

# **TOWNSCAPE CONSERVATION**

**( WITH REFERENCE TO PIETERMARITZBURG )**

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## **ABSTRACT**

Our environment (built and natural) is a thing of beauty and value, an inheritance, created by our forefathers for us and for future generations.

In South Africa, conservation of cities has only recently become a reality. This study is an attempt to give a general picture of the conservation related mechanisms of townscape conservation in South Africa, with particular reference to Pietermaritzburg.

Townscape conservation legislation in South Africa is presently administered in separate and unrelated sets of legislation. The National Monuments Act 28 of 1969 (chapter 2) on the one hand and the physical planning legislation (chapter 4) which is contained in a variety of provincial and local legislation on the other. There is also the Environment Conservation Act 73 of 1989 and other mechanisms (chapter 3) which incidentally promote the conservation of the South African townscape. This study will examine the legal principles available to the different mechanisms which facilitate townscape conservation, with particular reference to the City of Pietermaritzburg (chapter 5).

I declare that the contents of this thesis are the result of my own original work,  
except where otherwise acknowledged.

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# CHAPTER 1

# INTRODUCTION

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It is the purpose of this study to analyse the South African law regarding the conservation of townscapes with specific reference to the City of Pietermaritzburg.

## Why preserve buildings ?

There are three distinct considerations taken into account for the preservation of buildings or structures and townscapes<sup>1</sup>: -

(1) The structure is the site of some historical significance. The case for preservation in this category rests upon the site being a place of happening in history; where an incident that is significant in history to a particular community took place. It is therefore considered worthy of preservation because of its connection with an historical event. This type of preservation has the effect of reminding the community of the great events in history, of inspiring the community with a sense of patriotism<sup>2</sup>, of serving as encouragement for the future and to foster a sense of a community.<sup>3</sup>

(2) The structure is of some cultural, aesthetic and/or architectural merit. This type of preservation where the aesthetic qualities of the structure form the basis for preservation reflect an awareness of the buildings or group of buildings as cultural artefacts that represent something of the style and aspirations of the different communities. This type of preservation is thus educational rather than inspirational and is

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<sup>1</sup> Rose, C.M. 'Preservation and Community: New Directions in the Law of Historic Preservation' in *Stanford Law Review* 33 (1981) 479. See also Schatzel, S.A. 'Public Historic Preservation In Texas' in *Texas Law Review* 49 (1971) 267.

<sup>2</sup> Rose (n1) 483.

<sup>3</sup> Ibid.

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an embodiment of past cultures, particularly extinct architectural forms.<sup>4</sup>

(3) Townscapes create a sense of identity for a community. The case for their preservation is one of environmental enrichment. An assembly of buildings creates a townscape that gives an area a distinctive identity to which the community relates. Buildings can therefore create a sense of place, rich with symbols of its past and cultural achievement that has the psychological effect of unifying the community's sense of identity.<sup>5</sup> Conservation of the built environment is thus an approach where the character of the environment as a whole is preserved in a living and on-going process.<sup>6</sup>

Townscapes may therefore be preserved even though they have no great historical, cultural or aesthetic value, but simply because buildings or places are typical or characteristic of a site. This approach is reliant on values of people and society. Such values are intrinsic to the field of conservation and are based on knowledge and interest in history, appreciation of architecture and the environment, and social and political interest. It is also apparent that the enthusiasm and vigour with which the activities associated with the preservation of buildings or a particular townscape is reliant on the appreciation of the people or society for the environment and its history.<sup>7</sup> It is in the context of this approach that the term townscape is employed to refer to the conservation of the overall appearance of a town or part thereof - the sum picture of buildings, streets, gardens, names and a host of land uses.<sup>8</sup>

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<sup>4</sup> Schatzel (n1) 270.

<sup>5</sup> Op cit n2 488.

<sup>6</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes in South African Law* (1987) 19.

<sup>7</sup> Townsend, S 'Architectural and urban conservation in the dawning second Republic' in *Architecture SA* (1993) May/June 29.

<sup>8</sup> Haswell, R *A Historic Conservation Scheme for Natal* (1984) 10.

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## Legal Methods of Preserving Historic Property

The law has important functions in the enforcement of a conservation strategy, based on the conservation policy of a specific community.<sup>9</sup> The legal principles applicable to the conservation of the townscapes in South Africa, will be analysed in this study. In South Africa conservation of cities has only recently become a reality having had to first deal with strong ownership lobbies which arise out of strong ownership rights granted via Roman Dutch Law.

### 1) *Preservation by the State*

The beginning of an organized appreciation of South African culture and heritage was the formation of The South African National Society which motivated for the introduction of the Bushmans-Relics Protection Act<sup>10</sup> and the Natural and Historical Monuments Act<sup>11</sup>. These laid the ground for the present National Monuments Act<sup>12</sup> and the National Monuments Council. The National Monuments Act 28 of 1969 provides, inter alia, for the preservation of certain immovable property as national monuments and to this end the Council was established:-

*'To provide legal protection for the tangible, historical and cultural heritage and to promote, manage and coordinate the conservation of that heritage for the people of South Africa'.<sup>13</sup>*

The legislation and controls for the preservation of to national monuments function well where cultural significance or conservation-worthiness has been established and offi-

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<sup>9</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes in South African Law* (1987) 19.

<sup>10</sup> 22 of 1911.

<sup>11</sup> 6 of 1923.

<sup>12</sup> 28 of 1969.

<sup>13</sup> National Monuments Council, Circular No 23 (1992).



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cially recognized through the declaration of individual buildings or an area.<sup>14</sup> ( Problems and criticisms have however been levied at the Act and the Council).<sup>15</sup>

The other Acts<sup>16</sup> which could be expected to promote and facilitate conservation orientated control have not been used for these purposes. There are however provisions within these Acts<sup>17</sup> which incidentally promote the conservation of South Africa's cultural heritage.

## 2) *Preservation by Local Authorities*

The most important protection of the urban environment takes place at the local level by the local authorities. There are various provincial ordinances and local authorities' town planning schemes which deal with townscape conservation and conservation in South Africa is more a local authority activity than a national one.

The provincial ordinances are the legal basis for the town planning schemes through which all land use planning is controlled by the local authorities. Provisions in the ordinances allow considerable opportunities for conservation of the built environment, and are framed in such a way as to allow for the protection of townscapes in a wide sense.<sup>18</sup>

Town planning schemes are the mechanism through which local authorities have the

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<sup>14</sup> Townsend, S. 'Architectural and urban conservation in the dawning second Republic' in *Architecture SA* (1993) May/June 32.

<sup>15</sup> These will be dealt with in detail in the chapter dealing with National Monuments.

<sup>16</sup> Environmental Conservation Act 73 of 1989; The Physical Planning Act 125 of 1991; and the Culture Promotion Act 35 of 1983.

<sup>17</sup> These Acts will be discussed in more depth in a later chapter.

<sup>18</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes in South African Law* (1987) 70.

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power to protect townscapes through the use of provisions such as zoning,<sup>19</sup> listing<sup>20</sup> and demolition<sup>21</sup> procedures. The local authorities also use incentives, financial and others, to promote townscape conservation. The effect and legal implications of these schemes are more or less the same in all the provinces.<sup>22</sup>

### 3) *Private Initiative*

As townscapes are essentially a man-built environment it would seem logical that there must be public participation in its conservation.<sup>23</sup> Public perceptions and awareness on matters affecting the built environment are important. In order to succeed, townscape preservation must intergrate the public into the process with the State and the local authorities.

In South Africa, national groups have been established for the purpose of acquiring, conserving and utilising historic buildings,<sup>24</sup> as well as public companies.<sup>25</sup> This public

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<sup>19</sup> Land use is regulated by way of a plan which designates particular areas - zones - as being devoted more or less exclusively to particular uses. This system of regulating land use often contains instruments that can be used in the preservation of the built environment.

<sup>20</sup> What listing involves is designating structures for preservation. Listing imposes a set of prohibitions upon the owner of the structure relating to future demolition or alteration of appearance or structure of the building. In some cases though incentives are also offered by the local authority when a structure is listed.

<sup>21</sup> Most city town planning schemes have special procedures that need to be followed before a demolition is allowed. Before the local authority grants consent for the demolition to take place it usually investigates carefully the effect the demolition will have on the townscape.

<sup>22</sup> These will all be dealt with in more detail later.

<sup>23</sup> Brett, M.R. 'Preference for Building Styles in Pietermaritzburg' in *Architecture SA* (1985) July/August 51.

<sup>24</sup> The Simon van der Stel Foundation.

<sup>25</sup> Eg. Historic Homes of South Africa Ltd.

awareness in urban conservation has also developed at a local level with the establishment of local street associations<sup>26</sup> and preservation groups.<sup>27</sup> The presence and participation of the public is therefore important if conservation of townscapes is to succeed.

In South Africa there is evidence of an increasing readiness to achieve the preservation of historical and cultural significant buildings and townscapes. An example of this is to be found in the provisions of the town planning scheme of the City of Pietermaritzburg.

Historic preservation contributes to the general welfare of the community. It offers educational and cultural opportunities for the public and enhances the general economic environment of an area by encouraging tourism and neighbourhood reinvestment. This study will examine the legal principles available which facilitate conservation, with particular reference to Pietermaritzburg.

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<sup>26</sup> Eg. The Deanery Lane Association.

<sup>27</sup> Eg. The Pietermaritzburg Society.

# CHAPTER 2

# NATIONAL

# MONUMENTS

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## Introduction

The program for the conservation of historical architecture in South Africa has primarily involved the declaration of national monuments. South African society has been influenced by generations of architectural historians and has come to equate "monuments" with "history" and at times inappropriately with "culture". This is false because it tends to marginalise the role of the larger community in the processes of history.<sup>1</sup>

The creation of a small number of "monuments" within an urban environment can act as a focus for the restoration of smaller and less important historical buildings. Endowing "official" historical status to buildings may at the same time "de-recognise" other buildings about them creating the impression that they are less worthy of recognition and thus open them up to a process of indiscriminate destruction or development. Current conservation policies in South Africa tend to single out special cases, idiosyncratic examples or buildings of exceptional merit and, through a process of "monumentalisation", isolate them from the social context in which they exist.<sup>2</sup>

The merits of monuments are established when they are used :

- to reinforce existing historical fabrics;
- to re-integrate old buildings into the present-day life and activities of the community;
- to return them from structural decay and the threshold of demolition and;
- to bring a halt to a potential "domino effect", where the loss of one important

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<sup>1</sup> Frescura, F. 'Who Needs Monuments?' in *Juta's South African Journal Of Property* (1989) 40.

<sup>2</sup> Op cit n1 41.

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building puts a series of others in jeopardy and under the immediate threat of removal.<sup>3</sup>

National monuments should be used as part of a larger policy towards townscape conservation.

### **The Origins of the National Monuments Act<sup>4</sup>**

In 1905 the South African National Society was formed in Cape Town with branches in Grahamstown, Pietermaritzburg and Durban. Its aim was to "To foster appreciation of the country's heritage and to make the public aware of the necessity for preserving monuments".<sup>5</sup> It was this society, which still exists today, which motivated for the introduction of the Bushmans - Relics Protection Act 22 of 1911 and the Natural and Historical Monuments Act 6 of 1923.<sup>6</sup> These two Acts laid the foundation of what is today the National Monuments Council.<sup>7</sup>

The Act<sup>8</sup> passed in 1911 was the first step towards the preservation of South Africa's cultural heritage. This legislation's specific purpose was the protection of the San rock art as well as other archaeological artefacts. The Act was in response to overseas expeditions removing and exporting examples of South African rock art. The 1923 legislation<sup>9</sup> established the Historical Monuments Commission, the forerunner of the Na-

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<sup>3</sup> Op cit n1 42.

<sup>4</sup> 28 of 1969.

<sup>5</sup> *Short Course; Architectural Conservation* Natal Provincial Museum Services (1991) 2.

<sup>6</sup> Richings, F.G 'National Monuments' in Joubert, W.A. (ed) *The Law of South Africa* vol 11 (1981) 2.

<sup>7</sup> Ibid

<sup>8</sup> The Bushman - Relics Protection Act

<sup>9</sup> The Natural and Historical Monuments Act 6 of 1923.

