

# **Conservation of Australia's Historic Heritage Places**

## **Productivity Commission**

### **Public Inquiry**

#### **Submission on behalf of Hobart City Council**

**29 July 2005**

---

#### **INTRODUCTION**

1. In Hobart, the second oldest of Australia's capital cities, the conservation of cultural heritage forms an integral component of municipal activities, with appropriate objectives and policies incorporated within strategic documents. Hobart has a large stock of 'heritage places' with over 1950 properties (approximately 8.8%) subject to some form of statutory listing and a much greater number included within 18 gazetted Heritage Areas of the city.
2. The 'Protection of Cultural Heritage' is a Key Area in the Council's Strategic Plan (Key Area 7). Hobart's identity is dependent upon its unique cultural heritage. The Council's responsibility is to ensure the City's intrinsic cultural heritage values are conserved, protected and celebrated.
3. The key results to be achieved by Council, according to its Strategic Plan are:
  - Long term conservation of heritage places including buildings, streetscapes and cultural landscapes;
  - New development that acknowledges, and is sympathetic to, the City's existing and evolving historic character and setting; and
  - A well-developed awareness and understanding of Hobart's unique and diverse cultural heritage.
4. In pursuit of these requirements, Council has adopted a key strategy "to develop and implement a cultural heritage policy and statutory provisions to protect and manage the existing and evolving qualities and characteristics of the City's cultural heritage values."

5. The Priority Actions identified in the Strategic Plan are:
- Promote awareness and understanding of the Hobart's rich and diverse cultural heritage and the need for effective protection of these values.
  - Promote and acknowledge development that is sympathetic to the City's existing and evolving historical character and setting.
  - Establish links and partnerships with other levels of government, business and key stakeholders to ensure effective application, utilisation and co-ordination of resources for heritage management.
  - Provide professional heritage advice to Council and owners of heritage properties.
  - Prepare comprehensive conservation plans for all cultural heritage assets.
  - Ensure compliance with all statutory provisions and obligations in relation to protection of cultural heritage values.
  - Effectively conserve, manage and demonstrate best practice in the use of Council's own cultural resources and projects.
  - Develop relationships with Hobart's culturally diverse community to increase understanding and awareness of Hobart's cultural heritage.
  - Review and improve the effectiveness of Council's Heritage Fund.

## **STATUTORY FRAMEWORK**

6. The Council operates within the statutory framework of relevant Tasmanian legislation, including the *Local Government Act 1993*, the *Land Use Planning and Approvals Act 1993* and the *Historic Cultural Heritage Act 1995*.

### ***Local Government Act 1993***

7. Section 20 of this Act sets out the functions and powers of Council. Key functions include the formulation and implementation of policies, the facilitation of proper planning and development in the best interests of the community, and efficient and effective management of resources. The Act also sets out the requirements for Strategic Plans, Operational Plans and Annual Reports. Section 65 of the Act requires that any advice or recommendation given to Council be given by a person who has the qualification or experience necessary to give such advice. The Council employs a Cultural Heritage Officer and an Assistant CHO. Additional support is provided by temporary assistants and external consultants as required.

### ***Land Use Planning and Approvals Act 1993***

8. This Act establishes the land use planning and approvals provisions within the overall resource management and planning system in Tasmania. Schedule 1 - Part 2 of the Act sets out the objectives of the planning process. The objectives include the following specific objective:

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.

9. Part 3 of the Act deals with the preparation and review of planning schemes. Section 44 requires Councils to keep its planning schemes under regular and periodic review – to ensure that the objectives are achieved to the maximum extent possible.
10. Part 4 deals with “planning control” (or development appraisal). Section 51(2) states that, in determining an application for a permit, Councils must seek to further these objectives.

### ***Historic Cultural Heritage Act 1995***

11. This Act was proclaimed in early 1997. It established the Tasmanian Heritage Council and the Tasmanian Heritage Register. The Act sets out criteria for including a ‘place’ on the Tasmanian Heritage Register. A ‘place’ can be a site, a building or any items historically or physically associated with a building. The Register was initially drawn from the National Trust Register and the Heritage Registers of Hobart and Launceston. New ‘places’ are identified and added on a regular basis. Local survey work (by the Hobart City Council) is undertaken in a consistent format – to facilitate transfer of information to the state register.
12. Local government authorities have responsibilities to co-ordinate the approval provisions under this Act.

