

Historic Buildings Restoration Committee (Inc)

PO Box 217, Portland 3305
Inc, No. A0034240R

Productivity Commission Submission Conservation of Historic Heritage Places

9/3/06

Portland's Historic Buildings Restoration Committee Inc., a community committee interested in conserving cultural heritage, was formed in 1976 at a public meeting called by the Portland Town council to gauge support for heritage.

Organisation Purposes - See attached.

These objectives were altered in 2004 to enable the organization to extend its interests to the broader Glenelg Shire, which is under pressure from "sea changers" seeking small coastal subdivisions. The coast in this Shire has strong associations with the cultural heritage of Indigenous people and early European settlement.

Strong Heritage and Environment Protective Legislation and Controls Needed.

Introduction

HBRC Inc's submission is based on this organisation's experiences since the amalgamation of three municipalities into the Glenelg Shire in 1994, and the development of its New Format Planning scheme in 1997-8 (one of the first in Victoria).

Throughout this submission we refer to the Victorian Auditor General's Report *Community Planning Services in Glenelg Shire Council, 1998-2005, October 2005*. It is available at www.audit.vic.gov.au.

While we acknowledge that the experiences of a single Committee in a single Shire are limited, we are making this submission because we consider that the Glenelg Shire has very high heritage values of National, State and local significance. They contribute a great deal to community pride and to the local economy through attracting tourists. However, the Shire's cultural heritage significance has recently suffered neglect of both its built and natural environments through deficient planning management.

HBRC Inc. is unusual as a community committee because of its planning experience e.g. prior to amalgamation, it made submissions for successive Council Strategy Plans, successfully advocated a Portland Urban Conservation Study (1981), employment of a Town Planner, and the formation of a Heritage Advisory Board to the Portland Town Council (1983). It was represented on the Board and supported the work of Heritage Advisers and Town Planners.

Following Amalgamation, and concerns about the approach to heritage to be taken by the new Glenelg Shire Council, by 1996 HBRC Inc. became Incorporated so that it could appear at VCAT Hearings if necessary. As a Submitter to the New Format Planning Scheme in 1997 HBRC Inc. was well placed to monitor how the conservation provisions of the Scheme were being managed.

The Heritage Advisory Board became ineffectual, did not meet for two years from 2001, and since 2003 has been downgraded to a Committee without Councillor representation; however new planning managers support it and it is again functioning to provide local input to decisions.

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Our experiences may be instructive to others, and are amplified by the findings of the Victorian Auditor General's Report.

The Glenelg Shire Planning Experience Post-Amalgamation -

The Kennett Government appointed Commissioners 1994 -1996. They tended to reflect the Government's pro-development culture, and to appoint officers of similar views, and this occurred in the Glenelg Shire. When the new Glenelg Shire Council was elected, the new ward system meant that new Councillors from outside Portland had little knowledge of or interest in Portland's heritage issues in comparison with elected Portland City Councillors up to 1994. Together with the loss of experienced officers across all three former Shires, the changed systems meant a great loss of corporate memory. Heritage and environmental protection both suffered.

Planning -

Under new Government rules for compulsory competitive tendering, Planning in this shire was tendered out on an external planning contract in 1997. The Auditor General's Report concludes that the "contractual arrangements to provide planning services were inadequate" (p. 110) and that Council had "inadequate oversight over many years" of the contract (p. 114).

When the Bracks Government was elected in 1999 and chose to relax Government authority and supervision of LGA's, Glenelg Shire Council already had a situation where its planning function was virtually unsupervised; the elected Councillors had no Delegated Planning Committee, relying on the appointed contractor for all decisions. The new Council's culture was and still is adamantly pro-development.

HBRC Inc. (formed in 1976) and the Portland Branch of the National Trust have been the only community groups with an overview of planning issues. Between 2000 and Dec. 2004, when the external planning contract was terminated, HBRC Inc. found it necessary to object to, and then seek VCAT reviews of, several permits which did not give proper regard to heritage considerations (e.g. Auditor General's Report Case Study 3, p. 42).

