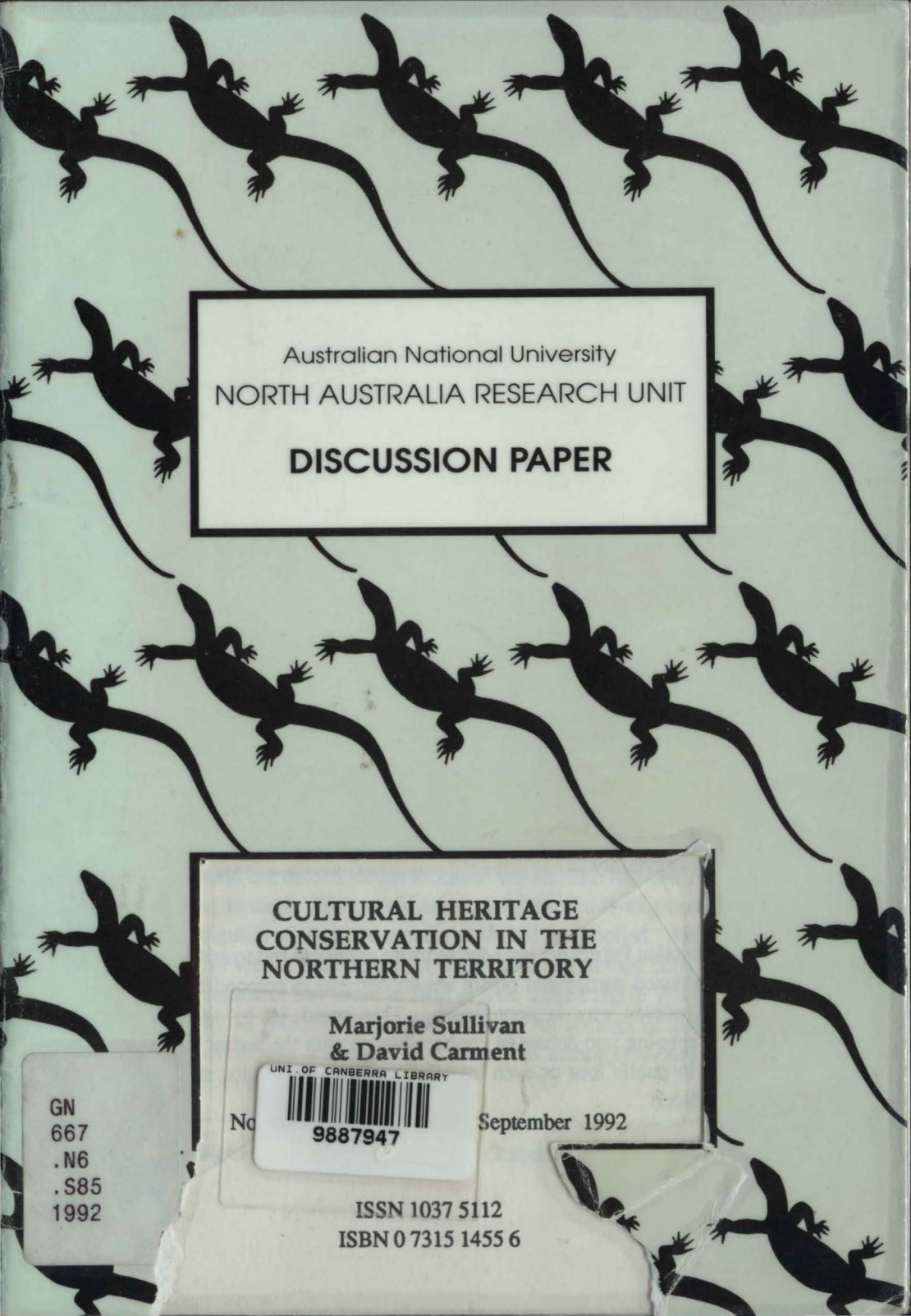

Australian National University
NORTH AUSTRALIA RESEARCH UNIT

DISCUSSION PAPER

CULTURAL HERITAGE CONSERVATION IN THE NORTHERN TERRITORY

Marjorie Sullivan
& David Carment

No. 1 September 1992

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NORTH AUSTRALIA RESEARCH UNIT

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The Unit's academic work is interdisciplinary and principally in the social sciences. An overall aim is to initiate research on problems of development in the north, little studied by other institutions. At present, emphasis is being given to four main research areas:

- Environmental management and planning
- Governance and policymaking structures
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- Quality of community life

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We hope that this series will open up discussion about some issues of northern development and the inevitable conflicts that arise from change, culture contacts and diversity of values.

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ABSTRACT

In September 1991 the Northern Territory Government passed its *Heritage Conservation Act* which seeks to identify, assess, record, conserve and protect places and objects of prehistoric, protohistoric, historic, social, aesthetic and scientific values. The new legislation is managed by a newly established Heritage Unit within the Conservation Commission of the Northern Territory. Because the Act and many of the concepts it enshrines are new, the Heritage Unit is new, and because the Act has very wide-ranging aims, there are problems with the functioning and administration of the legislation. In particular the management of prehistoric and historic archaeological places and objects presents difficulties. This Discussion Paper reviews some of the problems with the Act and its administration, and raises suggestions for guiding principles and practices which might be followed to ensure that the new Act is effective in conserving the Territory's cultural resources.

