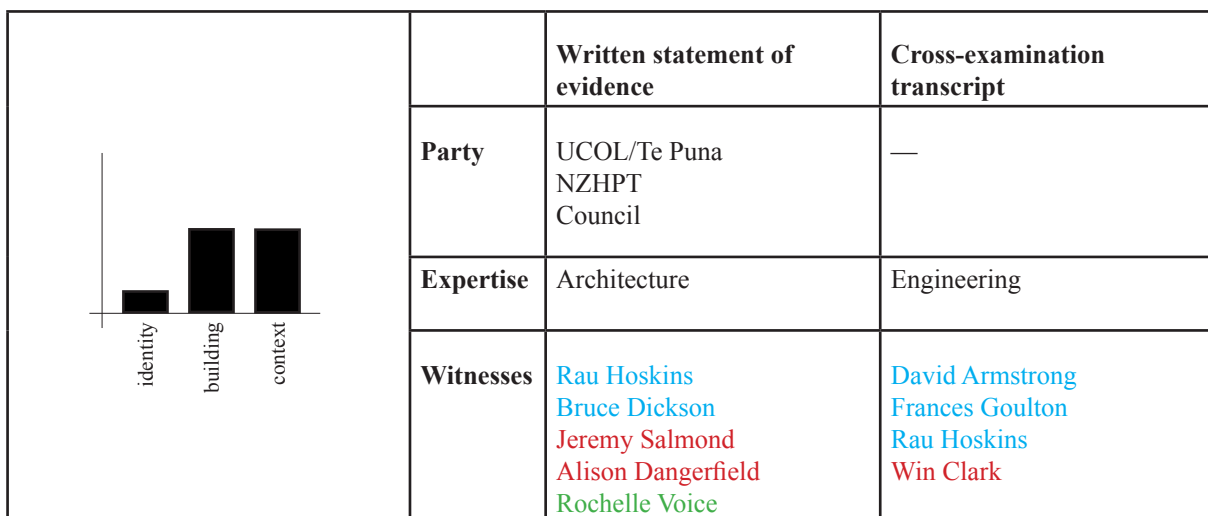


Figure 6.1. The Building/Context Pattern

The Building/Context pattern echoes the way material fabric is valued in Authorised Heritage Discourse. Smith states that “heritage has traditionally been conceived within the AHD as a discrete ‘site’, ‘object’, building, or other structure with identifiable boundaries that can be mapped, surveyed, recorded, and placed on national or international site registers.”³ As such, buildings, places, and

³ Smith, *Uses of Heritage*, 31.

objects are considered to be of innate value, and that value can be measured to assess the relational significance of buildings.

For example, in the hearing, Alison Dangerfield (architecture witness for the NZHPT) described the architectural significance of the Native Land Court building where

the Native Land Court was one of the buildings that concluded the architectural career of Government Architect John Campbell with a career of consideration and design of many government buildings. When he retired in 1922 two of his last projects for completion were Parliament House and the Native Land Court. This last design, a culminating project in a considerable body of work, was a design for a specific purpose and illustrated a pivotal shift in Government Style.⁴

In her statement, the building itself is valued as a tangible object because of the historical context of the building. This historical context is ascribed, in which it is assumed the building of a noted architect—and the building at the culmination of his career—is of greater significance than other buildings and should be retained for this reason. In the pattern, the built form, as described in the Building category, is valuable due to the significance attributed to the building in the Context category.

The Building category was not limited to the existing Native Land Court building as it also included the proposed iwi tertiary institute and designs for adaptive reuse. For example, Rau Hoskins (architecture witness for UCOL/Te Puna) described the significance of the proposed iwi tertiary institute where

The site is also part of the original wider Pākaitore Pā, prior to the creation of the Moutoa gardens and has deep significance for Tūpoho and the wider Atihaunui ā Pāpārangi Iwi in its own right. In this way it is proposed that the site's millennia of pre-history will be able to infuse the entire design of the ITI as well as embodying contemporary cultural and educational aspirations of Whanganui Iwi.⁵

For Hoskins, the design of the proposed Iwi Tertiary Institute was valuable as a tangible object because it represented the ascribed values of cultural and educational aspirations of Whanganui iwi. Hoskins'

⁴ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Dangerfield at [20].

⁵ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Hoskins at [14].

statement gives the proposed Iwi Tertiary Institute design a greater value than other buildings—including the Native Land Court building—because of the context of Māori cultural and educational aspirations. As with Dangerfield, the built form described in the Building category is valuable due to the significance attributed to the building in the Context category, regardless of whether the building is existing or proposed.

Smith also states that AHD “constructs the idea of heritage and the official practice of heritage, both of which stress the significance of material culture in playing a vital representational role in [...] identity.”⁶ This identity is assumed to be innate to the built form and thus its significance can also be assessed via the context of the built form. In the above examples, the Native Land Court building, for Dangerfield, represents a National identity as it was designed by a significant Government Architect and is representative of the changing attitudes of the Government following World War I.⁷ For Hoskins, the proposed Iwi Tertiary Institute represents the identity of Te Atihaunui a Pāpārangi as it embodies the contemporary cultural and educational aspirations of the iwi. In both cases, identity is not explicitly discussed in the pattern, as evidenced in the lower percentage of the Identity category for the witnesses that display the Building/Context pattern. Instead, material culture (the Building category) plays a vital representational role in the composition of heritage arguments.

In the Building/Context pattern, the Building category and the Context categories were a significant factor in the argument of heritage. By discussing the built form, the role of the material and the tangible was included in compositions of heritage, and by discussing the context of the built form the material and tangible were ascribed significance. For the expert witnesses who displayed this pattern, the built form—actual or proposed—and its context were significant factors in heritage arguments.

Identity/Context Pattern

The Identity/Context pattern had a significant percentage in the Identity and Context categories. Figure 6.2 shows the parties, professions, and expert witnesses who displayed this pattern. This pattern was common for the education profession and heritage profession, indicating that the medium of heritage

⁶ Smith, *Uses of Heritage*, 48.

⁷ See *Te Puna Mātauranga o Whanganui Evidence in Chief*, Dangerfield at [38].

for those groups may have been something other than the built form.

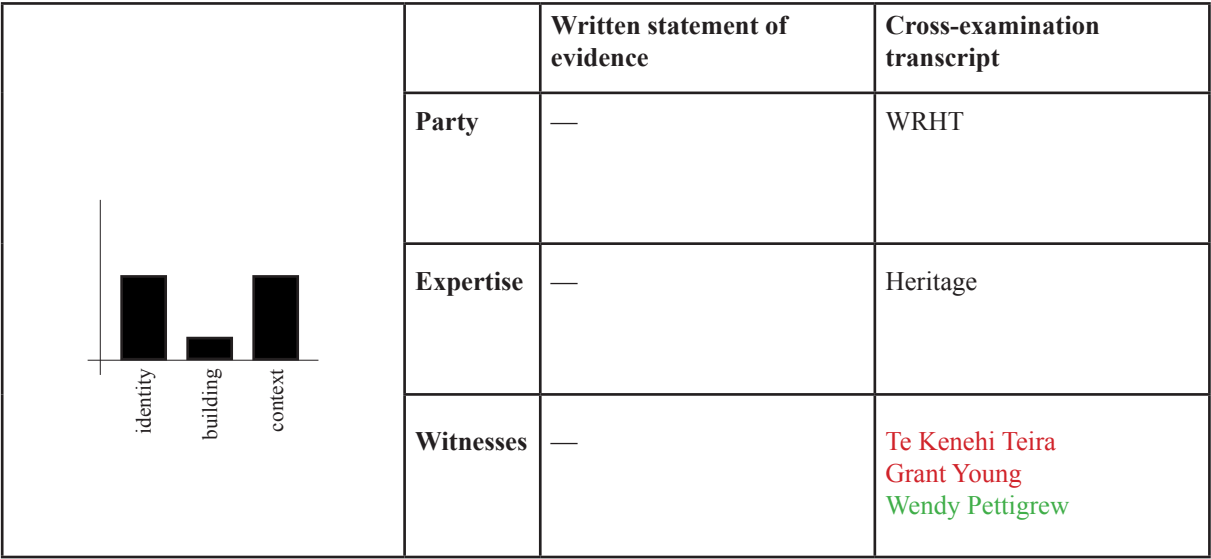


Figure 6.2. The Identity/Context Pattern

The Identity/Context pattern reflected the literature of intangible heritage, in which the built form was a cultural tool or medium in the performance of heritage (the intangibility of heritage). Smith states that heritage is a cultural process in which “the sites themselves are cultural tools that can facilitate, but are not necessarily vital for, this process.”⁸ The building is a conceptual mediator between identity and the significance of an identity in specific contexts.

Te Kenehi Teira (heritage witness for the NZHPT) provided an example of the building’s use as a cultural tool for discussing a wider context of the Native Land Court. He states “we must remember too, that the building was constructed in 1922, at a time when the primary function of the Aotea Māori Land Board was moving from one of alienation to administration. There is much that is positive to be remembered about what happened here.”⁹

This example references the historic context of the building, where the building was used to discuss the change in the historical context of the Native Land Court building at that time. The context also ascribes significance to the building. In Teira’s statement, if the context of the Native Land Court

⁸ Smith, *Uses of Heritage*, 44.
⁹ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Teira at [10].

was, when the building was built, one of administration functions, then the building, perhaps, is not a negative reminder of land alienation for Māori. The Context category provided the values and significance of the building without significantly discussing the physical building itself.

It is interesting, then, that a strategy of the UCOL/Te Puna counsel appears to have been to frame the cross-examination of Te Kenehi Teira (Māori heritage witness for NZHPT) and Grant Young (history witness for the NZHPT) in this pattern. While the pattern avoided significant discussion of the building itself, the Context category ascribed value to the built form. In this way, the built form was a cultural tool where it is less significant as a tangible building and more important in recalling contextual values in a conceptual way.

Context Pattern

The Context Pattern contained a significantly greater percentage in the Context category relative to the other categories. As shown in Figure 6.3 it was the most common category for the parties under cross-examination, and the most common pattern of the professions with the planning, history, and education professions displaying this pattern in both written statement of evidence and under cross-examination.

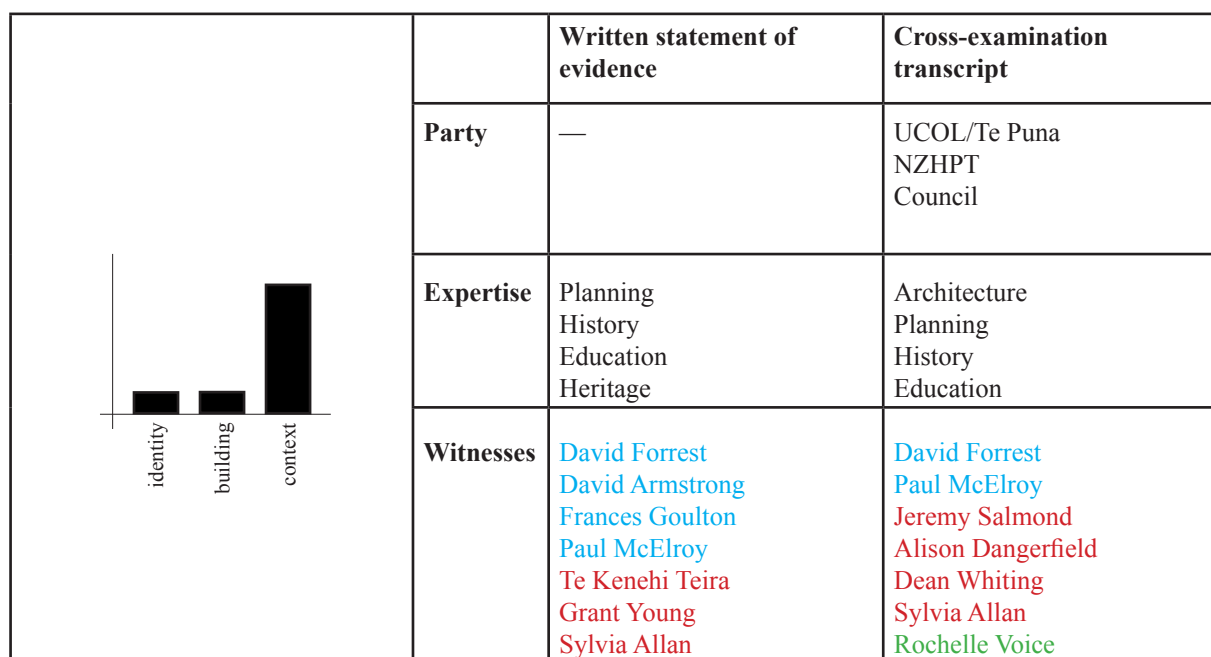


Figure 6.3. The Context Pattern

The Context pattern emphasised the mechanism through which value and significance was ascribed to the built form, without greatly considering the role of identity or the built form itself. Harrison states, such positions of heritage have “nothing to do with the particular qualities of the ‘thing’ [building] itself, but are defined values ascribed by those who hold positions of expertise and authority and whose viewpoints are recognised and acted upon.”¹⁰

The attribution of values is, perhaps, why this pattern was associated with the planning, history, and educational professions. The historical context, legislative context, and, ‘other’ educational context provided objective systems through which to value the built form, without significantly discussing it. For example, Sylvia Allan (planning witness for the NZHPT) discussed the ICOMOS charter in the Wanganui District Plan, where “in light of the recognitions in the Plan, given that it has been shown that the building can be reused, in my opinion the ICOMOS charter approach, with its strong emphasis on the protection and adaption should be taken into account in the decision.”¹¹ In the example, Allan discussed the legislative and regulatory functions of the Plan and ICOMOS charter to ascribe value to the building, despite not significantly discussing the Building category.

It appears a strategy of the UCOL/Te Puna counsel was to frame the evidence of Alison Dangerfield (architecture witness for the NZHPT), Jeremy Salmond (architectural witnesses for the NZHPT) and Dean Whiting (heritage witness for the NZHPT) in this pattern in cross-examination. This may have been because the discussions in the Context categories can both emphasise or de-emphasise the attributed values. Discussions, such as those of the historic context or legislative context, can be argued from several positions regarding the valuing of the built form.

For example, in discussing the rarity of the building type in the Whanganui region, the historians argued over whether the community hall in Upokongaro¹² was purpose-built. David Armstrong (history witness for UCOL/Te Puna) argued “the Court building erected at Upokongaro by Kennedy in 1881 was the first purpose built Native Land Court in the Whanganui District.”¹³ Grant Young

¹⁰ Harrison, *Heritage: Critical Approaches*, 15.

¹¹ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Allan at [157].

¹² Upokongaro is a small settlement located 10 minute by car from Whanganui.

¹³ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Armstrong at [60].

(history witness for the NZHPT) refuted that claim stating “it does not appear that the hall was used solely for Court sittings or that it was purpose built—indeed it appears to have been a general purpose building used for community events.”¹⁴ Both witnesses used the Context category to increase or lessen value ascribed to the Native Land Court building via the idea of building rarity.¹⁵ If the Wanganui Native Land Court building was the only purpose-built Native Land Court building, then it would be of greater significance due to its uniqueness. The Context Pattern suggests these arguments without significantly discussing the built form¹⁶ or identity.

The context pattern privileged the objective mechanisms for attributing value to the built form, without significantly considering the subjective role of identity and or the built form in heritage arguments. The pattern uses the built form and identity in a conceptual way, in which the recording of significance is, in itself, an argument of heritage. Harrison states that such concepts of heritage move towards “listing and archiving as an end result.”¹⁷ In this pattern, heritage is composed the values attributed to conceptual identities and objects by the best-practice of systematic mechanisms in professional disciplines.¹⁸

Building Pattern

The Building pattern had the majority of paragraphs and question sets in the Building category, as was common for the engineering expert witnesses, as shown in Figure 6.4. This pattern generally consisted of straightforward descriptions of the Native Land Court building or the proposed buildings. For example, Win Clark (engineering witness for the NZHPT) described the Native Land Court building as:

Constructed in 1922, the single story Native Land Court Building is made up of 3 separate structures:

- The main court building: 25.150 metres by 18.720 metres in plan that provides

¹⁴ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Young at [52(i)].

¹⁵ Rarity is one of the criteria for registration of an historic place in the Historic Places Act, where the Trust may assign Category I status or Category II status to any historic place, having regard to “the importance of identifying rare types of historic places.” Historic Places Act 1993, s 23(j).

¹⁶ In the definitions used in the methodology, only buildings relating to the Native Land Court site on Rutland Street, or designs of the proposed or adaptively reused iwi tertiary institute were coded in the Building category. The building at Upokongaro was coded in the Other Context subcategory.

¹⁷ Harrison, *Heritage: Critical Approaches*, 137.

¹⁸ For example, such disciplinary best-practice mechanisms include the interpretation of legislation by planners, or the interpretation of historic facts by historians.

space for the courts, offices, strong rooms and toilets.

- Office and storage annex: ‘L’ shaped form within 15.000 metres by 7.500 metres plan area built against the Southeast and Southwest boundary walls.
- Coal/Bicycle/Toilet outbuildings: 8.500 metres by 2.300 metres in plan, built into the West corner and along the Northwest boundary wall.¹⁹

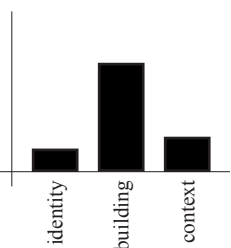
| | | | |
|---|------------------|---|-------------------------------------|
|  | | Written statement of evidence | Cross-examination transcript |
| | Party | — | — |
| | Expertise | Engineering | — |
| | Witnesses | John Silvester Win Clark Dean Whiting | John Silvester |

Figure 6.4. The Building Pattern

Similarly, John Silvester (engineering witness for UCOL/Te Puna) stated that during a site visit

I made the following observations.

- Wherever the Gunac had cracked, the substrate below was also cracked;
- In at least two locations I was able to insert a 100mm long x 4mm diameter nail into the crack below, confirming that the cracks penetrate well into the brickwork below;
- The larger the crack in the Gunac, the larger was the crack in the substrate;
- Some areas where the Gunac was clearly “stretched” but had not cracked, cutting and peeling back the membrane revealed a fracture in the surface below.²⁰

In both descriptions, the building was considered to be a tangible, material object.

It is perhaps of no surprise that the engineering profession displayed the Building pattern as it was

¹⁹ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Clark at [9].

²⁰ *Te Puna Mātauranga o Whanganui* Evidence in Chief, Silvester in Appedix B at [10].

composed of those with expertise in the built form. It was a requirement of the Environment Court that all witnesses follow a code of conduct. Acknowledgement of this code is referenced in an evidence statement that “The evidence I am about to give is within my area of expertise and represents my best knowledge about this matter.”²¹ Given that other professions do not necessarily have such expertise in the built form, the discussions in the Building category were primarily from witnesses with that expertise.

The written evidence of Dean Whiting (Māori heritage witness for the NZHPT) also displayed the Building pattern. The evidence of Whiting provided examples of how the Native Land Court could be adaptively reused or, alternatively if adaptive reuse was not an acceptable option, alternative sites in the locality where the Iwi Tertiary Institute could be construed. For example, he stated

Adaptive reuse would be best incorporated into three spaces: enhancement of the Aotea room and court room spaces, addition of a setback first floor, and addition of a building to the west end of the Native Land Court building. Elements of Whanganui wharenui style could be incorporated to the exterior both at the ground floor level and roof first floor using contemporary design or traditional elements.²²

Whiting’s evidence shows the Building pattern is not limited to the existing Native Land Court building but may also include a proposed building design. In both cases, the emphasis was on the building as a tangible object with little significance given to the identity of the building or its context.

Identity Pattern

The Identity pattern had the majority of paragraphs or question sets in the Identity category as shown in Figure 6.5. Esther Tinirau²³ was the only expert witnesses represented in this pattern. With a significantly greater percentage in the Identity category, she can be seen to primarily discuss the role of identity to construct her argument of heritage. For example, in her evidence explaining the site selection for the Iwi Tertiary Institute, she stated:

²¹ For example, see *Te Puna Mātauranga o Whanganui* Evidence in Chief, Dangerfield at [5].

²² *Te Puna Mātauranga o Whanganui* Evidence in Chief, Whiting at [18].

²³ Tinirau was called in as a last minute expert witness at the hearing to provide evidence on the role of Te Puna in the resource consent application; therefore, she only provided oral evidence at the hearing.

We do have a saying in Wanganui (10:12:50 speaks in Māori)²⁴ and basically that translates as [...] I am the river and the river is me and when we talk about the river [...], the river is inseparable from land and from people, ah, so the interconnection of people with place as well, as our river remains central to us. So we belong to the river. The river doesn't belong to us, we belong to the river and if one can understand the spiritual and cultural connection with that and our maintenance of the view that you cannot separate our people from land and water and that therein lies the significance of choosing the site.²⁵

Such a description was categorised in both the Group Identity and Site Context subcategories.

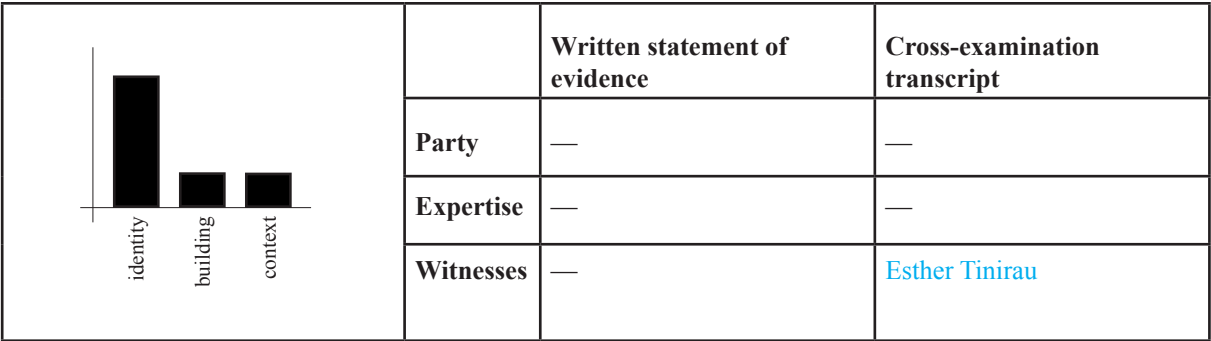


Figure 6.5. The Identity Pattern

For Tinirau, identity was not separate from the landscape. In her evidence, the site was not a context for the building or a context for identity, the site *was* identity. Pishief describes this conception of heritage as ‘the Connect’ in which heritage is “identity, and identity is created by people’s interactions—termed performances—with places, objects, and people. [...] It is the connect—the intangible essence formed with those places by individuals at those places—that creates identity.”²⁶

Tinirau’s evidence is peculiar in the way it follows the Identity pattern, yet is reliant on the physicality of site and land. It was an argument of heritage that does not significantly discuss both the built form and the context of the built form. Instead, identity is constructed through the land. As such, the Identity pattern was a construction of architectural heritage that was entirely intangible. Pishief identifies the

²⁴ The saying the transcript omits was “E rere kau mai to awa nui mai i te Kahui maunga ki Tangaroa. Ko au te awa Ko te awa ko au (The great river flows from the noble mountains to the majestic sea. I am the river and the river is me). *Te Puna Mātāuranga* [2013] at [79].

²⁵ *Te Puna Mātāuranga o Whanganui* Transcript at 79.

²⁶ Pishief, “Constructing the Identities of Place,” 197.

perplexity of such a construction in the Connect, which “is intangible, yet, paradoxically, dependant on physicality.”²⁷ The identity pattern follows that of the Connect—the intertwining of identity and landscape—and was not reliant on the built form to facilitate a construction of architectural heritage. In other words, the building was not a significant, or perhaps even necessary, factor in constructing heritage.

