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# Heritage conservation and character protection in Brisbane - an update



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LAWYERS

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## Introduction

An earlier paper **Heritage conservation, character protection and “The Vibe”**,<sup>1</sup> canvassed contemporary issues relating to both heritage conservation and character protection in Queensland, including recent changes to heritage law and practice.

Since then, six noteworthy cases have come before the Planning and Environment Court (PEC) concerning developments impacting on State and local heritage places in Brisbane. The Brisbane City Council (Council) has also recently made a temporary local planning instrument for the protection of buildings constructed pre 1911 – *Temporary Local Planning Instrument 02/17 Protection of Buildings Constructed Prior to 1911* (TLPI 02/17).

This article considers the issues canvassed in those cases, with a particular focus on the PEC’s consideration and interpretation of the statement of significance in heritage citations. The last two cases concern traditional building character protection. This article will also comment on TLPI 02/17.

## Athol Place

Athol Place, located on Wickham Terrace at Spring Hill, is a two storey Georgian-style terrace house listed as both a State and local heritage place. It was originally used as residential premises and is currently used for medical consulting rooms with residential apartments on the upper levels. It is considered significant due to being one of the earliest Georgian style stone terrace homes still surviving in Brisbane, as well for its association with Alexander McNab - the successful early Brisbane developer who built and owned the home for many years.

In 2015, a development application was made for the partial demolition and adaptive reuse of Athol Place as consulting rooms, a shop/food and drink outlet and an “interpretation foyer” showcasing the history of the building. The application also involved the development of an eight storey commercial office building behind Athol Place. The application was approved by the Council, and an appeal to the PEC was subsequently commenced by a submitter against that approval.<sup>2</sup>

The submitter contended that extinguishment of the residential use of Athol Place and the establishment of the commercial tower would cause an unacceptable impact on the heritage and character significance of Athol Place.

It was firstly argued that the use of Athol Place for residential purposes was an important part of its cultural significance, highlighting references to ‘house’, ‘dwellings’, ‘residential’ and ‘residences’ in the statement of significance. The PEC noted that such phrases in a statement of significance must be read in context. The cultural heritage significance of Athol Place is not linked to its use as a residence but rather, its appearance as a residence. It was ultimately conceded by the appellant that while retention of residential use would be optimal, the proposal was a compatible re-use and would retain the appearance of terrace houses. Accordingly, the PEC dismissed this ground of appeal.

With respect to the impact of the commercial tower, it was contended that the proposed buildings size with a glass façade would overbear and unacceptably impact on the cultural significance of Athol Place. Reference was specifically made to the increase in plot ratio and gross floor area. The PEC stated that these features alone were not conclusive, but rather it was necessary to consider the effect of the proposed building when viewed in the context of the heritage place.

The PEC found in this respect that Athol Place would continue to be read as colonial terraces and would maintain its significant corner position which was an important aspect of the cultural heritage significance of Athol Place. The PEC also found that the proposed development would improve the interpretation and appreciation of Athol Place by removing additions made in 1929, conserving Athol Place for future generations and including a public interpretation centre which would contain information about the history of Athol Place (and the development of Queensland more generally). The PEC also noted that the proposed commercial tower would be separated from Athol Place with over 12 metres of landscaping, sympathetic to the setting of Athol Place. The new work was clearly identifiable as contemporary and separate to the 19th century construction of Athol Place.

The appeal was dismissed with no conflict found against heritage provisions of City Plan and sufficient grounds to overcome conflict with other provisions of City Plan. This case reinforces the point made in **our earlier paper** about the need to relate impacts to the expression of cultural heritage significance contained in the heritage citations. As the Court noted, the citation must be read in context, rather than “cherry-picked” for particular words.

## Middenbury House

Located in Toowong, Middenbury House is an 1865 villa residence overlooking the Brisbane River. It is listed as a State heritage place. Middenbury House stood alone for a period of only 17 years until 1882, when the neighbouring Sidney House was erected. In 1958, Sidney House was demolished and replaced by buildings for the Australian Broadcasting Corporation (which was then demolished in 2015).

Middenbury House has remained largely untouched since its original construction. It is characterised by its high quality workmanship, large reception rooms and bedrooms, along with timber verandas (accessible through French doors) that surround three sides of the house, allowing for views of the Brisbane River and CBD. The house is accompanied by two large fig trees, which remain a landmark feature along Coronation Drive. It is considered significant for its aesthetic value and importance in demonstrating the evolution of residential housing and pattern of settlement in Queensland, and the principal characteristics of a 1860’s villa residence.

