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BASIS OF SUBMISSION

I am making this submission as an individual. My credentials include my being an Arts graduate from Sydney University, a Diploma in Town and Country Planning from that University, qualified membership of the Planning Institute of Australia, a certificated town planner under the NSW Local Government Act and experience in heritage planning dating back to 1974. My heritage experience includes being a foundation member of the Historic Buildings Preservation Council in Victoria (see p. xvii of the Commission report) and six years with the Mornington Peninsula Shire Council in Victoria as the Council's Heritage Planner. Thus I have been heavily involved in heritage at both the State level and the municipal level.

I wish to present this submission at the Commission's public hearing scheduled for 14 February 2006.

MORNINGTON PENINSULA SHIRE COUNCIL

In reading the Commission report it would appear that there was no submission from the Mornington Peninsula Shire Council and I do not know why this was the case. Thus, by way of background I can say that the Peninsula has been the subject of four separate heritage studies dating back to 1992 and the Council has progressively responding to the recommendations of these studies such that in the Mornington Peninsula Planning Scheme some 300 individual heritage places and another 400 properties in heritage precincts are now recognised and protected. In addition, another 40 heritage places of significance on the Mornington Peninsula to the State of Victoria are listed under the Victorian Heritage Act. With financial assistance from Heritage Victoria the Council employs a heritage adviser whose advice to owners of heritage places is available at no cost to the owners of heritage places. In December 2002 the Council adopted its Heritage Places Policy (a copy enclosed), with a key element being a heritage rate rebate for owners of heritage places, either of individual or precinct significance. Section 169 of the Local Government Act gives a Council this discretion. As well, the Council has a limited budget for urgent works to heritage places in private ownership. The above mentioned Heritage Places Policy was prepared on the basis of incentives already available under Victorian legislation. It is fair to

say that the Council's initiative in its approach to heritage has been widely commended in Victoria.

Contrary to general indications in the Commission's report, in all cases on the Mornington Peninsula for a heritage listing there is a statement of significance. These statements are in the public domain and are used by the Council in considering applications affecting heritage places.

PRESENT HERITAGE CONTROLS

As the Commission is no doubt aware the Victorian Government, through the Victorian Planning Provisions, prescribes the standard heritage controls for all planning schemes. To some extent this is seen as excessive in that, in broad terms, the matters that need heritage approval are seen to be onerous and that the same controls apply through out the State regardless of local circumstances. This comment is made even though it is recognised that the Schedule to the Heritage Overlay does allow some flexibility. In practice it has proved to be time consuming in that the Minister for Planning and his advisers need to be satisfied that additional flexibility is justified in the particular case.

THE COUNCIL'S EXPERIENCE TO DATE

When there is discretion under a planning scheme there are appeal rights to the Victorian Civil and Administrative Tribunal for parties dissatisfied with Council's decision. In the six years of Council having all significant properties on the Peninsula recognised in its planning scheme there have only been two matters referred to VCAT and in both cases VCAT endorsed the Council's heritage position. In my view this can be explained in terms of the Council's recognition that a heritage place needed to have a viable use and that alterations to heritage places were not unreasonable in order that the heritage place could be altered to meet modern expectations for urban living. There is a current case before VCAT where the National Trust of Australia (Victoria) has sought a review of the Council's decision to support the demolition of a heritage listed building (contrary to expert heritage advice to the Council). The point of issue is the cost of restoring the building, even though the property had subdivision potential.

THE STATUTORY PROCESS

Before a building in the Victorian system can be listed as a heritage place there is an independent process leading to a decision on whether or whether a place should be heritage listed. The Council's experience to date has been that between 5% and 10% of owners object to a proposed heritage listing and that some of these objections are duly recognised. The basic premise is that at the identification stage the issue is the intrinsic heritage importance of the place is the issue and that the feasibility of its economic sustainability is a matter to be considered at the time there is a proposal to demolish the place. Only last year the Council was satisfied in a particular case that a heritage building had gone past the point of economic salvation. In terms of which places had heritage potential the Council had regard to the recommendations of the relevant heritage study, the views of expert bodies such as the National Trust and Heritage Victoria and of the local heritage group.