Heritage and Identity

Pishief’s statement that ‘heritage is identity’ is reflected in the wider heritage literature.²⁸ Identity in current heritage theories plays a crucial part in the definition or argument of heritage practice. Of the five patterns, only two, the Identity Pattern and the Identity/Context Pattern, contain a significant discussion on the role of identity in heritage arguments. The other patterns do not contain such a significant discussion on identity.

If contemporary theories of heritage establish identity to be a vital component in defining heritage, such as the positions of intangible heritage and critical heritage, then the Building pattern, Context Pattern, and Building/Context Pattern might not be considered as heritage arguments. Both the Building pattern and Context Pattern tend to suggest this conclusion as they provide only partial heritage arguments, the first providing a discussion of the tangible role of the built form and the other providing a contextual discussion of the significance of the built form. The witnesses who displayed the Building Pattern or Context Pattern were reliant on the other witnesses in the same party to provide the other components of the heritage argument.

In the written statements of evidence, UCOL/Te Puna, the NZHPT, and WRHT all displayed the Building/Context Pattern. Additionally, no expert witnesses in their written statements of evidence followed a pattern that contained a significant quantity of content from the Identity category, i.e. no expert witnesses presented the Identity Pattern or Identity/Context Pattern in their written statements of evidence. The quantitative contribution of Identity, in most cases, appears to be too small to significantly contribute to the more common patterns. This result questions that, if identity was not

²⁷ Pishief, “Constructing the Identities of Place,” 231.

²⁸ See, for example, Smith, *Uses of Heritage*, Harrison, *Heritage: Critical approaches*, Graham, Ainsworth and Tunbridge, *A Geography of Heritage*, and Winter, “Clarifying the critical in critical heritage studies.”

an explicitly significant topic in the hearing in terms of quantity, then how, if at all, was identity discussed.

The Building/Context Pattern which the parties displayed in their written statements of evidence reflected that of Authorised Heritage Discourse. Smith states that AHD “maintains that heritage is a symbolic representation of identity. Material or tangible heritage provides a physical representation of those things from ‘the past’ that speak to a sense of place, a sense of self, of belonging and community.”²⁹ Without a significant association to the Identity category, the heritage argument naturalised identity into, what are, conventional heritage practices. Such conventional practices assume that heritage is a tangible, physical object that just ‘is’ and overlooks that heritage is actively constructed, and that the processes of that construction, as per the systematic mechanisms in the Context category, are liable to change.³⁰

As UCOL/Te Puna, the NZHPT, and Council all presented the Building/Context pattern and Context pattern in written statements of evidence and in cross-examination, it is likely that AHD was privileged in the Court’s decision to decline the application for resource consent. The party’s collective arguments all placed emphasis on a pattern which naturalised identity as the built form, and on a pattern that emphasised the contextual mechanism through which to value the built form. The materiality and tangibility of the built form took precedence in the arguments of heritage presented at the hearing. This is reflected by the Court’s decision where, “our approach is also an acknowledgement of the finite characteristics of the physical resource of heritage buildings. By definition, they are scarce and irreplaceable.”³¹

If the main arguments of heritage presented in the hearing reflected AHD, then the hearing tested which building was the most appropriate building use—the Native Land Court building, the proposed Iwi Tertiary Institute, or an adaptive reuse proposal—rather than broader notions of heritage. The Court appears to have made a decision that allows the best of both buildings, in which they state,

²⁹ Smith, *Uses of Heritage*, 30.

³⁰ For example, Harrison states that the assumption in heritage practices “seems to be that the values on which criteria are established for designation are universal and will never change.” Harrison, *Heritage: Critical Approaches*, 583.

³¹ *Te Puna Mātauranga o Whanganui* at [112].

“we have come to the clear view that, when the purposes of the UCOL/Te Puna partnership can be met by adaptively reusing this building, to demolish it to make space for a new building will be an inappropriate use and development of it.”³² As the arguments of heritage displayed by the parties, by way of the Building/Context Pattern and Context Pattern, were quantitatively composed to place significance on the heritage practices of Authorised Heritage Discourse, demolition of any heritage object might be considered an inappropriate use.

The Identity Pattern and Identity/Context Pattern indicate there are arguments of heritage where the built form is used as a conceptual tool to actively construct and perform heritage. In the following section, the theory of critical heritage is considered as a way to reinterpret the way in which the arguments of heritage were performed in the Environment Court hearing.

The Performance of Heritage

Each of the patterns displayed the way the expert witnesses and counsels quantitatively complied arguments of heritage. What all of the patterns had in common though, was that they were all performances of heritage within the Environment Court hearing. Each witness and counsel actively composed their arguments for the purpose of the Court. The resource consent application for the Wanganui Native Land Court building determined that the content of the hearing related to the building but the purposes of the heritage arguments were for the Court.

Harrison states that

heritage is not the inscription of meaning onto blank objects, places and practices that are produced in this process, but instead is produced as a result of the material and social possibilities, or ‘affordances’, of collectives of human and non-human agents, material and non-material entities, in the world. It is not primarily an intellectual endeavour, something that exists only in the human mind, but is one that emerges from the *dialogue*, or practices of people and things.³³

³² *Te Puna Mātauranga o Whanganui* at [121].

³³ Harrison, *Heritage: Critical Approaches*, 217.

If the dialogue of people, practices and things is what defines heritage in the theory of critical heritage, then it was the dialogue between the Environment Court, the expert witnesses, the counsels, and the Native Land Court building, that was the performance of heritage. While all of the patterns placed a different significance on the built form, in the Environment Court setting the building acted as a cultural tool in which the arguments of architectural heritage were constructed. In other words, the resource consent application provided the *content* of those heritage discussions while the Environment Court provided the *context* of those heritage discussions. The consent application placed the Native Land Court building and the proposed Iwi Tertiary Institute as the tool or medium for facilitating heritage discussions, but ultimately, the performance of heritage occurred in the setting of the Environment Court.

The narrative arguments and the quantitatively compiled arguments of heritage in the hearing provided different viewpoints on the significance of the built form. The combination of widely varying perspectives resulted in dissonance, as was observed in the hearing.³⁴ Dissonance is a necessary part of the heritage performance through which different understandings and values are identified and negotiated. As critical heritage defines the performance of heritage, Winter states, it is “through the process of interpretation and dialogue [that] differences are often diminished, whereby trust becomes an enabler of position re-evaluation and the opening up of new horizons.”³⁵ From the position of critical heritage, the Environment Court is viewed not as adversarial mechanism to determine whose vision of the future takes precedence, but is a process where arguments of heritage can be expressed and negotiated. Such a process was observed in the different patterns for expert witnesses in their written statements of evidence and the cross-examination transcript where the dialogue of heritage between expert witness and the counsels reframed the heritage argument of the expert witnesses.

Such a dialogue also appears to represent the counsels, as those who primarily determine the direction of questioning, and hence the patterns that are likely to be displayed in cross-examination. Additionally, the Code of Conduct for expert witnesses limited the witness’ ability to discuss areas outside of their expertise in the hearing. Winter states “at present too many heritage professionals

³⁴ For example, the arguments whether the community hall in Upokongaro was purpose built for the Native Land Court, as discussed previously in this chapter.

³⁵ Winter, “Clarifying the Critical,” 541.

have been trained via disciplinary specific methodologies, often orientated by technical, science-based epistemologies of culture.”³⁶ The professional expertise of the expert witnesses appears to have been a significant factor in what pattern they displayed.

It was only the Building/Context pattern which significantly privileged the built form as a tangible object and also privileged interaction with other factors. The decision to retain the Native Land Court building privileged, in terms of the quantitative composition of arguments, those witnesses who displayed the Building/Context pattern, particularly the architectural and engineering professions. The only witness to display the Building/Context pattern in both their written statements of evidence and the cross-examination transcript was Rau Hoskins (architecture witness for UCOL/Te Puna). To retain the building, based on the quantitative composition of the arguments of heritage, was to privilege the overall composition of each party’s evidence, as the Building/Context pattern related to the AHD in which the built or material emphasis defines heritage practice.

Critical heritage acts as an umbrella for the different heritage literatures. It recognises that each practice of heritage in the literature is equally valid, not because of its material outcomes but because the practice is a performance of heritage. Smith states that

the idea of performativity highlights the emotional and physical experience of heritage and stresses the idea of ‘doing’—that heritage is not something that is necessarily possessed, or only possessed, but that a thing becomes heritage because it is used as heritage or because it is a place that facilitates the doing of heritage performances.³⁷

In this case study, the Environment Court was the place that heritage was performed. The Native Land Court building was a cultural tool which, through its conceptual use in the hearing, facilitated the performances of heritage. If it is the use of a place that facilitates the doing of heritage then the quantitative compositions of the arguments of heritage legitimise the demolition of the Native Land Court building as an appropriate use. In other words, demolition of the building would facilitate the

³⁶ Winter, “Clarifying the Critical,” 541.

³⁷ Smith, *Uses of Heritage*, 304.

performance of heritage in the Court as equally as the building's retention. If critical heritage were incorporated into the decision of the Environment Court, then a different outcome may have resulted. Any decision made by the Court would be the outcome of multiple performances of heritage.





Chapter Seven

Conclusion

Corner detail of the Native Land Court building

March 2013, photograph by author

The literature of heritage theories identified different type of heritage practice, including:

- (a) Authorised Heritage Discourses that emphasised the built form as a tangible physical object and/or that emphasised categorisation, listing and archiving of heritage objects as an end result;
- (b) intangible cultural heritage practices that privileged intangible objects of heritage, and
- (c) intangible heritage definitions that instead emphasise the process of heritage.

Critical heritage sits as an umbrella theory, in which the multiple facets of existing heritage practice are viewed through a performative lens.

Critical heritage changes the focus of heritage practices from objects of ‘heritage’ to the social, cultural, and political processes of heritage construction. Harrison states that heritage is an active assembling of a series of objects, places, and practices that we choose to hold up as a mirror to the present, associated with a particular set of values that we wish to take with us into the future. As such, heritage is not inert or passive, but has the potential to engage directly with questions of contemporary global concern.¹

In this assemblage of heritage, the sites and objects—be they tangible or intangible—are “cultural tools that can facilitate, but are not necessarily vital for, this process.”² If heritage is an active engagement with the past in the present, then the way in which architectural heritage—a discipline that traditionally privileges the materiality of the built form—is significantly altered.

This thesis analysed the case study of the 2013 Environment Court hearing of the Wanganui Native Land Court building in order to identify how the different aspects of critical heritage literature were used in the hearing. Content analysis was used to analyse the documentation of the hearing. The documentation was coded into the categories of Threat, Identity, Building, Context, and Future Context in order to understand how each party, expert witness, and the professions of the expert witnesses constructed arguments of architectural heritage in the hearing. The quantity of each category was assumed to reflect the significance of each category in constructing the arguments of architectural

¹ Harrison, *Heritage: Critical Approaches*, 228-229.

² Smith, *Uses of Heritage*, 44.

heritage. A quantitative approach largely removed the significance of the content as presented in the Court and instead it related the content to an applied research context. Future research of this case study could include a qualitative analysis to complement this quantitative analysis.

The analysis revealed five patterns of how architectural heritage was quantitatively constructed in the hearing:

- (a) an Identity pattern,
- (b) a Building pattern,
- (c) a Context pattern,
- (d) an Identity/Context pattern, and
- (e) a Building/Context pattern.

Each pattern related to an aspect of the heritage literature. The Building/Context pattern related to definitions of the AHD that privilege material fabric and built form. The Identity/Context pattern was exemplary of intangible heritage, in which both intangible objects were used to produce heritage and the building was a cultural tool in identifying the performance of heritage. The Identity pattern reflected Pishief's definition of 'the Connect' in which Māori conceptions of heritage were intertwined with the physical landscape. Finally, the Building Pattern and Context Pattern were examples of partial heritage arguments which emphasised the built form as a tangible object or emphasised the objective systems and mechanisms of the AHD which ascribe value and significance to the built form.

In the written statements of evidence, it was a witness' expertise, rather than the party they represented, that had the greatest influence on how their argument of heritage was constructed. In cross-examination, it appears that the counsels had a greater influence in how the arguments of heritage were composed. Very few witnesses displayed the same pattern in both their written statements of evidence and in cross-examination. The only witnesses to maintain the Building/Context pattern in both the written statements of evidence and cross-examination was Rau Hoskins (architectural witness for UCOL/Te Puna). Both the written statements of evidence and cross-examination transcripts of Sylvia Allan (planning witness for the NZHPT), David Forrest (planning witness for UCOL/Te Puna) and Paul McElroy (UCOL CEO), likewise retained the same pattern, in this case the Context pattern, and John Silvester (engineering witness for UCOL/Te Puna) retained

the Building pattern. The collective results for the parties and professions tended to follow either the Building/Context Pattern or the Context pattern, with the only exceptions being the WRHT and the heritage profession in the Identity/Context Pattern and the engineering profession in the Building pattern.

If built form were a vital, or at least significant, component in architectural heritage, it could be expected that the Building/Context pattern or the Building Pattern would be the predominant pattern in the results. While this was primarily the case for the parties in their written statements of evidence, the building emphasised in the pattern was not always that of the Native Land Court building. Both the proposed designs for adaptive reuse and the proposed design for the Iwi Tertiary Institute facilitated arguments of architectural heritage. In other words, the argument of heritage required *a* built form, not specifically an existing built form.

The theory of critical heritage was considered in this analysis of the performance of heritage construction in the hearing where the *use* of the building as a cultural tool appears to have been more important in the performative construction of heritage than the physical reality of the building itself.³ The different patterns reveal different heritage uses of the building as a cultural tool or medium. While critical heritage cannot determine the most appropriate performance of heritage, it does recognise the diversity of heritage constructions. From this position, adaptive reuse and demolition were equally legitimate uses of the building as a cultural tool to facilitate the active construction of heritage.

The protection of historic heritage in the Resource Management Act is not absolute. Section 6(f) provides for the “protection of historic heritage from *inappropriate* subdivision, use, and development.”⁴ If a position of critical heritage was taken into account in the Wanganui Native Land Court hearing, then demolition of the building may have been deemed to be an appropriate use of the building as a way to actively perform heritage.

This is not to qualify that all demolition of heritage objects is necessarily a practice of critical

³ A qualitative analysis would be required to confirm this idea.

⁴ Resource Management Act 1991, s 6(f). My emphasis added.

architectural heritage. The bounded system of case study research limits the outcome to this particular case. The results do indicate, however, that the conventional role of the built form in architectural heritage—as an object of innate heritage value—maybe only one of many legitimate ways in which to perform and construct arguments of heritage. Further research is required to test this idea in other scenarios.

The significance of such an approach to architectural heritage is that it provides a greater diversity for how the built form is used as a medium in performing heritage, and the outcomes that may emerge from that use. Critical heritage allows a wider range of identities to be included in heritage practices as the built form operates as a medium or site from which identity can be expressed or negotiated. It appears that the built form is not significant or valuable in and of itself; rather it is valuable as it provides a tool in the performance of heritage with which to address wider contemporary concerns and that this should be allowed for within the RMA definition of historic heritage.





Reference List

The Public Office within the Native Land Court building

March 2013, photograph by author

- Alivizatou, Marilena. "Intangible Heritage and Erasure: Rethinking Cultural Preservation and Contemporary Museum Practice." *International Journal of Cultural Property* 18 (2011): 37-60.
- Berg, Bruce. *Qualitative Research Methods for the Social Sciences*. 5th ed. Boston: Pearson, 2004.
- Butts, David. "Institutional Arrangements for Cultural Heritage Management in New Zealand Legislation, Management, and Protection." In *Heritage Management in New Zealand and Australia*, edited by C. Michael Hall and Simon McArthur, 169-187. Auckland: Oxford University Press, 1993.
- Byrne, Denis. "A critique of unfeeling heritage." In *Intangible Heritage*, edited by Laurajane Smith and Natsuko Akagawa, 229-252. London: Routledge, 2009.
- Carman, John. *Archaeology and Heritage*. New York: Continuum, 2002.
- Craith, Máiréad. "Intangible Cultural Heritages: The Challenges for Europe." *Anthropological Journal of European Cultures* 17, no. 1 (2008): 54-73.
- Edson, Gary. "Heritage: Pride or passion, product or service?" *International Journal of Heritage Studies* 10, no. 4 (2004): 333-348.
- Elo, Satu, and Helvi Kyngäs. "The qualitative content analysis process." *Journal of Advanced Nursing* 62, 1 (2007): 107-115.
- Graham, Brian, G.J. Ainsworth, and J.E. Tunbridge. *A Geography of Heritage*. London: Arnold, 2000.
- Haig, Dorothy. "Reclaiming Intangible Cultural Heritage." *Art, antiquity and law* 15, no. 4 (2010): 365-374.
- Hall, C. Michael, and Simon McArthur. "Heritage Management: An Introductory Framework." In *Heritage Management in New Zealand and Australia*, edited by C. Michael Hall and Simon McArthur, 1-17. Auckland: Oxford University Press, 1993.
- Harrison, Rodney. "Forgetting to remember, remembering to forget: late modern heritage practices, sustainability and the 'crisis' of accumulation of the past." *International Journal of Heritage Studies* 19, no. 6 (2013): 579-595.
- - -. *Heritage: Critical Approaches*. Milton Park, Abingdon: Routledge, 2013.
- Harvey, David. "Heritage Pasts and Heritage Presents: temporality, meaning and the scope of heritage studies." *International Journal of Heritage Studies* 7, no. 4 (2001): 319-338.
- Hassard, Frank. "Intangible heritage in the United Kingdom: the dark side of enlightenment?" In *Intangible Heritage*, edited by Laurajane Smith and Natsuko Akagawa, 270-288. London: Routledge, 2009.
- "ICOMOS' Mission." *ICOMOS International Council on Monuments and Sites*. Accessed February 11, 2014. <http://www.icomos.org/index.php/en/about-icomos/mission-and-vision/icomos-mission>.
- Keelan, Ngawini. "Māori Heritage." In *Heritage Management in New Zealand and Australia*, edited by C. Michael Hall and Simon McArthur, 95-102. Auckland: Oxford University Press, 1993.
- Kelly, Michael. "Building a Case." In *Common Ground?*, edited by Alexander Trapeznik, 121-139. Wellington, New Zealand: University of Otago Press, 2000.
- Krippendorff, Klaus. *Content Analysis*. Thousand Oaks, California: Sage, 2004.

- Logan, William. "Cultural diversity, cultural heritage and human rights: towards heritage management as human rights-based cultural practice." *International Journal of Heritage Studies* 18, no. 4 (2012): 231-244.
- McCarthy, Christine, "Re-thinking threats to architectural heritage," *International Journal of Heritage Studies* 18, no. 6 (2012): 624-636.
- "Moutoa Gardens protest," *Ministry for Culture and Heritage*, accessed June 3, 2014, <http://www.nzhistory.net.nz/media/photo/moutoa-gardens-protest>.
- Moorefield, John. "Te Aka Online Māori Dictionary." *Māori Dictionary*. Accessed June 8, 2014, <http://www.maoridictionary.co.nz/>.
- Munjeri, Dawson. "Tangible and Intangible Heritage: from difference to convergence." *Museum International* 56, no. 1-2 (2004): 12-20.
- "Native Land Court and Aotea Maori Land Board Building (Former)," *New Zealand Historic Places Trust*, accessed May 27, 2014, <http://www.heritage.org.nz/the-list/details/7783>.
- Nealon, Jeffrey. *Post-postmodernism, or, the Cultural Logic of Just-in-time Capitalism*. Stanford, California: Stanford University Press, 2012.
- Nora, Pierre. "Between Memory and History: Les Lieux de Mémoire." *Representations* 26 (1989): 7-24.
- Pétursdóttir, Þóra. "Concrete matters: Ruins of modernity and the things called heritage." *Journal of Social Archaeology* 13, no. 1 (2013): 31-53.
- Pishief, Elizabeth. "Constructing the Identities of Place: An exploration of Māori and archaeological heritage practices in Aotearoa New Zealand". Ph.D. Thesis, Victoria University of Wellington, 2012.
- Putney, LeAnn Grogan. "Case Study." In *Encyclopedia of Research Design*, edited by Neil J Salkind, 116-120. Thousand Oaks, California: Sage, 2010.
- Ruggles, D. Fairchild, and Helaine Silverman. "From Tangible to Intangible Heritage." In *Intangible Heritage Embodied*, edited by D. Fairchild Ruggles and Helaine Silverman, 1-14. New York: Springer-Verlag, 2009.
- Salmond, Jeremy. "From Dead Ducks to Historic Buildings." In *Common Ground?*, edited by Alexander Trapeznik, 45-56. Wellington, New Zealand: University of Otago Press, 2000.
- Smith, Laurajane. *Uses of Heritage*. New York: Routledge, 2006.
- - - and Emma Waterton. "'The envy of the world?': intangible heritage in England." In *Intangible Heritage*, edited by Laurajane Smith and Natsuko Akagawa, 289-302. London: Routledge, 2009.
- Vossler, Greg. "Sense of Nonsense?" In *Common Ground?*, edited by Alexander Trapeznik, 57-72. Wellington, New Zealand: University of Otago Press, 2000.
- Waterton, Emma, and Steve Watson. "Framing theory: towards a critical imagination in heritage studies." *International Journal of Heritage Studies* 19, no. 6 (2013): 546-561.
- Whittle, Joanne. "'Your Place and Mine' Heritage Management and a Sense of Place". Masters Thesis, Lincoln University, 1993.
- Winter, Tim. "Clarifying the critical in critical heritage studies." *International Journal of Heritage Studies* 19, no. 6 (2013): 532-545.

Witcomb, Andrea, and Kristal Buckley AM. "Engaging with the future of 'critical heritage studies': looking back in order to look forward." *International Journal of Heritage Studies* 19, no. 6 (2013): 562-578.

Legislation, Cases, and Charters

"ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value Revised 2010," *ICOMOS New Zealand*, accessed August 8 2013, <http://www.icomos.org.nz/nzcharters.htm>.

Mainpower NZ Ltd v Hurunui District Council [2011] NZEnvC 384.

New Zealand Historic Places Act 1993.

Resource Management Act 1991.

Te Puna Mataraunga o Whanganui and Universal College of Learning v Wanganui District Council [2013] NZEnvC 110.

Universal College of Learning v Wanganui District Council [2010] NZEnvC 291.

Glossary

| | |
|--------------------------|--|
| Hapū | Kinship group, clan, tribe, subtribe - section of a large kinship group. ¹ |
| Iwi | Extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor. ¹ |
| Kāumatua | Adult, elder, elderly man, elderly woman, old man. ¹ |
| Matāuranga | Education, knowledge, wisdom, understanding, skill. ¹ |
| Pā | Fortified village, fort, stockade, screen, blockade, city (especially a fortified one). ¹ |
| Pākehā | New Zealander of European descent - probably originally applied to English-speaking Europeans living in Aotearoa/New Zealand. ¹ |
| Pou | Post, upright, support, pole, pillar, goalpost, sustenance. ¹ |
| Taonga | Treasure, anything prized - applied to anything considered to be of value. ¹ |
| Te Atihaunui a Pāpārangi | Māori iwi of the Whanganui River region. |
| Wāhi Tapu/Waahi Tapu | A place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense. ² |
| Waka | Canoe, vehicle, conveyance, spirit medium, medium (of an atua). ¹ |
| Whakapapa | Genealogy, genealogical table, lineage, descent. ¹ |
| Whānau | Extended family, family group, a familiar term of address to a number of people - the primary economic unit of traditional Māori society. In the modern context the term is sometimes used to include friends who may not have any kinship ties to other members. ¹ |

¹ Moorfield, “Te Aka Online Māori Dictionary.”

