



Managing our heritage

A Position Paper supporting the final
consultation on the reform of the
Historic Cultural Heritage Act 1995

September 2007

FOREWORD

The reform of Tasmania's *Historic Cultural Heritage Act 1995* has reached a critical stage. Your input is vital if the management of our State's historic heritage is to become easier, clearer and more consistent.

Since this legislative review began in 2003, there have been numerous levels of consultation with local government, the heritage sector and the public.

In 2005, independent heritage consultant Professor Richard Mackay provided a report to the State Government with more than 80 recommendations for improving the way in which we should protect and manage our important heritage places.

Some recommendations have far-reaching implications. They have the potential to reduce confusion for owners and developers.

While consistency across the state is needed, there is also a need to recognise our diversity. A one-size-fits-all model will not work. Instead, this paper proposes a framework for transition that provides a flexible approach.

There are, however, some recommendations that I have already accepted or rejected, based on advice provided to me. Others not amongst Mackay's major recommendations will be deferred for further consideration.

There are also a number of issues that have been drawn to my attention, as the Minister responsible for heritage, which I hope to address as part of this reform.

Tasmania has an enviable and diverse collection of heritage places of which we can be proud. Now, perhaps more than ever, we recognise our position as one of Australia's oldest European settlements that has a significant collection of heritage places.

Our heritage is a public good that fosters social cohesion and a sense of place; it is an economic driver, a key element of the visitor experience and a core visitor appeal. The adaptive reuse of our heritage is a key part of the sustainability agenda.

I encourage you to provide feedback so that we can enhance and build upon the work so many have done in the past to protect our heritage and enable this generation to pass on those places that are important to the next generation.

With your input, the State Government hopes to reform our heritage legislation based on sound principles, clear policies and a joint commitment to develop a more effective and integrated approach to its management across Tasmania.

Paula Wriedt MHA
Minister for Tourism, Arts and the Environment

PURPOSE

The purpose of this paper is to provide an opportunity for comment on the proposed reform of the *Historic Cultural Heritage Act 1995*.

Additional information of relevance, including the Mackay Report is available on the Heritage Tasmania website: www.heritage.tas.gov.au.

This Position Paper includes:

1. Introduction
2. Identifying heritage
3. Assessing heritage
4. Listing heritage
5. Managing heritage
6. Roles and responsibilities
7. Transition arrangements
8. Support and resources
9. The next steps

Making a submission

Local government, interested organisations and individuals are all invited to provide feedback in writing on the proposals outlined in this paper.

To help focus your feedback, some questions are provided at the end of this paper.

Submissions should be lodged by 31 October 2007.

Please forward your submissions to:

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If you have any queries or require any assistance or advice, please contact:

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1. INTRODUCTION

1.1 Background

Ten years ago, the *Historic Cultural Heritage Act 1995* was proclaimed. Its passage through Parliament signaled recognition of the importance of our historic heritage for current and future generations to enjoy.

The proclamation of this Act and the recognition of historic heritage in the *Land Use Planning and Approvals Act 1993* also reinforced, the Act's importance as a key component of the Resource Management and Planning System.

The Act predated a 1997 Council of Australian Governments (COAG) decision on the management of heritage. COAG concluded that the Commonwealth, State and local governments each have responsibility for listing, protecting and managing heritage of national, state and local significance respectively.

The Agreement was reached with the intention of ensuring greater consistency, avoiding duplication and delivering the best possible management outcomes for historic heritage across all levels of government.

The current reform of the State's heritage legislation results from an obligation to uphold this Agreement and a desire to provide an easier, clearer and more consistent approach to heritage management in Tasmania.

The process commenced in 2003 when the then Premier Jim Bacon, as Minister responsible for heritage matters, announced a review of the Act.

The first stage of this review was overseen by the Tasmanian Heritage Council. It involved a call for public submissions to the review and culminated in an Historic Heritage Symposium in December 2003.

The review drew input from property owners, interest groups and planning authorities, with discussions continuing throughout 2004.

In 2005, the nationally regarded, independent consultant, Professor Richard Mackay, was commissioned to review this feedback, consult widely with stakeholders and advise on future directions based on best practice.