### **PLANNING SCHEMES**

13. Although public education plays an important part in increasing appreciation of the value of heritage places, the actual conservation of these places is generally achieved through statutory planning systems. This section examines the position of heritage management within the planning system which operates in Hobart.
14. Hobart has three planning schemes - each with a heritage schedule: *Battery Point Planning Scheme 1979*, *City of Hobart Planning Scheme 1982* and *Sullivans Cove Planning Scheme 1997*. Each scheme sets out a framework of control of development, to protect and enhance identified places of cultural significance. The *City of Hobart Planning Scheme 1982* contains approximately 1415 individual places and 18 Heritage Areas (within which control of development is exercised to protect heritage values). The *Battery Point Planning Scheme 1979* includes approximately 415 places but no heritage areas - in one sense the whole planning area covered by the scheme is a ‘heritage area’ and the scheme contains general provisions relating to ‘appearance’. The *Sullivans Cove Planning Scheme 1997* contains approximately 120 places of cultural significance and also contains a table of places of archaeological sensitivity, with specific provisions for the protection of archaeological values.
15. Each of the planning schemes incorporates a reference to *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance* – the Council has adopted the definitions, conservation principles, processes and practices set out in that document.
16. Planning applications for work on listed places or groups, or on places adjacent to listed items, or on places within designated Heritage Areas are assessed by heritage staff as part of the overall development appraisal process. There is no special heritage advisory committee as such, though there is a statutory advisory committee with expert and community representation for the Battery Point planning areas. All planning applications which involve heritage places (or are adjacent to heritage places), or which are within

designated Heritage Areas are discretionary and must be publicly notified. This provides an opportunity for community scrutiny and “third party” appeals.

17. Approximately 400 planning applications are referred for heritage assessment each year. The vast majority of these are straightforward – i.e. the proposed work is relatively minor and has little or no adverse impact upon heritage values. The principal development pressures continue to be unsympathetic alteration of existing heritage places, rather than pressure for outright demolition. There is general community acceptance of the importance of heritage-listed places and precincts in Hobart.

## **HERITAGE REVIEWS**

18. Since 1999 the Council has undertaken a series heritage reviews and thematic studies to enable a more comprehensive assessment of heritage values within the city. These studies have identified new heritage areas and approximately 900 individual places of significance.

19. The studies have examined the following areas of Hobart:

- Sandy Bay
  - West Hobart
  - South Hobart
  - North Hobart
  - Battery Point
  - Fern Tree and Ridgeway
  - City Fringe
  - Central Area
  - Mount Stuart
  - Lenah Valley
- 
- Work on New Town area is programmed to commence this year.
  - The Council is also supporting the Wellington Park Management Trust in the preparation of a comprehensive cultural heritage audit of places within Wellington Park.

20. Each of these Heritage Reviews has been undertaken in accordance with widely accepted conservation methodology (based originally on a format developed in NSW). The studies have been underpinned by examination of historical context and evolution, and have been developed with broad community consultation (and support). The studies generally contain the following:

- Background Survey and Review
- Thematic Historical Context Report (usually a ‘stand alone’ document which assists in general education and understanding of history and the promotion of local heritage values)
- Field Survey
- Inventory of Individual Places
- Heritage Areas
- Planning Recommendations
- Implementation

21. In addition to the suburban or geographical based studies, a number of thematic studies have also been undertaken:
- Industrial Heritage
  - Women's Sites and Lives in Hobart
  - Cemeteries and Burial Grounds
  - Significant Gardens (New Town and Lenah Valley)
  - Subterranean Heritage
22. The identification of heritage places and areas has an educational benefit, in terms of contributing to community knowledge and a sense of place. The addition of new places and areas is reinforced by statutory listing and protection, which is undertaken through a formal scheme amendment process, which includes public consultation and formal 'hearing' by an external agency, the Resource Planning and Development Commission.