² Historic Places Act 1993, s 2.





Appendix A

The Court's 2013 Decision

Corner of the Native Land Court building and annex buildings

March 2013, photograph by author

BEFORE THE ENVIRONMENT COURT

Decision No: [2013] NZEnvC 110

ENV-2012-WLG-000075

IN THE MATTER of the direct referral of an
application for a resource consent
under s87G of the Resource
Management Act 1991

BETWEEN TE PUNA MATAURANGA O
WHANGANUI and UNIVERSAL
COLLEGE OF LEARNING
Applicants

AND THE WANGANUI DISTRICT
COUNCIL
Consent Authority

Court: Environment Judge C J Thompson
Deputy Chief Māori Land Court Judge C L Fox
Environment Commissioner D J Bunting

Hearing: at Wanganui 25 – 27 March 2013; Closing submissions 2 May 2013

Counsel/Representatives:

J W Maassen and N Jessen for applicants

P J Page & K E Krumdieck for NZ Historic Places Trust – s274 party

W K Pettigrew for Whanganui Regional Heritage Trust Board – s274 party

P Drake for the Wanganui District Council – consent authority

DECISION ON DIRECT REFERRAL

Decision issued: 17 MAY 2013

The application is declined

Costs are reserved



Introduction

[1] On 18 June 2012 the Wanganui District Council directly referred this application for a resource consent to the Court for a decision under s87G of the Resource Management Act. It is not, therefore, an appeal against a decision made by a consent authority and the hearing in this Court is the only opportunity for evidence for and against the proposal to be heard. For that reason we will discuss the issues and evidence in a little more detail than would normally be the case on an appeal from a Council decision.

Background

[2] The application, jointly made by Universal College of Learning (UCOL) and Te Puna Matauranga O Whanganui (Te Puna), was lodged on 10 April 2012, and was publicly notified on 26 April 2012. It is for a resource consent in these terms:

A land use consent to demolish the former Māori Land Court and ancillary building and establish, operate and maintain an iwi tertiary institute, Te Whare Matauranga.

[3] The site on which the former Court building stands is 707m² and is at 11 Rutland Street, on the corner of Rutland Street and Market Place, Whanganui. It is owned by UCOL. The building was purpose-designed and constructed c1922 for the Aotea Māori Land Board, and was occupied by the Land Board, the Native Land Court (later the Māori Land Court) and officers of the then Native Affairs Department. It was occupied by the Court until c1982, and was then transferred to the Proprietors of the Morikaunui Block and Atihau-Whanganui, jointly. This is a Māori land incorporation and has no direct legal relationship with the Whanganui Iwi – Te Atihaunui a Paparangi, although its shareholders may or may not be members of the tribe. The building then had a variety of occupiers including an Iwi Radio Station, and the Wanganui Iwi Law Centre, until the joint-ownership venture sold it to UCOL in 2006. It has been vacant since at least that point.

[4] It is a single-storey building of about 470m² and while the exterior is largely intact, it is presently in only fair condition – there is considerable deferred maintenance and in places the roof is not watertight. Interior water damage is increasingly evident. Over the 90 years of its existence, there have been significant interior alterations, and little remains of the original layout. There are also smaller



utility buildings at the rear of the main building, one of which is *original*, but they are of little real consequence in this decision-making process.

[5] The site is part of a larger area of Whanganui along the west bank of the river known to Māori as Pakaitore. That name derived from a Pa and fishing kainga once located nearby.

UCOL and Iwi Partnerships

[6] In its Whanganui UCOL Education Plan (2004), the applicant UCOL defined *Whanganui Iwi* as Te Atihaunui a Paparangi. This is the Iwi particularly associated with Whanganui. UCOL's region also takes in the traditional territories of Ngā Rauru and Ngāti Apa. It has as one of its long-term goals a commitment to support and collaborate with these tribes to realise their aspirations for Māori tertiary education in the Whanganui area. However, those who form Te Puna, only represent the Whanganui Iwi - Te Atihaunui a Paparangi. They do not represent Ngāti Apa or Ngā Rauru and those have only been informally consulted regarding this application for a resource consent.

[7] Te Puna is the mandated authority for Te Atihaunui a Paparangi for education. Those who have membership of Te Puna are selected based upon the 5 tipuna rohe or traditional hapu cluster areas of Whanganui Iwi, namely: Tupoho, Tamaupoko, Hinengakau, Ngāti Rangi and Tamahaki.

Māori Population

[8] The population of Māori in the Whanganui District constitutes approximately 22% of the total population, but 43% of that Māori community have no formal educational qualifications. The Māori population is growing and current projections indicate it will increase to 29.8% by 2026. The case for the applicants stressed the need for improved educational outcomes for Māori, given that currently there are discrepancies in participation and success rates between Māori and non-Māori in tertiary education.



[9] The applicants seek, through this proposal, to ... *enhance the social and cultural wellbeing of Whanganui Māori by improving: (a) access to culturally relevant facilities in the Old Town Conservation Zone (OTCZ); (b) educational outcomes; and participation in the life of the city centre.* Ms Esther Tinirau, who was called to give evidence about Te Puna's position, advised that culturally appropriate facilities are needed to validate student learning and this proposal would provide such a place. The implicit assumption is that this project is intended to improve Māori participation and success rates in tertiary education.

The Native Land Court and the Aotea Māori Land Board

[10] The Native Land Court started sitting in the Aotea District, using premises in the Wanganui town, in 1866 and it was to become a focal point for Māori attempting to protect their title to land. Court hearings were lengthy and many were forced to stay for long periods in unhygienic conditions at encampments along the river side of what is now Taupo Quay. The history of land alienation through the individualisation of title and the impact of that system on Māori social organisation was covered before us by Mr David Armstrong. He noted that under the leadership of Major Kemp and others, Whanganui Māori tried to mitigate the worst aspects of this system. In 1881 the Court moved to Upokongaro (about 10 kms up the river) to a purpose-built building. That building still exists today (in a rather modified form) and is registered by the Historic Places Trust. In 1884 the Court returned to Whanganui. In 1905, the Aotea Māori Land Board was constituted. It took over responsibility of acting as agent for land owners in the alienation of land and the pace of alienation, through sale and lease, accelerated. In 1917 the Board purchased the site on the corner of Rutland Street and Market Place and erected the present building in 1922.

The 2010 decision

[11] An unusual aspect of this matter, and one which no doubt influenced the decision to refer this application directly to the Court, is that after a hearing in December 2009 and March 2010, a differently constituted panel of the Court declined an appeal against the Council's decision to refuse consent to demolish the same building. It is apparent from reading the decision (*Universal College of*



Learning v Wanganui DC [2010] NZEnvC 291) that an (but not sole) influence on that outcome was the absence of a firm proposal for a replacement building or buildings on the site. What was proposed at that point was the demolition of the existing building and the conversion of the site to a ... *green space*. That clearly was an interim position, with the prospect of unspecified development to be undertaken at an unspecified future time. At paras [148] to [150] the Court said this:

[148] ... Heritage interests do not *trump everything else*. It may be that the promotion of sustainable management requires the social advancement (through education) of Whanganui iwi to take precedence over historic heritage in this case, particularly in the light of our reservations as to the heritage significance of the Māori Land Court building. We accept that establishment of an iwi institute will potentially have a positive effect on the social well being of Whanganui Māori by supporting Māori students at UCOL. However our difficulty lies in adequately identifying and assessing that positive effect due to the present uncertainty as to the form and functions of the institute.

[149] We return to the fact that the application is to demolish the Māori Land Court building and establish a green space. We did not understand UCOL to contend that creation of a green space of itself outweighed the adverse effects on historical heritage which would be occasioned by demolition of the building even subject to the reservations which we have expressed as to its architectural and historic values. It was the intended future use of the green space which provided the rationale for the proposal.

[150] We have given as much weight as we reasonably can in our considerations to the intended future use of the green space for an iwi institute but consider that weight is considerably diminished by the nebulous nature of the iwi institute proposal. We are conscious of UCOL's position that it was not prepared to commit to the degree of planning and expenditure necessary to promote a more specific development proposal without being certain that demolition would be approved. However we consider that UCOL's case would have been considerably advanced by a more comprehensive application incorporating an application for approval of the iwi institute with sufficient detail to address the various issues we have raised in this decision.



[12] So the Court's decision to decline the consent enabling demolition of the existing building was reached, at least in part, because it could not compare the present site and building with a known future development. It is apparent that the

Court was somewhat lukewarm about the heritage significance of the existing building, but we certainly do not take the 2010 decision as having irrevocably decided that point – the building’s heritage significance is not, in the Latin legal jargon, *res judicata*.

The parties’ positions – UCOL and Te Puna

[13] UCOL merged with the former Wanganui Regional Community Polytechnic in 2002 and has since consolidated almost all of its former six Wanganui tertiary education sites into one Campus in the part of the City bounded by Rutland Street, Market Place, Taupo Quay and Drews Avenue, close to the river and Moutua Gardens. We understand that it came to occupy six structures of heritage interest within the Campus area. Some were renovated and adapted for reuse by it. Two buildings, both on Taupo Quay, were already in use for educational purposes and were incorporated into the Campus but, because of their inadequate seismic capacity, have since been vacated. Their future, with possible strengthening, is presently being discussed. Other existing buildings on the Campus were demolished and their sites rebuilt. The former Court building is diagonally across Rutland Street from the main pedestrian access to the campus proper, so it is not part of the campus, but is very close to it.

[14] UCOL’s interest in the site of the former Court building is brought about by its agreement, formalised in 2006, with Te Puna. The 2006 agreement records the shared objectives of the two organisations as including:

- To form a close, strong and long-term relationship in which UCOL as the principal (mainstream) tertiary education provider and Te Puna Mātauranga O Whanganui, as the Whanganui Iwi Education Authority, work closely together to achieve the goals contained in the MOA introduction.
- To work together in an environment characterised by (Whakahoahoatanga, manaakitanga and rangatiratanga) good will and mutual respect, infused by honesty and openness and mediated by trust.
- To focus on increased participation of Māori students of the Whanganui rohe.
- To focus on the successful completion of qualifications of Māori students of the Whanganui rohe.



- To assist in the establishment of the Whanganui Iwi Cultural Centre, in close proximity to the UCOL campus development, not only to meet Whanganui Iwi aspirations and also for mutuality of services for student support.
- To explore tangible options for collaborative activity on campus in the areas of student support, shared services, cultural advice role.
- To recognise the unique nature of this collaboration in using the strengths of the established academic and collegial infrastructure of UCOL and the unique commitment of Whanganui Iwi to facilitate education as a key priority for whanau and hapu to achieve their development goals and aspirations. ...

[15] The possible future use of the site in partnership with Te Puna is seen as other than just *teaching space*. The intention is that it will give Māori students a cultural focus that is close to, but not actually on, the Campus. Its ability to accommodate and foster cultural events such as powhiri is seen as very important. UCOL regards the Court building as in a different category from the other buildings it has renovated and adapted for reuse. It sees it as, or perhaps more accurately is told by its partner Te Puna that it is, unsuitable for adaptation to its intended purpose because it is single-storeyed and too small, and it lacks suitably oriented outdoor space suitable for powhiri and similar uses. A concern is also that it is likely to be expensive to bring up to a watertight and acceptable seismic standard, with adaptation and additions requiring further expenditure.

[16] Even if those issues can be overcome, Te Puna is reported to be disinclined to occupy the existing building, even if strengthened, renovated and adapted. It is said to be interested only in a purpose-built facility. It does though regard the site, being close to Moutua Gardens and within sight of the river, as being appropriate and desirable for its purposes. We shall return to this issue, and the evidence of Ms Tinirau on Te Puna's views about the site, in discussing s6 issues.

The Council

[17] The Council's Senior Resource Management Planner, Ms Rachelle Voice, provided the Court and the parties with a helpful report under s87F RMA, and amplified that in evidence. In summary, Ms Voice has the view that the adverse effects of the proposal are not more than minor. She acknowledges of course the



declining of the earlier application, but points out that this application is different, and that ... *recent plan changes to the District Plan affect the subject site*. Formally, the Council does not take a position on the merits of the current application and focussed its participation on helping the Court to understand the relevant planning documents.

The New Zealand Historic Places Trust

[18] During the course of the proceedings about the application to demolish dealt with in the 2010 decision, the Historic Places Trust (HPT) took steps to classify the building as a *Category 1 Historic Place*. That took effect in 2008 - previously, the building was not on the Trust's Register at all. The Trust expresses the view that this building has high architectural and historic heritage significance and should be preserved. It submits that the building has significance for Māori, perhaps negative in some aspects, but positive in others; that it is a reminder of significant times and events of inter-Māori and Māori-Pakeha relationships, land transactions and colonial settlement. It also regards the building as significant in that it was one of the last public buildings (the other being Parliament Buildings in Wellington) designed by (or at least under the supervision of) the then Government Architect, John Campbell. It represents a pivotal shift in Government style – to ... *the restrained geometrics of the art deco Moderne style*. Among the buildings surviving in the OTCZ of urban Whanganui, the Trust regards this building as unique.

[19] The Trust first suggested that there may be at least one other site already within the UCOL campus that could be used for the desired facility, a suggestion that does not find favour with UCOL/Te Puna. That was a site, presently a carpark, referred to as 10 Taupo Quay, within the block containing the UCOL campus. Te Puna dislikes it because it is within the campus, rather than being, as the Rutland Street site is, close but separate. Also, because of the slope of the landform towards the riverbank, it is also slightly lower than the portions of the campus built on the eastern side of Rutland Street and this was said to give it an *inferior* status. During the course of the hearing the possibility of using the site of the former Federal Hotel on the corner of Market Place and Taupo Quay came into sharper focus. The site is owned by UCOL and the building is vacant, with no current plans for its reuse. It is



not registered with the HPT but is a Class B building in terms of Plan Change 29 (of which more later). Mr Hoskins discounted its possible use for the project because it is ... *too disconnected from the UCOL site* ... and sits at a lower plane than the balance of the campus. From other evidence, supported by our observations, we cannot agree that it is *disconnected*, but in any event, disconnection is seen by Te Puna as a positive attribute for its proposed facility. The site is actually within the UCOL block and is immediately beside the carved kuwaha, or gateway, onto the campus from Market Place, and has a view across Market Place to Moutua Gardens and to the river. We would accept though that the river view is not nearly as expansive or direct as that from the old Court site.

The Whanganui Regional Heritage Trust Board

[20] Those forming the Trust Board formerly constituted the local branch committee of the HPT, but in anticipation of the disestablishment of those committees by legislation presently before Parliament, the committee has already dissolved and has reconstituted itself as an independent entity. The Trust is a s274 party to the application. Ms Wendy Pettigrew, who has considerable experience in heritage conservation, is the Trust Board's Chair and gave evidence explaining its position. The Board does not oppose the application, and is content with the agreement reached between some of the parties on the question of memorialisation, in the event that the existing building is demolished. We shall return to that later also.

The proposed new structure

[21] The proposed building, as presented in the evidence of the architect engaged by Te Puna, Mr Rau Hoskins, is designed with two, two-storey wings, with a total floor area of about 615m². The southern wing is designed for service functions and would be of masonry construction. The more prominent northern wing is designed with a transparent glass facade. At the corner of Rutland Street and Market Place there is to be a circular welcoming, or powhiri, area on the ground floor. There will be a double height corridor off the foyer. Apart from the service areas, the spaces are designed to be flexible. A large, covered and landscaped courtyard beside the welcoming area



can extend that area and will be usable for outdoor learning activities. The first floor will contain office and, possibly, teaching spaces.

Adapting the existing building

[22] In their joint statement¹, engineers Mr John Silvester for UCOL and Mr Winston Clark for HPT, agreed that in its current state, the building has a seismic capacity as low as 10% NBS (National Building Standard)². They also agreed on the measures required to strengthen the building to achieve 67% NBS³ or, if required by the building owners, up to 100% NBS.

[23] In very general terms the strengthening would require the tops of the perimeter and partition walls to be braced with new structural elements constructed within the ceiling space; for tie rods to be inserted and then stressed in ducts drilled vertically from the tops of the brick masonry walls to the foundations; and for a grillage of carbon fibre strips to be fitted and fixed into saw cuts formed on the two faces of each partition wall.

[24] The caucus statement notes that the tie rod and carbon fibre grillage strengthening techniques are relatively new and that (as at 2009) further development of them is continuing at the University of Auckland⁴. The concept of such strengthening has however been proved to be cost effective and successful in at least one Canterbury heritage building – the Arts Centre – which was strengthened pre-2010.

[25] The Court building has settled at its eastern (Rutland Street/Market Place) corner, with this being attributed to poor compaction of material placed as backfill in what is assumed to have been the cellar of a former building. The engineers agree that this settlement can be stabilised by constructing a reinforced concrete beam to carry the wall load from this corner back to firm foundation material and on to a new

¹ Caucus Statement of Engineering Experts, 7 December 2009

² NZS 1170.5:2004 Structural Design Actions Part 5:Earthquake Actions – New Zealand (Published by Standards New Zealand)

³ 67% is the recommended strength level considered appropriate for the protection of heritage buildings.

⁴ Caucus Statement para 25



pile⁵. They note that re-levelling of the wall is not required for structural stability, although it may be for aesthetic reasons.

[26] The joint statement also records the agreement of the two engineers about a strengthening method which could be used if it was desired to remove the existing strong-rooms to provide a more open-plan internal layout. They agree that this would involve significantly more expense than if the strong-rooms were retained.

[27] The engineers also agree that it is feasible to add one or two stories to the existing building. In doing so they note that, for this option, the requirement to strengthen the existing masonry walls and the need to construct the additional storey(s) from within the existing building perimeter would double the construction costs from ground floor up to first floor (presumably compared with the cost of a new building), with construction above this level being similar to conventional construction. The addition of a first floor however would provide an ideal medium to tie the external walls to the central part of the building.

[28] Finally, the engineers agree that the existing roof cladding is beyond the end of its working life, and that there has been severe deterioration of the Gunac membrane applied sometime between 1950 and 1970 to prevent moisture ingress to the perimeter walls.

[29] At the request of the HPT, Mr Jeremy Salmond, a highly qualified and very experienced conservation architect, prepared an indicative concept of how the existing building might be adapted for Te Puna's use. He regards it as ... *eminently adaptable for this purpose*. Principally, he suggests adding a first floor to expand the service and teaching space and, in the space now occupied by the utility outbuildings at the southern end, placing a covered and paved atea, or welcoming space, with an entryway from there into the main building. The exterior of the building would be retained, in keeping with Mr Salmond's view that it is ... *a building of architectural and historic significance to the Whanganui District*. He acknowledges that the atea



Caucus Statement para 23

does not face towards Moutua Gardens and the direct line of sight to the river, but has the view that:

It does, however, provide a high level of amenity, and could be argued as having a better relationship with the facilities of the other partner in the project (UCOL). It provides also significantly greater potential for expansion.

Comparative costings

[30] As neither UCOL's nor the HPT's evidence provided us with comprehensive costing information for the building alternatives for the new facility, we have had to piece together our own assessment of the costings. In doing so we have drawn from the evidence of Mr Silvester and Mr Bruce Dickson (engineer and architect respectively for UCOL) and from our questioning during the hearing of Mr Hoskins. As Mr Dickson was unable to attend the hearing we have information provided by him in his 12 April 2013 written response to the Court's questions.

[31] Mr Hoskins told us that the cost of the new building proposed by UCOL was of the order of \$2 million⁶. It is not clear whether this includes the \$60,000 cost for the demolition of the NLC building⁷, although in the overall scheme of things this does not appear to be particularly significant.

[32] The 2012 report of *Good Earth Matters Consulting* (Mr David Forrest, UCOL's consultant planner's firm) forms part of UCOL's Resource Consent Application and AEE and is for a new building with a floor area of about 615m²⁸. This is about 144 m² more than the 471m² (25.150 m by 18.720 m)⁹ floor area of the existing building.

[33] The costings for the adaptive re-use of the NLC building to provide a tertiary facility with a floor area of 615 m² are summarised in this table:



⁶ Transcript Page 28, l 25

Clark EIC para 37

⁸ *gemconsulting* report para 2.4.2

Clark EIC para 9

Cost Estimate for Adaptive Re-Use of NLC Building

| Item | Cost (\$) | Source | Comment |
|--|-----------|-------------------------|--|
| Seismic Strengthening to 67% NBS | 1,000,000 | Silvester ¹⁰ | Based on upper end of range of minus 20% to plus 50% for rough order of cost estimate of \$800,000. |
| Compliance works to address fire safety, heating, waterproofing of the external walls, replacement of the roof, disabled person's access and toilets, mechanical ventilation and insulation. | 550,000 | Dickson ¹¹ | |
| Building settlement mitigation works: Rutland St/Market Place | 250,000 | Dickson ¹² | Includes geotechnical work and up to 37x15 metre piles. |
| Repair/refurbishment of building interiors | 1,099,000 | Dickson ¹³ | In addition to compliance costs listed above. |
| Extension to provide floor area equivalent to that of UCOL proposed new building (from 471m ² to 615 m ²) | 585,000 | Dickson ¹⁴ | Cost of new first floor area. Excludes cost of lift and stair access, included in repair/refurbishment listed above. |
| Covered outdoor entry area | 385,000 | Dickson ¹⁵ | Provides for covered outdoor area equivalent to that of new building. |
| Sub-Total \$3,869,000 | | | |
| Less Reduction in Seismic Strengthening Cost | 280,000 | Dickson ¹⁶ | Floor slab for first floor extension would replace horizontal bracing provided for in seismic strengthening cost listed above. Cost reduction of \$280,000 is very approximate only. |
| Total \$3,589,000 | | | |

¹⁰ Original evidence, 24 March 2009 (attached as Appendix 2 to 30 November 2012 rebuttal evidence)

¹¹ Dickson EIC Para 27

¹² Dickson Answer to Questions 12 April 2013

¹³ Dickson Answer to Questions 12 April 2013

¹⁴ Dickson Answer to Questions 12 April 2013

¹⁵ Dickson Answer to Questions 12 April 2013

¹⁶ Dickson Answer to Questions 12 April 2013



[34] This costing information can at best be described as being a “rough order of cost”. For instance, Mr Silvester describes his cost estimate for the seismic strengthening works, as being a rough order of cost over a range from minus 20% to plus 50%.

[35] None of the costings has been peer reviewed and on the face of it there could well be elements of double counting between some of the items. Also, the extent of the building settlement mitigation works (and their associated costings) seem excessive when compared with the information provided in the engineering experts’ joint statement which indicated maybe only “one pile”¹⁷.

[36] The costings for consultant and local authority fees are quoted by Mr Dickson as being around \$300,000 for the adaptive re-use option but it is not clear to us whether the \$2 m cost estimate for the new building provided by Mr Hoskins includes/ excludes these fees.

[37] Considerable caution must therefore be exercised in attempting to draw a direct comparison between the cost estimates that have been provided to us for the two options other than it being quite clear that re-use of the existing building is likely to cost a lot more.

[38] In its closing legal submission, HPT has assessed that the cost of the adaptive re-use option would be in the vicinity of \$2m.¹⁸ It reaching this conclusion, it would seem that HPT has failed to include the costs of the seismic strengthening and the compliance works which were provided separately and not included in Mr Dickson’s 12 April 2013 response.