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tional Monuments Council, though it could do little to safeguard buildings and other artifacts from indiscriminate destruction.<sup>10</sup> It was only the Natural and Historical Monuments, Relics and Antiques Act 4 of 1934 that empowered the Historical Monuments Commission to extend its protection to a wide range of artifacts, buildings and natural environments and as a result the Commission was able to embark upon a relatively modest program of monument declaration. This was continued with determination after 1969, when the Commission was replaced by the National Monuments Council with the enactment of the National Monuments Act.<sup>11</sup> The National Monuments Council is a body whose powers have since been extended by the successive Acts amending the legislation in 1979, 1981, and in 1991.<sup>12</sup>

### **The Purpose of the Act**

The purpose of the National Monuments Act<sup>13</sup> is stated<sup>14</sup> to be the provision for the repair, maintenance and general care of certain burial grounds and graves, the establishment of gardens of remembrance, the erection of memorials for certain persons and the establishment of certain movable and immovable property as national monuments. A monument in section 1 of the Act is described as any property declared under the Act to be a national monument and includes any property provisionally so declared. According to A J van der Walt<sup>15</sup> this definition is wide enough to provide for the inclu-

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<sup>10</sup> Frescura, F. 'National Or Nationalist? A Critique Of The Monuments Council, 1936-1989' in Japha, D. and Japha, V. (eds) *Proceedings Of The National Urban Conservation Symposium Johannesburg 1990* (1991) 12.

<sup>11</sup> 28 of 1969.

<sup>12</sup> Op cit n10.

<sup>13</sup> 28 of 1969.

<sup>14</sup> In the long title of the Act.

<sup>15</sup> *The Conservation of Buildings and Townscapes in South African Law* (1987) 36.

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sion of both buildings and townscapes and thus the Act can theoretically accommodate all statutory measures necessary for the conservation of historic buildings and townscapes.

### **The National Monuments Council**

As previously stated the Act provides for the establishment of the National Monuments Council<sup>16</sup>, a body corporate capable of suing and being sued in its own name and of performing all acts such as may be necessary for or incidental to the exercise of its powers and the performance of its functions and duties under the Act.<sup>17</sup> The council consists of not less than seven members<sup>18</sup> and meets twice a year. It also has many sub-committees<sup>19</sup> on which both Councillors, other appointees and, in certain instances, members of the staff of the National Monuments Council serve. The Act defines the object of the National Monuments Council as follows :

" To preserve and protect the historical and cultural heritage, to encourage and promote the preservation and the protection of that heritage, and to co-ordinate all activities in connection with monuments and cultural treasures in order that monuments and cultural treasures will be retained as tokens of the past and may serve as an inspiration for the future. "<sup>20</sup>

This study deals essentially with the built environment as opposed with the natural environment and hence only those aspects of the Act will be dealt with. Provision though is made for protection of other categories of cultural and natural artifacts. For purposes

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<sup>16</sup> Section 2

<sup>17</sup> Op cit n15 36.

<sup>18</sup> Section 3(1).

<sup>19</sup> Section 3A.

<sup>20</sup> Section 2A.

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of this study the significant component of the Act is contained in the provisions regarding the powers, functions and duties of the Council.<sup>21</sup>

*Powers, Functions and Duties of the National Monuments Council*

(a) The Council has the power to investigate and report to the Minister of National Education<sup>22</sup> on any matter relating to a monument, the desirability of declaring anything to be a national monument, any application for a State subsidy in respect of the purchase, restoration or maintenance of a monument, and to make the necessary recommendations to the Minister in order to enable him to exercise any of his powers under the Act.<sup>23</sup>

(b) The Council may provisionally declare any immovable property, in respect of which the Council is investigating the desirability of recommending it to be declared a national monument, to be a national monument or likewise withdraw such a notice.<sup>24</sup> This action has the effect for the purpose of the application of the provisions of the Act with regard to the protection of the property<sup>25</sup> to administer the provisionally declared immovable property as a national monument. Under this action the consent of the owner or the Ministers' is not required.<sup>26</sup> Such action is a temporary measure taken for either six months or until the notice expires<sup>27</sup> and may not be applied to state-owned buildings.<sup>28</sup> This provision is generally used if an owner does not wish to grant permis-

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<sup>21</sup> Op cit n15 38.

<sup>22</sup> Section 1.

<sup>23</sup> Section 5(1)(a)-(b).

<sup>24</sup> Section 5(1)(c).

<sup>25</sup> Particularly Section 12.

<sup>26</sup> *Short Course: Architectural Conservation* Natal Provincial Museum Services (1991) 6.

<sup>27</sup> Section 11.

<sup>28</sup> Section 5(5)(a).



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sion for declaration and there is simultaneously a threat to the continued existence of the building, or when the National Monuments Council wishes to have control over work being done on a building, but wishes to see the outcome before deciding whether or not to recommend the declaration.<sup>29</sup>

(c) The ultimate declaration of a national monument is effected not by the Council, but by the Minister Of National Education on the advice of the National Monuments Council, when he considers it to be in the national interest that any immovable property of aesthetic, historical or scientific interest be preserved, protected and maintained.<sup>30</sup> The owner's consent (this includes State owned property) is required before a site may be declared<sup>31</sup> and without the owner's consent it is very difficult to succeed with an attempt at declaration.<sup>32</sup> The implication of the declaration is that building specifications and plans etc. for work on a building must be approved by the National Monument Council before it may proceed<sup>33</sup> and it also subject provision in the Act protecting monuments.<sup>34</sup> Thus the National Monument Council has the power to regulate and if necessary prevent inappropriate treatment of national monuments (bar a few loopholes).<sup>35</sup> The national monuments status may be rescinded upon recommendation of the National Monuments Council.<sup>36</sup>

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<sup>29</sup> Op cit n26 6.

<sup>30</sup> Section 10(1).

<sup>31</sup> Section 10(3).

<sup>32</sup> Op cit n26 6.

<sup>33</sup> Ibid.

<sup>34</sup> Especially Section 12.

<sup>35</sup> Mr. A. Hall - National Monuments Council - Pietermaritzburg.

<sup>36</sup> Section 10(2)(b).

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(d) The Council is also authorized to compile and maintain a register of immovable property which it regards as worthy of conservation on the ground of its historic, cultural or aesthetic interest and to supplement, amend or delete any entry in the register from time to time. Provided that no entry shall be made until consultation has taken place with the local authority in whose jurisdiction the property is situated.<sup>37</sup> The implication of listing is that the National Monuments Council must be notified of proposed alterations to or demolition of registered structures.<sup>38</sup>

(e) The Council also may after consultation with the relevant authority, designate any area of land to be a conservation area on the grounds of its historic, aesthetic or scientific interest.<sup>39</sup> The concept of conservation areas is therefore to identify areas which have unique characteristics or require a special form of protection. Different regulations are promulgated in each case and depend upon the needs of the area concerned. In the urban context the establishment of conservation areas is essentially a town-planning action which takes place in consultation with the local authority and the community concerned.<sup>40</sup> Examples of such areas in Pietermaritzburg are Leighton street and Deanery lane.

(f) The Council can purchase or otherwise acquire, hold, let, hire, receive in trust, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in any property.<sup>41</sup> The reason for this provision is to enable the Council to obtain control of prop-

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<sup>37</sup> Section 5(1)(cC).

<sup>38</sup> Section 12(1A).

<sup>39</sup> Section 5(9).

<sup>40</sup> *Short Course: Architectural Conservation* Natal Provincial Museum Services (1991) 6.

<sup>41</sup> Section 5(1)(e).

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erty which is declared to be a national monument, in order that it can take action to restore, maintain or take care of the property.<sup>42</sup> The power to acquire property by way of purchase can only be done if the property is or is about to be declared a national monument and if the council has the necessary funds at its disposal.<sup>43</sup> It can also invest, lend or borrow money for the application of its functions<sup>44</sup>, with the consent of the Minister in writing given in consultation with the Minister of Finance.<sup>45</sup> It is also possible for the Council to expropriate immovable property if it can satisfy the Minister that the property is needed for the application of its functions, and that it cannot be acquired on reasonable terms from the owner.<sup>46</sup>

(g) The Council has the power to preserve, repair, restore, maintain anything declared or provisionally declared under the Act to be a national monument, if the property is under the control of the Council and if not, the Council may with the concurrence of the Minister after reasonable notice to the owner, take steps that may be necessary for the maintenance of the property if the owner of such property fails to maintain the monument properly.<sup>47</sup> The Council may not construct fences, walls or gates on the property<sup>48</sup> or acquire, construct or maintain an access road over land to a monument without the consent of or prior agreement with the owner.<sup>49</sup>

(h) The Council can erect memorial tablets to give information regarding the relevant monument,<sup>50</sup> and to affix the badge or a sign of the Council to the property.<sup>51</sup>

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<sup>42</sup> Van Der Walt.A.J. *The Conservation Of Buildings and Townscapes In South African Law* (1987) 40.

<sup>43</sup> Section 5(3).

<sup>44</sup> Section 5(1)(d).

<sup>45</sup> Section 5(2).

<sup>46</sup> Op cit n45 41.

<sup>47</sup> Section 5(1)(f).

<sup>48</sup> Sections 5(1)(f) and 9B(a).

<sup>49</sup> Sections 5(1)(i) and 9B(b).

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(i) The Council is enabled with extensive additional powers to exercise its functions,<sup>52</sup> such as the power to publish and distribute knowledge and information relating to monuments, and to encourage and to promote the preservation of monuments through the news media or otherwise.<sup>53</sup>

(j) The Council may with the approval of the Minister render financial assistance to any person, authority or body of persons which restores and preserves monuments and which has been registered under this section<sup>54</sup>, for defraying such expenditure of such person, authority or body as determined by the Minister from time to time.<sup>55</sup> However in these inflationary times this aid is not as substantial as it used to be. The Council also provides a service whereby old materials can be obtained for restoration purposes, at very low cost or for nothing at all depending on the circumstances.<sup>56</sup>

(k) The Council shall also endeavour to ensure that land surrounding or in the immediate vicinity of a monument is not developed in such a manner that the aspect of, or the view from, that monument is obstructed.<sup>57</sup> This provision is a good example according to A. J. van der Walt<sup>58</sup> of a legislative measure aimed at the conservation not only of the monument in isolation, but of the townscape as a visual unit.

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<sup>50</sup> Van Der Walt, A.J. *The Conservation Of Buildings and Townscapes In South African Law* (1987) 43.

<sup>51</sup> Section 5(1)(g).

<sup>52</sup> Op cit n50 43.

<sup>53</sup> Section 5(1)(j).

<sup>54</sup> Section 5A(2).

<sup>55</sup> Section 5A(1).

<sup>56</sup> Mr A. Hall - National Monuments Council - Pietermaritzburg.

<sup>57</sup> Section 5(8)(a)(i).

<sup>58</sup> *The Conservation Of Buildings and Townscapes In South African Law* (1987) 45.

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### Protection Afforded by the Act

Section 12(2A)(f) of the Act stipulates that no person shall destroy, damage, excavate, alter, remove from its original site or export from the Republic any historical site<sup>59</sup>, except under the authority of and in accordance with a permit issued under this section. Application forms for the issuance of a permit under this provision of the National Monuments Act or any other of the forms of protection mentioned above are available from any of the six Regional Offices of the National Monuments Council.<sup>60</sup> This provision is difficult to police because many developers and property owners are unaware that such a clause exists and that approval is needed for changes to be made in buildings older than 50 years. Many buildings are therefore destroyed without the Council ever knowing.<sup>61</sup> This clause can also lead to owners and developers becoming antagonistic toward conservation. Up until the time of being told to make application to the National Monuments Council, in terms of the clause, developers maybe unaware of any conservation value in the building concerned and are often faced with the dilemma of being asked to save a building on a site in which they have already invested considerable time and money in planned development.<sup>62</sup> If the listing of buildings was comprehensive and buildings on the list enjoyed appropriate protection and the local authority was cooperating with the Council, the application of this clause could be suspended.<sup>63</sup> Ultimately therefore the cause of conservation is not well served, because

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<sup>59</sup> Section 1 defines an "Historic Site" as any identifiable building or part thereof, marker, milestone, gravestone, landmark or tell older than 50 years.

<sup>60</sup> *Short Course: Architectural Conservation* Natal Provincial Museum Services (1991) 7.

<sup>61</sup> Mr A. Hall - National Monuments Council - Pietermaritzburg.

<sup>62</sup> Ibid.

<sup>63</sup> Op cit n60 15.

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such a provision creates a false sense that the problems of destruction have been addressed, whereas nothing can be further from the truth.<sup>64</sup>

Thus property which has been declared or provisionally declared a national monument, a property worthy of conservation or a conservation area under the act is thereafter protected from alienation, removal, export and against damage of any kind.<sup>65</sup> There are three possible ways that a national monument may be protected:<sup>66</sup>

- (1) by the owner of the property, with or without the financial assistance of the Council.
- (2) by the Council in cases where the State or the Council is the owner of the monument.
- (3) by the Council in cases where the state or the Council is not the owner of the monument, due to either an agreement to that effect with the owner or because the owner failed to maintain the monument.<sup>67</sup>

Also once a property has been entered into a list of immovable property worthy of conservation or an area has been declared a conservation area, planning authorities and the owner are required to consult with the Council in respect of planning which affects such immovable property or such conservation area.<sup>68</sup>

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<sup>64</sup> Fagan, G. 'The Conservation Pyramid' in *Architecture SA* (1988) September/ October 21.