### **HERITAGE LISTING**

23. A heritage register is a means of identifying places so that their heritage values are taken into account when decisions regarding their management and their future are being made. Listing is regarded primarily as an EDUCATIONAL tool. Planning schemes and their heritage registers provide the statutory mechanism for the protection of cultural heritage values.
24. Although each of the planning schemes places a strong emphasis on 'listing' the protection of heritage values extends to adjacent places – in terms of the impact which adjacent development may have on listed places. Listing is a convenient means of identifying and protecting places of significance.
25. The Council has a broader responsibility to conserve places of significance under the *Land Use Planning and Approvals Act 1993*. This extends to places which are not specifically listed. In a celebrated case involving decisions of the Tasmanian Resource Management and Planning Appeal Tribunal and the Supreme Court of Tasmania (including a subsequent appeal), a place which was not listed in the *City of Hobart Planning Scheme 1982* (a former blacksmith's shop at 38 Barrack Street, Hobart) was nevertheless saved from demolition, with Council successfully arguing that it was required to conserve such places by virtue of meeting its responsibilities to further the objectives of the *Land Use Planning and Approvals Act 1993*.
26. When the THC was first established (1997), it formed its register (Tasmanian Heritage Register) from existing registers, including the schedules in the Hobart planning schemes. It initially adopted an 'inclusive' approach to listing. The THC has increasingly adopted higher thresholds in listing – preferring to concentrate on places of 'state level significance' rather than including places which it considers may be more appropriately identified and protected at a local level.
27. At the same time, the Council has increasingly looked toward the Tasmanian Heritage Council for guidance in relation to heritage listing. Council's current preferred model in terms of identifying and protecting places within its planning schemes is for the Council to provide the THC with data inventory sheets from the various heritage studies, with the request that the THC proceed with registration of places under the *Historic Cultural Heritage Act 1995* and heritage registers in planning schemes to be amended to include 'any place in THR' (in addition to those already included in planning schemes).

28. While this policy achieves a degree of consistency between two different tiers of government (local and state), it does not accommodate the THC's increasing tendency to establish differential thresholds for heritage listing.
29. Council's desire has been to simplify the listing process and to ensure consistency between the registers in the various planning schemes and the Tasmanian Heritage Register. If the Tasmanian Heritage Council intends to limit its register to a smaller number of places of state level significance (as it has been suggested), this will have implications for Council's current policy, if places of local significance are to be adequately protected.

## **SEPARATE PLANNING AND HERITAGE APPROVALS**

30. The *Historic Cultural Heritage Act 1995* commenced operation in February 1997. The greatest impact of the Act upon property owners and planning authorities is the requirement for obtaining Tasmanian Heritage Council approval before undertaking any work on a place listed in the Tasmanian Heritage Register, in addition to the normal requirements associated with obtaining a planning permit under the *Land Use Planning and Approvals Act 1993*.
31. In 1991, when the whole question of heritage legislation was first being actively considered, the need to integrate the heritage approval processes with planning processes was articulated.
32. The inconsistency between the *Historic Cultural Heritage Act 1995* and the *Land Use Planning and Approvals Act 1993* and the duplication of processes has been a significant problem for applicants and for those responsible for administering the legislation, including planning authorities and the Resource Management and Planning Appeal Tribunal.
33. The Hobart City Council, together with a number of other planning authorities, recognised the major shortcomings of the heritage legislation at the outset, which provided for separate application procedures in spite of advice from local government and other interested bodies before the legislation was framed.
34. The Council has consistently argued that the approval processes of both Acts should be integrated. The fundamental position is that there should be 'one application – one permit'.
35. In April 1995, during the preparation of the heritage legislation, Council conveyed specific concerns regarding the integration of the *Land Use Planning and Approvals Act 1993* and the draft heritage legislation. These concerns included the question of duplication and inconsistency between the processes and procedures of both pieces of legislation.
36. In September 1997 the Director wrote to Peter James, the Chairman of the Tasmanian Heritage Council, outlining the need for clear procedural steps and work instructions to ensure smooth implementation of the new Act. The THC was urged to strongly consider options for changing the Act to better integrate the approvals processes with those of the *Land Use Planning and Approvals Act 1993*.
37. In November 1998, the Council resolved to write to the Minister, seeking urgent amendments to the *Historic Cultural Heritage Act 1995*, so that its administrative and

approval processes are fully integrated with the existing statutory system of the *Land Use Planning and Approvals Act 1993*.