Professor Mackay's report included 82 recommendations, some with far-reaching ramifications. Local governments and interested parties were again invited to comment on the recommendations.

Since 2005, market research with owners, pilot projects with local government, reform of Heritage Tasmania and the exploration of possible transitional models to support the Mackay recommendations have been undertaken.

This Paper reflects the consultation outcomes to date and outlines a range of reforms that will develop a framework for heritage management that is robust, clear, streamlined and sustainable in its application.

1.2 Drivers of change

The State Government is committed to and recognises the following Acts, principles, agreements and processes as key drivers of this reform process.

Tasmania Together (2006)

Tasmania *Together* recognises the importance of our historic heritage and built environment with a standard to 'Encourage the protection of our built heritage'.

Historic Cultural Heritage Act 1995

The Heritage Act promotes the 'identification, assessment, protection and conservation of heritage places' and establishes the Tasmanian Heritage Council as part of the Resource Management and Planning System. It gives the Heritage Council responsibility for the Tasmanian Heritage Register and assessing works that affect the significance of places on the Register.

Land Use Planning and Approvals Act 1993 (LUPAA)

The LUPAA recognises the importance of historic heritage and sets an expectation that planning authorities will work 'to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value' [Schedule 1 Part 2(g)]. The Better Planning Outcomes process is also acknowledged.

Council of Australian Governments (COAG) Agreement 1997

In 1997, COAG reached an agreement on the Commonwealth and State roles and responsibilities for the environment. Local government, through the Australian Local Government Association, and the Tasmanian Government were both signatories to this Agreement.

The Agreement resulted in:

- the adoption of the tiered model of heritage protection and management, defining places as being of either world, national, state or local heritage significance;
- the Australian Government assuming responsibility for coordinating Australia's nominations to the World Heritage List and ensuring obligations under the World Heritage Convention are upheld;
- the introduction of a new National Heritage System on 1 January 2004, creating the Australian Heritage Council (AHC), National Heritage List (NHL) and Commonwealth Heritage Lists (CHL);
- the Australian Government, through the Australian Heritage Council, being responsible for listing, protecting and managing heritage of national significance;
- the State and Territory Governments being responsible for listing, protecting and managing heritage of state significance; and
- local government being responsible for listing, protecting and managing heritage of local significance.

Mackay Report 2005

In 2005, Professor Richard Mackay provided a report to the State Government including 82 recommendations on how best to sustain the state's collection of significant historic heritage places.

Mackay concluded that:

- “the focus on centralised heritage regulation by the State Government is at odds with both best practice elsewhere and the practical realities of the resulting workload: a ‘state’ and ‘local’ heritage management model is needed: the benchmark for effective statutory management of heritage has moved away from the existing Tasmanian legislation”;
- “the nature of the (Tasmanian Heritage) Register and the resulting works approvals workload ... will necessarily become unmanageable at a state level and is not justified by the level of heritage significance for many of the listed places”; and
- “the approval/development consent process lacks integration and alignment between the processes of the Tasmanian Heritage Council and those of local government”.

A copy of the Mackay Report is available at www.heritage.tas.gov.au.

Productivity Commissions' Inquiry on the Conservation of Australia's Historic Heritage Places (released 21 July 2006)

The Inquiry concluded that:

- all States, with the exception of Tasmania, now have provisions or requirements for their local governments to establish a register of locally significant places; and
- all governments should remove any references to the Register of the National Estate from their planning and heritage legislation and regulations as this Register no longer has any statutory function.

National Trust Act 2006

The *National Trust Act 2006* was proclaimed in late 2006. As part of this reform, the Trust ceased its “semi-statutory” role and no longer classifies places or imposes covenants on heritage places. This addressed confusion about the role and responsibilities of the Trust and reinforced the statutory roles of planning authorities and the Heritage Council.

As a result of this local and State Government need to act to remove references to the Trust from planning schemes and the Heritage Act, reinforcing the statutory roles of planning authorities and the Heritage Council.

EMRS Market Research, May 2006

While these proposed reforms are about enhancing the planning system, they also need to respond to public concern and the needs of owners.