<sup>65</sup> Van Der Walt, A.J. *The Conservation Of Buildings and Townscapes In South African Law* (1987) 45.

<sup>66</sup> Ibid.

<sup>67</sup> Section 5(1)(f).

<sup>68</sup> Section 12(1A).

**Ministerial Duties Under The Act**

The Minister may also make regulations under the Act for the practical administration of all matters considered to be advisable.<sup>69</sup> Also the Council with the approval of the Minister may make by-laws to:

- (a) regulate the admission of members of the public to the monuments under its control, and the fees payable for such admission.<sup>70</sup>
- (b) safeguard monuments and conservation areas from damage, disfigurement, alteration, destruction or defilement or for the prevention of unauthorized export.<sup>71</sup>
- (c) regulate the excavation, removal or export of any objects that may be declared national monuments.<sup>72</sup>
- (d) regulate the conditions of use of any area of land which has been declared to be a monument and which is under the control of the Council, as well as conservation areas.<sup>73</sup>

Any local authority may, with the approval of the Minister and the Council, make by-laws for the same purpose as stated above.<sup>74</sup> These by-laws may prescribe fines not exceeding one hundred Rand for any contravention.<sup>75</sup>

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<sup>69</sup> Section 17.

<sup>70</sup> Section 18(1)(a)-(b).

<sup>71</sup> Section 18(1)(c).

<sup>72</sup> Section 18(1)(d).

<sup>73</sup> Section 18(1)(e).

<sup>74</sup> Section 18(2)

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### **Criminal Sanction**

A contravention of any of the provisions of the Act by any person shall make the person guilty of an offense and liable on conviction to a fine<sup>76</sup> or imprisonment or both.<sup>77</sup> However since the purpose of the Act is to promote conservation rather than to be punitive the use of criminal sanction is generally ineffectual and difficult to enforce.

### **Criticism of the Act**

Numerous criticisms have been levied at the Act and the Council, the greatest of these being that it operates outside the town planning legislation, thus operating in a vacuum<sup>78</sup>. The legislation under which the council operates is antiquated, since Act 28 of 1969 is merely a reworking of the 1936 legislation, which was based on a misunderstanding based on the English situation where unlike South Africa there is a large legacy of great monuments and ancient monuments<sup>79</sup>. The objectives of the Act are idealistic.<sup>80</sup> Also the Minister of National Education does not have the power to force the owner of a listed building or national monument to maintain it. Thus the owner, if he so desires, can allow the building to erode due to decay or from lack of

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<sup>75</sup> Section 18(3).

<sup>76</sup> For some offenses under the Act to a fine not exceeding R 10 000 or to imprisonment for a period not exceeding two years or to both; and to other offenses to a fine not exceeding R 1 000 or, in default of payment of such fine, to imprisonment for a period not exceeding 12 months.

<sup>77</sup> Section 16.

<sup>78</sup> Japha, D & Japha, V. 'Urban conservation: "monumentalisation" or everyday planning?' in *Architecture SA* (1993) May/June 27.

<sup>79</sup> Mr B Bassett - City Engineer - Pietermaritzburg.

<sup>80</sup> Section 2(a).



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maintenance.<sup>81</sup>

Another criticism that can be levelled at the Act is the lack of formal structure in terms of which representations can be made to local authorities or by any person or organisation relating to the conservation of any particular building. The National Monuments Council simply does not have the manpower or resources to fully investigate the historic, aesthetic or scientific values of every structure in South Africa.<sup>82</sup> The National Monuments Council has also been criticised for forming local regional plans committees made up of invited voluntary members who have little practical knowledge of the difficulties of scrutinising plans in order to establish their conservation worthiness<sup>83</sup>.

Criticism has also been levied that the conservation of buildings by the Council has been too 'Eurocentric' and an elitist practice in light of the difficult economic circumstances and changing political and cultural context of the country.<sup>84</sup> Stronger criticism has also been given against the National Monuments Council by F. Frescura<sup>85</sup> who stated that it played an obvious ideological role by giving legitimacy to past totalitarian and racist regimes. Many believe that the only way of righting this imbalance is find potential monuments which are 'relevant to Blacks'.<sup>86</sup> In Natal this has occurred with several sites being in the process of declaration as National Monuments. Among these

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<sup>81</sup> Mr A. Hall - National Monuments Council - Pietermaritzburg.

<sup>82</sup> Ibid.

<sup>83</sup> Townsend, S. 'Conservation-related control in South Africa, with particular reference to Cape Town' in Japha, D. & Japha, V. (eds) *Proceedings of The National Urban Conservation Symposium Johannesburg 1990* (1991) 33.

<sup>84</sup> Hall, A. 'National Monuments - A new focus in Natal' in *Natalia* 22 (1992) 55.

<sup>85</sup> Frescura, F 'National Or Nationalist? A Critique Of The Monuments Council 1936 - 1989' in Japha, D. & Japha, V. (eds) *Proceedings Of The National Urban Conservation Symposium Johannesburg 1990* (1991) 21.

<sup>86</sup> Op cit n83 58.

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are the Shakan pitfalls traps at the confluence of the Black and White Mfolozi Rivers and the Umhlathuzana Rock Shelter on the Mhlathuzana River south of Hillcrest.<sup>87</sup>

These sites do warrant protection and are relevant to many , but the problem is that black culture does not leave behind as much material culture as western culture does. Regardless of the fact that there is this backlog in the protection of these sites in terms of legislative protection, there will never be the same amount and variety of material which can be protected by the various levels of protection provided for by the National Monuments Act.<sup>88</sup> This problem needs to be tackled if the concept of cultural conservation by means of legislative protection is to take place under the new political dispensation.<sup>89</sup>

To overcome this, greater use could be made of the provisions in the Act which are associated with figures or the occurrence of historical happenings.<sup>90</sup> Thus there is an opportunity to extend the sphere of recognition to related sites associated with the 'struggle' or figures close to it.<sup>91</sup> The National Monuments Council has recently dealt with the retention of the Alan Paton papers in South Africa and the Sol Plaatjies House. There are many other sites in Natal such as the Luthuli House at Groutville and the place where Nelson Mandela was arrested near Howick.<sup>92</sup> These sites are relevant and will in time be recognized and protected.

The provision of 'historical sites'<sup>93</sup> under the National Monuments Act could be extended to encompass oral tradition and oral history, thus creating a broader scope of

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<sup>87</sup> Op cit n83 59.

<sup>88</sup> 28 of 1969.

<sup>89</sup> Ibid.

<sup>90</sup> Sections 2A and 12(2A)(f).

<sup>91</sup> Ibid.

<sup>92</sup> *Short Course: Architectural Conservation* Natal Provincial Museum Services (1991) 17.

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sites that could be protected in terms of the Act. Such a site could include a rock, tree or pool upon which a community places significance and which is considered to be conservation worthy.<sup>94</sup>

In Natal, there has been a unique level of co-operation between the two monuments councils<sup>95</sup> and the Provincial Administration where joint projects have enabled the institutions to overcome certain of the administrative, political and geographic divisions which exist in the region.<sup>96</sup>

### **Conclusion**

Ultimately the only way architectural conservation is going to justify its existence in the future is through economic and social terms and not by legal methods in isolation. What has to be demonstrated is that conservation of the built environment can hold economic and social benefits for the vast majority of the population in the country.<sup>97</sup> In architectural conservation a few projects have recently tied conservation with social upliftment in Natal. The restoration of the old Girls Collegiate School in Pietermaritzburg, a provisionally declared national monument, was one of the first such projects in Natal to incorporate the two goals.<sup>98</sup>

This is an unusual project in that it ties the conservation of an important group of buildings in Pietermaritzburg with the development of building skills among the less

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<sup>93</sup> Sections 12(2A)(f), 1, and 2A.

<sup>94</sup> Hall, A. 'National Monuments - A new focus in Natal' in *Natalia* 22 (1992) 55.

<sup>95</sup> National Monuments Council and the KwaZulu Monuments Council.

<sup>96</sup> Op cit n94 60.

<sup>97</sup> Ibid.

<sup>98</sup> Op cit n94.

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privileged sectors of our society. Restoration of a type and quality rarely seen in South Africa is taking place on the site. This has been due in part to the fact that the time constraints of a normal building project do not exist on a site where the training of the builders is part of the building sponsor's (various foreign and local institutions) plans. The buildings will become a basic skills training centre.<sup>99</sup> Other such projects of a similar nature include the old Merchiston School boarding hostel in Pietermaritzburg and a settler home in Howick. It is hoped that future politicians will utilise this form of conservation that facilitates social upliftment and also can be justified in terms of the facilities that these type of projects provide. If architectural conservation is to be justified in the 'new' South Africa innovative projects like Old Girls Collegiate will have to be found and encouraged.

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<sup>99</sup> Ibid.

# CHAPTER 3

## The Environment Conservation Act 73 of 1989 and Other Mechanisms

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### The Environment Conservation Act<sup>1</sup>

The long title of the Environment Conservation Act<sup>2</sup> reads:

" To provide for the effective protection and controlled utilization of the environment and for matters incidental thereto"

This statement is both clear and simple and offers great scope to the Council for the Environment for the effective protection of the environment.<sup>3</sup>

#### *The definition of the Act*

The Act defines the Environment as:

"the aggregate of surrounding objects, conditions and influences that influence the life and habits of man or any other organism or collection of organisms".<sup>4</sup>

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<sup>1</sup> 73 of 1989.

<sup>2</sup> 73 of 1989.

<sup>3</sup> Prins, H. 'Conservation for a Post-Apartheid South Africa' in Japha, D., and Japha, V., (eds) *Proceedings of The National Urban Conservation Symposium Johannesburg 1990* (1991) 3.

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This definition acknowledges the 'holistic or dynamic, organic and symbiotic nature of the environment'<sup>5</sup> and gives culture a place in the environment.<sup>6</sup> However, excluded in terms of the Act are all matters that protect and control that part of the environment comprising cultural objects such as buildings, monuments and their surroundings. Section 41(2) of the Environment Conservation Act states:

" The provisions of this Act shall not apply in respect of any matter to which the provisions of the National Monuments Act 28 of 1969 apply. "

Although the Council for the Environment has in fact appointed one of its committees in the field of the built environment<sup>7</sup>, it is extraordinary that the Act makes no provision for the co-ordination of this aspect of the environment and its integration within a holistic policy for and administration of the environment.<sup>8</sup> Thus although the Council for the Environment is an advisory and not an executive body, a grey area exists between the two Councils<sup>9</sup> in the fields covered, with the built environment addressed by two<sup>10</sup> separate central government departments.<sup>11</sup>

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<sup>4</sup> Section 1.

<sup>5</sup> Op cit n3.

<sup>6</sup> The 'influences that influence the life and habits of man'.

<sup>7</sup> Committee for the Built Environment.

<sup>8</sup> Op cit n3 .

<sup>9</sup> Council for the Environment and the National Monuments Council.

<sup>10</sup> The Department of the Environment and the Department of National Education.

<sup>11</sup> Fagan, G. 'The Conservation Pyramid' in *Architecture SA* (1988) September/October 21.

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*A National Environmental Policy*

The Act does, however make provision for the enunciation of a National Environmental Policy.<sup>12</sup> The Environmental Policy has only recently been set out in Government Notice 50 of 1994<sup>13</sup>. This policy statement contains considerable references to cultural heritage and the urban environment.

The preamble of the notice sets out various premises and principles upon which the environmental policy is based. Those relevant to urban conservation are as follows :

\* *" Every inhabitant of the Republic of South Africa has the right to live, work and relax in a ....aesthetically and culturally acceptable environment. "*

\* *"Every generation has an obligation to act as a trustee of its ...cultural heritage in the interests of succeeding generations. "*

\* *" The State, every person and every legal entity has to consider all activities that may have an influence on the environment duly and to take all reasonable steps to promote the protection, maintenance and improvement of ... the human living environment".*

Under the heading Cultural Heritage the policy states:

\* *" South Africa has a wide variety of cultural groups, each attaching certain values to their heritage. Cultural assets such as rock art, archaeological sites and implements, historical equipment, transport, weapons and artwork; ancestral graves; sites of religious significance; geological sites and aesthetic and culturally significant man-made landscapes are also to be found in close relationship with the natural environment.*

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<sup>12</sup> Section 2.

<sup>13</sup> In Government Gazette No 152428 dated 21 January 1994.

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*The conservation of these rich cultural assets, be they proclaimed historical buildings of national importance or simply elements of local significance, must be integrated into the process of environmental management. In particular, it must be ensured that the maintenance of cultural assets is taken into account in all development projects and that the needs of the local communities are honoured in this respect. "*

The policy relating to the Urban Environment states that:

\* *"Urban development and management must as far as possible be guided in such a manner that all inhabitants can live ....in an aesthetically and culturally acceptable environment.*

This would include inter alia the following:

*A holistic environmental approach will form an integral part of all facets of urban planning and development. This includes the built environment and natural environmental elements taking into account the socio-economic factors. Consultation with all interested and affected parties is a fundamental element of this policy. "*

The Environmental Policy follows an approach similar to the Convention, adopted in November 1972 by the General Conference of UNESCO<sup>14</sup> concerning the Protection of the World Cultural and Natural Heritage,<sup>15</sup> in that whenever possible, development must take place subject to the requirements for the preservation of cultural heritage assets.