However, where inadequate permits were issued within days of application without advertisement even to neighbours, it proved impossible for this community committee to act, since in 2003 Council foreshadowed its intention to challenge HBRC's "standing" in its VCAT application to amend a permit post-issue. This action was over a permit for a McDonald's outlet with excessive signage in the Area of Special Significance and under the Heritage Overlay (Auditor General's Report, Case Study 2). The permit was issued within one day of the Planning Department's receipt of the application.

Contact with Authorities -

Between 2001 and 2003 HBRC Inc. wrote to the Department of Sustainability and Environment, to Heritage Victoria, and contacted the Victorian Ombudsman about the Shire's planning problems, but they proved unable to assist its efforts to protect highly significant heritage in Victoria's First Settlement (although HV officers gave valuable advice).

Letters to Ministers from 2002 proved similarly ineffectual, as did the Council's "Best Value Review of Statutory Planning" in 2002-3. The consultant's recommendations for improved advertisement of applications was rejected by Council, leading to even less public information from the Planning Department before permits were issued; they were often issued on the same day, and the planning contractor and Council saw this as deserving commendation.

A new CEO appointed in January 2003 gradually introduced improvements, including a Council Delegated Planning Committee from 2004 (Auditor General's Report p. 96 - 98).

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After the Council had been forced, on legal advice, to apply to have a large subdivision permit cancelled by VCAT in late 2004 (Auditor-General's Report, Case Study 9, p. 60-61), the external Planning contract was terminated from March 2005, and internal planning staff are now running the shire's Planning Scheme according to legislated requirements.

Costs of Poor Planning in Gleneig Shire 1998 - 2005 -

At a cost of \$180,000, the Victorian Auditor General has investigated planning anomalies in the Glenelg Shire 2004-5 (Report, p. 18). It has recommended improvements to planning in the Shire, many of which are now being implemented.

Members understand that the Report is also now used as a reference document for many other shires across Victoria and is influencing them to improve their planning practices.

Costs of Poor Planning Decisions

The costs to this community 1997-2004 may never be able to be quantified. Many poor decisions made between 1998 and early 2005 will in the future afflict the sustainability of this shire.

1. Cultural heritage losses include

- some heritage buildings and streetscapes,
- inappropriate new developments under the Heritage Overlay prejudicing the unique character and amenity of Portland,
- high cultural heritage, landscape and environmental values throughout the Shire due to excessive subdivisions and inappropriate development, e.g. the Shire encouraged applications from wind farm companies for the three volcanic Capes Bridgewater, Nelson and Grant. Eventually the Portland Wind Energy Project was approved by the State Government with almost one hundred 75m. towers to be placed on these National Estate-listed, National Trust Registered cliffs and landscapes, and within 1 km. of the City of Portland outskirts (not yet built but an ongoing threat).

All of these have the potential to impair the Shire's attraction for visitors and its lucrative tourism industry.

2. Over the last 10 years, many heritage hotels and B&B's have been developed in Portland and the Shire, and there has been strong private investment in restoring and refurbishing heritage buildings. Council has spent millions on streetscape improvements. This public and private expenditure has been undermined by poor Planning management, which has necessitated HBRC Inc. taking action at VCAT in defence of the Shire's heritage (for discussion of heritage, restoration and streetscape investment in Portland since the 1970's see Attachment 2, extract from HBRC Inc.'s Submission to VCAT re a development proposal for 25 Julia St., June 2005; especially pages 5 to 8 re Clause 22.03-5 of the Portland Planning Scheme).

3. Other values that the Glenelg Shire Planning Scheme 1998 sought to protect have been undermined by subdivisions along unstable coastlines, subdivisions outside the Planning Scheme's nodes of development and existing services, loss of agricultural land to dispersed housing, potential erosion and detriment to the quality of ground water, and loss of biodiversity. However, the Planning Scheme developed in 1997 never envisaged the possibility of applications from wind farm proponents for high quality landscapes and cultural heritage areas.

4. There is a further loss to heritage when groups such as HBRC Inc. are forced to adopt adversarial stances, and have little time to promote and support positive heritage activities (open days, tours) in their community - as has happened to HBRC Inc. in the recent past.