[39] The capital funding for this project, if granted, will be provided by the Crown as part of Project Coverage pursuant to a capital injection agreement dated 22 July 2002. Funding provision for the project has also been approved by the UCOL



¹⁷ Engineering experts’ joint statement, 7 December 2009, para 23

¹⁸ Closing Submission, NZHPT para 41

governing Council. We take it that this funding is presently of the order of the \$2M that Mr Hoskins told us would be the cost of a new building.

[40] The costing figures both for adaptive reuse and for demolition/new construction are certainly imprecise at the moment, but we accept for the purposes of this decision that there will be a premium to be paid for retaining the existing building, strengthening it, and adapting it for the intended use. That is the all but inevitable consequence of recognising and providing for ... *the protection of historic heritage from inappropriate ... use and development.*

[41] There may be some financial assistance available from the HPT for a restoration of the existing building. Ms Alison Dangerfield, a heritage advisor for the HPT, confirmed that the maximum contribution presently available would be \$100,000, but whether that or any lesser sum would actually be available would be decided on a case-by-case basis.

Zoning and Activity Status

[42] In her s87F report, Ms Voice identified that, at the time the application was lodged, the site was within the *Outer Commercial* zone, and subject to the overlay of the OTCZ.

[43] She said that the proposal is categorised as an educational facility, and is therefore a *community activity* as per the District Plan's definition of that term. Chapter 14 provided that community activities are permitted in the *Outer Commercial* zone, if they comply with the relevant zone rules. As the proposal did not comply with the Parking Loading and access rule (R47¹⁹) and the requirements of Rule R24, it was to be assessed as a *restricted discretionary* activity. Ms Sylvia Allan, the planner called by the HPT, agreed with this assessment.

[44] Ms Voice noted that the application seeks to demolish structures in the OTCZ. She also noted that the construction of a new structure is a *restricted discretionary* activity under Rule R180. Ms Allan agreed that *restricted discretionary* status

¹⁹ Ms Voice explained that PC 20, now operative, amended the numbering in the Plan to make it readable online. The content of the plan was not changed.



applied to the new building, but also noted that Rule R181 makes demolition of structures in the OTCZ a fully *discretionary* activity.

[45] Under the bundling principle, Ms Voice said that the application should be treated as a *restricted discretionary* activity under the operative District Plan (that is, the plan as it stood when the application was made), but, as Ms Allan pointed out, R181 makes demolition a fully *discretionary* activity. Therefore, Ms Allan considered that the application (again, bundling the different aspects requiring consent) should be considered as a *discretionary* activity.

[46] Plan Change 21 (made operative on 25 May 2012, after the application was lodged) changed the site's zoning from *Outer Commercial* to *Arts and Commerce*, while retaining the OTCZ. The proposal is still defined as a *community activity*, but failure to comply with two rules – R238 (structures) and R240 (Parking Loading and access) still makes its construction and use a *restricted discretionary* activity. Ms Allan noted that the proposed new building does not meet R238(a) which would require the exterior walls to be built to street and site boundaries. Therefore the passive surveillance requirement of R238 cannot be achieved. As the OTCZ has not been amended, the demolition aspect of the proposal is still a fully *discretionary* activity.

[47] The overall status of the activity was not, therefore, changed as a result of PC 21. We will consider it as a fully *discretionary* activity.

The local significance of the site

[48] At para [108] of the 2010 decision, the Court found that the OTCZ under the Operative Plan did not:

... seek to prohibit demolition of buildings in the OTCZ and contemplates future use and development although that must be consistent with the conservation of cultural heritage. The cultural heritage which the OTCZ seeks to conserve is the European cultural heritage largely reflected in the buildings contained within the Overlay Zone.



[49] The OTCZ overlaps the broader area of Pakaitore and Moutoa Gardens. The Court noted in the 2010 decision that Pakaitore is of considerable cultural importance

to Whanganui Iwi. The evidence before us was that it was where their ancestors had kainga, fishing camps and paa; where their chiefs signed the Treaty of Waitangi; where their ancestors interacted with the new settlers for commerce and trade; and where they gathered to stage hui of regional significance.

[50] The Native Land Court building sits on the margin of the OTCZ at the corner of Market Place and Rutland Street. As the Court noted at para [17] of the 2010 decision:

... the site is situated at the northern extremity of the campus. Rutland Street divides the site from the bulk of the campus buildings and there is a certain stand alone element about this site in relation to the rest of the campus.

[51] The site is directly opposite Moutoa Gardens, with direct and open view shafts, appropriately looking past the statue of Major Kemp, towards the Whanganui River. It sits on the only site owned by UCOL where, in Te Puna's reported view, the Whanganui Iwi relationship with Pakaitore, Moutoa Gardens and the Whanganui River can be provided for. The possible alternative sites of the Federal Hotel on the corner of Market Place and Taupo Quay and the current car park off Taupo Quay, do not enjoy the same direct, unimpeded, link with all three iconic remnants of the cultural landscape of Whanganui township. Ms Tinirau explained that the old Court site was selected because of its natural character, its relationship with Moutua Gardens and the mana of the river.

[52] In supporting the proposition that demolition of the existing building is essential to the overall project, Mr Maassen submitted (at para 12) that:

The Iwi Institute is the final part of Project Coverage. It is an essential part of Project Coverage and will enable the Whanganui Iwi to have a Whare o te Wananga within an important ancestral/cultural area for Whanganui Iwi and celebrate the identity of tangata whenua with strong design elements connecting them to their ancestral lands and the Whanganui Māori more fully in the life and work of Whanganui's only tertiary institution. ... The Iwi Institute will happen if the Native Land Court building is demolished. ... If it is not demolished it is improbable that Whanganui Iwi will have an Iwi Institute at all.



Section 104(1)(a) effects of the proposal - permitted baseline/existing environment

[53] UCOL suggested that part of the *permitted baseline* could be to simply leave the building as it is, and allow it to deteriorate further. We do not consider that to be part of the *permitted baseline*, as we were not referred to any rule in the Plan that permits that to occur. In the sense that *doing nothing* is not *prevented* by the Plan, the existing building, in its present state, is though part of the existing environment against which we consider the proposal. We do not consider the possibility of *demolition by neglect* to be a likely outcome and we discuss it further in the next section of the decision.

[54] Ms Allan considered the Plan's Rules, and said that they provide only for minor changes and the maintenance of structures with the OTCZ. Within the definition of *minor change and maintenance* is a detailed description of such *permitted* activities, which include: cleaning, repainting, maintenance and sympathetic replacement of surface elements. In her opinion, the *permitted baseline* for the area is an environment which would be very similar to the present, where the building's fabric may be enhanced through maintenance and minor repairs, and where a relatively wide range of activities may occupy the existing building (subject to meeting other plan requirements). Ms Allan noted Mr McElroy's evidence that UCOL could allow the building to continue to decay, but hoped that would not be the case. Ms Allan also questioned whether the building would realistically reach that state, as the Council has recently signalled the building's importance and the HPT has offered to assist.

[55] While we acknowledge that hope, it is not a requirement that the building be maintained to any standard, there is no *permitted* activity for demolition, and the changes that can be made are minor. As for the construction of the new building, the planners noted that the building fails to comply with two *permitted* activity standards.

Positive and adverse effects

[56] If the application is granted, the adverse effects on the environment will be centred on the loss of a building to which the HPT has given its highest formal



recognition for its heritage value. Others may not entirely share that level of esteem for it, nor see its loss as an adverse effect of much significance. But the considered view of the organisation charged with administering the Historic Places Act – the purpose of which is: ... *to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand* - deserves considerable respect, and as we discuss shortly we would not differ from it without clear reasons.

[57] The other side of that coin, and the positive effect promoted by the applicants, will be the construction of a new building to a design that UCOL and Te Puna both want, on a site that has significance for Te Puna; the encouragement of participation by the rangatahi of Whanganui Iwi in tertiary education (so better providing for their social, economic and cultural wellbeing), and the enhancement of their experience while studying.

[58] If the application is declined, the ultimate outcome is not clearly predictable. One possibility is that the UCOL/Te Puna partnership may abandon any plans for the site, and perhaps look elsewhere, even if alternative sites may be regarded as *second-best*. If the site is not used for the Te Puna project, it may be available to UCOL for another campus project.

[59] If the site is not used for educational purposes, we understand from Mr McElroy that the funding arrangements with the Crown would oblige UCOL to return it to Crown ownership, or dispose of it at the direction of the Crown. What may then be done with it is presently imponderable. In any event, the rather faintly suggested spectre of UCOL choosing to do nothing with the site, and allowing the building to deteriorate to the point of collapse, would be fiscally insupportable even if UCOL retained it, and hardly seems a credible possibility.

[60] The other alternative, which the UCOL/Te Puna partnership did not advance, but did not convincingly discount either, was that Te Puna might decide to make the best of what it can get and accept the existing building after all, adapted and extended perhaps along the lines suggested by Mr Salmond in his evidence or some



adaptation of it. The added first storey would give the required floor area, and would provide the opportunity for an atea, or formal 'outdoor' ceremonial area. Granted, if his plan is adopted, the atea would face towards the south-east, rather than the more desirable east-to-north, and it would not have direct line-of-sight to the river across Moutua Gardens. Alternatively, it may be possible to use the upper floor, with its views overlooking Moutua Gardens to the River, for those purposes.

Section 104(1)(b) - Planning documents - Regional Plan and Policy Statement

[61] The (partly operative) Regional Policy Statement (Part 1 of the Manawatu Wanganui Regional Council's One Plan) has these provisions:

Objective 7-3 Protect historic heritage from activities that would significantly reduce heritage qualities.

Policy 7-10 Historic heritage

The Regional Coastal Plan and district plans must include provisions to protect historic heritage of national significance, which may include places of special or outstanding heritage value registered as Category 1 historic places, wahi tapu, and wahi tapu areas under the Historic Places Act 1993.

Policy 7-11 Historic heritage identification

- (a) Territorial Authorities must develop and maintain a schedule of known historic heritage for their district to be included in their district plan.
- (b) The Regional Council must develop and maintain a schedule of known historic heritage for the coastal marine area to be included in the Regional Coastal Plan.
- (c) Historic heritage schedules must include a statement of the qualities that contribute to each site.

[62] Under 7.5 Methods, this table appears:

| | |
|-------------|--|
| Method 7-9 | Proactive Identification of Historic Heritage |
| Description | <p>The aim of this method is to determine an approach to provide for the proactive identification of historic heritage resources within the Region.</p> <p>The approach may include the development of a Region-wide database or list of areas with a high potential for containing unidentified historic heritage <i>sites</i> and structures, amendments or variations to existing regional or Territorial Authority plans, or agreed partnerships for funding and carrying out surveys.</p> |
| Who | Regional Council, Territorial Authorities, New Zealand Historic Places Trust, New Zealand Archaeological Association, <i>hapu</i> and <i>iwi</i> and landowners. |
| Links to | This method implements Policies 7-10 and 7-11. |



| | |
|---------|--|
| Policy | |
| Targets | An approach is agreed upon within two years of this Plan becoming operative. |

[63] The Regional Policy Statement concludes with this statement:

The protection of historic heritage from inappropriate subdivision, use and development is a matter of national importance. It is considered important to provide a regional framework for the protection of historic heritage by:

- (a) requiring Territorial Authorities and the Regional Council to identify historic heritage sites and structures, and to include them in district plans and the Regional Coastal Plan, and
- (b) requiring the Regional Council to manage the effects on historic heritage for those resource use activities for which it has jurisdiction.

Objective 7-3 and Policies 7-10 and 7-11 provide the regional framework, guidance and direction required to manage historic heritage.

[64] We note that the One Plan's Regional Coastal Plan provisions do, as required, extend to the protection of historic heritage in the coastal marine area (see eg Table 17.1) but those provisions are not relevant to the issues here. There is nothing in the Regional documents that requires further analysis here – they are given effect to in the District documents, rounded out by the proposed terms of PC 29.

Section 104(1)(b) - The District Plan provisions

[65] The operative District Plan has a number of provisions generally relevant to the issues. While none individually could be described as decisive either way, taken overall, we think we agree with Ms Allan's opinion that they are supportive of the HPT position. The provisions we particularly have in mind, beginning with the identified *Issues* in the District Plan, are:

Heritage Issue 2 Conservation of Cultural Heritage Resources of the Wanganui District

Even with identification and recognition of *cultural heritage values*, there are concerns that unless conservation mechanisms are in place, *cultural heritage values* may be eroded or lost as a result of land use activities and the development process and natural events.

Damage or loss of *cultural heritage values* may be due to:



- a. Poor maintenance of heritage *buildings* or items leading to a state of disrepair and structural instability, which may be costly to repair and restore, and might ultimately require the demolition of the *buildings* or items.
- b. Demolition of heritage items, or redevelopment of heritage items or areas without regard to, and provision for, conservation of *cultural heritage values*.
- c. Inappropriate alterations or adaptations of heritage items or areas.
- d. New *development* which is incompatible with, and detracts from, the *cultural heritage values* of surrounding *buildings* or areas.

Equally, there are concerns that requirements to conserve items or places with recognised *cultural heritage values* may significantly constrain opportunities and design flexibility for new *development*.

Heritage Issue 3 *Conservation of the Cultural Heritage Values of the Old Town*

The 1990 Heritage Study of the Central Area of Wanganui has identified the Old Town of Wanganui as being of high conservation value. While individually many *buildings* and items may not be of extreme *cultural heritage significance*, the collective significance of the concentration of items and streetscapes endows the Old Town area with an overall significance that far outweighs that of the individual component.

There are *sites*, *buildings* and areas within the Old Town which require restoration, or redevelopment. Guidelines and incentives for the *conservation*, restoration and enhancement of *buildings*, or groups of *buildings*, in this area are considered necessary. Management of new infill *development* and redevelopment is required to ensure that new *development* is of appropriate design, materials, and scale to maintain and enhance *cultural heritage values*.

Historically, development in the Old Town was focused on, and closely associated with, the Whanganui River. Trading and transport-related activities were concentrated in the area between Bates Street and the City Bridge, and in particular, along Moutoa Quay. Historical buildings in the area have been demolished. Apart from the loss of *cultural heritage values*, the landscape and cultural significance of linkages to the Whanganui River has also been weakened. ...

Urban Issue 2 *Loss of Urban Amenity*

1. There are a number of particular amenity 'sub-issues' that relate to how the *effects* of urban land use should be managed in the interests of sustaining a high level of amenity



in the city. In order to establish what *effects* will be adverse to urban amenity, the individual components of urban amenity require identification. These would then form the basis of the 'sub issues'.

Components of urban amenities include:

- a. Landscape and visual characteristics – the shape, size, landscape features, streetscape and landmarks of the urban area; bulk, location and height of buildings; openness or density of *development*. ...
- d. Character – the vibrancy, style intensity and uniqueness of the urban form, its structures, and recreation opportunities, monuments and *infrastructure*.

2. Adverse effects on amenity include:

- a. Features and characteristics valued by the District community could come under threat from inappropriate *development*, unsympathetic modification, pollution and *natural hazards*. The landscape character of Wanganui is defined and enhanced by a number of landscapes features, heritage buildings, landmarks and physical characteristics which give shape, cohesion, and identity to the urban area. Examples of such features include the Whanganui River and adjacent terraces, the estuary and coastal dune system, Bastia and Durie Hills, Queens Park, the Old Town and tree-lined streetscape etc. ...
- d. Redevelopment and infill development within the existing urban area increases the density of development. This may reduce on site and neighbourhood amenities like daylight, privacy, outlook and visual character.

...

[66] We can then move to the relevant Objectives of the District Plan:

Objective O15 *Recognition and Conservation of the Special Cultural Heritage Significance of the Old Town*

The Old Town has a great concentration of heritage items and groups of heritage items. However, the *cultural heritage significance* of the Old Town is more than the individual items and areas that have been registered. The entire Old Town is recognised as a *conservation* area where special management is required to conserve its great *cultural heritage significance*.

Objective O23 *To ensure that development and activities in the central city area maintain or enhance the high quality amenity of the area.*

Development and *activities* have the potential to adversely affect the amenity of the central city area. Amenity will be maintained if the characteristics that people value are maintained or enhanced.



There are characteristics common to all of the areas of the central city, and characteristics unique to the individual areas that make up the central city. There are also characteristics that, while they do not currently exist, are important to create the places that the community desire.

The characteristics, or distinguishing qualities, that contribute to the amenity of *the central city area* include:

- The presence of heritage *sites* and *buildings*,
- Natural and historic heritage features;
- Good urban design. ...

In addition to the characteristics of the central city, *the old town area* has characteristics, or distinguishing qualities, that include:

- A mix of boutique, commercial and arts *activities* reliant on pedestrian movement;
- Buildings built to a high standard, up to the street frontage, reflecting the historic rhythm and with no gaps between them.

In addition to the characteristics of the central city, *the riverfront area* has characteristics, or distinguishing qualities, that include:

- Visual and physical connections with the Whanganui River;
- Riverbank shared pathway connection;
- Connects to Moutoa Gardens/Pakaitore, Queens Park/Pukenamu, and the central city;
- *Commercial activities* reliant on pedestrian movement;
- Public open space;
- Public open space is used for events and *activities*.

Objective O24 *To ensure that development and activities in the central city area reflect the importance of the Whanganui River to Wanganui*

The Whanganui River is perhaps the single most important feature of the District. Its historical significance is immense, to both colonial and Māori cultures. It is important that the significance of the Whanganui River is reflected in all development.

[67] Finally, we can refer to the Policies:

Policy P65 *Enable a range of activities that will revitalise the Old Town as a vibrant and physically attractive centre and conserve cultural heritage values to be located within the Old Town conservation area*



Empty *buildings* or floors contribute to the physical deterioration of the building stock and threaten the economic viability of development in the Old Town. Both can lead to damage or loss of cultural heritage values.

This policy aims at allowing greater flexibility in the way *buildings/sites* are used. The contribution of physical improvements to the *environment*, eg introduction of landscaping works, is also recognised by this *policy*.

Plan Change 29

[68] PC 29 was notified in late 2012, well after this application was made. It has yet to be considered by the Council, so it has no status other than as a possible modification to the District Plan's heritage provisions. Ms Allan said that while PC 29 removes the *Old Town Conservation Zone* in its entirety, it recognises the Old Town as a conservation area (as an Overlay zoning) and has specific provisions, including rules, for that area. She considered it to be a substantial rework of the heritage provisions of the District Plan.

[69] Ms Allan considers that some weight should be given to the objectives, policies and other provisions relating to *Built Heritage* in that Plan Change. This is because they are specific; relate to a s6 matter, and build on and enhance the way the Plan addresses heritage matters. Ms Allan also considers PC 29 assists in giving effect to the relevant RPS. PC 29 identifies the Native Land Court building as a Class A Heritage Inventory Item, which would make its demolition a *non-complying* activity if those provisions become operative. In its submissions, UCOL is somewhat dismissive of PC 29, regarding it as coloured by a *Eurocentric* view of historic heritage. In a sense, that may be so, but in this instance even if there may be a Eurocentric colour to the provisions, that will not disadvantage Māori save that their reported preference for a new, rather than adapted, building on this site will not come to pass.

[70] Ms Voice noted that UCOL has made a submission on PC 29. The submission seeks amendments to the rules about the notification of applications for different activities. Ms Voice confirmed that UCOL had not challenged the Class A categorisation for the Native Land Court Building and also confirmed that no other submitter asked for that classification to be changed. She also acknowledged that 11



Rutland Street was the only Category A item in the Old Town, and that it was given that status because of its Category 1 registration with the HPT.

[71] We note that the contents of PC 29 support the Category 1 scheduling of the building by the HPT, but given that it is at such an early stage of its processing, we give it no more specific weight than that.

Section 104(1)(c) – other relevant matters

[72] In some respects, this might have an appropriate heading under which to discuss the Court's 2010 decision, but we have found it more convenient to do so under individual topics.

Part 2 RMA

[73] In order to achieve the purpose of the RMA as outlined in section 5, we are required to have regard to the provisions of Part 2 of the RMA.

[74] We will discuss these statutory provisions about culture and heritage sequentially. Section 6 of the RMA contains matters to be ... *recognised and provided for* ... as matters of ... *national importance*. It provides:

Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance: ...

(e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

(f) the protection of historic heritage from inappropriate subdivision, use, and development. ...

[75] In some situations there can be a tension between matters of national importance under s6, and it was suggested that could be so here. In many circumstances, such tension can be resolved by recalling that the protection of s6(f) is not absolute, but is a protection from *inappropriate* subdivision, use and development. But, as we hope will be apparent from the balance of the decision, we think that any tension really is a construct of the way the cases for the parties have been put.



[76] Mr Salmond criticises the suggestion of conflict as:

... a false conflict between two matters of national importance identified in the Act. It is based on the erroneous presumption that the objectives of Te Puna and UCOL for Te Whare Matauranga O Whanganui cannot be accommodated in the existing heritage building on this site.

[77] Perhaps that is a little sternly expressed, but we are inclined to agree with the sentiment and the conclusion. There is the clear possibility that, with a little compromise on the part of Te Puna, both nationally important matters of s6(e) and (f) can be recognised and provided for.

Section 6(e) – the relationship of Māori with ancestral lands, water and sites

[78] There can be no doubt from the evidence that the Te Atihaunui a Paparangi – Whanganui Iwi have a strong relationship with the land traditionally known as Pakaitore, of which the old Court site forms part. They are the tangata whenua of this land. This area was of practical and spiritual significance to them before, and in the early times of, European contact, and it remains of cultural significance now. We heard how important it was for them to be able to regain a *foothold* in this area. It would also go some little way to restoring mana whenua for these people and would at least give them an independent physical presence on Pakaitore, close to Moutua Gardens (a place of great significance in itself) and with a direct line of sight across the Gardens to the Whanganui River.

[79] The importance of the site includes that it provides a nexus to the Gardens and the River. The latter remains of major cultural significance and is a strong icon of self-identification for all Whanganui Iwi, perhaps best expressed in the proverb:

E rere kau mai te awa nui mai i te Kahui maunga ki Tangaroa

Ko au te awa ko te awa ko au

(The great river flows from the noble mountains to the majestic sea

I am the river and the river is me)

[80] As noted above, we are required to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. In this case the term Māori must mean first and foremost, Te



Atihaunui a Paparangi – Whanganui Iwi and the ancestral land and waters we are concerned with are Pakaitore and the Whanganui River. We turn now to consider whether granting the consent sought is the only way of recognising and providing for that relationship.

The Māori view of the old Court building – should it be demolished?

[81] The old Court building is not, as we understand the evidence, regarded by Te Atihaunui a Paparangi – Whanganui Iwi as having cultural significance in itself. Indeed, the evidence was that it may even have strong negative connotations for Māori. That is because the Native land legislation and the Native Land Court from the 1860s to the 1920s, converted customary tenure into individualised freehold titles thereby facilitating the alienation of huge areas of land from Māori ownership. Such alienations were approved by the Court or the Land Boards in a manner that many complain accelerated the pace of colonisation. However, from the 1920s onward (ie from about the time this building was constructed and occupied) the thrust of the Native Land Court and the Land Boards work moved to focusing on recording ownership and successions; to consolidating Māori land titles into viable ownership units; and to creating productive and profitable enterprises on the land. Dubbed *the administration era* by the applicants, its work focused on Māori land development and administration – and all that of course was positive.

[82] It was originally said that for the applicants the negative memories of what had gone before still remain. As the building which housed the institutions formerly involved in land alienation and, perhaps more directly, as the repository (until the Court moved elsewhere in 1982) of the records of that alienation process, it is said that some regard the building with distaste and therefore it should be demolished.

[83] Conversely evidence for the HPT was that many Māori (who do not have a direct relationship with the land as ancestral land) would take a neutral position on the building itself. Indeed they may see its possible future adaptive use as a centre for Whanganui rangatahi involved in tertiary education as a strong and happy outcome which will outweigh and expunge whatever negatives may remain from its past.