The comments from owners, developers and the wider community as part of this market research reinforced:

- the importance of adopting a system that is clear, easy to understand, provides certainty and balances the need for protection with development; and
- that people are generally supportive of protecting heritage, but they are wary of regulation that impacts on their home or “castle”.

1.3 The current situation

Local government has been an active supporter of heritage for many decades. Ninety per cent of our planning schemes have some form of provisions for heritage, and more than 5,800 individual places and 87 precincts are entered in planning schemes and protected locally.

As the owners and managers of important local heritage places, buildings and infrastructure, local governments have and will continue to fulfil a crucial role in protecting our historic heritage.

Local government also recognises the need to respond to community concern surrounding heritage. More than forty per cent of local governments have or are developing historical profiles and conducting comprehensive heritage surveys, many with financial support from the State Government.

The Heritage Council is also a strong advocate for and supporter of our heritage. It has entered more than 5,400 places in the Tasmanian Heritage Register, committed more than \$1.9 million to support conservation works, and assessed more than 3,300 works applications in the past 10 years.

Despite the best efforts of local government and the Heritage Council, Mackay concluded that the current practice of listing and managing places entered in the Heritage Register is impractical and a more clearly defined 'local' and 'state' management model is needed.

There is a need to create greater consistency in identifying and managing heritage, avoid duplication of effort and improve integration between heritage legislation and the Resource Management and Planning System.

Such a move presents new challenges. This Paper suggests way to address these challenges and a number of other related issues and needs.

2. IDENTIFYING HERITAGE

The first step in developing a more clear and consistent approach to heritage management is ensuring a simple and effective means of identifying places of heritage significance across the state.

Many of the heritage places listed in planning schemes and the Heritage Register were initially drawn from community-based systems such as the National Trust classification lists, the Register of the National Estate and through public nominations.

The differing approaches, definitions and thresholds have resulted in inconsistent heritage lists. It is also acknowledged that many of the existing lists are unlikely to be thorough, complete or representative of our heritage.

The role of public nominations too, may also create difficulties. Effective lobbying and frivolous or vexatious nominations are difficult to address and manage within the current system. However, there are many examples where owner action or public lobbying has protected some of our finest heritage assets.

While it is proposed that nominations by individuals or groups should continue to be allowed without any associated fees, provisions to address the current difficulties are proposed.

It is also proposed that the current process of conducting comprehensive heritage surveys across municipal and wider areas, as has been piloted across the state over the past three years, should continue.

2.1 Public nominations

Nominations can and should continue to be able to be made by any individual or group. While it may be preferable that an owner is informed of and provides their consent to a nomination being made by a third party, this should not be a mandatory requirement under the Act.

This is a position consistent with interstate legislation and reinforces the primary focus of identifying heritage to protect heritage values.

However, it is proposed that legislation includes a mechanism to reject nominations deemed to be frivolous or vexatious. This provision will be included in a new vetting and initial assessment phase (see 3.1).

At the local government level, it is suggested that public nominations be restricted to planning scheme review periods or when a heritage survey is being undertaken or reviewed.

While public nominations are important, it is preferable that heritage surveys are used as the primary means of identifying heritage places.

2.2 Heritage surveys

Heritage surveys are the best and most professional method of identifying heritage. The benefits of completing surveys include the ability to:

- develop an historical profile of the area to confirm its distinct themes and use this to identify places of local, state, no significance against agreed criteria;
- provide certainty on heritage status to owners and developers, regarding the listed status of a place, its values and development status;
- reject public nominations for a place that a survey classifies as being of a lower significance than that for which protection is being sought;
- define the period of relevance for a survey so that public nominations are unlikely to be considered until the survey is reviewed; and
- identify unique attributes that can feed into emerging tourism planning and areas for future economic growth.

Completing heritage surveys also reflects objective (g) of the planning process as established by LUPAA – ‘to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value’.

It is anticipated that this work should be augmented by targeted thematic surveys (eg: convict or industrial heritage), to ensure lists represent all heritage aspects, rather than the traditional focus on architecture. Issues with existing lists also suggest a review of their content would be worthwhile (see 7.1).