However, some costs may be able to be quantified.

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Members respectfully suggest that the Productivity Commission could ascertain the costs of work done by the Victorian State Government Solicitor's Office, the Department of Sustainability and Environment, and the Glenelg Shire Council over the Case Studies related to cultural heritage issues as provided in the Auditor-General's Report Oct. 2005 (nos. 1 to 5 and No. 9, the Convincing Ground).

As an example, in Case Study 2 (McDonald's, Report p. 40-41), the Council's VCAT costs were \$10,200, and this case only went to two Directions Hearings. HBRC Inc. costs for Case Study 2 were in excess of \$600 and do not include volunteer time in managing the case, a pro bono barrister's appearance and advice, and travel to Melbourne.

Litigation costs also are borne by developers, and in some cases, their costs have been awarded against the Council. While its insurers will be paying out, ratepayers lose because Council's insurance premiums must rise.

Several cases over the Convincing Ground (Case Studies 4 and 5, pp 45-50) are currently before VCAT. They have been in progress since January 2005 when Aboriginal Affairs Victoria halted bulldozers on one site. HBRC Inc. is currently a participant at the Hearings, hoping to ensure that the Tribunal is mindful of the significance of European as well as Indigenous cultural heritage. Despite the Convincing Ground being an early contact point and aboriginal massacre site before the Hentys' arrival; having held a Henty sheep run, a whale fishery, and a ship building site in the 1840's; and being obviously of extremely high conservation value, the Glenelg Shire Council issued two subdivision permits for the site in 2003 and 2005 and has allowed development nearby in the past.

Heritage Victoria has now nominated this site for Registration, but until now protection of the Convincing Ground has relied on manifestly inadequate local government respect for its significance; had HV had better resources, perhaps this site could have been protected before the current debacle overtook it.

The Convincing Ground VCAT hearings involve great expense (now totalling millions of dollars) for the Council, Government agencies (Department of Sustainability and Environment and Solicitor), developers, aboriginal and community groups.

The most recent Directions Hearing set down for 9/3 has now been deferred for a further 2 months at the request of the Government Solicitor's Office, to "allow the parties to further consider the Draft Development Plan which has just been circulated". The Department of Sustainability and Environment has been forced to prepare this Plan due to deficiencies in Council's original Development Plan Overlay 5, under which the subdivisions occurred (see Portland *Observer* article 8/3/2006, "Convincing Plan Made", re the current VCAT situation).

After these experiences, members cannot support trust being given to heritage bureaucracies and local governments to negotiate heritage protection with individual landowners, without stronger legislative provisions to control their actions, and without adequate resourcing to enable them to act positively in support of heritage and heritage property owners.

Our delicately-balanced and authentic heritage in this shire is at a crossroads; and the Council's coffers are depleted so that even heritage and planning budgets and maintenance of Councilowned properties (many of them significant for their heritage) are being cut back.

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Despite the Auditor General's Report, and Council's agreements to improve its practices, the elected Council still has a pro-development focus and is not adequately undertaking community consultation (see Current Planning Issues below).

Inadequate Government Support for Heritage Agencies

The Register of the National Estate - Members understand that this has been superseded by the new National Heritage system, but any changes will only be beneficial for heritage conservation if there is good resourcing and support for identified places and their owners.

Heritage Victoria - It is members' experience that while Heritage Victoria has been very sympathetic towards the plight of heritage in this district, sheer distance and lack of resources has made it impossible for *officers* to extend the support needed - except in extreme cases such as the Convincing Ground, where Registration to provide State protection appears to have been expedited.

For example, Portland National Trust branch has nominated two very significant areas to the Heritage Victoria Register in 1999 and 2001 - the Government Buildings Block in Portland (of high status and still reasonably intact) and Cape Bridgewater, which is on the Register of the National Estate and the National Trust's landscape register; both nominations have been accepted by the Director of HV, but there has been no further action to assess the areas and effect their Registration, we understand due to lack of personnel.