#### *Provisions of the Act*

The Act also contains other provisions that may be linked to planning legislation and

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<sup>14</sup> United Nations Educational, Scientific and Cultural Organisation.

<sup>15</sup> Commonly called the World Heritage Convention.



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used to promote the conservation of the built environment. These provisions<sup>16</sup> enable the Minister of Environment Affairs<sup>17</sup> to set down regulations under the Act relating to the conservation and the utilization of the environment in order to control the activities which may have a detrimental effect on the environment. Such activities may include land use and transformation<sup>18</sup>. These provisions will probably be interpreted restrictively<sup>19</sup>, but theoretically they can be interpreted so as to enable the Minister to regulate the conservation of the built environment. It is possible, in theory, for the Minister to use his power to prevent any activity proceeding, which may involve the destruction or impairment of some architectural feature, historical monument or site. Thus the Department of the Environment has the mechanism to be a protector of the urban environment but as yet has not used its legislative tool to protect townscapes.<sup>20</sup> Rather the Department just offers helpful advice<sup>21</sup> to local authorities and thus seldom is anything done.<sup>22</sup>

The Minister also has the power to enter into conventions, treaties and agreements and to apply the provisions of such conventions, treaties or agreements by way of regulations<sup>23</sup>. The Minister should utilise his powers under the Act to adopt the various conventions and recommendations of UNESCO.

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<sup>16</sup> Sections 21,22 and 23.

<sup>17</sup> Section 1.

<sup>18</sup> Section 21(2)(a).

<sup>19</sup> Van Der Walt, A. J. *The Conservation Of Buildings and Townscapes In South African Law* (1987) 67.

<sup>20</sup> According to Mr B. Basset - Chief City Engineer - Pietermaritzburg.

<sup>21</sup> By means of departmental newsletter for local authorities - Muniviro.

<sup>22</sup> Op cit n20.

<sup>23</sup> Section 28 read with Section 38.

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The provisions of the Environmental Conservation Act are extremely broad and will not actively assist townscape conservation on a day-to-day basis. However, there would appear to be a clear message, as contained in the environmental policy that architectural and cultural conservation is important.

### **The Physical Planning Act<sup>24</sup>**

The Department of the Environment does not operate<sup>25</sup> the Physical Planning Act<sup>26</sup> which includes vague provisions for the conservation of the urban environment. The Physical Planning Act enables the drawing up of policy plans<sup>27</sup> and urban structure plans<sup>28</sup> which could theoretically include conservation related provisions. This though has yet to happen according to S. Townsend.<sup>29</sup>

### **The Culture Promotion Act<sup>30</sup>**

Another act which creates potential for the conservation of the urban environment is the Culture Promotion Act 35 of 1983<sup>31</sup>. The purpose of the Act is:

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<sup>24</sup> 125 of 1991.

<sup>25</sup> The Department of Planning, Provincial Affairs and National Housing administers this Act.

<sup>26</sup> Act 125 of 1991.

<sup>27</sup> Sections 4, 5 and 6.

<sup>28</sup> Sections 22 and 24.

<sup>29</sup> 'Conservation - Related Control In South Africa, With Particular Reference To Cape Town' in Japha, D, and Japha, V. (eds) 'Proceedings Of The National Urban Conservation Symposium Johannesburg 1990'; 1991; 36.

<sup>30</sup> 35 of 1983.

<sup>31</sup> Van Der Walt, A.J. *The Conservation Of Buildings and Townscapes In South African Law* (1987) 52.

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"the preservation, development, fostering, and extension of culture in the Republic by planning, organizing, co-ordinating and providing facilities for the utilization of leisure and for non-formal education; for the fostering of educational and cultural relations with other countries; and for the establishment of regional councils for cultural affairs; to confer certain powers upon Ministers in order to achieve those objects; and to provide for matters connected therewith.

This purpose is stated widely enough to include the preservation or conservation of the built environment.<sup>32</sup> Thus the Act is of some significance, especially with regard to its expressed objective regarding planning, organizing and co-ordination of cultural matters. The Act empowers the Minister<sup>33</sup> to acquire, develop and maintain immovable property in order to foster culture in the Republic<sup>34</sup>, and thereby create the possibility for the conservation of culturally important buildings and townscapes.

The Act also establishes regional councils for cultural affairs,<sup>35</sup> whose purpose is stated to be the preservation, fostering, development and extension of cultural affairs in the region for which they have been established.<sup>36</sup> This section does not notably provide for the preservation or conservation of buildings or townscapes, but the reference to the visual arts<sup>37</sup> and the Minister's<sup>38</sup> ability to determine the fields in which the councils may function are probably wide enough to include it.<sup>39</sup>

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<sup>32</sup> Ibid.

<sup>33</sup> Section 1.

<sup>34</sup> Section 2(1)(a)(i).

<sup>35</sup> Section 3(1).

<sup>36</sup> Section 3(5).

<sup>37</sup> Section 3(5)(a).

<sup>38</sup> Section 3(5).

<sup>39</sup> Supra.

### **Acts Dealing with Particular Areas Of Conservation**

There are a handful of acts devoted to the protection or conservation of a particular group of buildings or area. These Acts are important in themselves, but do not make any meaningful contribution to townscape conservation generally. These acts include The Church Square, Pretoria, Development Act<sup>40</sup>; Groot Constantia Estate Control Act<sup>41</sup>; Paarl Mountain Act<sup>42</sup>; and the Rhodes Will (Groote Schuur Devolution) Act<sup>43</sup>.

Thus although there are Acts<sup>44</sup> which could be expected to enable conservation orientated control, they have not been used for these purposes. As stated above the reasons for this under utilization include the lack of provision's which actually relate to conservation of the built environment and the non use of the provisions that are provided which could enable and promote conservation control of the built environment.

### **Restrictive Conditions**

There are also, however, legal institutions in the common law which can serve as the basis for conservation measures, such as restrictive conditions. Restrictive conditions may be defined as limitations on the use of land, imposed by the original township

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<sup>40</sup> 53 of 1972.

<sup>41</sup> 24 of 1975.

<sup>42</sup> 83 of 1970.

<sup>43</sup> 9 of 1910.

<sup>44</sup> The Environmental Conservation Act 73 of 1989; the Physical Planning Act of 1967 and the Cultural Promotions Act of 1983.

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owner, in favour of each and every purchase of land in the township as part of a general township scheme and registered in the title deed of the land for preserving the specific characteristics of the area.<sup>45</sup> The principles behind these restrictive conditions are that they have been deemed to be imposed for the benefit of all the owners of the erven<sup>46</sup>. The consequence of this is that the owners become at the same time mutually and reciprocally bound against other owners. The ramification of these rights is that the owner is entitled to enforce the restriction against any other owner who violates it, and also has the right to object where a particular owner wishes to remove a restriction.<sup>47</sup>

Therefore the purpose of the imposition of restrictive conditions is to preserve the character of a neighbourhood<sup>48</sup>, which makes them useful for conservation purposes. Also applications to remove these conditions afford opportunities for local authorities to impose new conservation related conditions in exchange for the relaxation or removal of the existing title conditions.<sup>49</sup> Unfortunately though the purpose of these restrictive conditions have been ignored and thus the character of many old and gracious neighbourhoods have been permanently destroyed<sup>50</sup> by the injudicious scrapping<sup>51</sup> of restric-

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<sup>45</sup> Van Wyk, J. 'Preserving The Essential Character Of The Neighborhood By Means of Restrictive Conditions' in Japha, D., and Japha, V. (eds) 'Proceedings Of The National Urban Symposium Johannesburg 1990' (1991) 38.

<sup>46</sup> *Blanckenberg v Forbes* 19955 (3) SA 170 (C) 175G; *Ex parte Nader Tuis (Edms) Bpk* 1962 (1) SA 751 (T) 752F; *Swiss Hotels (Pty) Ltd v Pedersen* 1966 (1) SA 197 (C) 201F-202D; *BEF (Pty) Ltd v Cape Town Municipality* 1983 (2) SA 387 (C) 392E-F.

<sup>47</sup> Op cit n45.

<sup>48</sup> *Norbreck (Pty) Ltd v Rand Township Registrar* 1948 (1) SA 1037 (W) 1044 -1045; *Transvaal Consolidated Land Exploration Co Ltd v Black* 1929 AD 454 @ 466; *Siegfried v Tidswell* 1952 (4) SA 319 (c) 326C-D.

<sup>49</sup> Townsend, S. 'Conservation - Related Control in South Africa, with Reference to Cape Town' in Japha, D. & Japha, V. (eds) 'Proceedings of the National Urban Conservation Symposium Johannesburg 1990' (1991) 32.

<sup>50</sup> Op cit n45 42.

tive conditions from title deeds<sup>52</sup>, as well as the apathy of local authorities to impose new conservation related conditions in exchange for existing conditions. Thus Conservation of townscapes in South Africa will have to rely heavily on statutory measures as far as legal enforcement is concerned.

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<sup>51</sup> Legislative methods have been developed whereby restrictive conditions can be removed, the most important of these is the Removal Of Restrictions Act 84 of 1967.

<sup>52</sup> Van Der Walt, A.J. *The Conservation Of Buildings and Townscapes in South African Law* (1987) 42.

# CHAPTER 4

# THE ROLE OF LOCAL

# AUTHORITIES

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## Introduction

The most important protectors of the urban environment in South Africa are the local authorities. It is at the local level that important preservation and conservation work occurs and therefore major issues are encountered and resolved. Thus conservation of the urban environment has become a local authority activity and not a national one. There are acts and various provisions in the provincial ordinances dealing with provincial and municipal control of town planning which affect the conservation of the built environment or offer opportunities for such conservation.

## The National Building Regulations and Building Standards Act<sup>1</sup>

This Act empowers and requires local authorities<sup>2</sup> to control all buildings under their jurisdiction<sup>3</sup> in terms of the National Building Regulations.<sup>4</sup>

The Regulations do not include any conservation-orientated controls.<sup>5</sup> The opposite is true as many of the regulations and standards militate against conservation as they re-

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<sup>1</sup> 103 of 1977.

<sup>2</sup> Section 1.

<sup>3</sup> Section 2(1).

<sup>4</sup> Section 17.

<sup>5</sup> Townsend, S. 'Conservation - related control in South Africa, with particular reference to Cape Town' in Japha, D. and Japha, V. (eds) 'The Proceedings of The National Urban Conservation Symposium Johannesburg 1990' (1991) 31.

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quire old buildings to conform to modern standards. An example of this is illustrated clearly with the Regulations requiring buildings to comply with the laid down precautionary measures against fires; and other emergencies including the resistance of buildings against the outbreak and spreading of fires; the protection of the occupants or users of buildings or other persons against fires, the aids or other installations to be in buildings for the combating or prevention of fires and for the vacating of the buildings in cases of fire.<sup>6</sup> To conform with the Regulations, structural alterations to old buildings or alterations which detract from the appearance often affect their integrity and the reason for their conservation. Under certain circumstances relaxations can be granted by the local authority and in some cases the conservationist ( be it the National Monument Council, local amenity society or conservation specialist within the local authority) can insist on conservation in exchange for support and a motivation for relaxation. Thus relaxation of the National Building Regulations can be used as a carrot to encourage and enable conservation. This requires expertise and cooperation on the part of the owner or architect, conservationist, and Local Authority to negotiate and compromise.<sup>7</sup>

A local authority may refuse to allow plans to be passed if it is satisfied that the building to which the application relates, is to be erected or altered in such a manner or will be of such a nature or appearance, that the area where the building is to be erected will be disfigured, or that the building will probably or in fact be unsightly or objectionable.<sup>8</sup> This provides local authorities with the opportunity of making aesthetic judgments in particular cases. Although probably not its original intention, this provision could be utilised to impose conservation or context-orientated aesthetic control.<sup>9</sup>

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<sup>6</sup> Section 17(1)(e).

<sup>7</sup> Op cit n5.

<sup>8</sup> Sections 7(1)(b)(ii) and 10 (1)(a)(ii).

<sup>9</sup> An example of this according to S Townsend op cit n5, is Simon's Town where the municipality has established an advisory Architectural Aesthetics Committee which scrutinies all building proposals within a given area in Simon's Town and advises the Town Engineer to approve or not approve applications. Given the somewhat ambiguous intention of the relevant sections of the Act it would probably be more beneficial if the creation of such committees were written into the Town Planning Regulations.