In 2014, a development application was made for the construction of three residential towers, which included an addition to, and adaptive reuse of Middenbury House. The proposed reuse provided for public access to a café, restaurant and a community centre with historical information relating to Middenbury House. The application was approved by the Council and an appeal to the PEC was subsequently commenced by a submitter against that approval.<sup>3</sup>

The appeal raised conflicts with many provisions of City Plan, including conflict with various performance outcomes of the Heritage Overlay Code.

<sup>1</sup> Published on 29 May 2017

<sup>2</sup> *Body Corporate for Mayfair Residences Community Titles Scheme 31233 v Brisbane City Council & Anor* [2017] QPEC 22

<sup>3</sup> *Bell v Brisbane City Council & Ors* [2017] QPEC 26

Conflict was alleged in the following respects:

- the significant fabric of Middenbury House could be damaged;
- the significant fig trees could be damaged and their future survival threatened;
- the towers would not provide an adequate and appropriate setting for Middenbury House;
- views between Middenbury House and the Brisbane River /West End and between Middenbury House and Coronation Drive would be impaired; and
- the addition to Middenbury House was unsympathetic and inappropriate, detracting from the appearance and expression of Middenbury House.

In relation to the potential damage to the fabric of Middenbury House, the PEC, upon hearing evidence from a structural engineer, found that any risk of damage during construction would be manageable and acceptable. A submission that the proposed suspension of Middenbury House over an underground car park would result in "butchering" the building, was dismissed on the basis that the heritage citation did not indicate that the footings of the house contribute to its cultural heritage significance.

With respect to the setting of Middenbury House, the PEC opined that whilst the towers would be a prominent landmark much taller than Middenbury House, it did not negatively impact its heritage significance. The PEC drew focus to the fact that the proposal maintained Middenbury House's historical location and set it within a large area of public open space. The PEC also noted that the towers were sensitively placed and had tapered bases. The PEC said that Middenbury House could be contrasted with the modern architectural design of the towers and found that each would be prominent for differing reasons.

As to the impaired views from Middenbury House, the PEC found that the reference in the heritage citation to the verandas (which provide views to the Brisbane River and CBD) did not necessarily mean the heritage significance required unrestricted panoramic views. The PEC noted that the proposed development provided for a viewing corridor to the river and West

End, which was wider than was required by the citation. This provided an additional viewing corridor to the CBD. The PEC ultimately found that the development appropriately respected and preserved the views to and from Middenbury House.

In relation to the proposed additions to Middenbury House, the PEC accepted that the proposed additions sufficiently identified the new work by contrasting the "old" and "new" in accordance with the **Burra Charter** and did not substantially reduce the cultural heritage significance of the heritage place. This decision also reinforces the point made in **our earlier paper**, that there must be recourse to the words of the citation in order to determine acceptability of impacts. This is especially so in the case of alleged impacts on the setting of heritage places.

Ultimately, the PEC found no conflict with the Heritage Overlay Code. The appeal was dismissed on the basis that there were sufficient grounds in the public interest to approve the development application, notwithstanding conflict with other provisions of the City Plan. This decision is the subject of an application for leave to appeal to the Court of Appeal which has been heard and judgment reserved.

## Fenton

Designed by renowned architect Robin Dods of Hall & Dods, 'Fenton' is a single storey dwelling in New Farm that was constructed in 1907. It is listed on the local heritage register and has been previously occupied by a number of prominent Brisbane families, including one Premier of Queensland, Edward G Theodore (**Theodore**).

This appeal concerned the Council's refusal of a development application to establish an additional three townhouses on the site of Fenton. This included re-siting Fenton towards Bowen Terrace and demolition of ancillary features of the heritage building to enable "improved future use of the building" (being a reference to, amongst other things, the intention to raise and build in under the existing residence to provide for functional living areas).<sup>4</sup> The re-siting of the house would see it move forward from its current setback of 24m / 25m to a standard setback of 6m.

One of the main conflicts relied upon by the Council was conflict with the Heritage Overlay Code of City Plan. In respect of the subject site, the following values were identified in the applicable statement of significance<sup>5</sup>:

*"This is a place of local heritage significance and meets one or more of the criteria for entry in the Heritage Register of the Brisbane City Plan 2000. It is significant for the following reasons:*

*(a) it is important in demonstrating the evolution and pattern of the city's or local area's history as demonstrating the continued growth of New Farm in the first decade of the 20th century when Bowen Terrace was considered to be one of Brisbane's most prestigious residential addresses;*

...