Acknowledgments

This Paper derived from discussions with other prehistoric archaeologists, and environmental scientists who were directly involved with issues of archaeological management in the Northern Territory. As people in these situations began to deal with the implications of the Northern Territory's new cultural *Heritage Conservation Act 1991*, many of the problems discussed here began to emerge. As these matters became anecdotal and as newspapers described the frustrations of local organisations concerned with the preservation of the built environment, it became clear that the new Act presented problems not just for archaeologists, but also for historians and others concerned with heritage conservation in the Territory. This Discussion Paper has therefore attempted to cover the current broad issues of cultural heritage conservation, as they relate to the new legislation, and to make some suggestions for dealing with the problems which have become apparent. We wish to thank many people for stimulating our ideas. They include Toni Bauman, Annie Clarke, Richard Fullagar, Peter Hiscock, Philip Hughes, Norma Richardson and David Wigston; but we wish to emphasise that all of these people were unaware that they were contributing to what has become a Discussion Paper on the new legislation. We are grateful to Annie Clarke, Penny

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Marjorie Sullivan is a Fellow at the North Australia Research Unit, Australian National University. She is a Geographer with a Masters degree in Geomorphology from the University of New South Wales and a Doctorate in Prehistory from the Australian National University, and since graduating has alternated between land management and academic roles. She joined NARU early in 1992 to work on issues of sustainable management and conservation outside reserved land. Prior to that she was Professor of Geography at the University of Papua New Guinea, where she taught Geomorphology and other Physical Geography courses, carried out research in Geomorphology and Archaeology, and worked as an environmental consultant on development projects. Her previous positions in Australia included working as a Management Archaeologist with the New South Wales National Parks and Wildlife Service, and her interests in this Act relate mainly to the management of landscapes and prehistoric archaeological sites.

David Carment is Associate Professor in History at the Northern Territory University. He has an honours degree from the University of New South Wales and a Doctorate from the Australian National University. His research interests include Northern Territory history, and politics and cultural resource management. He has been active in the National Trust of Australia (Northern Territory) for more than 10 years, and is currently its President. He is also a Member of the International Council on Monuments and Sites (ICOMOS). He was actively involved in the public discussions of the proposed Cultural Heritage Conservation Bill prior to its enactment in 1991, and in earlier attempts to develop a cultural resources strategy for the Territory. His particular interest in this legislation relates to the conservation and interpretation of historical structures.

CULTURAL HERITAGE CONSERVATION IN THE NORTHERN TERRITORY

Marjorie Sullivan and David Carment

Cultural heritage and land management

Since 1989 all governments in Australia have accepted the concept of sustainability in land management. In the Northern Territory several policy documents published since 1989, and which relate to conservation issues and sustainability, mention 'cultural heritage' as one aspect of the broader environment which requires consideration in conservation policies and strategies. Included among these are the Territory's wide-ranging draft conservation strategy (Conservation Commission of the Northern Territory [CCNT] 1992b).

The concept of land management, particularly when it is directed towards the specific aim of sustainable management, must necessarily consider all phenomena which are inextricably related to land. There has long been widespread acceptance, throughout Australia, of the need for governments which set land use policies to legislate also for the management of natural areas, particular ecosystems and species, through land or habitat management policies. In the Northern Territory therefore there is clearly perceived logic in the Conservation Commission being responsible for a wide range of functions (see eg CCNT 1992a) relating to the conservation and protection of the Territory's natural environment, the management of parks and reserves, land and soil conservation management, environmental impact assessment, the management of the impact of development on the environment, and undertaking research and public educational programs in these areas.

Amidst this climate of developing policies and strategies for sustainable management, in September 1991 the Northern Territory Government

passed its *Heritage Conservation Act (No. 39 of 1991)* in which the principal object is stated as:

> *... to provide a system for the identification, assessment, recording, conservation and protection of places and objects of prehistoric, protohistoric, historic, social, aesthetic or scientific value, including geological structures, fossils, archaeological sites, ruins, buildings, gardens, landscapes, coastlines and plant and animal communities or ecosystems of the Territory.*

In the Northern Territory archaeological relics were previously given legislative protection under the (now repealed) *Native and Historical Objects and Areas Preservation Act 1955*, a piece of legislation designed specifically to deal with such sites. This Act was administered by the Museums and Art Galleries Board of the Northern Territory, and such administration offered an inadequate infrastructure for enforcing the Act or for protecting sites in their landscape setting.

Until the 1970s the preservation and management of places with archaeological and historic values in the Northern Territory, as elsewhere in Australia, was not considered an urgent priority, and the conservation of historic places and areas was generally accidental. There was some interest in sites of importance to Aboriginal people, but coherent policies on such sites were just being developed. The Commonwealth Government's Committee of Inquiry into the National Estate in 1974 found, not surprisingly, that places of cultural importance were poorly protected and managed in the Territory. An urgent recommendation was then made for a detailed review of relevant policies and procedures, and a reduction in the number of overlapping authorities. The Committee also advised that the conservation and preservation of the Northern Territory's cultural heritage be a major objective of government policy, that a National Trust be established in the Territory, that when established the Trust receive adequate financial help, and that special attention be paid to the interests of Aboriginal people.

In November 1988, fourteen years after the Committee of Inquiry's report, the then Northern Territory Minister for Conservation, Daryl Manzie, announced that the government would introduce legislation to protect the Territory's heritage, focussing upon important prehistoric and historic sites (Carment 1991, 70). This announcement signalled a major reverse in the policies of the Country Liberal Party Government, and marked the commencement of a period of public debate over the meaning, significance and protection of the Territory's past. As detailed by Carment (1991), politicians were involved in the debate, but the most active participants were professional historians and archaeologists and their professional organisations, and other environmental organisations, most notably the National Trust.

By the 1980s some of the observations made by the Committee of Inquiry were no longer relevant, but as Carment (1991) noted, several still remained accurate. These included the problem of assessing community support for issues associated with cultural sites in the Territory, the lack of effective public education, the failure of the Register of the National Estate to recognise adequately the Territory's special qualities, the complications involved in listing Aboriginal places in the Register, argument over appropriate means of protecting Aboriginal sites, the slow rate of work in documenting and managing the European built environment, lack of sufficient funds, and the continuing absence of appropriate legislation.