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The Act also states that owners of property are required to apply to the relevant local authority<sup>10</sup> for approval to demolish such structure. However, the only criteria for refusal are those of public health and safety<sup>11</sup>, and permission to demolish cannot be withheld on conservation grounds.

The Housing Act 4 of 1966 also contains provisions relating to the prohibition of demolition of dwellings and certain other buildings<sup>12</sup> without consent or permission. This prohibition has no relevance to the protection of the built environment. Its function is to protect the stock of residential dwellings in South Africa and refusal to demolish cannot be withheld other than that the building is fit for habitation and conservation plays no part in this decision.<sup>13</sup>

### **Provincial Ordinances**

In the various provincial town planning ordinances<sup>14</sup> there are provisions concerning the establishment of the new townships which obviously affect the built environment, but are disregarded for the purpose of this study because they do not affect the conservation or preservation of the built environment.

The important provisions are those dealing with town planning schemes in the various provinces as administered by the municipal authorities. The most important provisions

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<sup>10</sup> Section 12(2).

<sup>11</sup> Ibid

<sup>12</sup> Section 85(1).

<sup>13</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>14</sup> These are the Town Planning Ordinance 27 of 1949 (N), Town-Planning and Township Ordinance 15 of 1986 (T), Township Ordinance 9 of 1969 (O), Land Use Planning Ordinance 15 of 1985 (C).

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dealing with the purpose and effect of the town planning scheme will be discussed, while provisions concerning most of the procedural matters will be disregarded<sup>15</sup>. The purpose of a town planning scheme is stated in the Natal Ordinance to be the co-ordinated and harmonious development of the local authority area, or areas situated therein to which it relates, in such a way as will most effectively tend to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications.<sup>16</sup>

In all the provincial ordinances the relevant authority is authorized to incorporate specified provisions in the town planning scheme in order to promote the purpose of such a scheme,<sup>17</sup> and some of these provisions may be relevant for the conservation of the built environment.<sup>18</sup> In the Natal Ordinance, provision is made for the preservation or conservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty.<sup>19</sup> The relevant provisions that most town planning schemes embody which are relevant to conservation of the built environment are as follows<sup>20</sup>:

(a) The town planning scheme may control the allowable uses of designated parcels of land and the zoning of such land, as well as formulating an objection procedure

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<sup>15</sup> The various procedures for the drafting and implementation of a town planning scheme contained in the Town Planning Ordinance 27 of 1949 (N) are sections 41-45, 47bis - 55, 60-66, 67bis - 73.

<sup>16</sup> Town Planning Ordinance 27 of 1949 (N) section 40(1). Virtually the same wording is used in the ordinances of the other provinces.

<sup>17</sup> This illustrated in section 40(2).

<sup>18</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes In South African Law* (1987) 69.

<sup>19</sup> In the Schedule of the Town Planning Ordinance 27 of 1949 par 15.

<sup>20</sup> Op cit n18 69.

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for the aggrieved.<sup>21</sup>

(b) The town planning schemes may provide for the conservation of things or places of historical interest or natural beauty<sup>22</sup>, as illustrated above in the Natal Ordinance.

(c) The town planning scheme may contain provisions for the furtherance of the visual or aesthetical appeal of the town, by means of planting and protecting plants and trees as well as by controlling the visual aspects of buildings.<sup>23</sup>

(d) The town planning scheme may also contain provisions prohibiting certain developments, uses, alterations or works and allow for a review of this procedure to determine whether or not consent should be given.<sup>24</sup>

These provisions allow considerable opportunities for the conservation of the built environment, and are framed in such a way as to allow for the protection of the townscape in a wide sense.<sup>25</sup> It is therefore up to the relevant authorities to draft town planning schemes in such a way that these opportunities for conservation are utilised. It is also the job of concerned individuals and the relevant organisations to make use of the procedures so that the local authorities draft and utilise these provisions in the town planning schemes.

The Natal Town Planning Ordinance unlike any other of the provincial ordinances has provisions which establishes a Town Planning Appeals Board<sup>26</sup>. The powers of the Ap-

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<sup>21</sup> Section 46-47.

<sup>22</sup> Section 40(2) read with the Schedule par 15.

<sup>23</sup> Section 40(2) read with the Schedule par 2(d), and section 47 read with the Schedule par 12.

<sup>24</sup> Section 67.

<sup>25</sup> Op cit n18 70.

<sup>26</sup> Section 73bis.

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peals Board are laid down in section 73quat of the Ordinance. The Appeals Board has the power to hear and consider any appeal which right of appeal is conferred upon the appellant by the ordinance. The Appeals Board can confirm, alter or set aside the decision of the local authority, or the responsible authority as the case may be, or give a decision as it seems proper whether or not such a decision is in conflict with any provision of the scheme.<sup>27</sup> The board takes account of the provisions in the town planning scheme, the hardship that the appellant is being placed under due to the scheme and it also takes into account the uniqueness of the site.<sup>28</sup> Once an Appeals Board has decided an appeal, that decision then goes on review to the Administrator, who will either confirm or alter or set aside the decision of the Appeals Board or give another decision or make such an order as he deems proper.<sup>29</sup> The cases usually dealt with by the Appeals Board include special consent appeals, appeals against the prohibition of certain works<sup>30</sup>, and other town schemes decisions or orders (such as listing).<sup>31</sup>

Contravention of the Ordinance<sup>32</sup> can lead to fines or imprisonment if there is no compliance with a notice served in terms of this section.<sup>33</sup> A notice served may order termination of the contravention, compliance with the relevant provisions or alteration, removal or demolition of any building or structure in contravention with the ordinance. The use of the criminal sanction in response to contravention of conservation related provisions of the ordinance has met with not much acceptance by the courts.<sup>34</sup>

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<sup>27</sup> Section 73quat(5)(d).

<sup>28</sup> Mr. B. Dalling - member of the Appeals Board.

<sup>29</sup> Section 73sex.

<sup>30</sup> Section 67.

<sup>31</sup> Mr B Dalling - member of the Appeals Board.

<sup>32</sup> 27 of 1949.

<sup>33</sup> Ibid.

<sup>34</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

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The provincial ordinances such as the Town Planning Ordinance 27 of 1949 (N), are the legal basis for the town planning schemes through which all land use is controlled by the local authority, which often take into account the conservation of the built and natural environment.<sup>35</sup>

### **Town Planning Schemes**

Conservation orientated provisions are implemented through the next tier of controls in order to have legal force.<sup>36</sup> Thus local authorities have the power to protect the townscape through town planning schemes which are protected through the use of provisions such as zoning, listing and demolition procedures. The effect and legal implications of town planning schemes are more or less the same in all the provinces.<sup>37</sup>

### *Zoning*

Most town planning schemes seek to achieve the objectives<sup>38</sup> found in the town planning legislation<sup>39</sup> by delimiting the town into a variety of regulated and coordinated

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<sup>35</sup> Section 40(2) read with the Schedule par 15.

<sup>36</sup> Townsend, S. 'Conservation - related control in South Africa, with particular reference to Cape Town' in Japha, D. & Japha, V.(eds) *'Proceedings of the National Urban Conservation Symposium Johannesburg 1990'* (1991) 31.

<sup>37</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes in South African Law* (1987) 71.

<sup>38</sup> The co-ordinated and harmonious development of land in such a way as will most effectively tend to promote health, safety, good order, amenity, convenience and general welfare, as well as the efficiency and economy in the process of development.

<sup>39</sup> Town Planning Ordinance 27 of 1949 (N).

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zones<sup>40</sup>. These provisions are supplemented by proposals relating to such matters as the reservation of land for public use, general regulation of building and buildings within each zone, road traffic, the provision of recreational facilities, the preservation and conservation of items of historic interest or natural beauty.

Typically a scheme will zone land as residential (subclassified as general or special), industrial (general or special), commercial (general or special), educational, institutional, agricultural and open. The plan will specify the purpose for which the land in each zone may or may not be used. This specification is elaborated by additional provisions indicating the purposes for which the land may be used at the discretion of the local authority (so-called consent uses).<sup>41</sup> The zones indicate the purpose for which land may be used and prohibit land uses in the zone that are not in conformity with the scheme and proscribe 'consent' uses for which the requisite permission has not been obtained.<sup>42</sup>

The whole set of proposals is usually presented in the form of a map (or series of maps) which indicates (by colour codes) the various zones and their assigned 'uses'. The map is usually combined with a manual containing 'clauses' and tables elaborating or expressing the map<sup>43</sup>. In addition the clauses will set out additional planning specifications touching matters such as building regulations (eg floor area ratios, coverage and height, building lines, appearance), road traffic, streets, parking and various other aspects of a proper scheme of town planning.<sup>44</sup> Other relevant clauses to conservation of townscapes will be expanded upon shortly.

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<sup>40</sup> Claassen, P.E. and Milton, J.R.L. 'Land - Use Planning' in Fuggle, R.F. and Rabie, M.A. (eds) *Environmental Management in South Africa* (1992) 727.

<sup>41</sup> For example section 46(1)(c).

<sup>42</sup> Ibid.

<sup>43</sup> For example the City of Pietermaritzburg - Town Planning Scheme Clauses.

<sup>44</sup> Op cit n40.

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Many towns in South Africa have provisions in their zoning schemes which enable conservation related control. These controls in many towns,<sup>45</sup> though not Pietermaritzburg, are applied only to certain parts of the municipal area which have been identified as 'conservation', 'special' or 'environmental' areas.<sup>46</sup> Environmental or conservation areas are areas which local authorities are encouraged to define and declare as being areas with special character or quality. This no longer restricts attention to individual buildings but includes an appreciation of the character and appearance which deserve preserving or enhancing. This might relate to outstanding views or to buildings or groups of buildings, which might though be unexceptional in themselves, add to the general quality of the area; equally it might apply to trees and shrubs. The aims therefore are to conserve historical and architectural buildings in the area and to prevent excessive intrusion by out of scale redevelopment.<sup>47</sup>

It has been suggested that zoning regulations of the kind described above are the best form of conservation orientated control.<sup>48</sup> It will only be successful, however, if there is a procedure whereby sensitive or conservation areas are analysed and identified on the basis of an implicit recognition of the value of context, both visual and functional. Conservation zoning can lead to over regulation of certain cities and be too prescriptive as to where townscape conservation should take place.<sup>49</sup>

### *Building plans*

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<sup>45</sup> For example, Cape Town - Section 108 of the Zoning Regulations; Port Elizabeth - Section 12 of the Zoning Scheme; Stellenbosch - Article 7 of the Zoning Scheme.

<sup>46</sup> Townsend, S 'Conservation - related control in South Africa, with particular reference to Cape Town' in Japha, D. & Japha, V. (eds) *Proceedings of the National Urban Conservation Symposium Johannesburg 1990* (1991) 31.

<sup>47</sup> Ratcliffe, J. *An Introduction to Town and Country Planning* (1981) 299.

<sup>48</sup> Op cit n46 32.

<sup>49</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

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As previously stated no building work may be done in South Africa without approval from the relevant local authority<sup>50</sup>. When applications for approval are submitted they are scrutinized in terms of the National Building Regulations and the local authority's zoning regulations. In the clauses of certain town planning schemes there is also provision for the submission to the local authority of plans indicating the external appearance of a building, which can be used as a conservation related clause. Under this provision the local authority has to approve the plan taking into consideration the character of the locality of where the proposed building is to be erected.<sup>51</sup>

An integral part of conservation is control of new development. It is important that the designs of new buildings and alterations to existing buildings harmonize with the context to which they are or will be placed.<sup>52</sup> The successful "stitching" of new development into historic urban fabric is a sensitive issue, and many factors have to be taken into account in order to arrive at a design solution which is both functional and environmentally sensitive. An important aspect of the creation of successful townscapes is a thorough knowledge and understanding of the local urban environment.<sup>53</sup>

### *Listing*

Town planning scheme clauses can also provide for the listing of buildings, which the local authority considers to be of historic or architectural interest or of sufficient merit to justify the preservation thereof.<sup>54</sup> Before acting in terms of the clause the local

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<sup>50</sup> National Building Regulations and Building Standards Act 103 of 1977, Section 4; also see definition of 'erection' in Section 1.

<sup>51</sup> For example Section 7(1)(2) of the City of Pietermaritzburg - Town Planning Scheme Clauses.

<sup>52</sup> Mr M Erasmus - Pietermaritzburg City Engineer's Department.

<sup>53</sup> Erasmus, M. 'Conserving the unique character of Pietermaritzburg' in *Natal Institute of Architects Journal* 2 (1991) 2.

<sup>54</sup> Eg. Section 7(2)(1) of the City of Pietermaritzburg - Town planning Scheme Clauses.