38. In December 1999, in response to the government's 'Minor Review Statement' the Council endorsed correspondence to the chairman of the review team, which noted the present cumbersome arrangements of two separate and inconsistent pieces of legislation, and reiterating Council's position that applicants should not be required to submit two separate applications.
39. In October 2000, in response to the government 'Heritage Review 2000' the Director advised the Chairman of the Tasmanian Heritage Council that "the issue of integrated application processes is quite clearly the major priority of this Council ..."
40. In March 2002, in response to release of the 'draft instructions for parliamentary counsel', the Acting Director advised LGAT that Council supported better integration of the planning and heritage assessment process, and had consistently argued for the need for legislative reform in this area.
41. The government's own review processes have confirmed the views which had been expressed by local government authorities.
42. The Minor Review Statement of 1999 suggested reform, but the recommendations were 'overtaken' by a further review the following year.
43. The State Government Heritage Review of 2000 suggested the administrative processes of the two acts be co-ordinated by procedural 'guidelines' rather than by overall legislative change.
44. The Annual Report of the Ombudsman for 2001-2002 comments upon a recent case involving the various approval processes for a heritage listed property, and notes that there is "room for confusion ... particularly for a person who did not access the legislation on a regular basis."

### **Present System**

45. At present, applicants must obtain two separate approvals before undertaking work on a heritage listed place:
  - a planning permit issued by the planning authority in accordance with Part 4 of the *Land Use Planning and Approvals Act 1993*; and
  - approval from the Tasmanian Heritage Council, in accordance with Part 6 of *Historic Cultural Heritage Act 1995*.
46. Applicants submit a works application (on a separate form) with the planning authority (generally at the same time as they submit an application for planning permit).
47. The planning authority must advertise the works application and then forward it to the THC for assessment. This is not necessarily done concurrently with the notification of the planning application (as the planning application may be delayed by a request for further information under s.54 of the *Land Use Planning and Approvals Act 1993*). The notification period is for 14 days after the day of advertising.

48. The planning authority must forward to the THC copies of any ‘submissions’ received in relation to the advertised application.
49. The THC must determine the works application within 42 days of it being lodged. There is no provision in the *Historic Cultural Heritage Act 1995* for the THC to seek additional information. If the planning authority seeks additional information in relation to the associated planning application, the 42 day time period (under the *Land Use Planning and Approvals Act 1993*) is stopped until the information which has been requested is provided. In some circumstances, a THC decision must be made even before the associated planning application has even been advertised.
50. The THC must advise the planning authority of its decision, and the planning authority must then forward a copy of that advice to the applicant and any person who made a submission.
51. There is no automatic linking of the two decisions (the planning decision under the *Land Use Planning and Approvals Act 1993* and the Tasmanian Heritage Council decision under the *Historic Cultural Heritage Act 1995*). For example, an applicant could receive a letter from the planning authority one day, stating that a planning application has been approved, and a second letter on the next day (again, from the planning authority) stating that the THC has refused the proposal. In practice, administrative measures have been put in place to minimise the risk of confusion to members of the public (where possible, the THC letters are held over so that they can be sent with the planning decision), but with two differing legislative requirements, it is not always possible to avoid such cumbersome situations.
52. In some cases, the THC decision is not made until after the decision of the planning authority.
53. There are appeal provisions relating to both acts. An applicant (or representor) must lodge two separate notices of appeal (if both decisions are being appealed against). It is the practice of the Resource Management and Planning Appeal Tribunal to hear both appeals concurrently.

### **Preferred approach for approvals under state heritage legislation**

54. In simple terms, the Council’s preferred model in relation to approval of works by the state heritage agency is:
  - an applicant would need to lodge only a single application;
  - there would be one advertisement;
  - the proposal would be referred to the THC;
  - the THC would advise whether or not it approves of the granting of a permit by the planning authority;
  - the THC’s advice would be incorporated within the final determination of the planning authority; and
  - there would be one permit.
55. The proposed amendments to the *Historic Cultural Heritage Act 1995* (incorporated in a 2003 Bill) are still subject to review, some two and a half years on.