[84] Even should they consider the history of the building as negative, Mr Te Kenehi Teira, the Kaihautu (the manager of Māori heritage nationally) for HPT, argued that negative associations can be as important as positive associations for Māori. At para 11 of his brief, he says this:

Examples of these types of places will also be presented [ie in his later evidence] to illustrate the value that iwi, hapu and whanau hold for places that have negative historical associations. Two of the examples, also former Native land Court buildings, have been conserved and adaptively reused for modern purposes with the support of iwi, hapu and whanau.

[85] We consider that these two contrasting views do not indicate one way or the other why the relationship of the Whanganui Iwi cannot be recognised and provided for without the need to demolish the building. The views of Māori from other iwi, while important to how the history of the building should be portrayed, either as of regional or local significance, do not assist in the determination of how to recognise and provide for the ancestral relationship of Atihaunui a Paparangi – Whanganui Iwi with the site.

[86] While we must recognise and provide for s6(e) matters, our clear view is that any stigma associated with the Land Board and the Native Land Court cannot be the basis for preferring the UCOL/Te Puna demolition and rebuild option over the adaptive reuse of the building. We would require much stronger and direct evidence about such sentiment as a basis for rational decision making, and no authority has been cited to justify such an approach. We consider, as an alternative, that we can provide for and recognise s6(e) matters by reconciling these with the matters we must recognise and provide for under s6(f).

[87] Another, although somewhat faint and indirect, suggestion about a disapproving view of the building came from the fact, mentioned earlier, that that site was purchased, and the building constructed, using Māori Land Board funds. The Board was responsible for collecting rents for leased Māori land and distributing it to the (often multiple) owners. Sometimes, said to be because of administrative shortcomings, that was not properly done, and sometimes because the individual amounts were so trifling that they were not worth the owners' bother of coming to



town to collect them, parts of the rents were never distributed. After a lapse of time, unclaimed amounts were accumulated by the Board as *surplus* funds. In part at least, these were the funds used to finance the new building, together with other funds accumulated by the Board which did not carry the taint of being money that *should have* found its way to its rightful owners. What the relative amounts and proportions of these income flows were, we simply do not know. One can understand a lingering sense of unfairness about that although it was a process having an exact and current counterpart in the Unclaimed Money Act 1971, where money held by various institutions and deemed to be *unclaimed*, is required to be paid to the Commissioner of Inland Revenue and is available for use as part of the Crown Bank Account.

[88] More importantly, we do not see how this can be relevant to a decision under s6(e) because the money used by the Land Board would have been derived from the lands of the many tribes throughout the Aotea region not just the Whanganui Iwi and their lands.

Section 6(f) - heritage values

[89] The RMA defines *historic heritage* as:

- (a) ... those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
 - (i) archaeological;
 - (ii) architectural;
 - (iii) cultural;
 - (iv) historic;
 - (v) scientific;
 - (vi) technological; and
- (b) includes—
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Māori, including wāhi tapu; and
 - (iv) surroundings associated with the natural and physical resources

[90] It is clear from this provision that we are required to recognise and provide for both European and Māori historic heritage where they are both present in cases before us. The question is one of balance depending upon the circumstances of the case and the relevant planning documents. In this case, we have a historic building on one part of an important cultural site.



[91] The building is important because it has received HPT registration under the provisions of the Historic Places Act 1993. The purpose and principles of that Act are set out in s4:

- (1) The purpose of this Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.
- (2) In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise—
 - (a) The principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and
 - (b) The principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should—
 - (i) Take account of all relevant cultural values, knowledge, and disciplines; and
 - (ii) Take account of material of cultural heritage value and involve the least possible alteration or loss of it; and
 - (iii) Safeguard the options of present and future generations; and
 - (iv) Be fully researched, documented, and recorded, where culturally appropriate; and
 - (c) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.

[92] It can be seen that the provisions in the two statutes, the RMA and the Historic Places Trust Act 1993, are entirely compatible. The Native Land Court building is registered with the HPT with a Category 1 listing and, as a result of Plan Change 29 (and because it is an HPT Category 1 building), it is proposed to be listed in the heritage inventory of the District Plan for Category A protection.

[93] The HPT, in summary, contended that the building has important heritage values because:

- *It has architectural significance*, this being derived from the period and style of its design and construction, and its context and streetscape values. It was one of the last two buildings that Government Architect John Campbell was responsible for before he retired in 1922. The other was Parliament Buildings.



- *Uniqueness* - the building is unique as there is no other like it within the OTCZ. Adaptive reuse would allow it to continue to contribute to the streetscape of Market Place and the OTCZ. Its absence would diminish the variety and extent of the OTCZ by removing the firmness of the building on the corner.
- *Historical significance* - the HPT noted the history of the Native Land Court and the Land Board.

[94] In terms of s22 of the Historic Places Act 1993, a classification as Category 1 indicates that the Trust regards the building as a place ... *of special or outstanding historical or cultural heritage significance or value*. Having so classified it, the HPT regards the building's demolition as a breach of the principles of the Act and of the ICOMOS: International Charter for the Conservation and Restoration of Monuments and Sites: NZ Charter. Its position is that the building should be adapted for reuse by UCOL, and that that can be done at a reasonable cost, although we note again that in its closing submission HPT omitted to include the costs of the seismic strengthening in its assessment of the overall cost for reuse.

[95] Section 22 also expresses *the purposes of the register* as including:

(2) ...

(c) To assist historic places, historic areas, wahi tapu, and wahi tapu areas to be protected under the Resource Management Act 1991.

[96] The placing of a building or site on the HPT register does not have the legal effect that the making of a heritage order under s187ff of the RMA would have, and the registration does not, as a matter of law, create an onus which an applicant must displace. But it does reflect the considered and processed opinion of an expert body, measured against the criteria in s23 of the Historic Places Act, and as such is worthy of considerable respect and should not be overturned without coherent evidence.

[97] Conversely, in the 2010 decision, the Environment Court was somewhat lukewarm about the heritage significance of the building. At para 136ff it said this:

[136] In the *Heritage Issues* section of this decision we identified that the significance attributed to the Māori Land Court building by NZHPT derived from its



architectural and historic qualities. Although we accept that the building does have architectural and historic qualities as identified by NZHPT we have some reservations as to whether or not those qualities are of the significance which NZHPT has asked us to attribute to them.

[137] In para [90] of this decision we ask the questions what is specifically *unique* or *purpose built* about the building. It appears not untypical of small administrative buildings of the 1920's/30's era. We do not think that there were any features which proclaimed it to be a Māori Land Court. We appreciate that the building was designed by the Public Works Department of the New Zealand Government whilst Mr Campbell was its director. Whether it is one of his significant works seems highly debateable.

[138] Insofar as historic significance is concerned, we generally accept the propositions advanced for NZHPT that retention of the building as a symbol or reminder of the history of land alienation both in the Whanganui region and in New Zealand generally and the effect which this alienation had on Māori communities may potentially contribute to the understanding and appreciation of New Zealand's history and cultures. On the other hand, those Māori interests represented by Te Puna at our hearing might consider that contribution less important than advancing their own social and cultural needs and indeed might wish to see the symbolic reminder demolished as a desirable end in itself.

[139] Our acknowledgement of the building's historic significance however must be tempered. We have referred to the Māori Land Court building as potentially contributing to the understanding of our history and cultures by providing a reminder or symbol of the land alienation process. We have deliberately used the word *potentially*.

[140] Other than to that section of the community which has a particular knowledge or interest in the building it presently provides little of a reminder or symbol. There is nothing of any kind on the building at present to indicate what its initial use was. There is nothing to indicate that it was a courthouse, let alone a Māori Land Courthouse. It simply appears to be a small, old, somewhat dilapidated building which may have been used for administrative purposes. While there may be a story to be told by the building, it does not presently tell that story to the wider public.

[141] It might be possible for the building to be adaptively reused for some other purpose and as part of that process for it to be rejuvenated in some way so as to highlight its historic significance. We think that would be a matter of some moment



and a desirable outcome. It is not one which can be forced on UCOL. It is equally possible that the building could be left to deteriorate to such an extent that its retention becomes impossible. This is the process known as demolition by neglect. Arguably the building's historic significance might be appropriately marked in some way by memorialisation even if it was demolished, but there was no firm proposal before us in that regard.

[98] We find ourselves more positive about the historic heritage value of the building than did the Court in 2010. In addition to the witnesses heard then, we had the advantage of the appraisal by Mr Salmond, who was very positive about it. He considered it to be ... *a building of architectural and historic significance to the Whanganui district*. In considering the comments made about it in the 2010 decision, he went on to say:

In the previous case the Court notes that there is "*nothing to indicate that it was a courthouse, let alone a Māori Land Courthouse*". At that time, however, architectural styles were not generally applied to reflect the functions of such buildings (and nor are they today), but were intended to provide an appropriate setting in the wider urban landscape for the activities they accommodated. They followed formal architectural rules of order, scale and geometry, which were applicable to all institutional and most commercial buildings.

[99] Nor did Mr Salmond agree with the Court's view that the building has diminished heritage value because it presented as ... *a small, old, somewhat dilapidated building that may have been used for administrative purposes*. He said:

In my professional view the former Land Court is a sound building that is the victim of systematic neglect through lack of prudent maintenance that all buildings need for their well-being.

I do not agree that being "small" or "old" diminishes either the historic significance or utility value of this or any other heritage building, nor its capacity to be adapted for a new purpose. (He then went on to note the revised and now significantly smaller UCOL space requirements.)

Conclusions on s6



[100] We conclude, first that the adaptive reuse of the existing building could, on the evidence we heard, recognise and provide for the relationship of Māori (Te

Atihaunui a Paparangi – Whanganui Iwi) with their ancestral land, water, and sites. Secondly, the provision of specific space in Pakaitore for fostering cultural activities and awareness among Māori UCOL students would recognise and provide for their culture and traditions and their relationship with their ancestral lands, waters and sites. Thirdly, we accept the evidence for the HPT that the existing building is a significant piece of historic heritage in local, regional, and national terms and should be protected from inappropriate use and development.

[101] The only open issue might be whether the building is significant enough that the reported disinclination of Te Puna to have it adapted for the intended use makes its demolition and replacement an appropriate use and development.

[102] Our clear view is that it does not. While we can understand a wish to have a new and purpose-built facility the existing building can, we are satisfied, be adapted and made to satisfactorily fit Te Puna's purpose, with only minor compromises in design, while at the same time recognising and providing for a matter of national importance. We do not, however, go so far as to approve the design suggested by the HPT, but rather consider that so long as the facade of the building is maintained, the applicants should be free to utilise the interior as they see fit.

[103] We repeat here our earlier acceptance that there will be a premium to be paid for retaining and reusing the existing building, in our view an all but inevitable consequence of recognising and providing for the protection of historic heritage from inappropriate use and development.

Section 7

[104] Section 7 contains the matters to which we are to also have ... *particular regard*. It provides:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) Kaitiakitanga:
- (aa) The ethic of stewardship:
- (b) The efficient use and development of natural and physical resources:
- (c) The maintenance and enhancement of amenity values:



- (f) Maintenance and enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources:

[105] The term *kaitiakitanga* is defined as the *exercise of guardianship by tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship*. The term *tangata whenua* is defined as the iwi, or hapu, that holds mana whenua over a particular area. *Mana whenua* is defined as the ... *customary authority exercised by an iwi or hapu in an identified area*.

[106] Kaitiakitanga was an issue discussed by Mr Hoskins, Ms Tinirau and Mr Teira. These witnesses accepted that the Kaitiaki for this area were Whanganui Iwi. It was also accepted that there were obligations associated with the term, including looking after the students from other tribes who participate in activities occurring within the new facility. Ms Tinirau noted that the principle of manakitanga would govern the issue. Mr Hoskins and Ms Tinirau explained that the new building would incorporate design features that emphasise Whanganui Iwi identity and whakapapa links to the other iwi of the UCOL area.

[107] We note that the obligations of kaitiakitanga may also include acknowledging other Māori in the region when deciding whether to support demolition of the building or, alternatively, deciding how to preserve and present the history of the Native Land Court from a regional perspective.

[108] The latter obligation arises because the geographical district of the Aotea Native Land Court and the Aotea Māori Land Board – for which Whanganui was, and remains, the only Registry and depository of Māori land records, is huge. Its boundary extends from northern Taranaki eastwards to Lake Taupo and down the mountainous central spine of the Island to Wellington, so it includes Taranaki, Taihape, Turangi, Ruapehu, Rangitikei, Manawatu, Horowhenua/Kapiti and Wellington, encompassing the rohe of many iwi. Those iwi include Ngāti Ira, Ngāi Tara, Ngāti Toa, Te Atiawa, Ngāti Raukawa, Rangitane, Ngāti Apa, Muaupoko, Ngāti Haua, Ngāti Tūwharetoa, Ngāti Hauiti, Te Atihaunui-a-Paparangi, Pakakohe/Tangahoe, Ngā Rauru, Ngāti Ruanui, Ngāti Tama, Ngāti Maru, Ngāti



Mutunga, Taranaki, Ngā Ruahine. There are also the smaller groups identified by Mr Teira. This information is readily available on the Māori Land Court web-site.

[109] While there were satellite Court sittings at venues throughout the District, the Court held the title records of most of these tribes in Whanganui. The records of the hearings were stored in the building, or in Wellington, and many Māori from these tribes would have travelled to Whanganui or Wellington to access them. The Minute Books for Aotea are replete with their traditional and cultural histories, or with the Court cases that were filed to defend land rights. One of these was the famous case of *Te Heuheu Tukino v Aotea District Māori Land Board* [1941] NZLR 590, eventually resolved in the Privy Council. The short point is that the use of the building is not only relevant to the history of Whanganui Iwi, it is also relevant to other Iwi of the historic Aotea Native Land Court District. We do not consider that we are over inflating the importance of the building by recognising this point; rather we are reporting why it is historically significant to the region.

[110] While in tikanga terms, the ahi kaa, rangatiratanga and kaitiakitanga of Te Atihaunui a Paparangi – Whanganui Iwi are to be respected, the link for the other tribes should also be acknowledged.

[111] A further matter to which we have had regard is the definition of *the ethic of stewardship*. A steward is one who manages the property or estate of another - recognition that a current generation is to be charged with, in terms of s5, sustaining the potential of resources to meet the reasonably foreseeable needs of future generations. Protecting historic heritage for Māori and other New Zealanders has resonance in this case, although we recognise that it should not impose an obligation on an owner to maintain a heritage item at all costs: - see eg *NZHPT v Christchurch CC* (C173/2001).

[112] We also consider that the maintenance and enhancement of amenity values, and the quality of the environment, will be met by protecting this building, from use and development that is inappropriate in s6 terms. Our approach is also an



acknowledgement of the finite characteristics of the physical resource of heritage buildings. By definition, they are scarce and irreplaceable.

Conclusions on s7

[113] As with the s6 factors, and having *particular regard* to the s7 issues we conclude that the principles of the section would be best served by a solution that avoids demolition of the existing building, in favour of allowing its adaptive reuse.

Section 8 – the Treaty of Waitangi

[114] It of course needs to be recognised that the partnership embedded in the Treaty is between Māori and the Crown, and that UCOL and the Council are not the Crown and are not subject to the obligations imposed on the Crown.

[115] But there was no disagreement that the principles of the Treaty to be *taken into account* here (in terms of s8) are those of the obligation to act reasonably and in good faith, and of rangatiratanga: - see eg *Hanton v Auckland CC* [1994] NZRMA 289; and *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8.

[116] We consider that the rangatiratanga of Whanganui Iwi is not denied by declining this consent. Rather it is reconciled with the competing interests of other New Zealanders, including other Māori, represented by the HPT. In addition, as kaitiakitanga is an element of rangatiratanga, we consider the impact of the Native Land Court in the history of the region should be acknowledged and accommodated. In the end, how this should be done should be left to the applicants.

Conclusion – s5 – the purpose of the Act

[117] In summarising its reasons in the 2010 decision, the Court said (para [47]) that the uncertainty about just what was proposed as the replacement facility was significant for two reasons:

At least one plank of UCOL's case was the inability of the present Māori Land Court building to be adapted for use for modern educational purposes. We were told that what is required to meet Māori educational needs at UCOL is a three storey, 1200m²



building which cannot be accommodated by adaptive reuse of the Māori Land Court building. However, those requirements have been arrived at by reference to a specific series of design guidelines catering for uses which might never be accommodated within the iwi institute. On the basis of the evidence which we heard, there are some real questions as to whether or not a structure of the dimensions proposed (and which therefore requires demolition of the present building), is in fact required to meet Te Puna's needs.

Ultimately, we think that the outcome of these proceedings comes down to an assessment of the social and cultural benefits which might accrue to Māori from the establishment of the iwi institute against the adverse effects on heritage values which might arise from demolition of the Māori Land Court building. It is however, difficult to assess the benefits to Māori in other than a quite vague and general way, when the nature of the iwi institute and what it is to do remains as nebulous as it presently appears to be.

[118] As we see it, the position now is significantly different in material respects. It is not now suggested that only a three-storey, 1200m² building will suffice. The required floor area is now half that and, as Mr Salmond has modelled, the existing building could be adapted and expanded to meet that requirement. The Court's earlier doubt has been clarified – demolition is not required to meet Te Puna's needs.

[119] Secondly, it is now possible to better compare, insofar as such different concepts can be compared, the social and cultural benefits which would undoubtedly accrue to Māori from the establishment of the institute, against the adverse effects on heritage values which would arise from the demolition of the building. More to the point, it is possible to say that now that the actual requirements are known, with a little compromise on the part of UCOL/Te Puna, and the expenditure of more money, the community can have the benefits of both the institute and the retention of a heritage building. If both can reasonably be had, the dilemma of the sacrifice of one to achieve the other no longer needs to be resolved.

[120] If the existing building is kept, and adaptively reused, its significance as the home of the former Land Board and Native Land Court, and Māori Land Court could very well be marked by good memorialisation of those times and events in its history. As one mitigant of the loss, or the absence, of that history, memorialisation



should not, we suggest, be done only when a building is demolished. If it changes use, its former significant uses deserve to be recorded.

Result

[121] For the reasons traversed, we have come to the clear view that, when the purposes of the UCOL/Te Puna partnership can be met by adaptively reusing this building, to demolish it to make space for a new building will be an inappropriate use and development of it, and thus fail to recognise and provide for a matter of national importance, in terms of s6. We should add too that given the extensive reworking of the building's interior over the years, we would not be overly concerned at the absence of an attempt to recreate the interior's original form. In the end though, that will be a matter to be decided if and when there is an application for consent to renovate and adapt it.

[122] In the overall weighing of issues to decide whether the application would meet the purpose of the Act – *the sustainable management of natural and physical resources* - we conclude that the adaptive reuse of this building for the purpose of enabling people and communities to enhance their cultural and economic (and probably social also) wellbeing will undoubtedly be the better option.

[123] The application for a resource consent authorising the demolition of the building is declined.

Costs

[124] Costs are reserved. Any application should be made within 15 working days of the issuing of this decision, and any response lodged within a further 10 working days.

Dated at Wellington this 17th day of May 2013

For the Court

C J Thompson
Environment Judge







Appendix B *Results Set*

Window shadow in the public office of the Native Land Court building.

March 2013, photograph by author

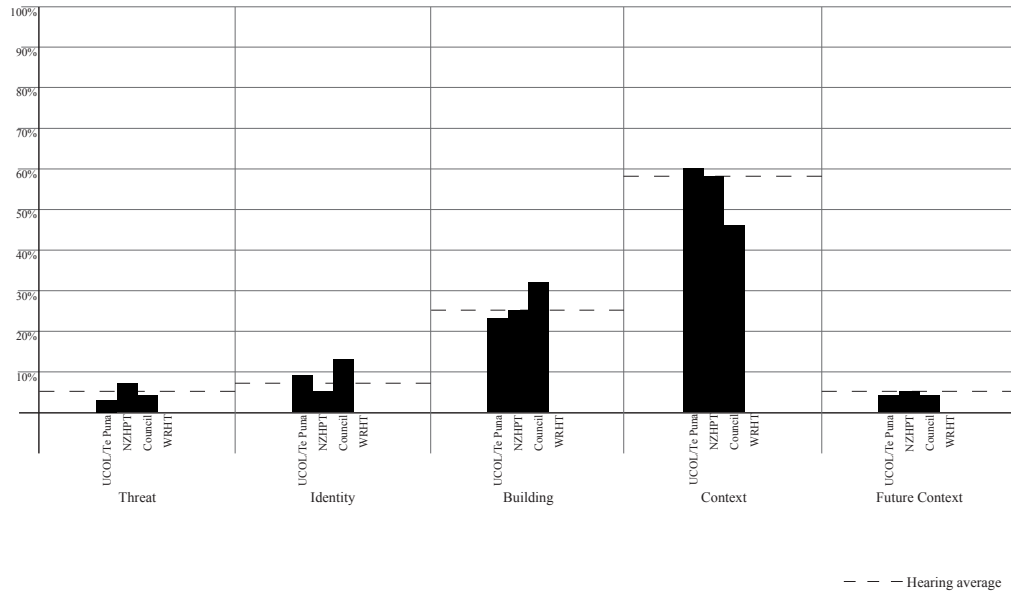
| Expertise | Party | | | |
|---------------------|---------------------------------|--------------------------------------|----------------|-----------------|
| | UCOL/Te Puna | NZHPT | Council | WRHT |
| Architecture | Rau Hoskins Bruce Dickson | Jeremy Salmond Alison Dangerfield | | |
| Engineering | John Silvester | Win Clark | | |
| Planning | David Forrest | Sylvia Allan | Rochelle Voice | |
| History | David Armstrong | Grant Young | | |
| Education | Frances Goulton Paul McElroy | | | |
| Heritage | Esther Tinirau | Te Kenehi Teira Dean Whiting | | Wendy Pettigrew |

Table showing the parties and expertise of the expert witnesses.

| Category | Subcategory | Number of Paragraphs | Number of Question Sets | Percentage of Paragraphs | Percentage of Question Sets |
|---------------------------|---------------------------------|----------------------|-------------------------|--------------------------|-----------------------------|
| Threat | | 52 | 62 | 5.12% | 3.97% |
| Identity | | 73 | 213 | 7.19% | 13.63% |
| Building | Current Building | 124 | 158 | 12.22% | 10.11% |
| | Proposed Iwi Tertiary Institute | 84 | 66 | 8.28% | 4.22% |
| | Other Proposed Building | 44 | 79 | 4.33% | 5.05% |
| Building Sub-total | | 252 | 303 | 24.83% | 19.39% |
| Context | Historic | 197 | 150 | 19.41% | 9.60% |
| | Site | 45 | 187 | 4.43% | 11.96% |
| | Legislative | 237 | 324 | 23.35% | 20.73% |
| | Other | 109 | 303 | 10.74% | 19.39% |
| Context Sub-total | | 588 | 964 | 57.93% | 61.68% |
| Future Context | | 50 | 21 | 4.93% | 1.34% |
| Total | | 1015 | 1563 | 100.00% | 100.00% |

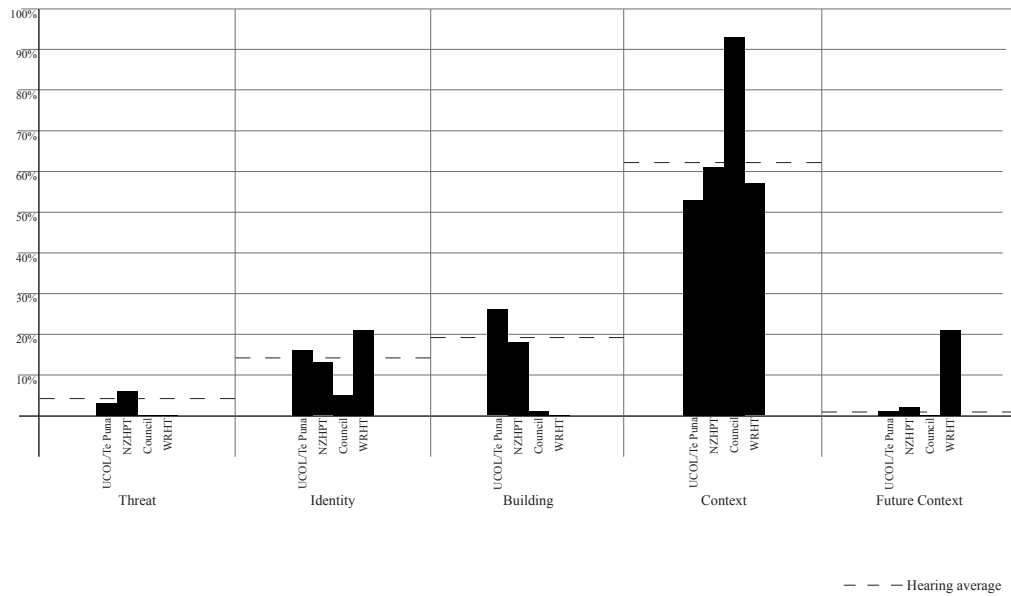
Table showing the absolute number of paragraphs and question sets, and the percentage of paragraphs and questions sets for the hearing overall.