It is proposed that future surveys should continue to be jointly managed and funded, with local government responsible for coordinating these initiatives.

2.3 Precincts, cultural landscapes, moveable heritage and archaeology

It is important that the planning system allows for identifying and listing groups and precincts.

A group is a collection of related places where the value of the group is greater than its individual parts. Examples include the Inveresk Railway Yards or Salamanca Place.

A ‘precinct’ by contrast is defined by the Oxford Dictionary as “an enclosed or clearly defined area”. The Heritage Register has a number of entries that fit this definition - Port Arthur and the Lake Margaret Power Scheme are two examples.

Tasmanian planning schemes identify at least 87 precincts, including towns and suburbs. It is an important provision which should be retained, but feedback received has suggested the introduction of more consistent management provisions is desirable (see 3.3).

As part of the process of identifying heritage, new definitions will be needed to distinguish between groups and precincts.

The State Government recognises the importance of cultural landscapes, movable heritage and archaeology. However, further discussions on Professor Mackay's recommendations will be required following the outcomes of this reform process.

3. ASSESSING HERITAGE

The Resource Management and Planning System outlines how the listing of heritage places in the heritage schedule of a planning scheme should occur. Any changes to this are for the future consideration of local government.

The previous chapter recognises that identifying heritage should be a joint process, whereas it is proposed assessment processes should remain distinct. This chapter is largely focused on assessing places for entry to the Heritage Register.

3.1 Process for assessing applications

The proposed reforms anticipate that a preliminary assessment will be undertaken to vet all nominations within four weeks of their receipt, to establish if further assessment is warranted.

The vetting process will be used to rule out those that are vexatious or frivolous, and places previously assessed or identified in a survey as a lower level of significance than that for which protection is sought. Consideration should also be given to a place's potential to meet the threshold, its contribution to the Register, and any threats, grant applications or links to works approvals (See 3.5).

Vetting will result in one of three potential outcomes:

- continue to assess those places of high heritage potential, provide interim protection for those places and finalise the assessment within a fixed period (12 months);
- defer action to the next survey if the place is of medium to low heritage potential with potential interim protection if deemed necessary; or
- reject the nomination with no further obligations on the owner.

If the place is considered to be of heritage potential, it will be assessed in consultation with owners, local government and with a public review period. This will replace the current process of provisional entry in the Register.

Opportunities for formal submissions will remain, but earlier consultation and collaboration with owners throughout the assessment process are proposed. Also proposed is the option of independent mediation before the assessment is concluded where consultation suggests this would be beneficial to both parties.

It is anticipated that the introduction of a more clearly defined 'state' threshold will greatly reduce the number of nominations that progress through to full assessment compared to the current situation.

Property owners and those parties who have lodged submissions will retain the ability to appeal a decision of the Heritage Council to the Resource Management and Planning Appeal Tribunal. This includes appealing a decision to permanently enter a place on the Register or to not list a place in the Register.

It is further proposed that if a place nominated for entry in the Register has not been assessed within a year of the formal acceptance of the nomination following vetting, the ability to extend the assessment period will be considered with relevant parties.

3.2 Criteria for assessment

The seven criteria identified in the Act are to remain in place. The need to include aesthetic values within the criteria and some minor editing of existing criteria is intended for national consistency.

From these criteria, guidelines will be derived that will assist with assessing places of state or local significance.

Under recommendation 21 of the Mackay Report, heritage assessment criteria should be removed from the Act and incorporated by regulation. It is now recommended that this be reviewed in the context of establishing definitions and thresholds as part of this reform process.

3.3 Assessing nominations for precincts

As mentioned previously, it is important that heritage legislation continues to allow for the entry of groups and precincts on the Heritage Register. However, the careful consideration of such nominations will be required.

The value and importance of larger precincts, such as historic towns and suburban areas such as Battery Point, Oatlands or Stanley need to be acknowledged. However, as suggested in the Mackay Report, responsibility for such areas should chiefly link to planning schemes.