The management of sites or areas of cultural significance, particularly historical and prehistoric sites, has not traditionally been perceived as being part of an integrated land management strategy. Despite the fact that cultural resources or cultural heritage issues are not immediately identifiable as land issues, there is however logic in regarding them in this way. Cultural sites are features within landscapes. They occupy space and are located either on erosional landforms or, more commonly, within sedimentary deposits. They can therefore be managed only by understanding landscape processes, and managing the landforms on which they occur.

In many Australian states, cultural resource management legislation falls within the responsibilities of land based authorities. It is common to find cultural resources protected within land-oriented Conservation, National Parks, or National Parks and Wildlife legislation. Recent legislation in Queensland bracketed conservation and heritage, similarly recognising that natural and cultural phenomena share planning and management requirements. The Australian Heritage Commission is responsible for both natural and cultural heritage phenomena.

The new Northern Territory legislation appears to be modelled largely on other state legislation designed to protect or conserve historical sites or places and other heritage structures or landscapes. It conforms with the current trend in Australia to link natural and cultural heritage management. It is unfortunate that in following that trend the Territory's legislators did not pay more attention to the problems associated with the administration of such comprehensive legislation, or seek to benefit from the experience of other state, Commonwealth and territory natural and cultural resource managers. Although workshops on the proposed legislation were held in Darwin and Alice Springs prior to the new Act being drafted, there is little evidence in the Act that attention was paid to the problems described at these workshops by cultural resource managers, especially those dealing with archaeological resources, from other states. The 1991 Heritage Conservation Act is undoubtedly a major advance in attempts to conserve the Territory's historical heritage. For archaeological site management however the Act presents new problems and concerns.

The management of archaeological sites, whether they are prehistoric, protohistoric or historic in origin, requires a different approach from that which is involved in the management of natural resources. It is necessary to realise that the sites of concern are commonly visually uninteresting to casual or non-specialist observers, that they do not therefore generate the wide public interest commonly displayed towards cute cuddly and furry animals or majestic forest plants, and that their significance is not readily assessed from a casual inspection. Once disturbed or removed, even if all

information relating to their nature and contents is recorded, they lose their integrity and thus much of their scientific significance.

Most land managers generally do not recognise such sites. They may be found anywhere in the landscape, and their protection or appropriate management requires vigilance, and a cautious approach to permitting their disturbance. Unlike living organisms or even damaged soil profiles, archaeological resources are totally non-renewable.

Cultural heritage legislative responsibility

Responsibility for the enforcement of the new Act was vested in the Conservation Commission of the Northern Territory (CCNT), an authority already concerned with land management, natural areas and species conservation.

Within this organisation there is considerable expertise in land assessment or evaluation for pastoral or agricultural use. This expertise will certainly need to be harnessed by those implementing the new cultural resource legislation, as they recommend to the Minister for Conservation that he/she issue gazettal notices 'prescribing' archaeological places. To date however, little of this expertise has been directed toward cultural resource management, and to encourage land managers to direct their skills towards that field will require a major change in people's perceptions of their work responsibilities.

It is likely that a management authority which already has expertise and a strong interest in species conservation, and landscape analysis and management, will be better prepared and more enthusiastically disposed to manage 'places and objects of ... aesthetic or scientific value, including geological structures' and 'landscapes, coastlines and plant and animal communities or ecosystems' than it will to manage 'places and objects of prehistoric, protohistoric, historic' or 'social ... value'. There is therefore a great danger that the management of this latter group of places and objects will not receive adequate care and attention under the

administrative arrangements for the 1991 heritage legislation, largely because of a lack of cultural resource management expertise and understanding at the time of transfer of responsibilities under the new Act.

In fact to date, CCNT has failed in some respects over a considerable time to take up an excellent opportunity to demonstrate its interest in cultural resource conservation. For several years staff of the Commission have been partly responsible for handling matters dealt with in the Northern Territory under the *Australian Heritage Commission Act 1975*, including responsibility for applications under the National Estate Grants Program, and the ability to be involved in the evaluation of nominations for the National Estate. These responsibilities however have remained limited, and CCNT has rarely sought to take a pro-active role in the processes of making nominations to the Register of the National Estate, or suggestions for cultural heritage management in grant applications. The former Heritage Advisory Committee, established in 1979, took over the role of assessing National Estate Grant applications. Almost all Northern Territory nominations to the Register of the National Estate have gone directly to the Australian Heritage Commission without CCNT involvement. Over half of these nominations have been made by the National Trust of Australia (Northern Territory).

Thus despite having been involved in cultural resource management for several years, the CCNT does not hold an active and current register of places so listed in the Territory. Members of the public enquiring about the Register of the National Estate in the Northern Territory are politely and helpfully referred to the Australian Heritage Commission (in Canberra). The failure of the Register of the National Estate to 'recognise adequately the Territory's special qualities' which was noted by Carment (1991), can be at least partly explained by the CCNT's frequently demonstrated lack of interest in cultural heritage matters.

Prior to the new Act being gazetted in September 1991, CCNT had sought, partly to set an example to other land managers, to conserve

historic sites on its own property. The Commission however has not carried out surveys for archaeological sites, nor taken such sites into account in the broader environmental management of its own property.

Despite CCNT's having an active geographic information system (GIS) in which it records a large body of other 'land' information, there has been no attempt to record, even as simply digitised point information, the location of heritage places within the Territory. If such sites were integrated with other land data, their management would be simplified.

In the third week of June 1992 the first external advertisements for staff to manage the new heritage conservation legislation appeared in local and national newspapers. It is probably significant that despite the Commission's acknowledged existing expertise in land and natural resource management, the first advertisements were for staff to deal with the *natural* heritage. Apparently there was no qualified person within the Commission who could be transferred across to that position. While qualifications in physical geography and geomorphology were seen as relevant to the position, history, historical geography, prehistory and archaeology were not mentioned in the advertisements.