I should say that the rigour and quality of the assessments from some of the earlier the heritage studies have, with wisdom of hindsight, been very broad brush and, on occasion, superficial. With the assistance of Heritage Victoria the quality of more recent heritage studies has improved and this has contributed to the statements of heritage significance being able to respond to challenges in the various appeal forums.

FINANCIAL ASSISTANCE

As the Commission report notes there is land tax relief under the Heritage Act, at the discretion of the Treasurer, for places included in the Victorian Heritage Register. Firstly, the Mornington Peninsula Shire Council understands that only in a small number of cases has the Treasurer agreed to land tax relief and secondly, the Mornington Peninsula Shire Council has not been successful to the State Government in its submission that there should also be the opportunity for land tax relief where the heritage place is listed in a local planning scheme.

HERITAGE LISTING AND LAND VALUES

There have been quite a number of expert reports on this point, with even one from the Valuer-General of Victoria, with the jury well and truly being out. I assume that the Commission is aware of these reports. My view is that there would be circumstances where there is a negative impact on the value of a property and my submission is that, in the case of a heritage listed property, the valuation should be on its existing, rather than its highest and best, use.

ASSESSMENT

In my view the bottom line is the quoted submission from Australia ICOMOS (p. xx of Commission report):

Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records that are important as tangible experiences of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious. "

This ICOMOS submission has my strong support. In my view the protection of our heritage, whether the level be National, State or local, should not be a unilateral matter for the owner of a heritage place of recognised heritage value. In terms of the Commission's key recommendation (p. xl.iii) there should be a negotiated conservation agreement before a place can be heritage listed and as a corollary there can be no heritage listing against the wishes of the owner. As a further corollary the Commission is saying that existing heritage listings should be removed in the absence of a negotiated agreement. Having seen first hand in the 1970's where I participated in, and indeed chaired, many public hearings where owners opposed to the heritage listing of their property exercised their legislative right before any decision was made to heritage list their property under the Historic Buildings Act I cannot support this

proposed key recommendation. I draw the Commission's attention to highly significant Collins Street, Melbourne, buildings where the owners challenged their proposed heritage listing in the 1970's such as 1-9 Collins Street, Portland House, the former CBA banking chamber, 333 Collins Street, Anzac House and Alcaston House. As well, there were many fine CBD churches at the time where the Church authorities argued against heritage listing. Is the Commission saying that the recognition and adequate protection of such outstanding elements of our cultural heritage should be solely a matter for the owners? However in making the above comments I am not saying that there is no community responsibility with the economic sustainability of heritage places of recognised community significance.

CONCLUSIONS

- 1 Heritage preservation is a community responsibility and should not be at the discretion of the private sector. However I do support, in conjunction with the owner, a conservation management approach to the listed heritage building. In the Mornington Peninsula conservation management plans have been prepared for key heritage buildings such as 'Beleura' at Mornington, The Briars at Mount Martha and Mount Martha House.
- 2 The Mornington Peninsula Shire Council has shown that there are existing legislative and statutory mechanisms for assistance to owners of heritage places. These mechanisms need to be fully pursued.
- 3 There needs to be a more rigorous assessment process before any decision is made on a listing of a proposed heritage place.
- 4 When a heritage place is under threat its future should be determined by the community, rather than by its owner, through a transparent public process.
- 5 Legislative changes in relation to land tax relief and the basis on which heritage places are valued would be a step towards redressing a perceived imbalance in the burden of heritage preservation between the public and the private sector.

PJ BROWN

1 February 2006

Heritage Places

Policy No. 3.1

PURPOSE

To recognise that there is a public responsibility for the preservation of heritage places in private ownership

To develop a policy for financial and professional assistance to owners of heritage places.