*(d) it is important in demonstrating the principal characteristics of a particular class or classes of cultural places as a good example of a fine timber federation-era residence;*

*(e) it is important because of its aesthetic significance for the house's fine design featuring a dominant roof form and restrained timber detailing as well as its attractive garden setting;*

...

*(h) it has a special association with the life or work of a particular person, group or organisation of importance in the city's or local area's history as the home of Edward Granville Theodore when he was Premier of Queensland.*

*(And) it has a special association with the life or work of a particular person, group or organisation of importance in the City's or Local area's history as a fine example of a residence designed by influential Brisbane architect R.S Dods."*

The PEC identified that the central and dominant issue came down to whether or not Fenton is an important place and whether it ought to be protected, which,

<sup>5</sup> Ibid [15]

<sup>4</sup> *Alloa Properties Pty Ltd v Brisbane City Council & Ors* [2017] QPEC 51

would require the house to remain in its present location, or in accordance with the Appellant's case, its cultural heritage values would be protected and, arguably, enhanced by it being moved to its proposed new location.

As to criterion (a), evidence was put forward that the siting of the house well back from the street, with gardens designed for display, recreation and entertainment was an important aspect in demonstrating an early 20th century practice in Brisbane. The PEC was not sufficiently satisfied that this was an established practice and found that the proposed relocation of the house would not offend criterion (a). The PEC concluded that the statement of significance for criterion (a) was primarily focused on the physical characteristics of the house itself.

As to criterion (d), it was argued that the relationship between the house and its location within the site was important in demonstrating that Fenton remained a good example of a fine timber federation-era residence. However, the PEC was unpersuaded that the setting of the house was relevant, before coming to the conclusion that the focus should be on the physical characteristics of the house and whether the proposed re-siting and renovation would frustrate the criterion. In this regard, the PEC found that upon re-siting and renovation, the house would remain a good example of a fine timber federation era-residence.

As to criterion (h), there were two significant values identified; firstly, the association between the architect Dods and Mr Trude (the first owner of the house) and secondly, the houses association with Theodore, the prominent former State Premier and federal politician.

As to the first association, the evidence showed that Mr Trude and Dods had both a business and personal relationship. The PEC found that, although the relationship was a relevant consideration, it was not determinative, being less materially important than the other issues at hand, including the dispute concerning the siting/setting of the house, and the association between the house and Theodore). The PEC noted in this regard that, whilst the "Note" to the statement of significance made reference to Theodore, it did not make such a reference to Trude. The PEC also held the view that the

proposed relocation of the house would not bring an end to this association; rather it would remain a house originally designed by Dods for Trude.

As to the second association, the evidence showed a significant relationship between the location of the house and Theodore. Two areas of the house became relevant throughout the discussion of this relationship: the library/study area and the garden area. The evidence established that upon moving into the house, Theodore converted the south-eastern corner under the verandah into a library/study area. It became a significant element of the house to Theodore, being an area he spent much time in. The PEC found that due to subsequent renovations, no tangible remnants of the library/study area remained. If the proposal had the potential to destroy a remnant of the Theodore library/study areas, the PEC commented that tension with criterion (h) would have clearly arisen. The repositioning of the house would not of itself offend the association between the area and Theodore. Turning to the garden area, the evidence established that over the years the garden area had been materially altered and presented differently than it would have during Theodore's occupation of the home. The historical evidence established that Theodore spent much of his time in the garden and the PEC found conflict with criterion (h) only to the extent of the impact on the setback and garden setting.

As to criterion (e), the PEC focussed on the impact of the proposed development on the aesthetic significance of the house (which as noted above includes the houses' attractive garden setting). Notably, the proposed development would bring the house further forward, making it more prominent in the streetscape while interfering with the garden setting which was found to be an important aspect of its cultural heritage significance. The PEC was persuaded by evidence which clearly showed the positioning of the house to be deliberate for a number of reasons. Firstly, the location of the house took advantage of the topography (i.e. the breezes and views). Secondly, the location of the house was likely designed to provide a more attractive and dramatic entry from the street to the front steps. The PEC ultimately reached the conclusion that the siting of the house back from the street was an integral part of its

aesthetic significance and an important aspect of the cultural significance of the site. Therefore, the PEC concluded that the proposed development would have a significant adverse impact on the aesthetic significance of the house.