At the same time the Commission had apparently been able to find within its own or other Northern Territory government departmental ranks people considered capable of administering the *cultural* part of the new legislation. This indicates some misunderstanding of the implications of the new Act on the part of Commission management, since the Commission has now acquired management responsibility for several thousands of archaeological sites. Not surprisingly, existing staff did not include people with extensive cultural resource management experience, including particularly experience in the assessment of significance of cultural heritage phenomena. CCNT management nevertheless apparently considered that people with other training or experience could carry out the functions required by the new Act — functions which clearly demand both demonstrated skills and experience in prehistory, history and archaeology. Staff within the Unit have training or skills in

history, and some experience with conservation architecture. None has expertise or experience in archaeological management. The current program of advertising for staff does not suggest that the Commission's recent pattern of showing little enthusiasm for managing cultural resources is changing.

Inherent problems in the scope of the legislation

There is undoubtedly considerable logic in grouping within one piece of holistic legislation all phenomena of heritage significance. It is however difficult to manage the wide variety of places and objects so identified and to ensure that all receive adequate consideration.

One inherent reason for this difficulty is that the legislation seeks to protect both renewable (ie largely natural) and non-renewable (especially cultural) resources without apparent recognition of the fact of this difference, certainly without acknowledgment of the need for a carefully considered and cautious approach to the management of the non-renewable resources.

Being non-renewable is certainly not a property exclusive to cultural heritage phenomena, nevertheless it is invariably a property which is relevant to their management. Places and objects of prehistoric, protohistoric and historic value, archaeological sites and ruins, like some of the other heritage phenomena identified in the legislation, once disturbed or destroyed can never be re-created or renewed, and must be managed accordingly. Unlike dynamic coastal landscapes or ecosystems, genuine rehabilitation or restoration of archaeological phenomena is not possible.

Another inherent problem in designing appropriate procedures is to take into account the fact that the legislation seeks to protect both portable objects and places in non-movable landscapes. Prehistoric, protohistoric and historic sites occur within landscapes, and their successful long-term management is contingent on appropriate land management. Other

cultural heritage legislation faces the same difficulty, and the questions which arise here have been asked in several Australian states, and been dealt with differently. Land management requires policing by field staff empowered to enforce the legislation. For cultural heritage places within National Parks, Nature Parks or Reserves, ranger staff either have or can be taught site recognition skills, and can enforce protective legislation. Outside land gazetted for conservation purposes enforcement becomes a problem. Most police officers, agricultural extension officers and other field-based land managers do not have either skills or interest in protecting archaeological sites or historic ruins. It is much simpler to curate a fossil collection in an air-conditioned keeping place.

The legislation relating to protohistoric and prehistoric archaeology appears to have been drafted largely to deal with these cultural heritage phenomena as they relate to environmental assessment. Developers and researchers alike however must share the concern that issues relating to the permitted disturbance to or destruction of sites is left unclear in both the Act and its Regulations. Dealing with archaeological sites is an issue of concern to developers who are often afraid of Aboriginal issues in general, and who commonly have little sympathy with or interest in a discipline which their own training has not equipped them to appreciate. The Act does not appear to have been greatly influenced by the perception of a genuine need to protect the Territory's cultural heritage, but rather to defuse (and diffuse) the worry of cultural sites impeding construction and development. In the procedures currently being developed, research into the Territory's cultural resources does not appear to be considered as important. Rather there seems to be a desire to develop formulae to handle surveys for environmental assessment, and to facilitate the granting of consents to disturb sites, without sufficient consideration of the need to develop criteria to assist in assessing significance, and policies relating to archaeological site conservation.

Hiscock (in press), an archaeologist active in research, teaching and environmental impact assessment in northern Australia, has described the Heritage Conservation Act 1991 as 'chronically flawed'. For

archaeologists the new Act presented immediate mechanistic problems. These included ascertaining how to obtain permission to excavate a site (a problem which is being remedied, although some excavations appear to have been conducted in the hiatus between the two Acts being effective), and how to report archaeological findings (currently sites are being recognised but not necessarily reported, and under the new Act there is no systematic reporting of areas being or having been surveyed). Such problems are undoubtedly temporary, as a subcommittee of the Heritage Advisory Council is currently designing appropriate procedures to deal with these and similar issues. They can and, for the sake of the resource, must be quickly solved.

These mechanical problems are not the cause of genuine deep-seated concern. Other more fundamental problems however underlie Hiscock's analysis.

Problems of terminology and intention

One major problem which will continue to irk professional archaeologists using the legislation relates to difficulties encountered with definitions and concepts and the terminology of the new Act. Some of these have been recognised by Hiscock (in press), who discussed what he considered to be ambiguity in the use of terms and in the definitions of archaeological materials. Others can also be identified.

Three terms which are central to the discipline of archaeology, and which have defined or accepted meaning to archaeologists, are used in the Heritage Conservation Act (1991) with other meanings. This reflects an apparent lack of specialist advice having been sought or accepted by the legislators as the Act was being drafted, and indicates their disinterest in, or possibly even antipathy towards, archaeology as a scientific discipline. One reason may be that while architects and historians were active in both pressing for cultural heritage legislation in the Territory (Carment 1991) and in assisting with drafting the legislation, prehistoric archaeologists had much less involvement in the process. This is partly

explained by the fact that there were (and still are) very few archaeologists permanently employed in the Territory. Those that were had little involvement with community organisations concerned with heritage issues, with which most consultation occurred.

The three terms which cause major problems are *archaeological*, *site* and *occupation*. Hiscock (in press) commented on or alluded to their use (or lack of use) in the Act, but further discussion is warranted.

To cultural heritage managers the term *archaeological* refers to material or physical evidence of previous activity. It is not a term restricted to prehistoric or indigenous use. In fact the broad discipline of historical archaeology in Australia deals with the material evidence of numerous cultures, including relics from colonial times, the interactions between early European explorers or settlers and Aborigines (sometimes referred to as contact archaeology) and with evidence of previous technologies (sometimes referred to as industrial archaeology). Studies in various aspects of historical archaeology have been undertaken in the Northern Territory, and there are many areas where historical archaeological materials occur. Among the best known are Port Essington described by Allen (1967, 1969) and Mataranka, where evidence has been summarised by Gleeson (1985).