OBJECTIVES

To give effect to Council's responsibilities under the Planning and Environment Act to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest or otherwise of special cultural value

To give effect to the Community Plan requirement to pursue implementation of policy options to support owners of heritage properties in on-going conservation (such as architectural and building advice, rating issues and information)

SCOPE

This policy applies to all heritage places listed in the Schedule of Heritage Places in the Mornington Peninsula Planning Scheme (other than those included in the Victorian Heritage Register established under the Heritage Act 1995)

DEFINITIONS

A heritage place is defined as a place included in the Schedule of Heritage Places in the Mornington Peninsula Planning Scheme

POLICY

1 That the Council will consider applications from owners of individually listed heritage places for a rate rebate, pursuant to Section 169 of the Local Government Act, of up to 25% based on the difference between the Capital Improved Value and the Site Value

2 That the Council will consider applications from owners of property in a heritage precinct for a rate rebate, pursuant to Section 169 of the Local Government Act, of 12.5% based on the difference between the Capital Improved Value and the Site Value.



POLICY (CONT'D)

Heritage Places

Policy No. 3.1

- 3 That the Council provides a supplementary valuation, pursuant to Section 13DF of the Valuation of Land Act, where the value of the land would be materially affected by the heritage listing in the Planning Scheme or by the granting, refusal or cancellation of a permit under the Scheme.
- 4 That owners of heritage places be advised of the various funding programs in so far as they may be affected by a particular program, with Council assistance being available, as required, to facilitate the application process
- 5 That the Council waives fees for permit applications for heritage places where a permit would not otherwise be required and where it is satisfied that the specified conditions of Regulation 13 of the Planning and Environment (Fees) Regulations 2000 are met
- 6 That the Council waives fees for planning scheme amendments where a proposed heritage listing is adopted by the Council and where it is satisfied in the particular case that the specified conditions of Regulation 13 of the Planning and Environment (Fees) Regulations 2000 are met
- 7 That the Council be prepared to consider the use of Clause 52.03 of the Planning Scheme whereby an incorporated document may allow a heritage place to be used or developed in a manner which would otherwise be prohibited or restricted by the Planning Scheme
- 8 That the Council reviews the existing Schedule of Heritage Places in the Planning Scheme with a view to providing more flexibility for heritage places by the use of an incorporated plan under Clause 43.01-2
- 9 That the Council pursues opportunities for funding to be provided through Section 137 of the Heritage Act
- 10 That the Council considers applications for financial assistance where it can be demonstrated to the satisfaction of the Council that additional costs, above those which would be incurred if the building were not a heritage place, are involved for alterations to be carried out to a heritage place in a manner acceptable in heritage terms
- 11 That the Council considers applications for financial assistance from owners of non-rateable heritage places within the context of the various Council programs such as a Community Partnership and the Community Grants Scheme
- 12 That the Council continues to operate its heritage advisory service to owners of heritage places.
- 13 That the Council introduces an annual award for the heritage project of the year

Heritage Places

Policy No. 3.1

PROCEDURE

The implementation of this policy is important to ensure that the Council responds to the legislative requirements of the Planning and Environment Act, gives effect to its Community Plan and recognises the role of owners of heritage places in conserving and enhancing the heritage of the Mornington Peninsula.

On the adoption of this policy the Council will notify all property owners affected by the policy and will take all appropriate action to maximise public knowledge of its adoption. The Council will also assist property owners should they wish to apply for a rate rebate under this policy.

RESPONSIBILITY

Director - Sustainable Environment - for ensuring the policy and procedures are implemented and maintained

The Council's **Heritage Planner** - for co-ordinating the implementation of the policy and monitoring its effectiveness

RELATED POLICIES

Nil

RELATED LEGISLATION

Nil

REVIEW

This policy shall take effect for three (3) years and shall be subject to review not later than 31 December 2003