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authority has to first comply with statutory processes in the town planning ordinances.<sup>55</sup> Once a building is listed it means that there are special planning processes attached to the building. Thus a special application has to be made to the local authority should an owner wish to alter a building in any way or to demolish it.<sup>56</sup> In certain cities in South Africa the local authorities attach special privileges to listed buildings including rate rebates, transfer development rights and ad hoc departures from zoning regulations (these will be discussed later in more detail). Though offered these privileges are not often taken up due to a lack of demand or a non-belief that the remission will be given. Also none of these privileges help alleviate the high cost of maintenance which is normally associated with listed buildings.

### *Demolition*

Most city town planning schemes have a special procedure that needs to be followed before a demolition will be allowed<sup>57</sup>. In many cases the applicant will be called upon to make a special consent application<sup>58</sup>. This consent has to be granted before the building is allowed to be demolished and before such consent is granted the effect of its demolition is carefully investigated. Factors such as the quality of the building, its historical significance, whether its destruction will destroy the character of the block or the overall townscape are considered and negotiated with the owners who wish to demolish.

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<sup>55</sup> Eg. Section 47bis of the Town Planning Ordinance 27 of 1949 (N).

<sup>56</sup> Eg. Section 7(2)(5) of the City of Pietermaritzburg - Town Planning Scheme Clauses.

<sup>57</sup> For example Section 7(4) of the City Of Pietermaritzburg - Town Planning Scheme Clauses.

<sup>58</sup> Such as Section 67bis of the Town Planning Ordinance 27 of 1949 (N).

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*Other provisions*

Clauses in the town planning schemes relating to the control of the erection or displaying of advertisements and hoardings can be used to conserve the townscape. The locality in question where the proposed advertisement or hoarding is to be placed can be scrutinized, taking into consideration the effect of such a development will have on the townscape, before consent is given by the local authority.

The terrifying impact of the motor car upon the character and environment of urban areas, and especially upon our historic towns, presents one of the most intractable aspects of conservation.<sup>59</sup> Town planning scheme clauses in South Africa have provisions relate to traffic and parking and vehicular accessibility. Though few take into consideration the impact such provisions will have on the townscape.<sup>60</sup>

Usually there are clauses in the planning schemes that control the elevation of proposed developments. Elevation plays an important role in the townscape and thus provisions which monitor proposed changes in the elevation of a city are important if the townscape of a city is to be conserved.

*Special Privileges*

As stated earlier some town planning schemes attach special privileges to listed buildings and in some cases to conservation areas. These privileges include transfer development rights, ad hoc departures from zoning regulations and rate rebates which are dicussed below.

(1) Transfer Development Rights:

Tranfer Developmant Rights are a method by which the owners of historic buildings

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<sup>59</sup> Ratcliffe, J. *An Introduction to Town and Country Planning* (1981) 300.

<sup>60</sup> Mr M Erasmus - Pietermaritzburg City Engineer's Department.

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may be compensated for the loss of development rights on their properties.<sup>61</sup> They allow the owner of the historic building to transfer 'unused' development rights in respect of such a property to a development site which can be developed to a greater degree than would otherwise be possible.<sup>62</sup> The transfer of development rights is designed to allow the systematic reallocation of density within a designated transfer zone or area of the city, in a way that fulfills the city's planning objectives without inflicting unfair economic burdens upon the owners of listed buildings.

There are criticisms and problems with the use of transfer development property rights as an incentive for the conservation of townscapes. It has been argued that property owners do not have a permanent vested interest in any particular zoning of a property under a town planning scheme because zoning's are subject to change in future schemes. Future adopted schemes may amend the zoning of a property and thereby diminish or extinguish the development rights assigned to a particular property. It has also been argued that the compensation afforded by the transfer of development rights is not lasting because the expense of maintaining a listed or rather any historic building continues throughout its lifetime, while the compensation awarded through the transfer development rights may only last for life of the town scheme.<sup>63</sup> It has also been stated that transfer development rights are merely returning to the owner as 'compensation' what the scheme had previously taken from the owner, through zoning or listing, without compensation.<sup>64</sup> It is also argued that the value of development rights is controlled partially through zoning and thus may limit the effectiveness of the transfer development rights schemes as a device for the conservation of the built environment.<sup>65</sup>

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<sup>61</sup> Delaney, J.J., Kominers, W., and Gordon, L.A. 'TDR Redux: A Second Generation of Practical Legal Concerns (Transferable Development Rights)' in *The Urban Lawyer* 15 (1983) 597.

<sup>62</sup> Hagman, D.G., and Juergensmeyer, J.C. *Urban Planning and Land Development Control Law* (1986) 358.

<sup>63</sup> Arnold, C. 'Transferable Development Rights - A Planning Tool for the Preservation Of Heritage Buildings' in *Environmental and Planning Law Journal* (1992) 468.

<sup>64</sup> Ibid.

<sup>65</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

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The value of transferable development rights is difficult to determine. The value is dependent on the value of the right to the recipient development site.<sup>66</sup> If the development site is an area of higher land values than the listed building, then the sale of the transferable development rights will be more profitable to an owner than the sale of the same rights to a development site in an area of lower land values.

Other critics of transferable property rights scheme assert that the possible adverse social and aesthetic effects of transfer development rights transactions are numerous and irreparable.<sup>67</sup> Uncontrolled escalation of bulk through the use of transfer development rights on a town could result in congestion, loss of light and air, destroy views and alter the architectural character of neighbourhoods. This argument though is not really applicable in South Africa because the use of transfer development rights is controlled by the local authority.<sup>68</sup>

Transferable development property rights are a flexible, economic and legally acceptable planning tool which encourages the preservation of historic buildings by directly addressing the dilemma confronting townscape conservation efforts.<sup>69</sup> The success of any transferable property rights scheme is dependent upon its acceptance in the property marketplace<sup>70</sup> and the demand in the marketplace.<sup>71</sup>

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<sup>66</sup> Ibid.

<sup>67</sup> Op cit n63 469.

<sup>68</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>69</sup> Op cit n63 470.

<sup>70</sup> Ibid.

<sup>71</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

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(2) Ad Hoc Departures From Zoning Regulations:

Ad hoc departures from zoning regulations are often used in areas of considerable architectural or historic importance. Two processes can be applied when there are ad hoc departures from zoning regulations. The first of these is rezoning under which the owners of historic or conservation worthy property can apply to the local authorities for the rezoning of land<sup>72</sup> for a use which does not coincide with the town planning zoning schemes. The local authorities may then allow a type of rezoning compatible with conservation of the building.<sup>73</sup> The other more common process where ad hoc departures from the town planning scheme are allowed is when the owner of a conservation worthy site applies to the local authority for a special consent<sup>74</sup> to use the property in a manner which is in conflict with the scheme. In this process the local authority may grant a type of conditional rezoning which allows the property to be used for some other purpose in return for the conservation of the property.<sup>75</sup> Thus the processes are therefore used as compensation or as an encouragement to the owners of conservation worthy properties and thus allow for alternative uses to be accommodated in such properties.

(3) Rate rebates:

This is the most common type of incentive<sup>76</sup>. There are various rate rebates possible such as:

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<sup>72</sup> Such as Section 47bis B of the Town Planning Ordinance 27 of 1949 (N).

<sup>73</sup> Bassett, B. *Conservation and Development In Pietermaritzburg* (1985) 22.

<sup>74</sup> Such as Section 67bis of the Town Planning Ordinance 27 of 1949 (N).

<sup>75</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg .

<sup>76</sup> Usually allowed in terms of the local authorities regulations.

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(a) General Rates Rebates

A general rate rebate would grant a specific percentage in rates relief to all listed buildings and national monuments. There are however problems associated with such a rebate. Once a general rebate has been granted there is nothing more to offer the owner should the local authority wish him to undertake further conservation work at a later stage. Also under this type of rate relief owners tend to regard a general rebate as a right and not as a privilege. A general rate rebate also entails an immediate and quite considerable loss of revenue for the local authority. When short of finance, a local authority may find it necessary to cut rebates or dispense with them altogether for a certain period of time. Such an action would be damaging to the image of the local authority and would draw a negative response from the owners. It therefore should be avoided at all costs. Also this type of rebate would be difficult to withdraw from owners who do not cooperate in the conservation process.<sup>77</sup>

(b) Specific Rate Rebates:

These are rebates which are flexible and can be tailored to meet the specific environmental needs of a property. They do not accrue to a property but to an individual owner or project, thus they can not be part of the value of the property and can therefore not be used for the purposes of speculation. They are not granted in perpetuity but for a certain period of time. The percentage of rebate granted is flexible and it can be withdrawn if the owner does not restore or rehabilitate his building as desired. Specific rebates allow local authorities to develop townschemes with a conservation content and to utilise rates rebates of varying percentages to achieve different levels of conservation.<sup>78</sup>

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<sup>77</sup> Op cit n73 26.

<sup>78</sup> Op cit n73 27.

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(c) Rate rebates for National  
Monuments:

According to B Bassett<sup>79</sup>, rate rebates should be handled differently from those of other buildings. The reasons given are that the owner of a national monument has voluntarily agreed to surrender his right of final choice over the future of his property. This choice rest with the National Monuments Council, in cooperation with the local authority. National monuments qualify for state grants for capital works. The presence of monuments in a city can lead to the inflow of state funds for conservation. National Monuments also attract tourists and this has been found to exercise a considerable effect on the local economy. Thus a small basic rebate should be provided in order to acknowledge the owner's sacrifice in aid of conservation. If the monument is then in a townscheme or, if the owner is required to do specific conservation work, further rebates could be considered.<sup>80</sup>

In South Africa rate rebates are regarded as a privilege and not as a right. A rebate is something applied for under controlled conditions and granted on the merits of a specific application, in order to achieve a stated environmental end. The onus of providing the proof of both the need and the desirability for a rebate is on the owner, and the local authority is not therefore required to provide justifications for its decisions. The favoured system in South Africa is the system of specific rate rebates as this is more flexible and easier to implement than a general rebate. Rates are not normally subject to a standard formula, but a percentage rebate is determined according to the merits of each case. Under all circumstances a local authority must be able to withdraw the rebate in order to protect the interests of both parties. Rate rebates are a useful means of encouraging conservation of the built environment.<sup>81</sup>

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<sup>79</sup> City Engineer - Pietermaritzburg.

<sup>80</sup> Op cit n73 28.

<sup>81</sup> Op cit n73 29.

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*Other Incentives*

In the South African system of zoning, it is much more difficult to refuse an owner the use of the rights for which his land has been zoned. The Americans, who share many of South Africa's problems with regard to zoning and conservation, have developed other incentives other than those presently in use in South Africa to encourage conservation.<sup>82</sup> These include:

(a) Direct Grant Aid

This is aid given by the local authorities for a proportion of the conservation work required. Various parts of the buildings receive various levels of grant aid depending on their importance to the structure. This type of relief would be difficult to implement in South Africa where local authorities are usually financially under - resourced.<sup>83</sup>

(b) Income Tax Relief

In the United States both the Federal and State Governments have enacted tax laws to aid and promote historic preservation. Among the available methods are granting localities specific power to reduce tax burdens on historic properties<sup>84</sup> and the giving of tax credits for restoration of buildings in historic districts.<sup>85</sup> The tax laws in the United States make provisions, subject to a number of conditions, which allow an owner to deduct part of the cost of rehabilitation and renovation of approved buildings from his taxable income.<sup>86</sup> The loss to the State is not large, and the measure has provoked an

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<sup>82</sup> Bassett, B. *Cataloguing and Conservation In Pietermaritzburg* (1982) 16.

<sup>83</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>84</sup> North Carolina General Statute Sections 105 - 277(f).

<sup>85</sup> Hagman, D.G. and Juergensmeyer, J.C. *Urban Planning and Land Development Control Law* (1986) 467.

<sup>86</sup> The United States Tax Reform Act of 1976.



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increase in conservation activity in the United States.<sup>87</sup> The Minister of Finance should be lobbied for a similar concession in this country.

In South Africa, under the National Monuments Act 28 of 1969, the National Monuments Council is exempt from payment to the State of any duty, tax or fees in respect of any act or transaction under the Act.<sup>88</sup> The Transfer Duty Act 40 of 1949 exempts the Council and similar bodies from the payment of transfer duty in respect of property acquired for educational purposes.<sup>89</sup> The Income Tax 58 of 1962 exempts<sup>90</sup> the Council and similar bodies from the payment of income tax in respect of its cultural activities.<sup>91</sup> There is no provision in Act<sup>92</sup> which rewards the owner of historic property for conservation activities carried out on such a property.

(c) Revolving Funds

Another technique enjoying success in the United States is the revolving funds program to purchase, or to acquire options on historic properties. Once purchased, a structure is sold to a new owner who pledges to maintain the building's historic character. The money realised from this sale is then reused to purchase and protect other historic structures.<sup>93</sup>

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<sup>87</sup> Op cit n82 16.

<sup>88</sup> Section 15.

<sup>89</sup> Section 9(1)(c).

<sup>90</sup> Section 10(1)(cB)(dd) read with 10(1)(f).

<sup>91</sup> Van Der Walt, A.J. *The Conservation of Buildings and Townscapes in South African Law* (1987) 57.