Percentage of paragraphs from the written statements of evidence for each party

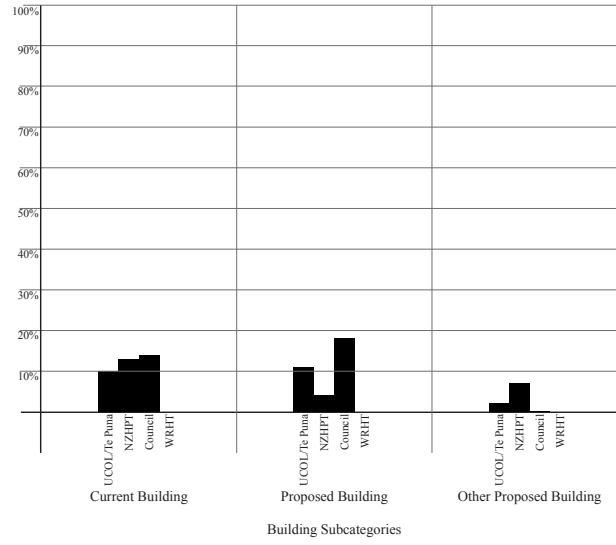


Parties

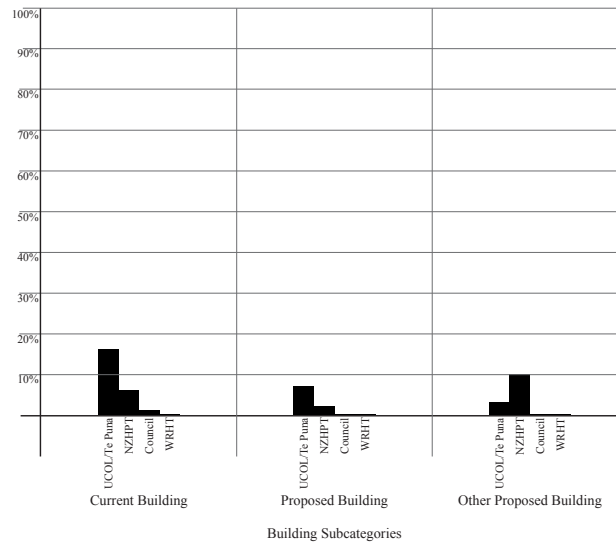
Percentage of question sets from the cross-examination of each party



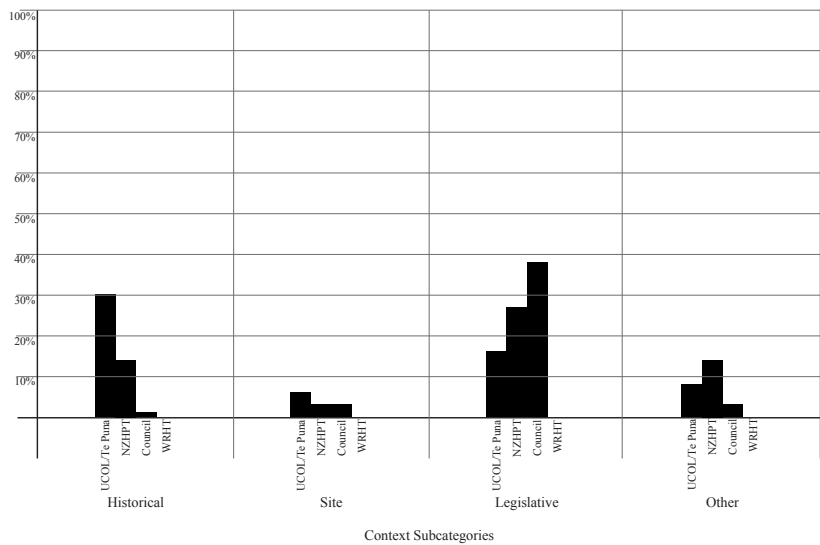
Percentage of paragraphs from the written statements of evidence for each party



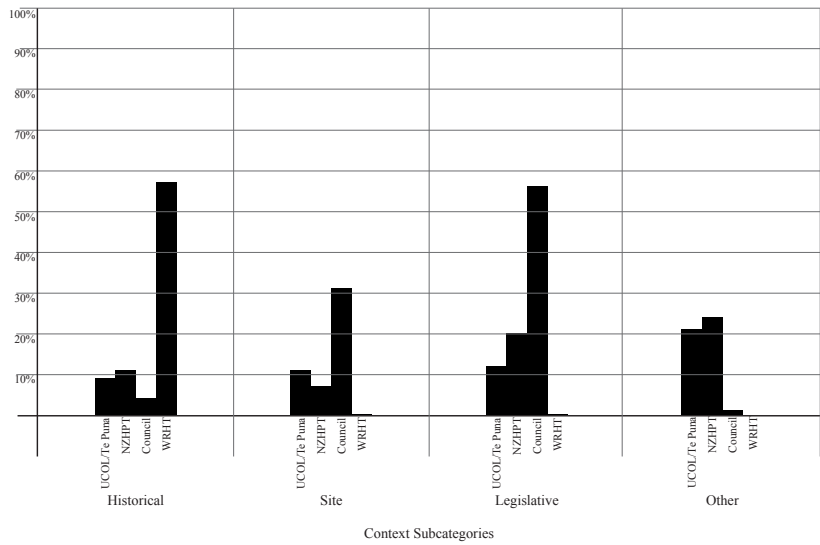
Percentage of question sets from the cross-examination of each party



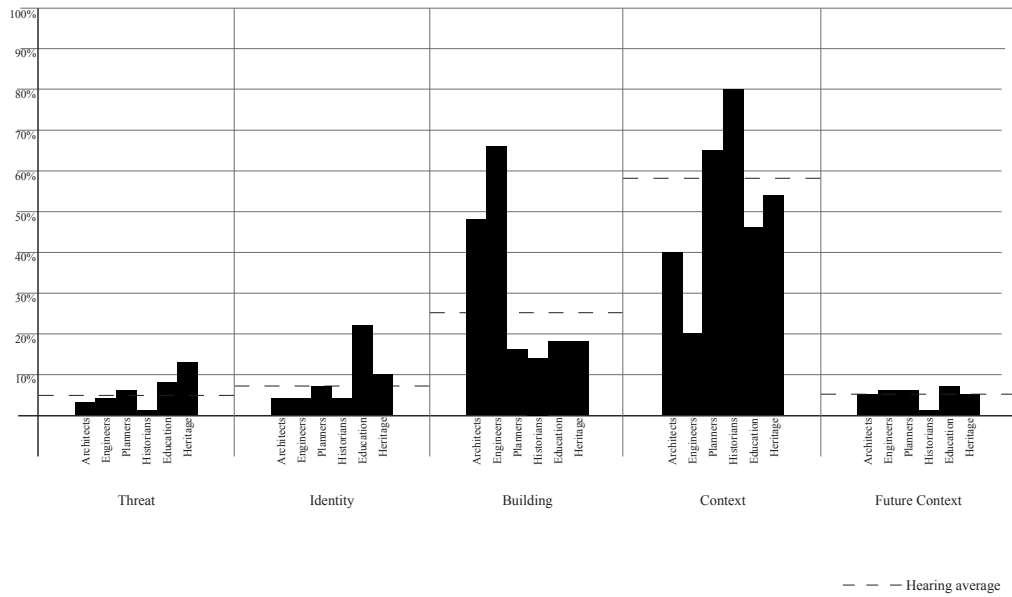
Percentage of paragraphs from the written statements of evidence for each party



Percentage of question sets from the cross-examination of each party

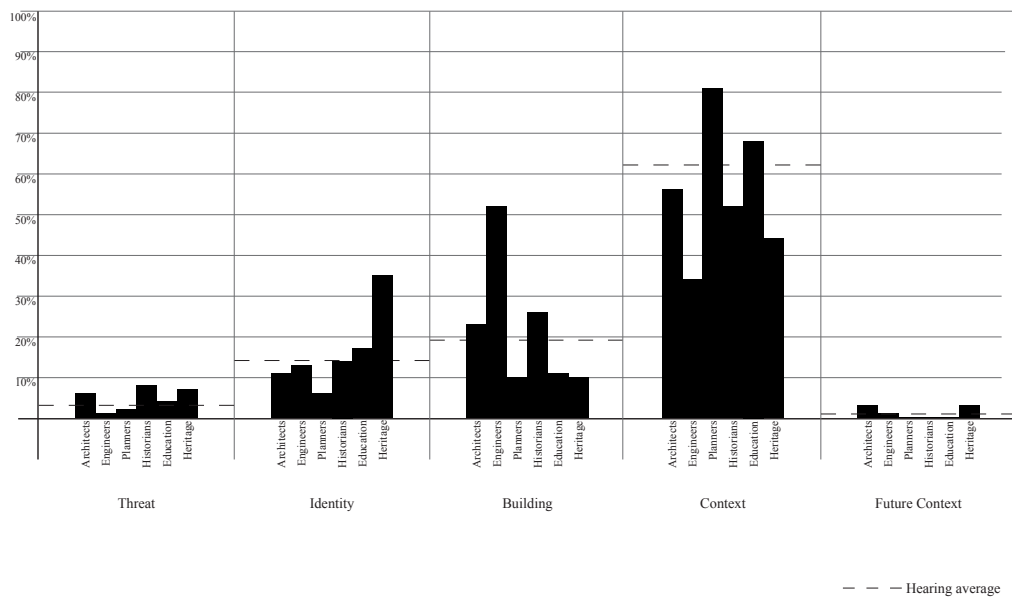


Percentage of paragraphs from the written statements of evidence for each professional expertise

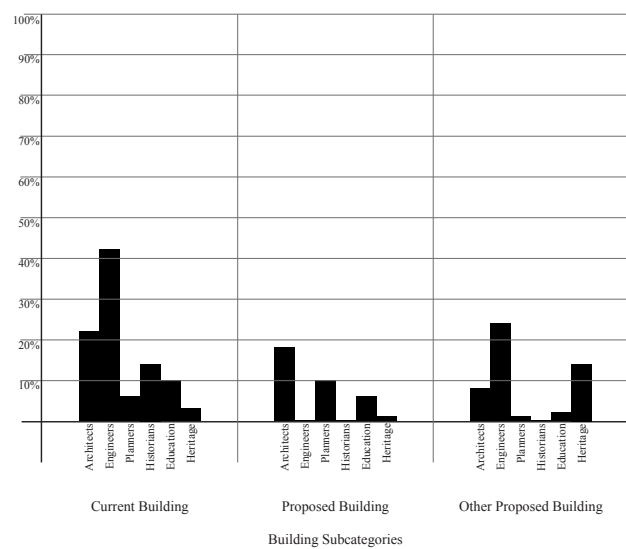


Expertise Groups

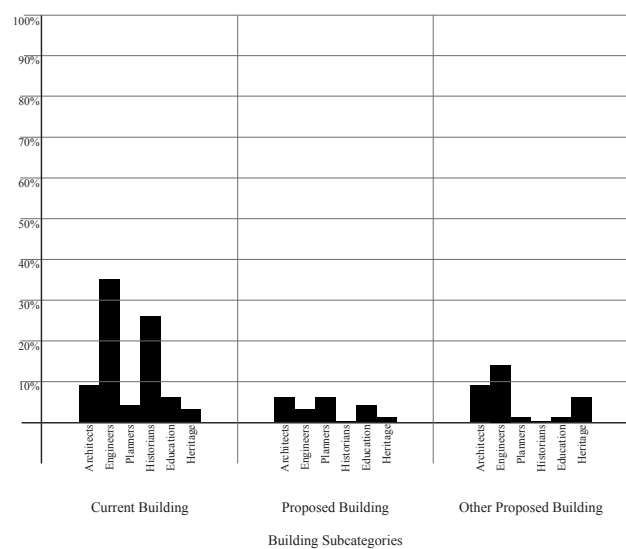
Percentage of question sets from the cross-examination of each professional expertise



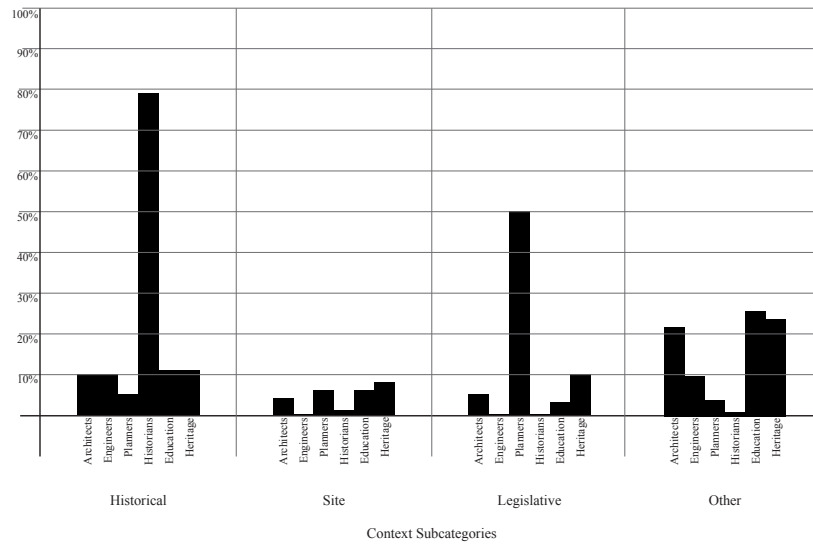
Percentage of paragraphs from the written statements of evidence for each professional expertise



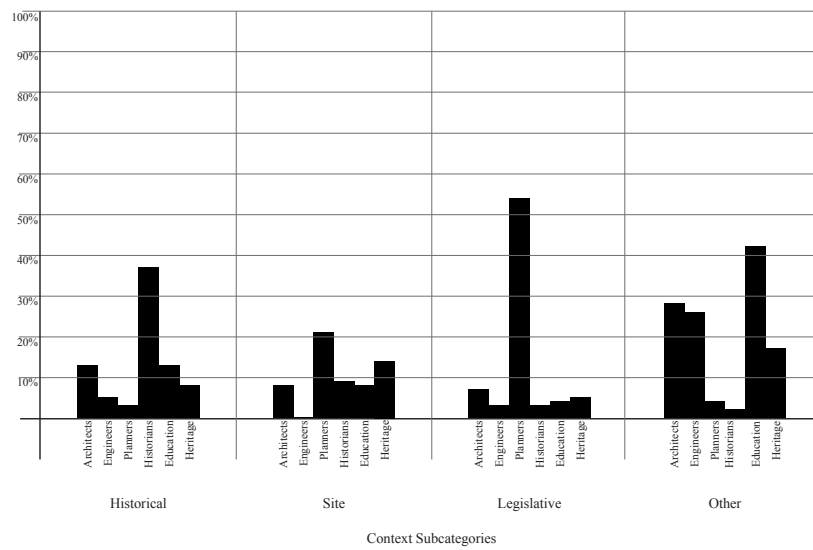
Percentage of question sets from the cross-examination of each professional expertise



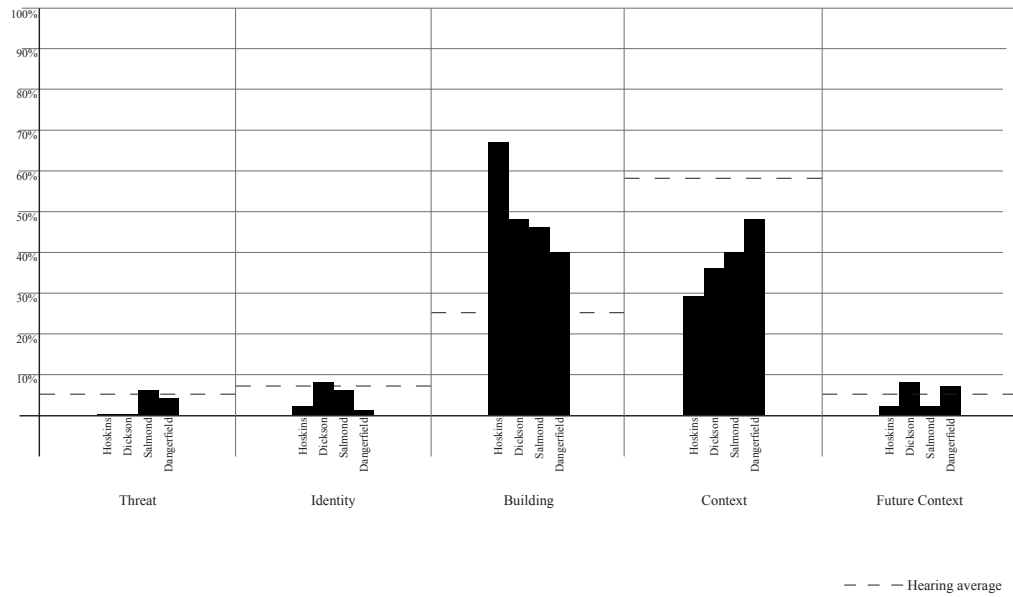
Percentage of paragraphs from the written statements of evidence for each professional expertise



Percentage of question sets from the cross-examination of each professional expertise

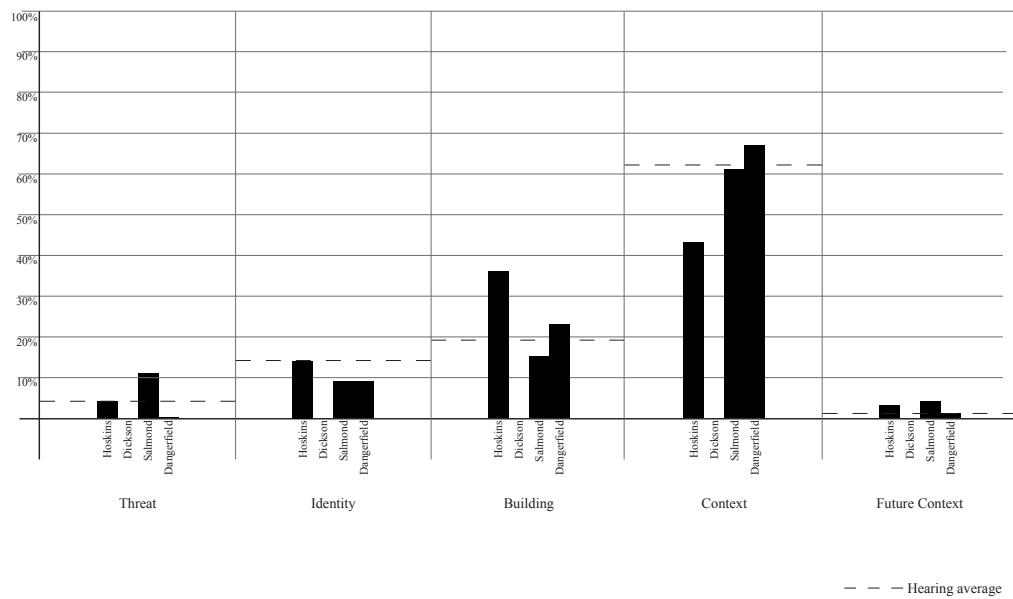


Percentage of paragraphs from the written statements of evidence for architecture witnesses

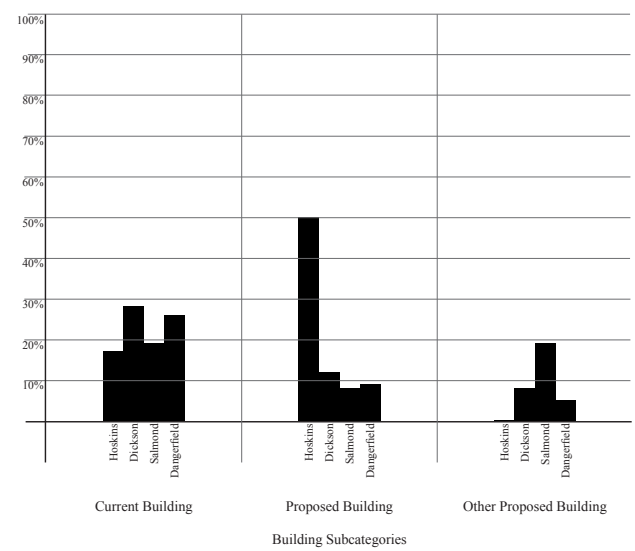


Architecture Experts

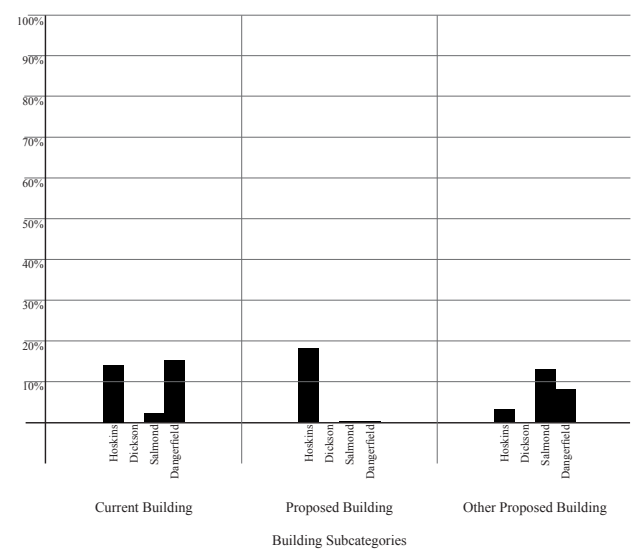
Percentage of question sets from the cross-examination of architecture witnesses



