



# Historic Heritage Bill 2012

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## Introduction

The Local Government Association of Tasmania (LGAT) is the representative body of Local Government in Tasmania. Established in 1911, the LGAT is incorporated under the *Local Government Act 1993* with membership comprising 28 of the 29 Tasmanian councils<sup>1</sup>.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal Councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

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<sup>1</sup> Note that Glenorchy City Council has announced intent to resume membership as of 1 July 2012.

## **General Comments**

The Association would like to commend the staff of Heritage Tasmania for the consultative way they have approached the development of the Historic Heritage Bill 2012. They consistently engage meaningfully with Local Government in progressing historical and cultural heritage issues.

Councils are very supportive of the principles of the Bill, particularly in relation to works, but have raised some practical concerns and suggestions for consideration by Heritage Tasmania.

Outside of the Bill itself, concern has also been expressed about the delays in developing a Heritage Code to support thorough development of the interim planning schemes using the Common Key Elements Template (PD1). There is also a degree of anxiousness on the impact of a review of the State Register on locally important heritage properties (that is that a large number of properties currently listed on the THR may be removed for not meeting the criteria at a 'State' level but which meet the criteria at a 'local' level and therefore must be looked after by councils. Further, it has been pointed out, that the Bill does nothing to resolve the absence of clear authority for the local planning process to identify and manage conservation and protection of areas or building of local heritage significance.

This submission has been developed through input by a number of councils at a forum hosted by Heritage Tasmania on 4 April 2012 as well through comment on a draft circulated to all councils. Some councils have also made their own submissions. Any omission of comments they have made should not be viewed as lack of support by the Association for that specific issue.

The Association's response is divided into three broad sections: Positives, Part 6- Heritage Works, Other.

### **Positives**

The Local Government Sector have long sought a process for works applications aligned with the *Land Use Planning and Approvals Act 1993* (LUPAA) with a single application, single permit, single advertising process and single appeal. The changes encompassing this streamlining are highly supported and felt to be very customer focussed. It is felt the aligned processes will facilitate improved communication between councils and the Heritage Council. The customer focus is also supported through the use of designated timeframes, providing greater certainty to applicants. The improved accountability of Heritage Tasmania in relation to processing applications was welcomed.

It was also noted that the better alignment of listing criteria with HERCON was a positive move.

There was also support for the continuing non legislative work of Heritage Tasmania including the improvements on the website, provision of online examples and stronger partnerships with councils.

### **Part 6- Heritage Works**

While the intent is widely supported, some concerns were raised about timeframes, definitions and links to LUPAA. (Note: This section steps through the provisions in order of appearance rather than order of significance).

s32 (1) – It is suggested that the definition of ‘application day’ be amended in accordance with the provisions of LUPAA (s86). That is reference ‘valid application’ to s 86 of LUPAA or use ‘valid application as determined by the planning authority’ and delete the final words ‘to carry out the heritage works’. Section 56N of the *Water and Sewerage Industry Act (2008)* also provides a definition of application that aligns with LUPAA.

s34 (1) – It is noted that as currently stands, there is no Head of Power which enables this provision. The Land Use Planning and Approvals Act does not provide an express power or obligation to incorporate heritage regulation into a planning scheme. Consequently, there is concern about the proposal to make any application affecting a listed place discretionary under s57 of LUPAA as it seems to cut across the planning scheme template by precluding the possible introduction of Acceptable Solutions in a Heritage Code.

s35 (4) – It was questioned as to whether these issues should be supported through guidelines rather than exemptions and that in particular 35 (4)(c) was of significant issue as it did not allow unique heritage values related to churches to be protected. The requirements were less onerous than currently in place (28 days notice required) and that shift was not supported.

s36 (2) – It was felt that the statements ‘as soon as practicable’ and ‘within 5 days’ were in conflict and the preference was for a statement of days or similar to the *Water and Sewerage Industry Act 2008* (s560), ‘without delay’.

s36(3) – This does not sit well in this section and it is suggested it is merged with s40.

s36(4) – After some discussion a number of proposals were made here. These are:

- Inclusion of a new clauses that describes that the Heritage Council can make one of three decisions. These are 1) yes we are interested, 2) no we are not interested, or 3) we need more information. This initial decision is to be made in 7 days (not 14).
- If the Heritage Council has said they need more information, they then have another 7 days to define that information request.
- Upon receipt of information, the Heritage Council is to have seven days to determine and advise if the information is adequate.
- It is suggested that 36(4)(b) is not relevant at this point and should be encompassed in s40. It is also noted that this should specify 14 days not 10.
- If no response within 14 days it should be taken that the THC has no interest (to avoid a limbo situation).