The way in which historians, prehistorians, anthropologists and Quaternary scientists commonly use the term archaeological is far less restrictive than is implied by the Act's definition of an 'archaeological object' as

> *a relic pertaining to the past occupation by Aboriginal or Macassan people ...*

The definition which restricts archaeological objects to those relating to Aboriginal or Macassan occupation is unfortunate. To protect archaeological materials which relate to some previous period of Chinese, British, or other (such as wartime or early gold-mining) activity in the

Northern Territory, the materials need to be declared or prescribed as a 'heritage place', defined in section 4 of the Act as

a place ... declared under section 26 to be a heritage place

This definition could be considered to lack instructive clarity. This problem may justify an argument for one early amendment to the Act, to re-define an archaeological object simply as one which pertains to *past human occupation*. It would then be necessary for any proponent wishing to have an area of historic archaeological value prescribed as a heritage place to argue its significance in scientific, educational or other cultural terms.

Another fundamental problem of terminology is that in the statement of the principal object of the Act (section 3) 'archaeological sites' are listed among the categories of phenomena it seeks to encompass. Nowhere else in the Act are archaeological sites defined or referred to. It is possible that there was an intention to use this term loosely in section 3 to refer to all of the phenomena which cultural heritage managers might regard as archaeological sites, however it is more likely that it was meant to refer specifically to past Aboriginal and Macassan sites. There is no clear indication in the Act that a 'heritage place' may be both archaeological and, for instance, historically or aesthetically significant, but this was presumably intended.

Such inquiry immediately raises a second problem of terminology, the use of the word *site*. Traditionally archaeologists refer to concentrations or clusters of archaeological materials as sites; this Act uses the term 'archaeological places'. Hiscock (in press) presented a discussion of the problem of the failure of the Act to use the traditional term, 'site'. As he noted, archaeologists have debated over the usefulness and definition of this term, and the need for legislation to include additional terms such as 'relic' (a term used but not defined in the new Act) or 'archaeological object' to refer to the more dispersed materials between sites which also require protection. It is apparent that while the definition of an archaeological place conforms with the logic of other definitions in the

Act, it presents some difficulties for professional archaeologists which were presumably not foreseen by those drafting the legislation.

The process of defining an archaeological place will now involve archaeologists in presenting their own definitions of both *place* and *site*, and explaining in each investigation report how they refer to scattered archaeological objects between the clusters of objects which traditionally make up sites. It is likely that the future archaeologists trained in the Northern Territory will be recognisable not by their preference for felt hats, but by their use of the term 'places' when describing what other archaeologists call sites.

The objects present in sites or places are protected under the current Act (sections 3 and 6) and Regulations (3.2), but future legal interpretation may be that providing they are not damaged or destroyed, they can be removed, collected, transported to a museum or other repository, as long as they are not part of a prescribed archaeological place. Alternatively it might be interpreted that 'a prehistoric or protohistoric occupation place' is one which has, for instance, evidence for occupation in the form of the presence of a single stone artefact. If this is sufficient evidence for 'occupation' (the meaning of which is discussed below), that landscape element is in fact a 'prescribed archaeological place' under part 6 of the Act and Regulation 3.1.b, and as such is protected. This Act may well provide lawyers with a reliable income source for many years.

The other term which concerns archaeologists is that of *occupation*, which even more unfortunately is used in the Act with two meanings. In one use in the Act occupation refers to a modern tenant or lease occupier. More worrying is its use in a technical definition, in a less restrictive sense, and hence with a different meaning from that normally perceived by archaeologists, to define an 'archaeological place' as one

> *... pertaining to the past occupation by Aboriginal or Macassan people that has been modified by the activity of such people and in or on which the evidence of such activity exists ...*

If only the legislators had simply used the word 'use'! The phrase 'pertaining to past occupation' which may be legally acceptable if occupation is applied in its broadest possible sense, certainly requires some archaeological interpretation. As noted by Hiscock (in press):

> *archaeologists commonly use 'occupation' in specific ways to imply site function and residence length.*

He noted that the term 'occupation site' for instance is normally used by archaeologists to refer to stratified deposits or to a base-camp of some description, while terms such as 'sparse artefact scatter' or 'flaking floor' are preferred when referring to brief use for a specific purpose not normally considered by archaeologists to be 'occupation' in the sense of residence.

Like the problems of interpretation which it was suggested above will arise from the definition of an archaeological place, the phrase 'pertaining to past occupation' will generate similar problems. Most archaeologists would argue that places in the landscape which can be demonstrated to have been used in the past, were 'occupied' at least during that period. Such places, which include sparse artefact scatters, quarries, flaking floors, and grinding grooves, are consequently 'occupation places', and are protected under section 6 of the Act, as specified in Regulation 3(1.b).

The word 'occupation' as used in the Act undoubtedly refers to an area far wider than the simple location of the 'relic'. Advice during drafting should have indicated that it would have been better to have used an archaeologically less specific word than occupation. As there are no experienced archaeologists concerned with implementing the Act, this may not cause CCNT any immediate problem with its interpretation. Trained or experienced archaeologists reporting on the findings of surveys will however now really need to specify at least the minimum limits of the areas they can demonstrate were 'occupied', or ensure that in their reports they make 'motherhood statements' about the whole of Australia (or at least the Northern Territory) having been 'occupied' at some particular period in the past. Should they fail to do this it is likely

that a clever lawyer acting for a developer will demonstrate in court that there is no evidence for occupation in the sense of residence, hence the relic is non-existent and its destruction can lawfully proceed.

What is an artefact or archaeological object?

Within this same definition of an 'archaeological place' another concept is raised, that of modification by past use. Few archaeologists would object to this qualification, and almost all would insist that without some form of modification no place or site could be recognised as having been used.