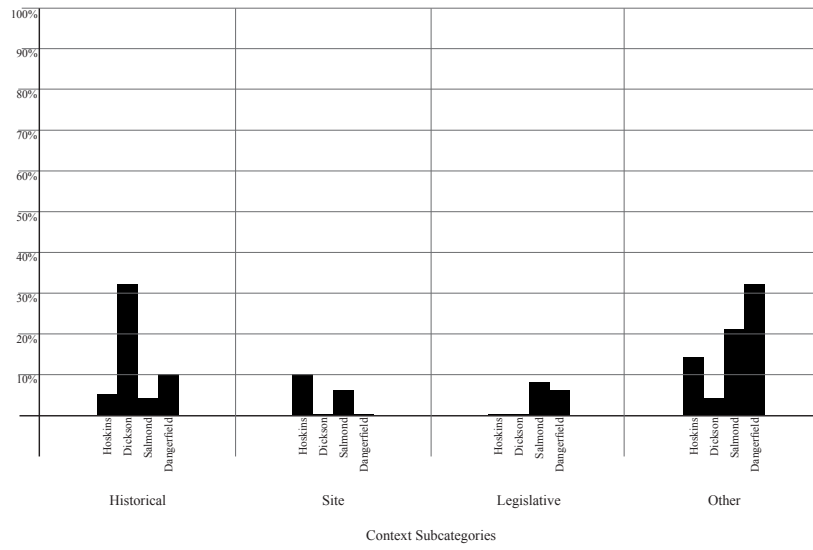
Percentage of paragraphs from the written statements of evidence for architecture witnesses



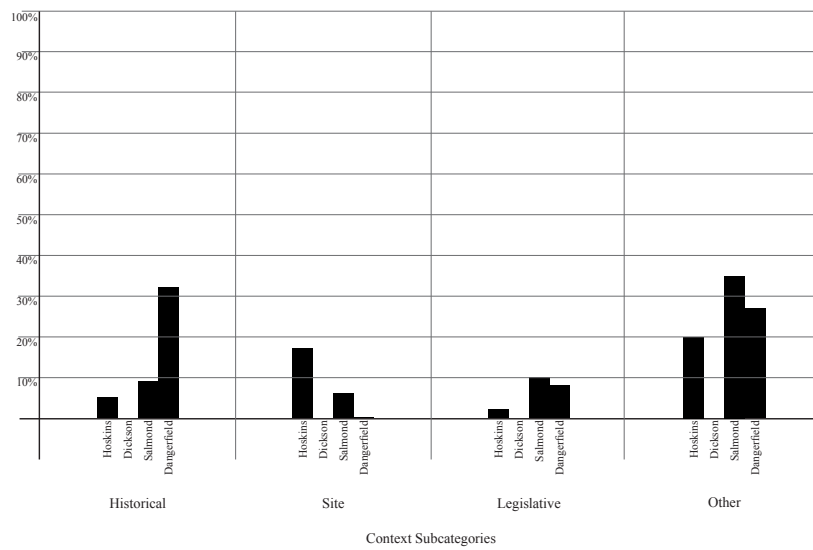
Percentage of question sets from the cross-examination of architecture witnesses



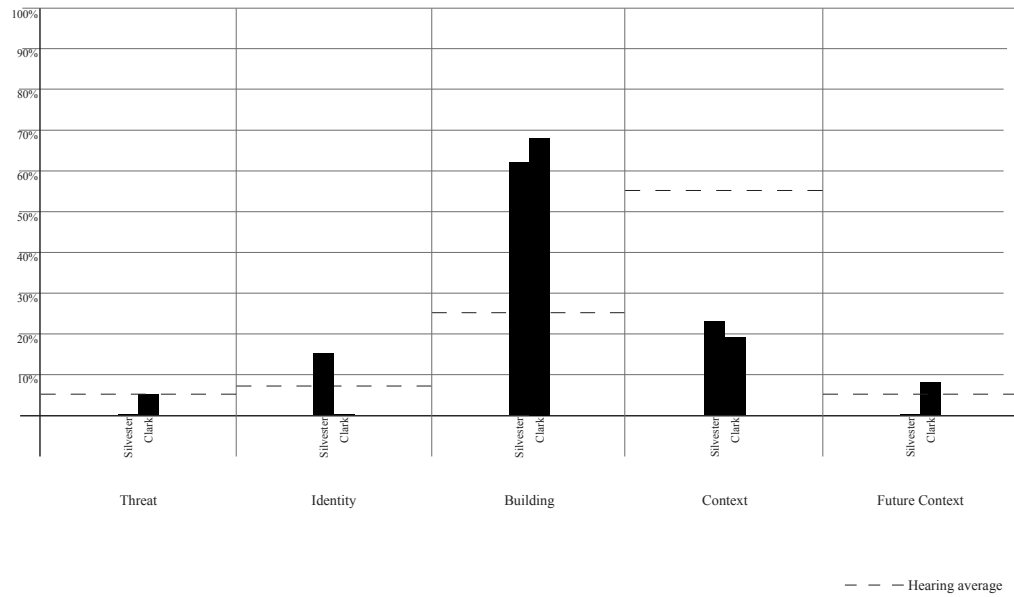
Percentage of paragraphs from the written statements of evidence for architecture witnesses



Percentage of question sets from the cross-examination of architecture witnesses

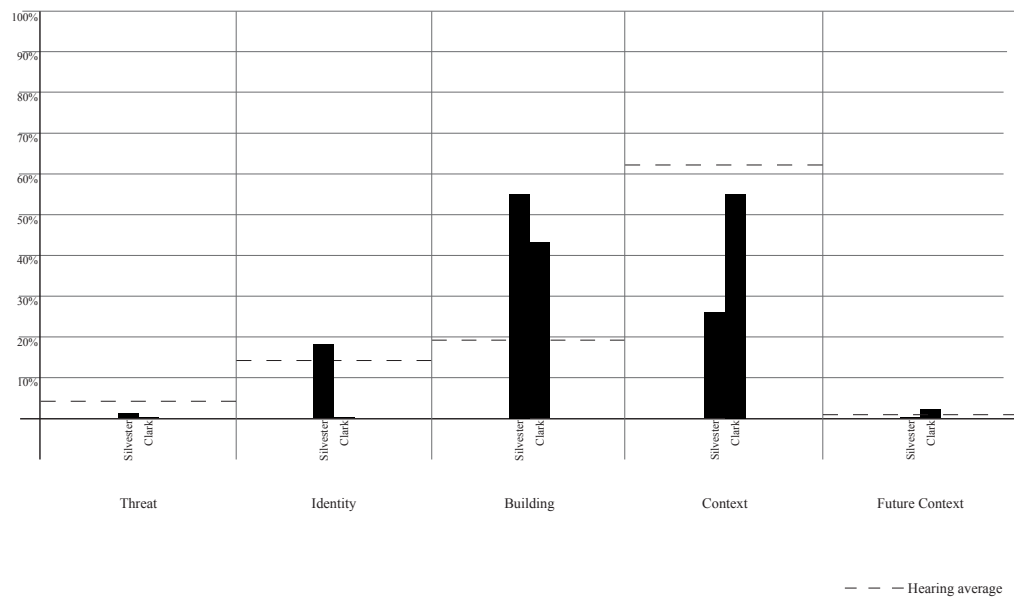


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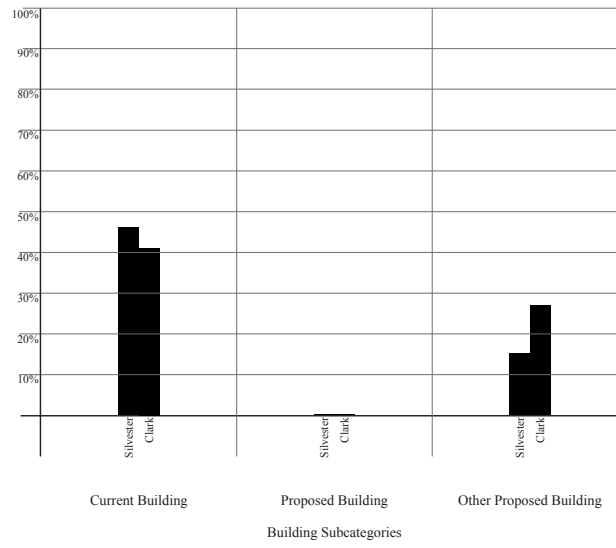


Engineering Experts

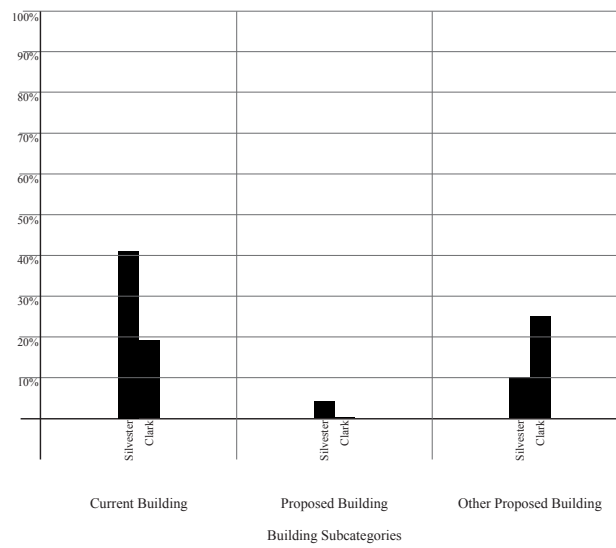
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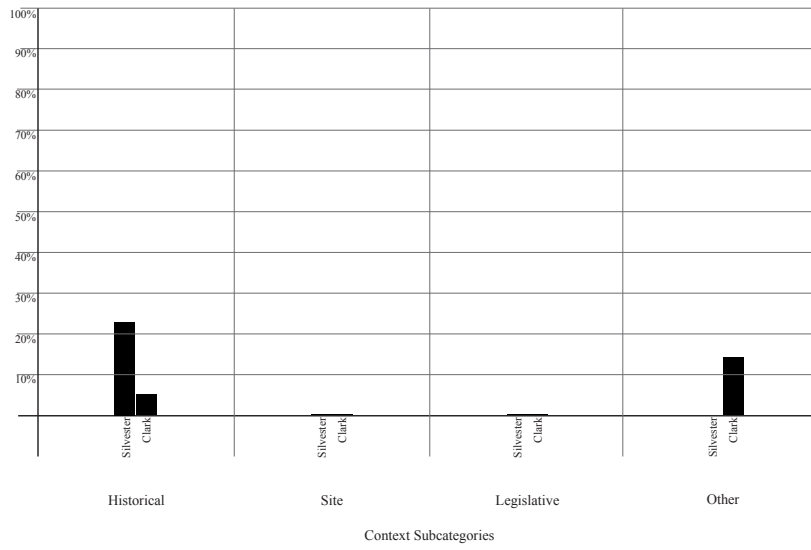
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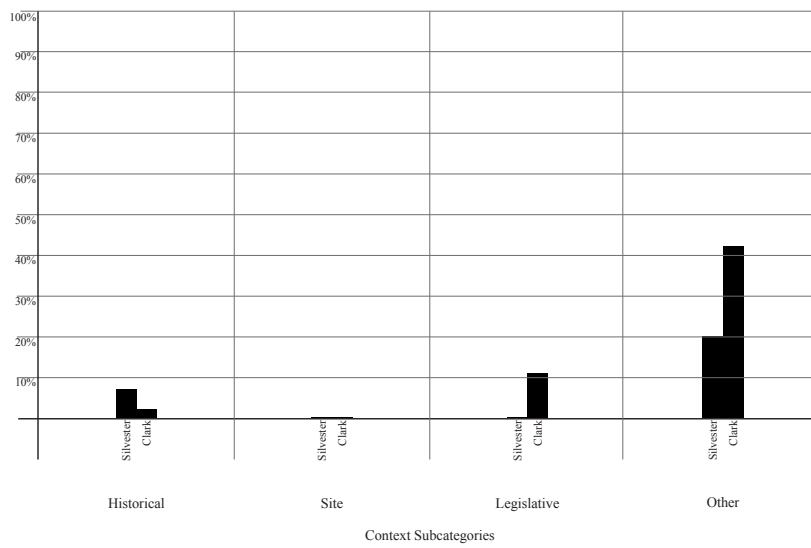
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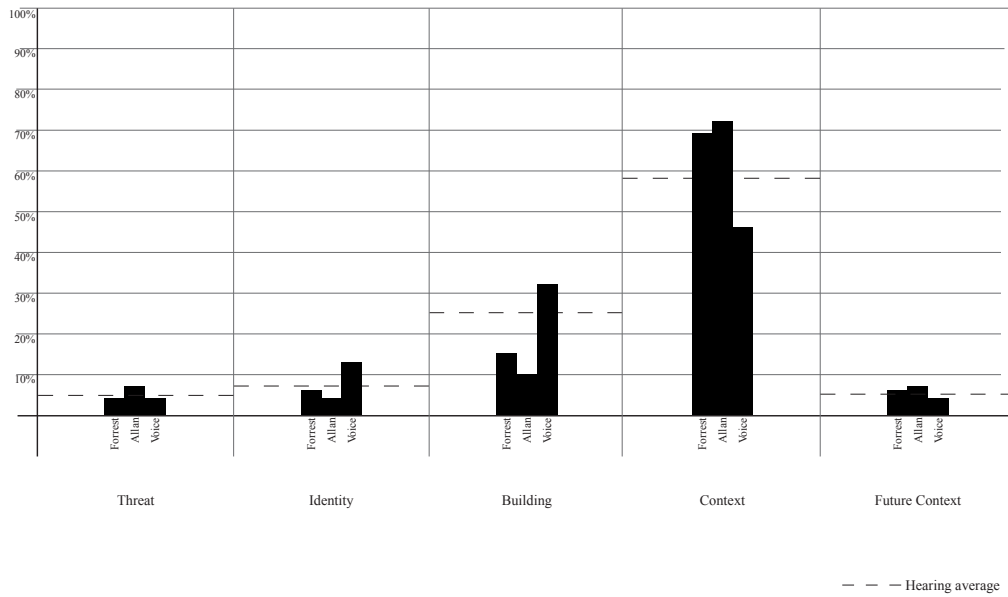
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Percentage of question sets from the cross-examination of engineering witnesses

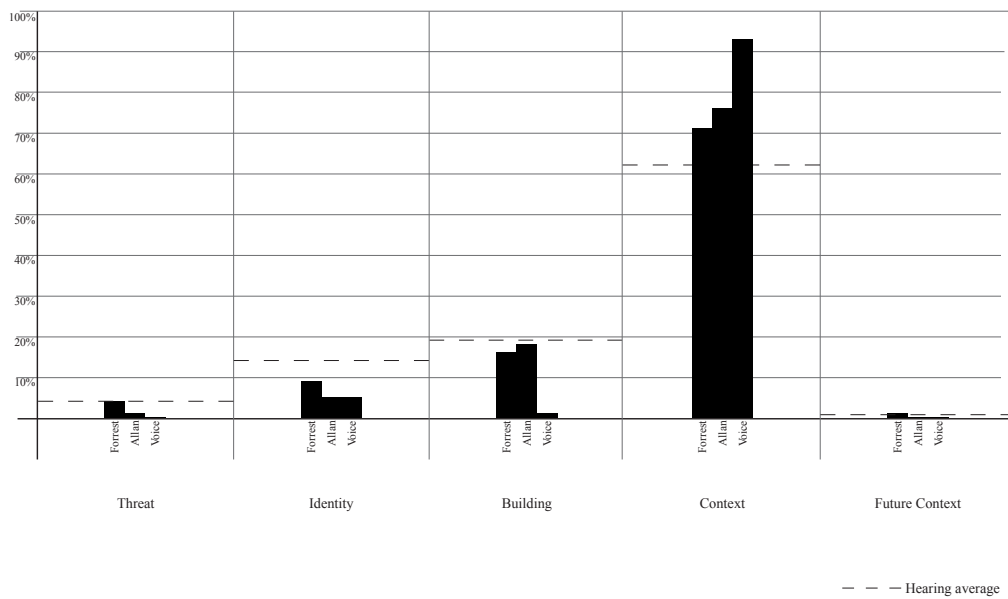


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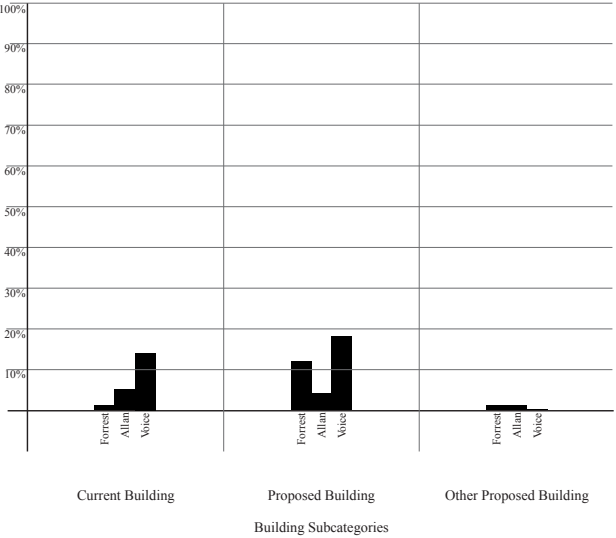


Planning Experts

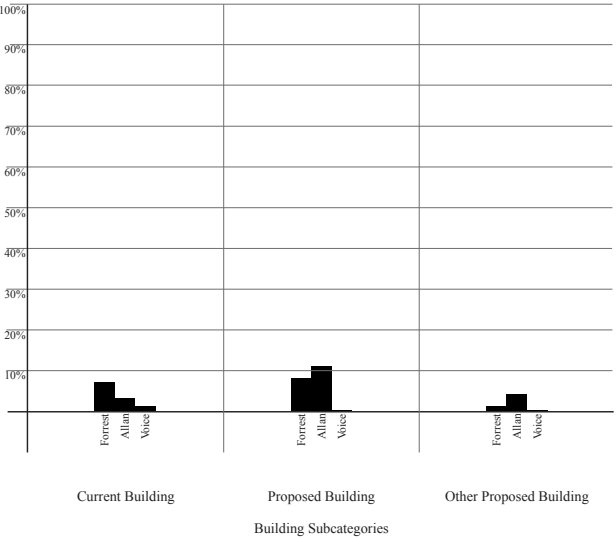
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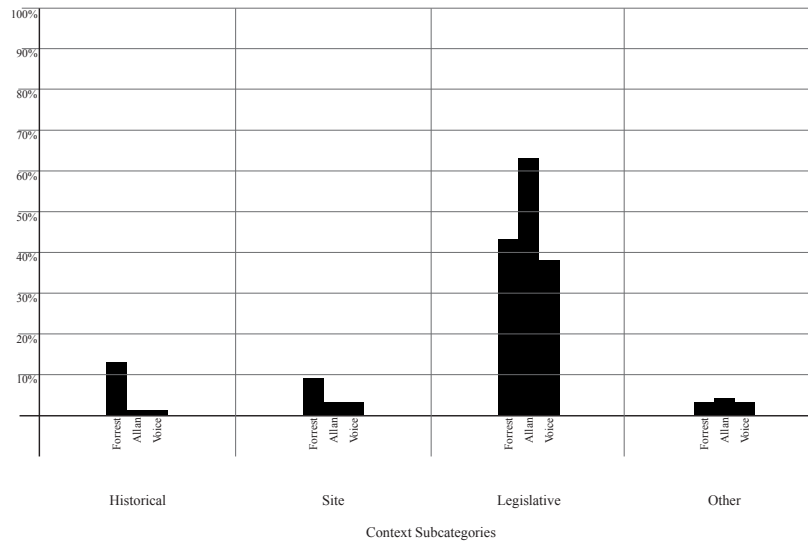
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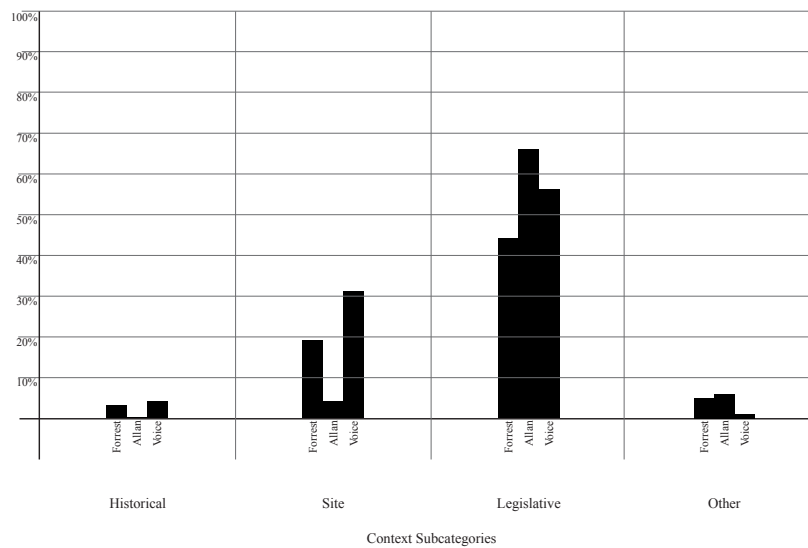
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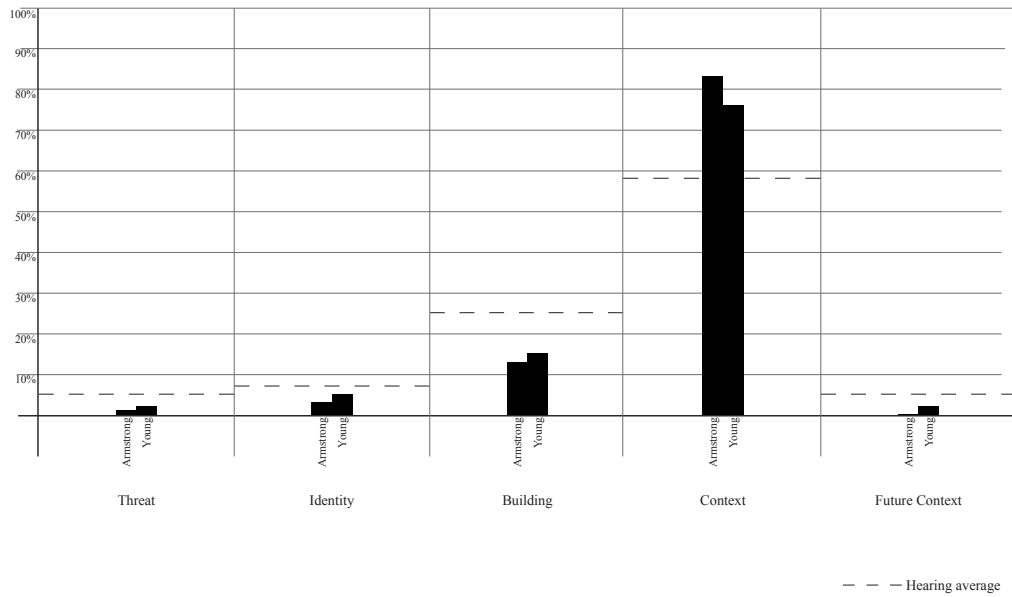
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Percentage of question sets from the cross-examination of planning witnesses

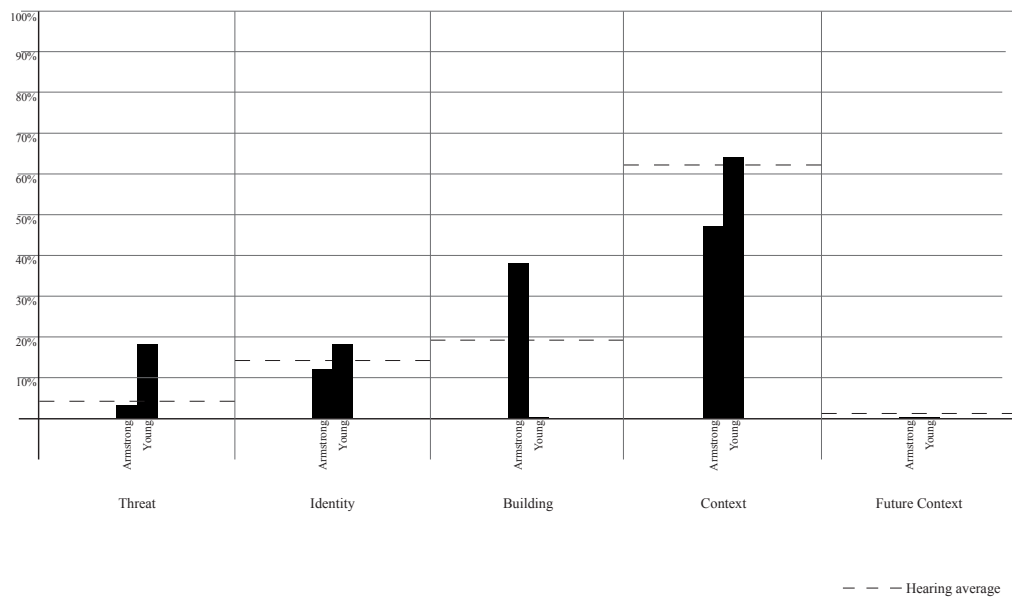


Percentage of paragraphs from the written statements of evidence for history witnesses