## HERITAGE FUNDING PROGRAM

56. The Council maintains a Heritage Account, established under the provisions of the *National Trust Preservation Fund (Winding-up) Act 1999*. The Act states that funds in the Heritage Account are to be applied for the provision of financial or other assistance in relation to a place entered in either the National Trust Register or the Tasmanian Heritage Register.
57. The Council has established a Special Committee to administer the Heritage Account, and has endorsed the Committee's Terms of Reference. The Council has also adopted certain principles in relation to fund expenditure. The Special Committee is responsible for developing further policies in relation to fund expenditure.
58. Policies already established include:
- The Council precludes financial assistance in relation to places owned by the Council or by the Australian or State Government.
  - The Council encourages financial assistance in cases where there is likely to be a community rather than private benefit.
  - Funding will incorporate a 'multiplier' effect on financial assistance, such as a retrospective award scheme.
  - The funds in the Heritage Account are to be maintained, with the capital invested and not more than half of the interest expended in any year.

### Funding Priorities

59. Priority is given to actual physical works, though heritage studies, conservation plans, educational projects etc. are also considered if these are related to heritage-listed places and are likely to assist future conservation works. Priority is also given to work where there is a public or community benefit.
60. Priorities include:
- **Physical conservation works** to places entered in National Trust Register or Tasmanian Heritage Register  
*Examples include urgent stabilisation works, or works which address damp problems, structural failure, subsidence, timber decay, roof deflection.*
  - **Conservation plans**, where necessary to guide conservation work, and where a commitment to physical work is also included in the project.  
*A conservation plan should set out what is significant about a place, and should identify the steps required in order to retain that significance. The Burra Charter (Australia ICOMOS) explains these processes.*
  - **Heritage studies**, but only if the outcome results in additional nominations for either the National Trust Register or Tasmanian Heritage Register.

*This program is unable to fund general heritage or historical studies, but consideration may be given to studies which result in additional nomination of places. The level of funding available will preclude comprehensive large-scale studies.*

- **Educational projects**, related to places entered in the National Trust Register or Tasmanian Heritage Register.

*Funding is available for projects which assist in the promotion and appreciation of heritage-listed places. Examples would include site interpretation, brochures and educational material.*

61. The majority of funding is provided for work which is yet to be carried out (i.e. future projects), but a small award may also be made in respect of recently completed projects. Commercial properties generally receive a lower priority for funding.

### **Funding limits**

62. There is no set funding limit for individual projects, although the maximum grant in previous years has been \$5,000. The total amount available in each year has been approximately \$75,000, and grants are limited to small-medium scale projects. Funding is limited to 33% of total project cost (i.e. applicants must indicate at least a two-thirds contribution).
63. The Heritage Funding program has been operating for three years and its success is subject to ongoing monitoring. The relatively small amount of money available means that it is essentially an *incentive* scheme – the Council providing a ‘helping hand’ to projects deemed worthwhile. With such a rich heritage of major nineteenth century buildings in Hobart, including outstanding churches, colleges and other institutional complexes, funding demands always seem to exceed available financial resources. The Council’s Heritage Funding Program is inadequate to meet such expectations.

### **OPPORTUNITIES FOR PROMOTION, EDUCATION AND CULTURAL TOURISM**

64. A key element of any heritage strategy at local government level is the exploration of opportunities for promotion and public education. The provision of knowledge about the wealth and diversity of a city’s heritage assets assists in developing public appreciation of cultural heritage values, and ultimately assists in ensuring that places are valued and retained. Opportunities for promotion, education and cultural tourism are explored in a variety of forms. The presentation of educational material is a major aspect of the City’s heritage and conservation program, and the City promotes economic activities surrounding cultural tourism.
65. The various historic context reports produced as part of suburban heritage studies are available for purchase as background research documents.
66. Council has also produced a number of booklets and brochures on historical themes and these are made freely available to visitors. Brochures include “Historic Hobart Places” - an illustrated and annotated map of central Hobart, with 51 key buildings, designed as a self-guided walking tour; “Hobart’s Historic Cemeteries and Burial Grounds” - which examines the various burial sites throughout the city and suburbs, and examines their

establishment and subsequent evolution; and a “Women’s Walk” - which examines sites of significance to women or associated with notable women.