Surely however even fewer archaeologists would then be comfortable with that part of the adjacent definition of an artefact or 'archaeological object' (section 4.1.b) which allows it to be

> *a natural portable object of any material sacred according to Aboriginal tradition.*

Clearly no physical modification by humans is needed here. Presumably the legislators believed that such an object is recognised by its own aura? Or, as a more likely explanation, is it simply that those who wrote the legislation had no concept of the difference between an archaeological and a sacred object? As Hiscock (in press) noted:

> *The development of an archaeological survey strategy which can identify such objects will be a marvel indeed!*

It is likely that this unfortunate definition was included to demonstrate sensitivity, in that there was an intention on the part of the legislators to protect any items of Aboriginal heritage (such as burial artefacts or 'grave goods') which may have slipped through the protective legislative net of the *Northern Territory Aboriginal Sacred Sites Act (No. 29 of 1989).*

As part (b) is written as a subset of the broad 'archaeological object' definition, then a simple interpretation of the legislation is that only past

sacred places or areas of significance are so classified. How do they differ from currently sacred sites? What happens to one which is both? Hiscock (in press) quoted Wesley Lanhupuy, Member for Arnhem in the Territory parliament, who (not surprisingly) raised an objection to this legislation when it was proposed, stating that he did not wish to have a sacred site protected by its being regarded from an historical point of view. The obscurity nevertheless remains in the Act.

Most importantly however, that part of the definition reduces a serious scientific discipline to an absurdity. While doing this it remains offensive to Aboriginal people for whom such objects, which certainly do not require human modification, are genuinely sacred. If the legislators wished to include Aboriginal sacred objects in this piece of legislation, although the existence of the Sacred Sites Act (1989) rendered this unnecessary, they should have done so using a separate class of object.

It now appears that all archaeological sites which might not normally be classified as 'prehistoric or protohistoric occupation places' (such as the locality containing a few scattered stone artefacts) will need to be specially declared as 'archaeological places' to offer them the protection of the Act. Listing their contents, which are indisputably 'archaeological objects' as defined, should however offer them immediate interim protection under the Act, as all such objects are prescribed in section 3 of the Regulations (1991).

Is the CCNT's heritage conservation officer going to be required to argue in court for an area having been occupied or not occupied in the past, should its proposed declaration be challenged? Or will this role fall collectively to the Heritage Advisory Council?

Dealing with identified problems in the legislation

The questions which now arise are twofold:

- Can the weaknesses in the Northern Territory's Heritage Conservation Act 1991 be overcome by sensitive interpretation and implementation?

- Can the new cultural resource management authority set the appropriate mechanisms in place sufficiently rapidly to ensure that no habit of encouraging the thoughtless destruction of cultural resources becomes entrenched?

Carment (1991) noted that Territory politicians had in the past considered that registration of places of cultural significance posed a potential threat to economic development, and was premature. The new Act permits and theoretically encourages the establishment and use of registers of Aboriginal and Macassan archaeological places, and places of other cultural significance. If there is not sensitive application of this legislation, if the necessary skills in assigning significance are lacking, and if there is no desire for excellence in cultural resource management, the new Act could be viewed as a rather cynical piece of legislation.

The ability of Cabinet or the Chief Minister to grant a permit for site destruction without necessarily requiring or following expert advice, and the ability of landowners or lessees to object to the registration of places of assessed significance on their land could indicate that the government may see the Act as a way of ridding itself of an embarrassing collection of heritage phenomena which are still perceived as standing in the way of development.

The Heritage Advisory Council

This Council consists of nine members, and has wide-ranging powers and responsibilities under the new Act. The Council's role is to advise the

Minister for Conservation on a range of issues concerned with the identification and significance of cultural heritage phenomena. Its functions are specified in the Act, and include the preparation of criteria for the assessment of heritage value, researching and evaluating heritage phenomena, recommending on the inclusion of places and objects on, or their removal from, the conservation Register, recommending on interim conservation orders, preparing conservation management plans or providing conservation advice for heritage places, advising on financial incentives or concessions for heritage protection, promoting public use and enjoyment, and other related functions.

As Hiscock (in press) commented,

> *Given the crucial role of this Council in the protection of archaeological material, it would be expected that professional archaeologists might have representation.*

Nowhere in fact does the Act specify even minimal requirements on the Council for scientific or professional expertise in any of the disciplines covered by the statement of objectives. Presumably those drafting it assumed that the Museum, CCNT, National Trust and Aboriginal Areas Protection Authority would between them nominate representatives with relevant professional expertise to cover all the fields of interest. As can be seen, however, the first Council fortunately includes one member with archaeological training, but no individual with archaeological management experience.

Despite its potentially random composition, the Council is required to carry out a sophisticated range of professional functions which are equivalent to those carried out in other parts of Australia by public service bureaucracies staffed by professional archaeologists, historians and architects. Council members may thus be required to undertake a considerable amount of extra unpaid work, and the membership at any time may be totally untrained or inexperienced in any of the disciplines relevant to its functions. While this is of less importance to the natural

sciences, given the expertise already resident in CCNT, for prehistory, protohistory, archaeology and history, it is a critical situation.

The Council is responsible for giving total management advice. Management means more than simply listing objects or places and advising on their protection. It includes the recognition and recording of phenomena, but extends well beyond that to also include the assessment of significance on a range of pre-determined criteria, an understanding of the various values of the phenomenon to different members of the community, an understanding of the possibility of offering physical protection to the phenomenon and the provision of sensible advice to the executive officers.