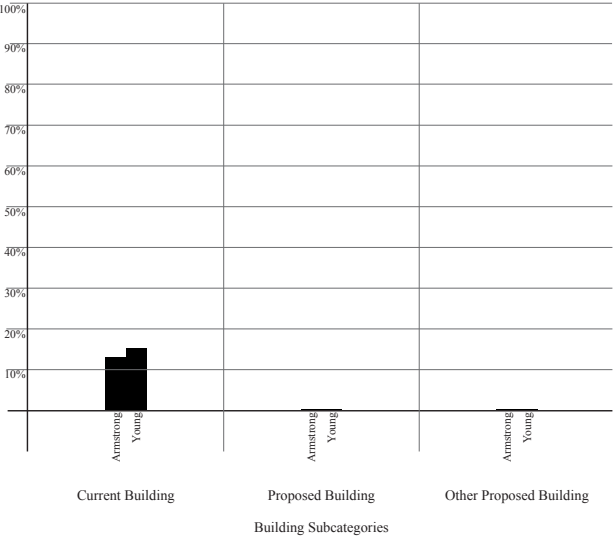


History Experts

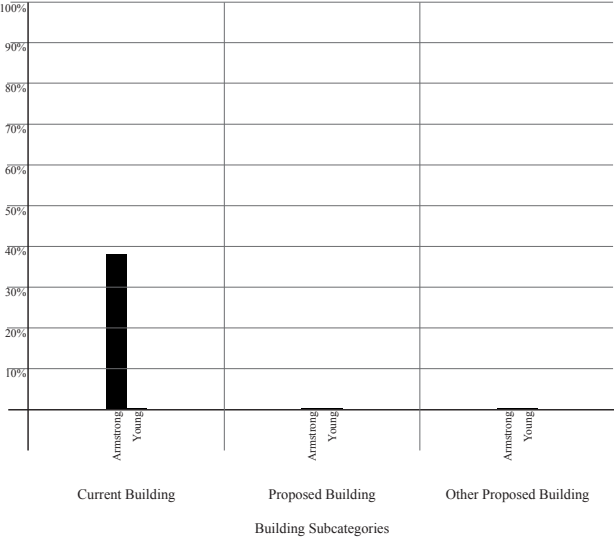
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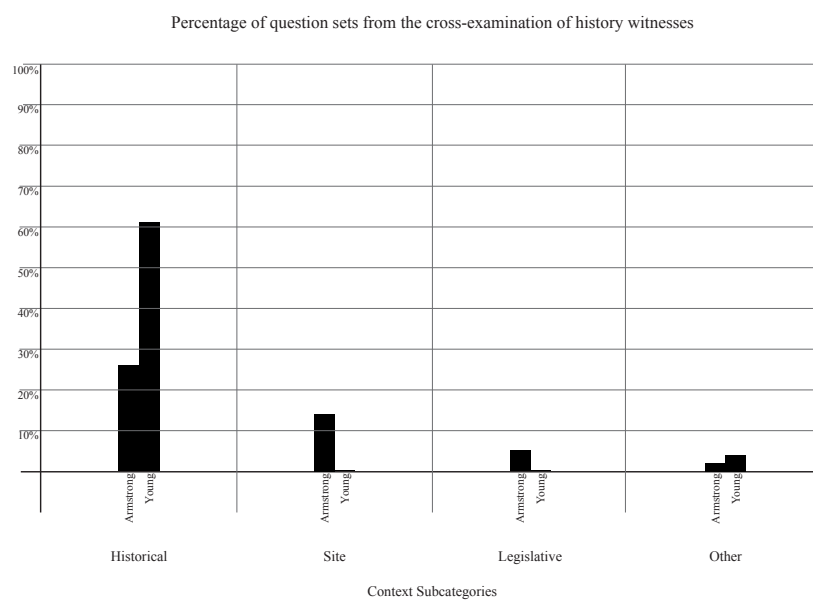
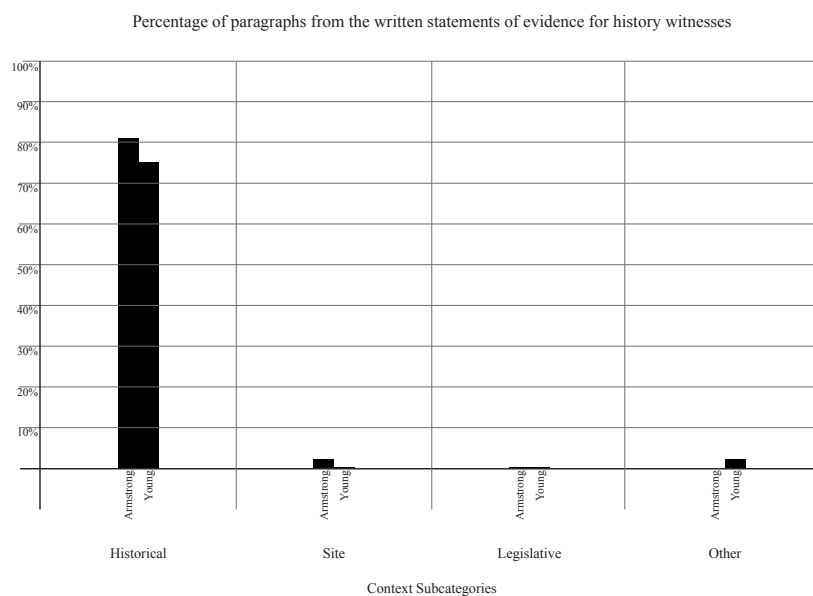


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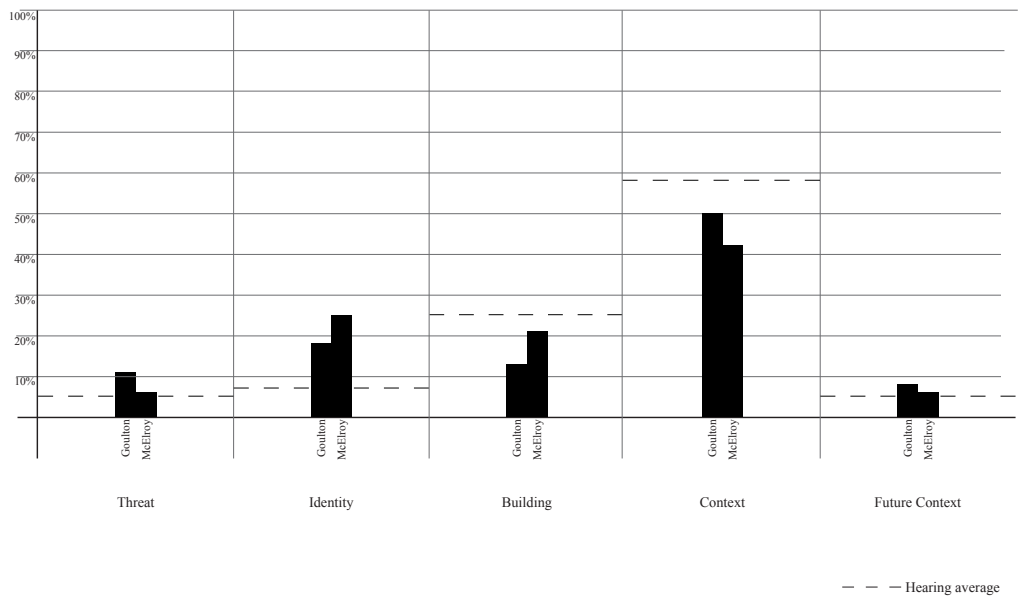


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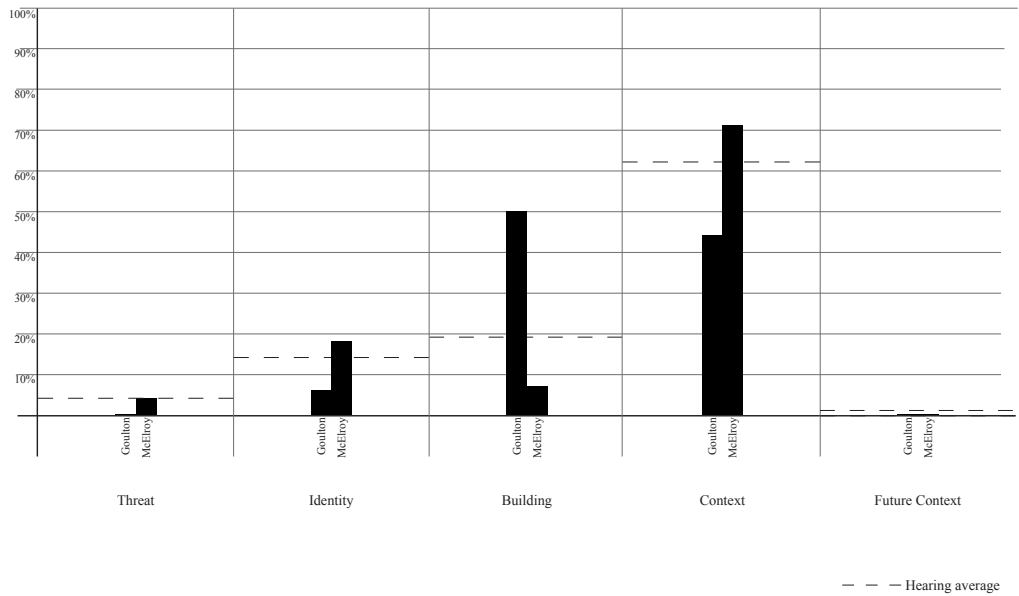


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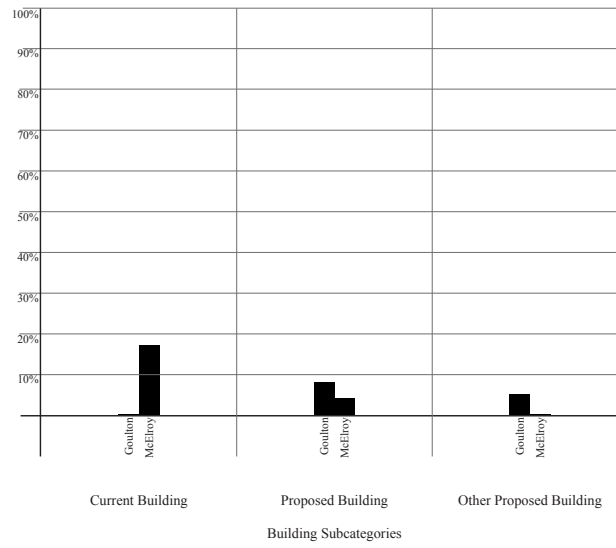


Education Experts

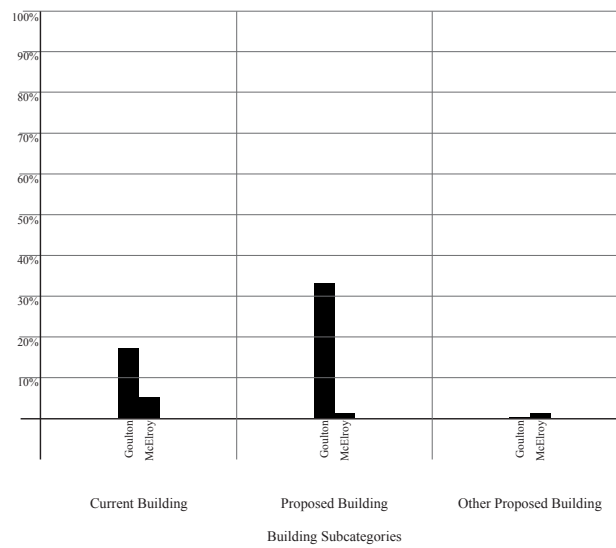
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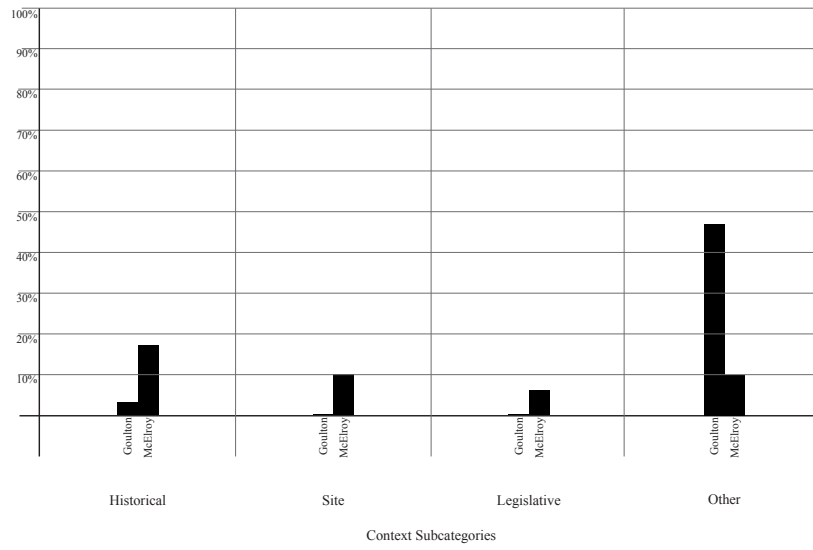
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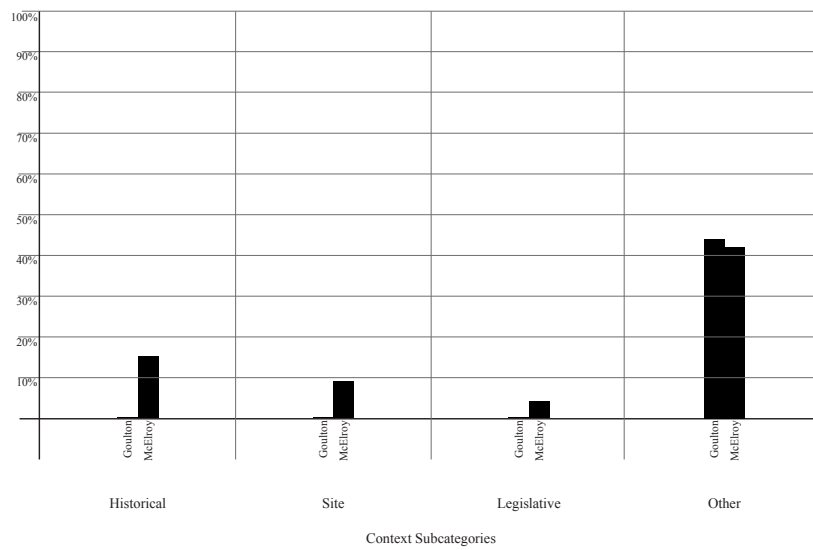
Percentage of question sets from the cross-examination of education witnesses



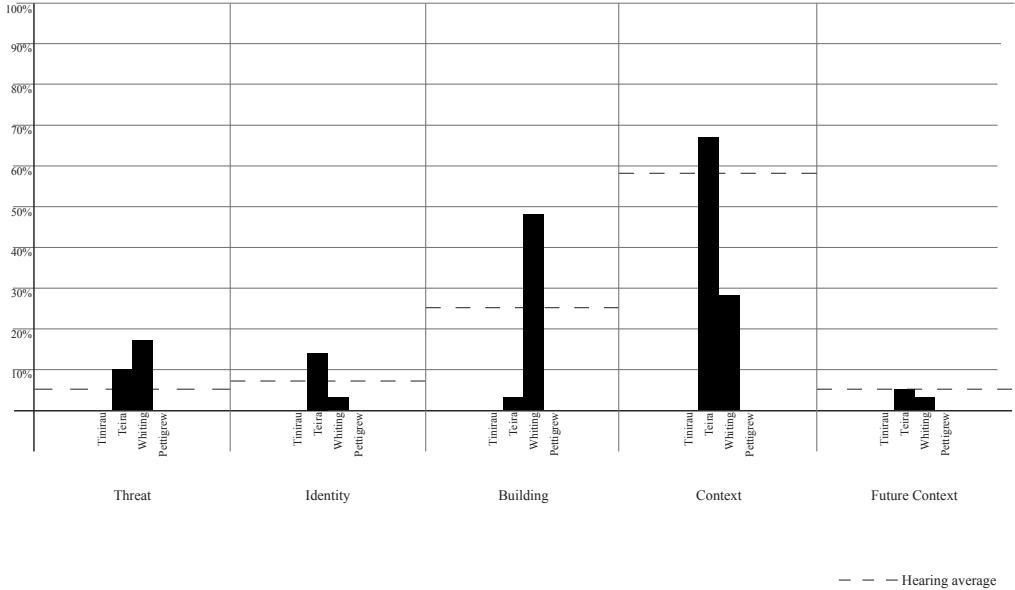
Percentage of paragraphs from the written statements of evidence for education witnesses



Percentage of question sets from the cross-examination of education witnesses

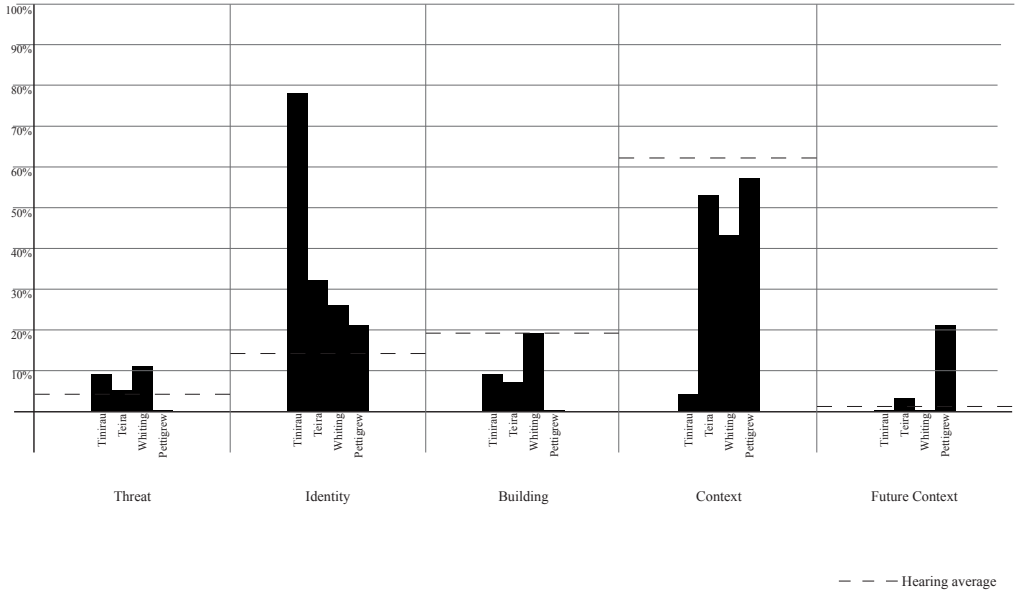


Percentage of paragraphs from the written statements of evidence for heritage witnesses

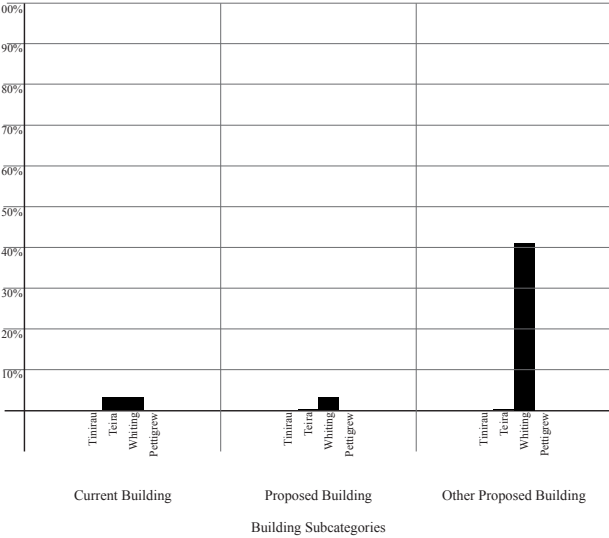


Heritage Experts

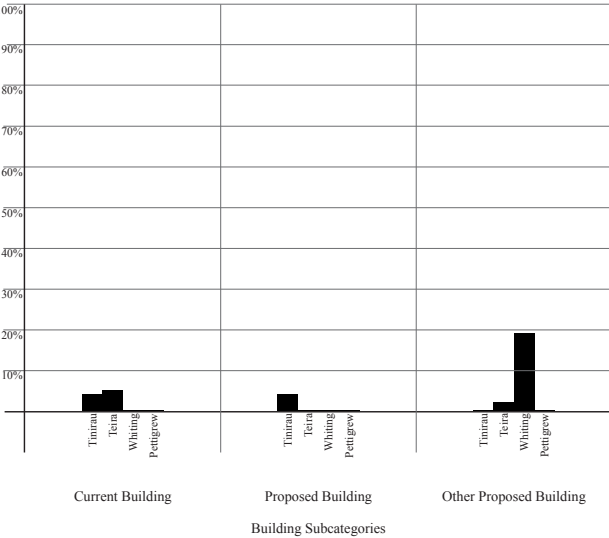
Percentage of question sets from the cross-examination of heritage witnesses



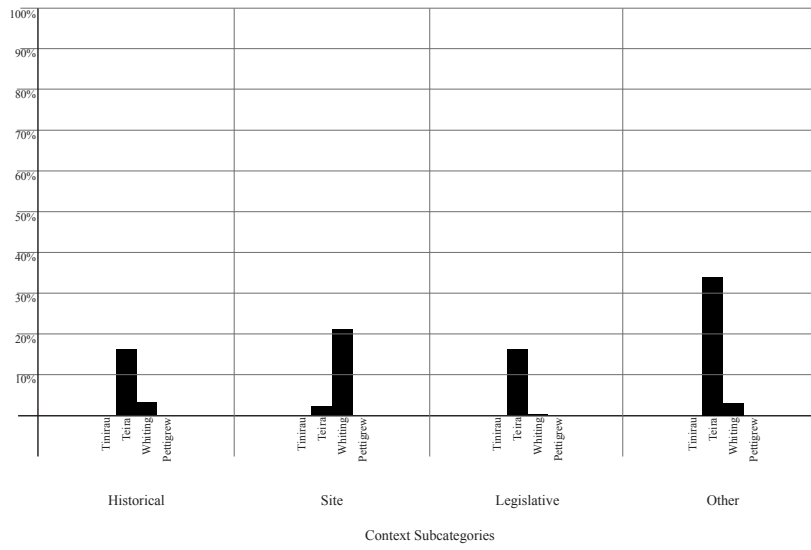
Percentage of paragraphs from the written statements of evidence for heritage witnesses



Percentage of question sets from the cross-examination of heritage witnesses



Percentage of paragraphs from the written statements of evidence for heritage witnesses



Percentage of question sets from the cross-examination of heritage witnesses