<sup>92</sup> 58 of 1969.

<sup>93</sup> Hagman, D.G., and Juergensmeyer, J.C. *Urban Planning and Land Development Control Law* (1986) 467.

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(d) Non - Fiscal Incentives

Each conservation situation should be carefully studied by the local authority in order to determine whether it would be possible to offer any non-fiscal incentive. Such as:

(i) Site Coverage

The granting of additional coverage on the site could allow the conservation of an historic building by permitting the owner to develop at the rear or the sides of the existing structure. Any site coverage incentive given by the local authority would require a commitment to the conservation of the historic building by the owner.<sup>94</sup>

(ii) Building Lines

The relaxation of building lines in terms of the town planning scheme<sup>95</sup> can allow for conservation opportunities.<sup>96</sup>

(iii) Minimum Size For Subdivision

The minimum size of subdivision should be adjusted to assist owners who are willing to conserve properties to allow the selling off of important properties on smaller than average sites<sup>97</sup>.

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<sup>94</sup> Bassett, B. *Conservation and Development in Pietermaritzburg* (1985) 23.

<sup>95</sup> This is presently allowed in Pietermaritzburg according to Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>96</sup> Op cit n94 23.

<sup>97</sup> Op cit n94 24.

**Conclusion**

To ensure that the conservation - orientated legislation is implemented by local authorities, either conservation minded officials must be employed or a conservation section established, preferably both, responsible for the scrutiny of plans and zoning applications , the procedures and, the co-ordination of all the conservation related legislation. Local government today stands at the forefront of the conservation effort of townscapes.

# CHAPTER 5

# PIETERMARITZBURG

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## Introduction

Pietermaritzburg possesses some of the finest remaining examples of Victorian architecture in South Africa. Initially established as an Afrikaaner dorp, the town underwent rapid change in the nineteenth century culminating in its elevation to the capital of a British colony. In recent times the city has assumed a more modest role, that of the provincial capital of one of South Africa's provinces. Operating parallel with the grandiose architectural processes of British colonialism were the oriental building influences and together these produced a diversified and distinctive townscape.<sup>1</sup> Thus Pietermaritzburg is a thoroughly South African City. Each of the country's four main culture groups has contributed significantly to the city's appearance, and although it is still possible to detect and distinguish the street plan, architectural and other contributions of the Afrikaner, Briton, Indian and African, Pietermaritzburg's townscape is much more than the sum of these parts.<sup>2</sup>

Pietermaritzburg, is one of the few cities in South Africa which actively encourages townscape conservation. Conservation is lobbied by the community and promoted in the town planning scheme, as well as the Town Planning Ordinance<sup>3</sup>. This is widely evident in Pietermaritzburg with its numerous listed buildings<sup>4</sup>, national monuments and protected streets<sup>5</sup>. Pietermaritzburg is the only city in South Africa which has a comprehensive catalogue of city buildings.<sup>6</sup>

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<sup>1</sup> Brett, M.R. 'Preference for Building Styles in Pietermaritzburg' in *Architecture South Africa* (1985) July/August 51.

<sup>2</sup> Haswell, R. 'From Voortrekker Dorp To Colonial Capital To South African City ; The Changing Face Of Pietermaritzburg' in Bassett, B. (ed.) *The Buildings Of Pietermaritzburg - Volume One* (1986) vi.

<sup>3</sup> 27 of 1949 (N).

## **A) Preservation by the State**

### **National Monuments**

In Pietermaritzburg there have been numerous declarations of monuments and the erection of statues and memorials in terms of the National Monuments Act 28 of 1969. The local branch of the National Monuments Council contributes to the restoration of buildings by considering the granting of aid, if applied for. However, in these inflationary times this aid is not as substantial as it used to be. Also, the local branch of the Council provides a service whereby old materials can be obtained for restoration purposes at a very low cost, or for nothing at all, depending on the circumstances.<sup>7</sup>

Further, there is a great deal of co-operation between the local branch of the National Monuments Council and the City Council in the application of Section 12(2A)(f) of the National Monuments Act 28 of 1969.<sup>8</sup>

### **Historical Lanes**

Many South African towns in terms of their town planning schemes have zoned conservation areas, though not Pietermaritzburg. The only way in which 'special' or 'environmental' areas are protected in Pietermaritzburg is through the National Monuments Act.<sup>9</sup> Section 5(9) of the Act allows the National Monuments Council after con-

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<sup>4</sup> Approximately 100.

<sup>5</sup> Leighton Street and Deanery Lane.

<sup>6</sup> Durban and Uitenhage have produced catalogues but only of selected buildings.

<sup>7</sup> Mr A. Hall - National Monuments Council - Pietermaritzburg.

<sup>8</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>9</sup> 28 of 1969.

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sultation with the local authorities and the community concerned to designate an area to be a conservation area. It is in this way that certain streets and lanes in Pietermaritzburg have been protected. Examples of this type of protection are Leighton street and Deanery Lane.

## **B) Preservation by the Local Authorities**

The recognised richness and diversity of Pietermaritzburg townscape<sup>10</sup> persuaded the City Council to take steps to provide for the conservation of the townscape as part of a wider activity of planning and growth in the City. Protection of historic buildings has been achieved through clauses introduced into the town planning scheme.<sup>11</sup> These clauses have empowered the City Council to list structures,<sup>12</sup> to prohibit demolition<sup>13</sup> or alteration<sup>14</sup> and to control new development<sup>15</sup> in the City. In addition the commission of the catalogue of buildings of Pietermaritzburg;<sup>16</sup> the establishment of a section within the City Engineer's Department devoted mainly to plan, implement and monitor environmental conservation; the co-operation between the City Council and the local branch of the National Monuments Council; as well as public awareness and participation in preservation has developed a conservation ethos and the establishment of an urban conservation framework in the City.

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<sup>10</sup> Bassett, B. *The Buildings of Pietermaritzburg - Volume One* (1986) iv.

<sup>11</sup> Clauses 7(1),7(2),7(3) and 7(4).

<sup>12</sup> Clause 7(2).

<sup>13</sup> Clause 7(4).

<sup>14</sup> Clause 7(2)(6).

<sup>15</sup> Clause 7(1).

<sup>16</sup> Bassett, B. *The Buildings of Pietermaritzburg - Volume One* (1986).

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## Catalogue of Buildings

In 1980 it was recommended to the City Council of Pietermaritzburg that a catalogue of the buildings of Pietermaritzburg be prepared, combined with a general system of evaluation of the elements catalogued.<sup>17</sup> The evaluation would only be used in an advisory function and neither the publication of the catalogue or the evaluations it contained would in any way commit the city to taking action to conserve any item catalogued. In order to obtain advice on a system of evaluation and how the cataloguing should take place, which would be suitable to the city's needs, a report was commissioned in 1982 from the National Monuments Council. The report '*Cataloguing and Conservation in Pietermaritzburg*', outlined a system of cataloguing and data collection. The report was accepted by the City Council in 1983.

A steering committee was formed, which oversaw the cataloguing project. This committee was composed of representatives of major private sector conservation groups and representatives of the City Council and the National Monuments Council.<sup>18</sup>

The criteria for the catalogue were chosen by a specially created Technical Committee, each member of which was appointed for his/her expertise.<sup>19</sup> These members also inspected each building appearing in the catalogue in order to ensure that the criteria allocated were correct.<sup>20</sup> The criteria used to evaluate the buildings included :

(1)(a) National and/or local historical importance

(1)(b) National and/or local architectural importance

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<sup>17</sup> Bassett, B. *Conservation and Development In Pietermaritzburg* (1985) 4.

<sup>18</sup> Ibid.

<sup>19</sup> Bassett, B. *The Buildings of Pietermaritzburg - Volume One* (1986) iv.

<sup>20</sup> Ibid.

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- (2) Rare or outstanding architectural example
  - (3) Grouping of architectural merit
  - (4) Contribution to the urban setting
  - (5) Contribution to or enhancement of the quality of the adjoining square or open space
  - (6) Work of a pioneer or recognized master
  - (7) Over eighty years old<sup>21</sup>
  - (8) Over eighty years old and worthy of architectural archaeological study.<sup>22</sup>

*Uses for the catalogue:*

The primary function of the catalogue is a planning tool. It provides the City Council with information concerning many aspects of the building stock of Pietermaritzburg on which to base its decisions. It is also an indispensable work of reference for property developers, as it informs them of the relative importance of the properties on any site they might consider purchasing or developing. Architects also find the catalogue useful because it points out groups of buildings of importance and indicates what styles are present in the city. Thus it is a source of information to developers, architects, environmentalists, academics and the local authority.

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<sup>21</sup> This and the following provisions has been criticized according to Mr M Erasmus - City Engineer's Department - Pietermaritzburg, it has been argued that the provision should rather have noted buildings over 50 years to tie in with the statutory provision in the National Monuments Act.

<sup>22</sup> Op cit n12 1157.



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Through the catalogue it is possible to identify which buildings and areas are of significance in the urban fabric of the city and thus which areas require special planning attention. The degree of attention given to any area will depend on how sensitive and important it is, the economics of the city and what future is desirable for the area concerned.<sup>23</sup> The evaluation done in terms of the catalogue will assist the City Council to determine conservation priorities and to put the limited resources available to the City Council to the best use.

The catalogue has also been a useful basis for other publications on the City such as tourist guides and other general informative publications.

The catalogue only covers central Pietermaritzburg and was completed in 1986. There are hopes to extend the catalogue to greater Pietermaritzburg, but to be limited to selected buildings. The lack of financial resources is a limiting factor since projects of this size are enormously costly.<sup>24</sup>

### **Listing**

This catalogue and the formation of the listing committee have been the basic tool, for listing buildings in Pietermaritzburg. Pietermaritzburg has tried to remove some of the subjectivity of listing by its attempt to approach listing in a methodical and pragmatic manner.<sup>25</sup> The committee selected 250 buildings worthy of the merit of listing. These chosen buildings were then looked at further, in batches of 20, by the Urban Services Committee<sup>26</sup>. So far a hundred buildings have been listed via the town planning

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<sup>23</sup> Op cit n10 7.

<sup>24</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>25</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>26</sup> Pietermaritzburg was the first City Council in South Africa which formed a section within the City Engineer's Department largely devoted to conservation and administration of environmental control in the City.

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scheme and the statutory process in the Town Planning Ordinance 27 of 1949 (N).

Clause 7(2) of the Pietermaritzburg Town Planning Scheme, as stated previously, allows the City to protect any building or portion of a building, structure or item including the portion of a site which it considers to be of historical or architectural merit. Before acting in terms of the clause the Council has to first comply with requirements of Section 47bis of the Ordinance. The listing procedure allows the owner the right of objection and depending upon circumstances the right of appeal to the Natal Provincial Town Planning Appeals Board. Also, although the City Council has the authority to list buildings without the consent of the owner<sup>27</sup>, the approach to date has been to encourage owners to apply to have buildings listed. This of course has not resulted in an overwhelming response from owners of buildings worthy of listing. Owners are generally not persuaded to forfeit any of their rights in their properties, or convinced readily to have unknown constraints imposed upon their properties in the name of conservation.<sup>28</sup>

#### *Rate rebates*

Once a building has been listed in Pietermaritzburg the owners have the opportunity to apply for a rate rebate.<sup>29</sup> In order to qualify for rate rebates certain conditions must be satisfied:

- (i) The building must be listed in terms of the Town Planning Scheme, or have been declared a National Monument.

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<sup>27</sup> This has only been done twice in Pietermaritzburg.

<sup>28</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>29</sup> Clause 7(2)(6) states the Council shall provide for financial and other adjustments relating to the listing of Buildings, by Regulations made in terms of The Scheme.

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- (ii) The applicant must be registered owner;
  - (iii) Ownership of the property in question must not have changed during that financial year;
  - (iv) Application must be made in the prescribed form before a specific date which is advertised in the local press. Any rebate is not an entrenched right but a privilege, and applications must be made annually.
  - (v) The property must be in a reasonable condition and it must be adequately maintained.<sup>30</sup>

The fiscal incentive is generally 20% of the rates payable, but it may be 40%, without the Administrator's consent, and up to 100% with his consent, depending on the architectural significance of the building, its prominence and also the effort of the owner in relation to its general upkeep. Recommendations are made by the Urban Services Section of the City Engineers Department, which are submitted to the City Council with whom the final decision rests.<sup>31</sup>

Despite this privilege only about 35% of the owners of all listed buildings apply annually for a rates rebate. Some of these apply regularly, while others skip a year or two before applying again. The majority of the owners of listed buildings do not avail themselves of the benefit of this privilege.

### *Demolition*

No demolition, alteration, or addition to a building listed in terms of this Clause is allowed until the Special Consent<sup>32</sup> of the Council has been obtained.<sup>33</sup>

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<sup>30</sup> Mr M Erasmus - City Engineers Department - Pietermaritzburg.