Ultimately, the PEC found that the proposal, by virtue of the relocation of the house to a 6m setback, was in conflict with criteria (e) and (h) of the statement of significance, section 3.2.1 of the strategic intent of the Strategic Framework and the Heritage Overlay Code. The proposed re-siting of the Fenton house created a real and significant conflict with these provisions, which were introduced to protect (as far as practicable in the circumstances of each case) cultural heritage values. As the PEC could not find sufficient grounds to warrant approval, the appeal was dismissed.

Again, this case emphasises the critical importance of properly construing the words of the citation, in order to understand the effect of development on cultural heritage values. The conservation of a "setting" depends upon how it is dealt within the citation.

## The Embassy Hotel

The Embassy Hotel, a local heritage place located on the corner of Edward Street and Elizabeth Street in the central business district (CBD) of Brisbane, was constructed in 1928 and has been the subject of a number of renovations and additions. Originally, it was a four storey building, broken into the base, the shaft and the cornice which reflects its original design as a Commercial Palazzo building. Importantly, the land is burdened by a number of easements, one of which benefited an adjoining landowner (for access purposes).

An impact assessable development application was made seeking a preliminary approval for building works for partial demolition and restoration works of a local heritage place. The development application was approved by the Council. A submitter appealed to the PEC against the Council's decision to approve the building work application.<sup>6</sup>

<sup>6</sup> *ISPT Pty Ltd v Brisbane City Council & Anor* [2017] QPEC 52

The proposed partial demolition aimed to remove the majority of the internal fabric of the hotel, leaving the external building façade as it presents towards Edward and Elizabeth Streets.

A main issue on appeal was whether the demolition conflicted with the Heritage Overlay Code of City Plan. Conflict was alleged with both the purpose and performance outcomes of the Heritage Overlay Code.

In determining whether there was conflict, the PEC first considered it necessary to identify the “*cultural heritage significance*” of the local heritage place.

This identification process began by reference to a note in the Heritage Overlay Code, which identifies that the Heritage Planning Scheme Policy provides guidance on the preparation of a heritage impact assessment report as well as describing the process by which local heritage places have been included in the Heritage overlay map, thereby providing important context for the phrase “*cultural heritage significance*”. Section 2(1) of the Heritage Planning Scheme Policy provides a number of values for which premises can be included in the Heritage overlay. Relevantly for this site, one of the values included is that the premises “*is important in demonstrating the evolution or pattern of the city’s or local area’s history*”.

Section 2(2) of the Heritage Planning Scheme Policy further provides the elements to be included when a citation is being prepared documenting these cultural heritage values. These elements include a description of the local heritage place, a statement of the history of the local heritage place and a statement of the cultural heritage significance of the local heritage place. The citation is intended to assist in the assessment of a proposal against the Heritage Overlay Code<sup>7</sup>. Where a citation exists, the Heritage planning scheme policy states that it is only necessary to assess the impact of a proposed development by reference to the culturally significant items listed in the citation<sup>8</sup>.

The statement of significance for the Embassy Hotel states that the Embassy Hotel, “*as a four-storey corner hotel erected during the CBD building boom of the 1920s; it is important in demonstrating the evolution or pattern of the City’s or local area’s history.*”<sup>9</sup>

The heritage experts had agreed to primarily rely on the statement of significance as set out in the heritage citation. However, following a combined joint report meeting with the expert historians, the heritage architects and the historians agreed that “*related matters of cultural heritage significance (such as rarity, aesthetics, creative significance and architectural typologies) can also be considered under this criterion.*”

However, the PEC did not wholly agree with that approach. The PEC found that when considering the applicable statement of significance, in light of all the values for which a premises can be included in the Heritage overlay, it was apparent that the Embassy Hotel was included because “*it is important in demonstrating the evolution or pattern of the city’s or local area’s history*”. As the citation did not identify any additional values as specified in section 2(1) of the Heritage planning scheme policy, despite the agreement of the relevant experts, the PEC considered that it was the statement of significance and the assessment of the proposed development’s impact on such matters which would determine whether conflict existed with the Heritage Overlay Code.

The next stage of the PEC’s analysis involved determining the impact and demolition proposed on cultural heritage significance. The issue was the impact of the proposed demolition of original features of the hotel, which included an Art Deco ceiling in the original private bar area, and a space that embodies the ceiling, the original timber flooring and rendered masonry walls located on the upper levels of the Embassy Hotel. It was determined that the Art Deco ceiling was not original and at the earliest was installed in 1939.