The National Trust - In earlier times, the Trust was relied on to identify and assist local groups to conserve significant heritage, but it now has insufficient personnel and resources to support its registered landscapes and places - especially if they are far-flung as is the Glenelg Shire. Branches cannot conduct VCAT action without Head *Office* support, and this is rarely forthcoming due to lack of resources, although some funds have been advanced to the Portland Branch of the National Trust which has supported HBRC Inc. cases before VCAT.

HBRC Inc. members support the remarks by Simon Molesworth AO, QC, Chairman, Australian Council of National Trusts, published in the *Trust News*, Vol. 34, No.3, Feb. 2006, p. 10-11 - "...we are deeply disappointed in the key recommendations of the draft ... taking heritage backwards 50 years to the period before statutory protection was enacted The problems (the Commission) has identified arise primarily from lack of resources, and could therefore be most effectively remedied through increased funding at all levels of government".

Current Planning Issues in the Glenelg Shire

It is acknowledged that new shire Planning management is addressing problems in management, which include a backlog of cases before VCAT, and that Council officers are endeavouring to fulfil the Auditor General Report recommendations.

Members understand that the elected Council is under 12 months' review by the Minister for Planning Hulls.

However this Committee remains concerned at the planning actions of the Glenelg Shire Council.

- Recently it unsuccessfully sought to reduce the area of the former Environmental Rural Zone, its application being rejected by the Planning Minister (see article from Portland *Observer*, Wed. March 1st - "Hulls Slams GSC"; also Case Study 7, p. 53 - "Subdivision Inconsistent with Council's Planning Scheme" gives some background to this matter.
- Limited "community consultation" - the GSC continues to selectively "consult" pro-development sections of the community in planning matters. Most recently (15/2/06) it

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held a meeting regarding "streamlining" planning decisions, which was not publicly advertised but had a media release published on the day of the meeting. Two HBRC Inc. members managed to respond. However the Portland Progress Association, a prodevelopment lobby group without a broad community base of membership, was issued with an invitation. It notified its members about the meeting who comprised most of the attendees.

In conclusion,

This organization considers that lack of Government supervision of local government actions in Planning has lead to municipalities in Victoria being virtually free to place their own interpretations on the Planning and Environment Act 1987 and on their New Format Planning Schemes introduced in 1998-9 in relation to that Act. As a result,

- planning management in Victoria now varies from municipality to municipality, and in this Shire required an investigation by the Auditor General (published October 2005, after a over year of investigation) to reveal this Shire's neglect of proper planning principles and heritage protection (now being addressed by new staff and processes).
- because good local government conservation practices in the 1980s were undermined and disrupted by the Government-imposed planning changes in the 1990s, there now needs to be a greater effort in this State to redress the damage that has been done and to overcome attitudes which are antipathetic to heritage protection.

Other Issues -

- protection and conservation needs to be better resourced. For example, Heritage Victoria has been unable to assist protection of many historic heritage places in the Glenelg Shire; while the Shire has a part-funded (from HV), part-time Heritage Adviser, for several years no appointments were made and there is a backlog for the current Adviser to handle. The National Trust can no longer assist its branches to protect locally significant heritage. Both Government and public organizations obviously need to be assisted, especially in protecting local heritage, by better Government funding;
- incentives from Federal and State governments to local governments and property owners encouraging them to adopt proper conservation practices need to be greatly improved. In particular, more funding is needed for heritage advice and enforcement;
- heritage professionals are scarce in rural areas and there needs to be incentives for them to work outside of urban areas;
- conservation education needs to be improved, especially among Councillors, Town Planners and municipal engineers;
- in some municipalities such as Gleneig, there is insufficient interest in and expertise on heritage to permit Councils to have control of heritage issues (the work of this Shire's current planners and Heritage Advisers is acknowledged, but they need better support to be able to better influence planning decisions).

As a small community committee, members of HBRC Inc. respectfully submit that heritage protection and resources need to be greatly augmented, and placed under the control of strengthened Federal legislation and trained personnel rather than left to the vagaries of elected local or state governments.

Yours faithfully,

A. L. Chalmers OAM, Secretary,
On behalf of members of HBRC Inc.