<sup>31</sup> Ibid.

<sup>32</sup> Section 67bis of the Town Planning Ordinance 27 of 1949 (N).

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*Transfer of Building Bulk*

Once a building has been listed in terms of Clause 7(2) any portion of bulk which has not yet been used in the property is rendered unusable. The Council may upon application for a special consent<sup>34</sup> agree to transfer the bulk which has been rendered unusable by the listing to another site within the same bulk zone.<sup>35</sup> The Council though may attach conditions to such a special consent.<sup>36</sup> Also the transfer of the bulk to another property shall not increase the bulk on that property by more than 25% of the maximum permitted in that zone.<sup>37</sup> This therefore means that if a listed building, which has not realised its bulk potential under the zoning regulations and its bulk can no longer be used, the owner of the listed building is entitled to sell or transfer the excess bulk, up to 25% of the excess. In cases of extreme hardship where the owner of a listed property has been unable to dispose of the unusable bulk within the same bulk zone, the Council may authorize the disposal to a property to an extent greater than the limit provided for in Clause 7(3)(1)(2), or to a property outside the bulk zone.<sup>38</sup>

To date there have only been two examples of the use of this right. The transfer of bulk from a listed building in Church Street owned by the Standard Bank to its main branch in Longmarket Street and the transfer from a listed building in Church Street to a building in Gallwey Lane. In both these cases the amount of bulk that was transferred was minimal.<sup>39</sup> The demand for bulk does not exist in South African cities. Most cities are

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<sup>33</sup> Clause 7(2)(6).

<sup>34</sup> Section 67bis of the Town Planning Ordinance 27 of 1949 (N).

<sup>35</sup> Clause 7(3)(1).

<sup>36</sup> Clause 7(3)(1)(1).

<sup>37</sup> Clause 7(3)(1)(2).

<sup>38</sup> Clause 7(3)(4).

<sup>39</sup> Mr I Parker - Chief Town Planner- Pietermaritzburg.

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under bulked, especially Pietermaritzburg, and there is not enough development for bulk transfer to be a beneficial privilege. Bulk transfer adds a further dimension to the City's response to the challenges of conservation of the built environment.<sup>40</sup>

### **Control Of Demolition Of All Buildings**

Unlisted buildings cannot be demolished without the consent of the Council<sup>41</sup>. The purpose of this clause is to ensure the preservation of buildings not listed in terms of Clause 7(2) which may be of architectural, historic or artistic interest.<sup>42</sup>

In order to acquire the consent of Council a written application has to be made to the Council in support of the application to demolish.<sup>43</sup> If the Council is of the opinion that the building concerned is not of architectural, historic or artistic interest to justify its preservation, it may approve the demolition application.<sup>44</sup> If the Council is of the opinion that the building concerned is of architectural, historic or artistic interest which could justify its preservation then it may refuse to approve the demolition, and require the applicant to make an application for special consent<sup>45</sup> for such a demolition.

The criteria which most often causes the Council to require the applicant to make a special consent application, are the criteria 1, 4, 7 of the criteria used in the cataloguing

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<sup>40</sup> Bassett, B. *The Buildings of Pietermaritzburg - Volume One* (1986) v.

<sup>41</sup> Clause 7(4).

<sup>42</sup> Clause 7(4)(1).

<sup>43</sup> Clause 7(4)(2).

<sup>44</sup> Clause 7(4)(3).

<sup>45</sup> Section 67bis of the Town Planning Ordinance 27 of 1949(N).

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of buildings, discussed above.<sup>46</sup> Once a special consent application is made a thorough investigation is undertaken by the Urban Services Section on the building concerned as to whether it justifies preservation.<sup>47</sup> After investigation the Council may refuse or grant its special consent to any application made in terms of Clause 7(4)(4) or it may make its consent subject to conditions.<sup>48</sup>

Pietermaritzburg Town Planning Department makes use of the demolition procedure to protect buildings not already listed and to protect the character of a block or the actual townscape. The Department tries to negotiate a workable solution with the owners of the buildings, an example being the Town Planning Department's negotiations with the Edgars Store Group to prevent the demolition of the present Edgars building in Church Street.<sup>49</sup> This type of control has been circumvented with certain buildings in Pietermaritzburg<sup>50</sup>, where the owners of the buildings rather than apply for demolition, or where they have had an applications for demolition refused, deliberately allow the building to run down thus causing the building to destruct itself through passive demolition. There is little that the Council can do in these cases.<sup>51</sup>

The implementation of such control on the demolition of buildings prevents the indiscriminate loss of significant urban fabric.

### **Control Over New Development**

An integral part of conservation is the control over new development. The importance

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<sup>46</sup> Mr M Erasmus - City Engineer's Department - Pietermaritzburg.

<sup>47</sup> Ibid.

<sup>48</sup> Clause 7(4)(5).

<sup>49</sup> Mr I Parker - Chief Town Planner - Pietermaritzburg.

<sup>50</sup> An example of this is the "Bird Cottage" in Loop Street.

<sup>51</sup> Mr M Erasmus - City Engineer's Department - Pietermaritzburg.

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of designing new buildings and alterations to existing buildings to harmonize with the context has been recognized by the Pietermaritzburg Town Planning Department.

Clause 7(1) of the Town Planning Scheme aids the Town Planning Department in this regard. It requires that plans indicating the external appearance of buildings be submitted to the Council. The Council in deciding, whether or not to approve the plans, shall have regard to the character of the locality where the building is to be erected.<sup>52</sup> This means that the Council has regard of the context, the neighbouring buildings, its actual physical situation, the design and architectural style of the building<sup>53</sup>. Often political decisions are made in order to encourage development in the town and so conservation of the townscape is ignored by the Council.<sup>54</sup>

The Town Planning Department also tries to preserve the townscape through elevation control of the city. Plans of new development are scrutinized by the Elevation Control Technical Advisory Committee which then makes recommendations to Council on whether or not to approve the new development taking into consideration the townscape's elevation and the situation of the new development.

Many factors have to be taken into account before new development is successfully sewn into the city's townscape.

### **Public Participation and Awareness**

The public's attitudes on matters affecting the built environment are important. Unless the public is fully integrated into the conservation process, frustration and antagonism will arise. Conservation is, in essence, a community activity, therefore input from the community is essential.

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<sup>52</sup> Clause 7(1)(2)(2).

<sup>53</sup> Mr M Erasmus - City Engineer's Department - Pietermaritzburg.

<sup>54</sup> Ibid.

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In Pietermaritzburg, conservation issues are taken seriously by both the local authority and the public alike.<sup>55</sup> This public awareness in urban conservation has manifested itself in the establishment of groups such as the "Pietermaritzburg Society"<sup>56</sup> an organisation which maintains constant vigilance on the City's buildings. Other groups include local "Street Associations" which stimulate public interest in a specific area. These associations of local house owners serve to protect noteworthy features of architectural or public interest in the immediate area, and try to promote high standards of development.<sup>57</sup>

Public participation and pressure is of vital importance in the conservation of townscapes. The power of the public and the media can certainly affect the future of the built environment and this must always be remembered by planners, the local authority, developers and the public of Pietermaritzburg.

## Conclusion

There is an awareness that the townscape in Pietermaritzburg should be conserved and this has placed responsibility and problems on the City Council, building owners, planners, architects and the public of Pietermaritzburg. To achieve an appropriate balance which is fitting in approach yet not destructive in execution is a major challenge facing the development of Pietermaritzburg. It is necessary to create a process of environmental management which would allow the retention of certain areas of the city and encourage modern uses and development within these areas by judicious application of a

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<sup>55</sup> Bryan, I. 'Problems Facing Design Professionals In Conservation Areas' in Japha, D. and Japha, V. (eds) *Proceedings Of The National Urban Conservation Symposium Johannesburg 1990* (1991) 127.

<sup>56</sup> This Society was formed in 1977 largely in response to Ireland's department store which was to be demolished, and it was instrumental in saving the facade.

<sup>57</sup> Erasmus, M. 'Conserving The Unique Character Of Pietermaritzburg' in *Natal Institute of Architects Journal* 2 (1991) 2.



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package of well balanced incentives and controls. A balanced system of planning controls and incentives as well as creative planning practice is required in order to encourage rather than coerce developers into conservation practices. This not only makes good economic sense, but is also in the long-term interests of Pietermaritzburg.

The basic framework for urban conservation has thus been established in Pietermaritzburg. Future development should be planned in such a way that the rich and diverse past will be respected and in doing so will create a balanced environment in the best interest of all who inhabit and use the City.

Finally, just as townscapes cannot be divorced from associated people and activities, the aim must not be merely to conserve streetscapes but to enhance community life. The challenge is to accept Pietermaritzburg as a South African product and to allow all South Africans to fully appreciate and enjoy it.<sup>58</sup>

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<sup>58</sup> Haswell, R. 'From Voortrekker Dorp To Colonial Capital To South African City; The Changing Face Of Pietermaritzburg' in Bassett, B.(ed) *The Buildings Of Pietermaritzburg - Volume One* (1986) xxvi.

# CHAPTER 6

# CONCLUSION

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While South Africa has a number of legislative tools which can be used for townscape conservation only a few South African cities including Pietermaritzburg actively promote city conservation.

In practice most conservation legislation is ineffectual and serves mainly to encourage townscape conservation. The legislation constitutes some formal authority, and this, combined with a steady increase in public awareness, effective lobbying by conservation groups, and the commercial success of many restored buildings, has resulted in a remarkable turn around in interest in conservation. Old buildings and districts have ceased to be considered by many as impediments to planning, and are regarded as invaluable components of the landscapes of cities.<sup>1</sup>

There is no legislative umbrella for urban conservation in South Africa and a "divide and rule" approach is applied to environmental management of all kinds. Conservation legislation promulgated by different state departments and at different levels of government remains entirely independent,<sup>2</sup> resulting in a fragmentation in administration. Conservation related controls should therefore be intergrated into a physical planning system<sup>3</sup> which would establish responsibility for the identification of conservation worthy buildings and sites and scrutinize procedures and decision making. While these responsibilities should be shared by local, regional and national authorities there should be a national body to co-ordinate and monitor the system. This specific enabling legis-

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<sup>1</sup> Relph, E. *The Modern Urban Landscape* (1987) 221.

<sup>2</sup> Japha, D & Japha, V. 'Urban conservation: "monumentalisation" or everyday planning?' in *Architecture SA* (1993) May/June 26.

<sup>3</sup> Townsend, S. 'Architectural and urban conservation in the dawning second Republic' in *Architecture SA* (1993) May/June 31.

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lation for urban conservation should clearly define the responsibilities of the different authorities and built into this legislation should be the co-ordination of the different legislative vehicles responsible for protecting the urban environment.<sup>4</sup>

Pietermaritzburg therefore illustrates what a willingness to co-operate at an informal level between the different conservation authorities can achieve in townscape conservation. This can only lead us to wonder how successful townscape conservation could be if national co-operation and intergration was achieved.

Further, the criteria and process for the identification of conservation-worthiness should be more inclusive in terms of values and be more accessible and outward reaching to a far wider range of people and bodies. A new era beckons where previously subjugated culture will question the values that have been used in heritage preservation. The following confirm this widening of values in conservation in South Africa<sup>5</sup>: -

*The belief of the ANC that a cultural policy should be informed by democratic, non - sectarian, humanist principles which should not only take local factors into account but recognise contributions and influences from countries all over the world.*<sup>6</sup>

*The belief of the PAC that if there is a monument, it should be linked to the population as a whole and should not anger a certain sector of the population. The PAC also believes that existing monuments and buildings should not be demolished, but new buildings and monuments should be erected alongside them to show "our side of history and to celebrate our heroes".*<sup>7</sup>

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<sup>4</sup> Japha, D. & Japha, V. 'Urban conservation: "monumentalisation" or everyday planning?' in *Architecture SA* (1993) May/June 28.

<sup>5</sup> 'Conservation Priorities' in *Restorica* 20 (1991) 8.

<sup>6</sup> Mr Oupa Ramachela - Media Officer - Department of Art and Culture - ANC.

<sup>7</sup> Mr Fitzroy Ngcukana - Cultural representative - PAC.

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A method should be developed to ensure the involvement of all communities in conservation programs, especially at a local level to ensure that the widest range of interest groups is consulted and involved in the conservation of townscapes. Townscape conservation must thus be community based in order for it to succeed. Due to the exclusion of other cultures in the past this is the greatest problem affecting townscape conservation in South Africa and due to apartheid, conservation is seen to be conservation of the white heritage. Perceptions and policies have to change in order that townscape conservation may continue. Urban conservation legislation should recognise and reflect a concept of conservation that emphasizes history as a continuing process and the built environment as a cultural resource.<sup>8</sup>

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<sup>8</sup> Townsend. S. 'Architectural and urban conservation in the dawning second Republic' in *Architecture SA* (1993) May/June 31.

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