In assessing the relevance of this fact, the PEC noted that, under the Burra Charter or general heritage conservation practice, it is not necessary for fabric to be original in order to be significant. Therefore, the fact that the Art Deco ceiling was not original was not determinative of its cultural significance. Given the existence of the heritage citation, the relevant consideration was the impact of the proposed development on the cultural heritage significance of the building as identified in the statement of significance.

In deciding this question, the PEC noted a number of things about the cultural heritage significance of the Embassy Hotel. Firstly, the statement of significance in the heritage citation does not expressly refer to either the external appearance or the internal fabric of the building. However, it does not simply refer to its significance as a hotel but rather “*it is important in demonstrating the evolution or pattern of the City’s or local area’s history.*” Secondly, the heritage citation for the Embassy Hotel includes a description of the local heritage place and a statement of the history of the local heritage place which provides important context to assist in understanding the statement of cultural heritage significance of the local heritage place. As interpreted from the statement of significance, all of the culturally significant features, other than the internal features of the lift, are external.

As the external features were not affected by the proposed development, the PEC found no conflict existed between the proposed development and the Heritage Overlay Code.

Ultimately, the appeal was allowed and the development application refused, solely on the basis of a legal point, as the proponent had failed to obtain the consent of registered easement holders under s65 of the *Building Act 1975*, to the proposed building works. However, the decision provides a useful insight into the application of a statement of significance, which in this case, the PEC construed strictly.

The case is somewhat unusual in that, it involved partial demolition of a local heritage place for the obvious purpose of re-development, without the proposed development and its impact upon cultural heritage values being revealed or considered. This is able to occur because of the compartmentalised approach to separate aspects of development under the planning legislation.

<sup>7</sup> BCC Heritage planning scheme policy, s. 2(3)

<sup>8</sup> Note to s 4 (1)(b) of the BCC Heritage planning scheme policy

<sup>9</sup> Brisbane City Council Heritage Citation

## 13 Sawtell Place, Auchenflower

This case concerned an appeal against the Council's refusal for demolition of a pre-1946 house situated at 13 Sawtell Lane, Auchenflower<sup>10</sup>.

The main consideration for the PEC was whether the development application was in conflict the traditional building character (demolition) overlay code of City Plan.

The land upon which the house was sited had frontages to both Sawtell Lane and Milton Road.

It was uncontentious that the house expressed traditional building character as a pre-1946 residential building, and equally uncontentious that the presentation of the house to Sawtell Lane was not of concern in the appeal. However, as the house formed part of a contiguous group of pre-1946 buildings on the inbound side of Milton Road, it was from that perspective that conflicts with the City Plan's demolition code were alleged.

The location of the house is in an elevated section of Milton Road, atop a near vertical rock retaining wall, the base of which is only separated from the roadway by a very narrow concrete pathway. A cyclone fence (approximately 1.2 metres in height) is next to another narrow pathway which adjoins the boundary with the land. The house sits close to this boundary but is obscured by a high continuous wooden fence and a considerable amount of untidy vegetation.

The architect who gave evidence on behalf of the appellant expressed the view that Milton Road was merely an arterial road with a "linear character". However, the PEC preferred the view expressed by the town planner who gave evidence on behalf of the appellant that parts of Milton Road "contains easily identified buildings that display traditional building character" and that traditional building character may be expressed along certain parts of Milton Road.

However, the PEC found that the precinct of character houses surrounding the house in question were located at such an angle that they did not present to Milton

Road as a coherent group of traditional character buildings. This was due to many of the character buildings being vertically separated from Milton Road to such a degree that their contribution to traditional character in Milton Road was not significant.

Visually, the house could only be seen to a limited extent from a few select vantage points and was not readily perceived by motorists travelling along Milton Road. The Court observed that even if the considerable vegetation obscuring the view of the house was removed, the siting of the house atop the significant cutting, which dominated Milton Road with high rock retaining walls on either side, would mean that any contribution the house made to the visual character of Milton Road was extremely limited.

The Court found that Milton Road had some traditional character which was present where the house was situated. However, the applicable performance outcome required the house to not only contribute, but "positively" contribute to the visual character of the street. The Court observed that the use of "positively" in this context required the house to add to the visual character of the street, meaning that the contribution must be favourable. The Court found that the contribution of the house to the visual character of the street was extremely limited and could not be described as favourable.