There is an enormous workload involved in declaring what must already amount to potentially thousands of 'archaeological places'. One question which should be raised at an early meeting of the Council is that of transferring the Northern Territory Museum's entire archaeological sites register over in a single 'batch job'. There is an immediate necessity of developing a mechanism for assigning at least interim protection status both to these sites and to any new sites which presumably CCNT Heritage Unit staff, and certainly people reporting to them, will now go on to record. This should probably include delegating the right to assign protection status to CCNT, either permanently or, more appropriately, as an interim measure between meetings of the Council. It should certainly not include, however, delegating the power to issue consents to disturb or destroy cultural heritage phenomena, even to a qualified and experienced professional officer.

The Council really has the power to decide not only on significance (a matter of considerable debate in all the scientific disciplines which relate to this Act) but even whether an 'object' or a 'place' is or is not real. Clearly this Council can function effectively only if it is provided with adequate resources. Even within the present economic climate of financial constraints, the Council will need to be assured of sufficient resources to enable ready access to additional professional expertise. In

most Australian states similar work to that being demanded of the Council is carried out by between six and 30 professionally qualified full-time staff.

In New South Wales, for example, where Aboriginal archaeological sites and historical archaeological sites are protected under the *National Parks and Wildlife Act 1976*, separate advisory committees exist. In the case of Aboriginal archaeological sites, regional committees comprising both professional or academic archaeologists and Aboriginal representatives may be called upon to advise the Minister on the issue of excavation permits, or consents to disturb sites for development. Before making their recommendations on any permit application, these committees require the specialist advice of both the regional professional archaeologists and Aboriginal sites officers employed by the National Parks and Wildlife Service, and are provided with relevant reports and summaries. This system is effective (provided developers consider cultural heritage issues early in their development planning) in ensuring the protection of significant sites, and generally appropriate archaeological site management.

Not only then do Council members need time (ie for frequent meetings), and resources to undertake their own research, but adequate professional indemnity insurance. Legal advisers could indicate whether this should be individual or corporate insurance, or whether the Act indemnifies them. It does not demand too vivid an imagination to conjure up images of lawsuits, with QCs asking Council members about their expertise to determine the significance of any of the phenomena covered by the Act. Experiences from other parts of Australia, in particular the New South Wales Land and Environment, and Mining Warden's Courts, suggest this is not a far-fetched scenario. There, lawyers acting for the forestry industry or for the New South Wales Forestry Commission have commonly questioned the expertise of trained botanists and field-based naturalists who were giving evidence on the ecological significance of rainforests in the north of the State, or of wetland communities in the south–eastern highlands. Similar questions of expertise have been

directed to prehistoric archaeologists, to ascertain whether the Court could have confidence in their bases for assessing the significance of sites which were threatened by developments associated with coal mining and sand extraction. The issue of ensuring that the Territory's Heritage Advisory Council has unhindered access to necessary expertise requires more serious consideration than it yet appears to have received.

Recent decisions by the present Minister for Conservation indicate however that he does not necessarily intend to follow the advice of his Council. Although that Council recommended that a Darwin building it judged to be significant and worthy of protection *in situ* should be protected on its original site, he made a decision on the basis of other information provided by CCNT — and followed contrary advice, to move the building to another locality, thus destroying its value in context, and reducing its heritage significance. The Council's advice on not permitting the investigation and consequent disturbance of specific prehistoric archaeological objects has similarly been overridden by the Minister.

Immediate needs and guiding principles

Both the Heritage Advisory Council and the Heritage Unit in CCNT need imminently to clearly articulate guiding principles by which the new Act should be administered. Suggestions for some of these are discussed briefly below; others will presumably develop as the legislation is applied.

1. It is essential to develop quickly a cultural resource management strategy for the Northern Territory. Under the terms of the new Act this must incorporate all cultural heritage phenomena, and to be successful would require inputs from a range of disciplines and individual professionals. An effort was made to do this in the late 1970s but at that stage the data base was completely inadequate. Such a strategy must take into account at least:

- A policy for identifying and assessing the resource, or determining the need for thorough site surveys.

  While this is well underway for historic buildings, objects which by their nature are relatively visible, this is certainly not the case for prehistoric archaeological sites, which are commonly unobtrusive, and can be identified only by intensive ground survey.

- The need to know where surveys for various types of sites have been conducted, in order to develop a knowledge base which includes information on where sites do not occur, as well as where they do, or may be predicted to occur.

  Current CCNT practice is not to require a permit to conduct a survey which does not involve any proposed disturbance of archaeological objects, and not to require professional archaeologists, even those engaged in environmental impact assessments, to report 'negative results'. In fact in many instances the confirmed genuine absence of evidence for occupation is as interesting an archaeological finding as evidence for occupation, and certainly raises additional research questions on past land use.

- A procedure for confidently relating sites to landscape so that cultural heritage issues can be related to land acquisition or land protection policies, and areas of particular cultural heritage sensitivity can be identified by land managers.

- A site or land acquisition policy based on recognised criteria such as representativeness, rarity, scientific value, value to various individuals or groups within the community.

- A protection policy to determine which sites will be physically protected or even 'restored'. Such a strategy needs to be based on land assessment, since it is not possible to conserve or manage *in situ* sites on inherently unstable landscapes. Such sites can be

appropriately managed only by scientific salvage and thorough recording of their nature and contents, or by their reconstruction in museums or other keeping places.

- A policy for dealing with sites which cannot be physically protected and which are threatened with disturbance through either natural processes or human activity.

- A policy for dealing with sites which are threatened by likely future environmental change, such as potential rise in sea level due to global warming.

The use of a well designed GIS, which incorporates selected environmental data, site location and/or density data, and the locations of all areas in which thorough archaeological surveys have been undertaken, would facilitate all these management tasks. Other states are now setting up dedicated archaeological GISs. It would probably be relevant for Heritage Unit staff to evaluate the feasibility of setting up such a dedicated GIS for the Northern Territory now, at the outset of its operations, or to consider carefully the possibility of using or modifying the existing CCNT GIS for this purpose.