67. The Council has developed a number of interpretative signs, including the Sullivans Cove area and throughout the major parks.
68. The Conservation Plans which have been completed for a number of key Council assets have also provided a wealth of opportunities for public education.
69. Council has also developed a program of heritage exhibitions, usually prepared to coincide with the annual National Trust Heritage Festival in April each year. Exhibitions have included “Hobart’s Forgotten Heritage”, “The Charm of Hobart ... 50 years on ...”, “Hobart’s Sporting Heritage” and “100 Hobart Houses”. This latter event involved the examination of one house for each year of the 20th century, with photographs, architectural drawings and a brief historical background being provided for each place. The public response to the exhibition was overwhelming and resulted in the subsequent publication of a very successful book based on the exhibition content.
70. The Council has also commissioned a corporate history, spanning the period 1846-2000. This book will examine the range of Council activities and endeavours through this period, and will assist in placing the various aspects of municipal administration within a historical context.

## **MANAGEMENT OF COUNCIL HERITAGE ASSETS**

71. Local councils have an important role as owners and managers of heritage property. These assets range from ornate town halls to grandstands ... from transport depots to aqueducts. Councils have the opportunity to lead by example in their approach to property management.
72. The Hobart City Council is directly responsible for many significant heritage properties, including the Town Hall (1864-67), the Lady Franklin Museum (1842), the City Hall (1915), three nineteenth century defence batteries, various parks and recreational areas, monuments and a number of other places. The new Hobart Council Centre is itself located within an Art Deco landmark, the former Hydro-Electric Commission building (1937-38).
73. In 1997 the Hobart City Council commissioned a comprehensive heritage audit of all Council owned assets including buildings, parks and other municipal infrastructure. The structure of the audit was compatible with a similar exercise undertaken by the Tasmanian Government, and the data compiled has been linked to Council’s asset management systems.
74. The audit has provided a framework for future studies and work programs. The audit has established priorities with respect to the preparation of conservation plans and other heritage protocols. Conservation plans have been prepared for the Town Hall and Carnegie Building, the Lady Franklin Museum, the former Beaumaris Zoo site, the City Hall, the Queen’s Battery and Alexandra Battery. A cultural heritage management plan for the Queen’s Domain has also been completed.
75. The establishment of appropriate mechanisms for the conservation and management of all culturally significant Council property is reinforced and specifically articulated within Council’s Strategic Plan.

## **EMERGING ISSUES**

76. Some emerging issues in Hobart are:

- increasing pressure on inner city and waterfront sites – the pattern of traditional nineteenth century development is of low density, and greater demands and expectations are being placed on such properties;
- subterranean heritage and archaeological issues – identification of sites and zoning plans are currently confined to the Sullivans Cove (waterfront) area, whereas places of archaeological sensitivity exist throughout the older areas of the city. The requirement for archaeological investigations can place a significant cost imposition upon property owners and developers.
- Aboriginal heritage – there is increasing awareness of Aboriginal heritage issue, and an expectation that these will be comprehensively addressed within development proposals.
- twentieth century places – the various heritage lists have generally had a strong bias towards nineteenth century places (reflecting, partly, the initial interests of bodies such as the National Trust). There is now increasing pressure on buildings from the post war period – with little identification or statutory protection.

77. Such factors will have an increasing influence on development of our cities, particularly where economic and sustainable development priorities promote urban consolidation as the preferred model.

## **CONCLUSION**

78. It will be seen that the Council's main roles and responsibilities in relation to cultural heritage management are set within the state legislative framework, and many of the issues which continue to face Council in terms of identification and protection of heritage places involve the state heritage agency, the Tasmanian Heritage Council. Nevertheless, the scope of the current Productivity Commission Inquiry includes examination of a broad range of issues, including the roles and responsibilities of the three tiers of government.

79. This submission has been prepared by Council officers, and will be submitted for Council consideration prior to the public hearing on 12 August.