In our earlier paper, it was noted that City Plan had moved away from protecting the character of neighbourhoods and consideration of streetscapes as a whole, to the "spot selection of houses or groups of houses." This case is an example of the spot selection of a group of houses which due to topography made minimal contribution to the streetscape.

## 37 and 37A Nicholson Street, Greenslopes

Two lots at 37 and 37A Nicholson Street, Greenslopes were within the traditional building character overlay area and contained a pre-1946 house, which exhibited traditional building character. An application was made to re-position the house 15 metres west onto a lot at 39 Nicholson Street, Greenslopes, which was not located within the traditional building

character overlay area. The Brisbane City Council refused the application on the basis that if the house was moved, it would lose legal protection under the Overlay Code, which was said to involve non-compliance with the purpose and overall outcomes of the code. The Council also said there was non-compliance with performance outcome PO5 of the Code. The applicant appealed to the PEC<sup>11</sup>.

The applicant conceded that the proposal did not comply with PO5 of the Code, but argued that, with the imposition of appropriate conditions, protection of the building could be achieved so as to comply with the purpose and overall outcomes of the Code. The PEC considered that, in reading the assessment table as a whole, the proposal was best categorised as a "re-positioning", thus engaging performance outcome PO10 of the Code which stated:

*"Development ensures that the sighting and orientation of a residential building on a lot:*

- (a) Is complementary to the traditional setting of a dwelling house constructed in 1946 or earlier nearby in the street;*
- (b) Does not diminish the streetscape character of the original street to which the building was orientated;*
- (c) Does not result in a building being isolated from a traditional streetscape."*

The Court found that the proposed development did not involve demolition. While the Court acknowledged that it was arguable the code was not applicable to development on the vacant lot at 39 Nicholson Street, it found it was unnecessary to decide the point. The Court was satisfied that the building could be relocated, as PO10 contemplates moving a building to a site within the vicinity. The Court was assisted in arriving at the conclusion that the street's character could be protected by imposing conditions, through agreement to that effect reached between the heritage architects who gave evidence on behalf of the parties in the appeal.

<sup>11</sup> Bourboulas & Ors v Brisbane City Council v Brisbane City Council [2016] QPEC 33

<sup>10</sup> Tong Town Planning and Development Services Pty Ltd v Brisbane City Council (2017) QPEC 70

It must be said that, one wonders why this case even went to hearing? Surely moving a house laterally a mere 15 metres within the streetscape is entirely consistent with the purpose of the code, which is not about pre-1946 houses per se, but rather about streetscape character? The case is noteworthy for the distinction made between re-positioning and demolition, and for the use of conditions, which will run with the land, to achieve streetscape character protection where a house is moved to another location within the same streetscape precinct.

## TLPI 02/17

TLPI 02/17 includes a further 28 properties within the pre-1911 building overlay of City Plan. The affected properties are located in Auchenflower, East Brisbane, Greenslopes, South Brisbane, Toowong, Windsor, West End, Woolloongabba, Lutwyche, Kangaroo Point, Newmarket and Taringa<sup>12</sup>.

The assessment provisions of the Pre-1911 Building Overlay Code of City Plan will apply to development undertaken on these properties. This will affect anyone who proposes to remove, demolish, or partially demolish any of the houses located on these properties.

TLPI 02/17 was made on 29 August 2017 and will continue until 28 August 2019, unless repealed at an earlier date.

## Conclusions

The cases reviewed in this article demonstrate the central importance of the Statement of Significance in assessing conflicts or consistency, with the heritage provisions of City Plan 2014. The Embassy Hotel case, in particular, evidences a black letter approach involving careful analysis of the Statement of Significance, so as to isolate and focus on the culturally significant features of a protected building and appraise proposed development in that context. It is an approach that encourages clear and transparent decision making, by limiting opportunities to step outside the recorded Statement of Significance.

The two cases concerning character protection emphasise the clear distinction between heritage and character. The latter is really concerned with the character of the streetscape within and around houses in the overlay, rather than with protection of pre-1946 dwelling houses per se.

According to a recent count, 15 appeals concerning character houses have been heard by the PEC in the past two years of which six were allowed and nine were dismissed. Time will tell, but it appears likely that the amendments to the Traditional Building Character (Demolition) Overlay Code referenced in our earlier paper will reduce the proportion of successful outcomes in appeals.

<sup>12</sup> A copy of TLPI 02/17 can be downloaded from here – <https://www.brisbane.qld.gov.au/planning-building/planning-guidelines-tools/other-plans-projects/temporary-local-planning-instrument-tlpi>

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