The reasoning behind these recommendations is that there is greater alignment with other processes (eg Water and Sewerage 7 days) and it allows more processing time at the critical later end.

s37 – needs to include advice about the process if the Heritage Council is not satisfied with the information received (see also s36 above).

s38 – it is felt this best belongs in or after s40.

s38(2) – In order to enact this provision a consequential amendment to LUPAA is required to stop the clock. If this consequential amendment cannot be made, it undermines the feedback provided earlier on timeframes and would require further consultation. It is suggested that it would be worth looking at how LUPAA was amended in relation to the *Environmental Management and Pollution Control Act (1994)*.

s40 (b and c) – while there was some debate about the impact of representation on timeframes it was excepted that in most cases these provisions are of limited impact and should be left in place to account for complex or controversial applications.

S40(2) – needs to be clear that the THC should only consider or give weight to representations relevant to heritage matters.

s40(4)(b)(i) – it is felt this is an unnecessary clause.

s40(5)(b) – There was considerable debate in relation to this provision with concern as to what would occur if the Heritage Council set conditions which would invalidate a permit, triggering a technical refusal. It was suggested that the words 'or are otherwise incompatible' might be removed. It was acknowledged that dealing with potential issues was likely best dealt with through practice rather than legislation with the following suggestions made:

- The Heritage Council should ensure a responsive streamlined process in relation to querying conditions through appropriate delegations to senior staff.
- The Heritage Council should secure expert planning advice through appointment of a planner to Heritage Tasmania.
- There should be greater use of tested standard conditions.
- That this be an area that monitored with potential for review in the future.

s40(8) – A number of issues were raised here:

- It is noted that the timeframe is tight but it was agreed that it could not be faster and will be an issue on occasion where an application is complex or has lots of representations. There will be times when the statutory timeframes set under LUPAA are exceeded but not this is unlikely to be significant in number. It further supports the need for a strong commitment to working with applicants prior to lodgement.
- In relation to 40(8)(a) it was noted that the 25 day timeframe needs to be linked to LUPAA's counting of time (not including clock stopped days) as per s57 and s58 of LUPAA.
- There needs to be included some reference to the applicant as time extensions cannot be agreed by the planning authority, only the applicant.
- s40(8)(b) lacks some clarity of drafting and while it is noted that on occasion the planning authority will have secured an extension of time on a matter unrelated to heritage, there are limited opportunities to pass that on (eg if the extension of time is related to the meeting of the planning authority, it may not be able to be passed on if it interferes with meeting preparation time). This is difficult to legislate for as it perhaps relies on strong relationships rather than legislation.

s43- Certificates of exemption need to specify clearly that it is not an exemption from planning or building approval requirements. It is suggested to improve the clarity of this section the word 'apply' or 'application' is changed to 'request', thereby limiting confusion with works applications.

s43(8) – It is suggested that the draft might be improved in relation to linking place and holder.

s45(4) – It is felt that this should refer to the Heritage Council and the Planning Authority being joint respondents when the appeal is on the basis of joint refusal.

S46- It was suggested the wording be changed from 'sanction demolitions' to 'approve heritage works' and from 'prudent or feasible' to 'prudent and feasible'. Further it was felt there should be a specified timeframe by which works must occur.

## **Other**

s15 (amended) – Additional information is required here. There is concern that there is potential for a shift of compliance costs to planning authorities who have to enforce heritage conditions if they become aware of breaches.

S16 – Discussion centred around the fact that this clarifies the role of the Register only in relation to State level listings and doesn't provide support for local listings. The new State requirements for listing are likely to be higher than a lot of currently listed properties which may lead to an influx of locally listed properties. The use of heritage precincts only affords limited protection and as it stands there is nothing to protect good local individual properties. It was noted that the Heritage Agreement concept might be better used by local authorities and we encourage Heritage Tasmania to work with councils in this area.

Review of the Heritage Register – this intended activity is widely supported given numerous examples of where the current listing does not reflect the current title or the original intent of the listing. However it is suggested that consideration needs to be given to a requirement to advertise intent to remove items for the register when, for example, deterioration is the issue at hand.

There is no clear definition, nor prescribed criteria for defining and establishing local heritage significance which may lead to inconsistency between planning schemes.

The expansion of practice notes/guidelines to cover registration, works and other emerging matters was supported.

Consequential amendments to LUPAA need to be given due consideration.