2. A strategy and policy for assessing site significance. This must take into account the present and possible future significance of cultural resources to archaeologists, historians, educators, Aboriginal people, other ethnic groups (including Macassan, Chinese, Vietnamese), scientists in other fields (such as biologists, geomorphologists, Quaternary geologists, industrial engineers) for whom site information may elucidate relevant palaeoenvironmental or other interdisciplinary information, and other land managers including pastoralists, tourist operators and conservation land managers. Scientific significance must not be ignored in the face of popular interest by other community groups.

3. A strategy and policy for determining research priorities. Research, including excavation, should clearly be encouraged on sites which are inherently unstable, while similar sites on stable landscape elements should presumably be identified for active protection. Other factors in determining research priorities will include the consideration of contemporary (and dynamic) research questions, the consideration of likely future research questions, the advantages of encouraging problem-solving research, the role of research in site management planning, and the need and mechanisms to include research and teaching organisations in the determination of priorities.

4. A policy of dealing with sites (places) previously recorded and listed in filing systems held by the Northern Territory Museum, the National Trust and other organisations and authorities. Presumably one action would be for the Minister to prescribe all such sites as 'archaeological (or historic) places' and declare them under section 26, or at least to grant them interim protection under section 28. As their significance assessed on a variety of criteria may be variable, it may later be necessary to remove the protection of prescription (under section 27), or to waive it over a portion of a site (place) which was to be investigated by excavation.

   An alternative more time consuming and therefore impractical option would be to embark on a program to investigate all recorded sites, to determine the significance of each, and hence to now make individual recommendations for prescription or otherwise. If the former course of action were to be followed, a program of eventual evaluation or re-evaluation of the significance of each place would be necessary to confirm its prescription. Applications could then be lodged under sections 21 and 24 of the Act, to have the places declared. In either case, the question highlights the need for expertise in advising on site significance.

5. An interim strategy and policy for dealing with research applications to investigate sites, or consent applications to destroy sites for

developments. At present, only very brief summaries of such applications are referred to a sub-committee of the Heritage Advisory Council for their agreement, before a permit is issued. Such summaries are not an adequate basis for advising on activities which may result in the destruction of the resource. Even if a full archaeological report were to be required, the people currently evaluating the applications have no relevant experience, nor thorough knowledge of the Territory's cultural resources, against which to evaluate the supporting documents. Those recommending on such decisions must trust the knowledge and integrity of the archaeologists requesting permits. Experience in other states indicates that this certainly does not ensure appropriate heritage resource management. The situation similarly highlights the need for cultural resource management expertise within the CCNT bureaucracy.

Concluding speculations and remarks

A recommended course of action now might be for interested members of the general public, cultural heritage professionals, academics, and others whose fields overlap with the phenomena dealt with under this Act to immediately urge the listing of all sites which they consider worthy of heritage classification. It is likely that several thousand such sites are already known, most of which are visually (and aesthetically?) unspectacular, but scientifically significant prehistoric archaeological sites. There may also be several hundred visually unspectacular, but more widely understood protohistoric sites, and historical archaeological sites (including ruins), also of scientific importance. The most obvious sites (apart from rock art sites which are prescribed by the Act and Regulations) are likely to be historic buildings, historic ruins and National Trust listed structures. The Heritage Advisory Council is better equipped to handle this last group than either of the others.

Can the system cope? The suggestion above raises the spectre of a Council which meets periodically to consider buildings of architectural merit, landscapes of aesthetic value, monsoonal vine thickets of scientific

value, geological structures of value, and to produce an annual report, facing at least 300 or perhaps 3,000 applications for 'archaeological place' prescription each few months. In reality all the Council can do is accept or reject the whole lot, or else let the CCNT staff register them or assign significance. The Act offers no alternative method to cope with this, but it would be absolutely counter-productive to delegate the collective wisdom of nine largely unqualified Council members to a few equally unqualified government appointees.

As it stands, the 1991 Heritage Conservation Act and its administration has improved considerably the possibility for the protection of historical structures and places, but has reduced the likelihood of effective management of the Territory's prehistoric archaeological resources in the immediate future. It must be stressed again that such resources are non-renewable, and the Act must be made to work to ensure their conservation. In the immediate future and in the absence of clear policy guidelines, it would be wise to proceed with caution in such matters as the issue of excavation permits or consents to destroy sites. In developing such guidelines, it will be necessary to provide the Heritage Unit and the Heritage Advisory Council with adequate financial or staff resources to develop effective policies and management strategies. It will also be necessary to focus attention primarily on the cultural resources and their fragility, not on the concerns of planners and developers.

References

Allen FJ, 1967. The technology of colonial expansion: a nineteenth century military outpost on the north coast of Australia, *Industrial Archaeology* 4, 111–37.

Allen FJ, 1969. Archaeology and the History of Port Essington, unpublished PhD thesis, Australian National University, Canberra.

Carment D, 1991. Heritage legislation in the Territory, *in* Rickard J & Spearritt P (eds), *Packaging the Past? Public Histories*, Melbourne University Press, Melbourne, 70–77.

Conservation Commission of the Northern Territory (CCNT), 1992a. *Northern Territory Decade of Landcare Plan*, CCNT and Landcare Northern Territory, Darwin.

Conservation Commission of the Northern Territory (CCNT), 1992b. *Territory in Trust: A Draft Conservation Strategy for the Northern Territory*, Darwin.

Gleeson J, 1985. Blocks, runs and claims: interaction in three settlements in the upper Roper River district, 1911–1942, *in* Gleeson J & Richards M, *Mataranka and the Daly, Two Studies in the History of Settlement in the Northern Territory*, North Australia Research Unit, Darwin.

Hiscock P, (in press). Coming to terms with the Northern Territory Heritage Conservation Act 1991, *Australian Archaeology*.

National Estate, 1974. *Report of the Committee of Inquiry into the National Estate*, AGPS, Canberra, 245–8.

Northern Territory of Australia, 1991. *Regulations under the Heritage Conservation Act*, Regulations 1991, No. 53.

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