It is proposed that the Heritage Council publish guidelines that outline requirements for assessing precinct nominations to the Register including:

- the nominator being required to inform the relevant local government of the nomination prior to the lodgment of the nomination;
- the need for community consultation organised by the local government with the assistance of Heritage Tasmania prior to the nomination being accepted for vetting and assessment;
- consideration being given to reviewing any published social, economic, environmental or other relevant reports relating to the nominated area or the municipality concerned, or developing such reports if warranted; and
- a requirement for the parties to explore the merits and options for listing, protecting and managing precincts, including consideration of whether or not listing on the Register is appropriate and can be justified.

If consideration is given to enter a precinct in a list, the agreement of the local government area will be required and the management arrangements confirmed before the place is listed.

This is consistent with recommendations from the Mackay Report and the Productivity Commission Inquiry.

3.4 Statements of heritage significance

Feedback has also highlighted the critical importance of ensuring the heritage values of a place are clearly identified and this information is documented.

These statements help provide a rationale for listing; inform the owner of a place's values and why it is important; and can be used as a tool to guide future management and development decisions, including conservation or development controls and standards.

It is important that such a process is adopted for all listings at a local and state level, including groups and precincts. This will increase transparency and provide greater certainty for all stakeholders, including owners and developers.

3.5 Development applications and nominations

Real and perceived threats to heritage (eg demolition) can often galvanize a community. It may only be then that the community clearly articulates that or why a place matters. Such situations can, however, heighten emotions, occur unexpectedly or without notice and raise many concerns or difficulties.

The completion of heritage surveys provides communities with the opportunity to define the values and places they wish to retain before such situations occur. Surveys can be used to identify and list places for protection, and in turn provide certainty under the planning system for future development.

Until such time as surveys are in place, it is acknowledged that applications to enter places to the Register will continue to be lodged at the time of a perceived threat.

As the primary role of the Heritage Act is to protect Tasmania's heritage, such nominations may continue to be appropriate if the circumstances justify listing. The proposed vetting provisions will assist in addressing these matters, but it is also proposed that, if:

- a building or works permit has been issued; the Heritage Council may continue to enter that place in the Register but the works that are the subject of the application will be deemed to be permitted; and
- a building or works application has been lodged or advertised at the time a nomination is made; listing on the Register will be deferred until after the application has been determined, unless the impact of the works on the heritage significance of the place is of a moderate to high degree.

4. LISTING HERITAGE

As with the previous chapter, the listing of heritage places in heritage schedules is governed by established processes, however, consideration of listing at a 'local' and a 'state' level is covered in general in this chapter.

4.1 Defining heritage

In line with the 1997 COAG Agreement and the Mackay Report, the reforms propose to identify places as being of either 'local' or 'state' significance.







Categories are used widely interstate and internationally, and the benefits of adopting this approach include:

- recognition of heritage places as having values at a range of levels, and having the means to manage them at the level of their significance;
- increasing community involvement in identifying, assessing and ongoing management options of heritage places;
- increasing certainty for owners and developers of what is the value of their place and what development can be undertaken;
- applying conservation needs and development constraints according to the level of significance of the place; and
- allocating or targeting resources appropriately, that give priority to those places of greatest significance.

However, it must be stated that these levels are not hierarchical in nature, and one is not more important than another. Instead, they are complementary and indicate or reflect the relationship for the significance of the item.

It must also be recognised that places may be of significance across a number of categories. The Port Arthur Historic Site is just one example. It has significance to the local municipality, to the state and nationally, and it is now also in the process of being nominated for World Heritage Listing.

While definitions and thresholds need to be formally ratified, it is envisaged that within Tasmania, the concepts on the following page will be built upon.

<p>State</p>   	<p>Places of state significance are those that 'define the State's identity or sense of place' through their relationship to significant aspects of the evolution of Tasmania's environment, society and culture. These places highlight what the State is known for to persons across and outside the State.</p> <p>It may include places that define a 'region' or area of the state, for example the mining heritage of the northwest coast, or a particular economic marker, for example the introduction of hydro schemes. These places contribute to the broader State identity.</p> <p>To the lay person, places of state significance are the 'iconic' places that are highly visible and prominent, for example Ross Bridge or Highfield House. They may be more modest structures associated with leading figures such as Joseph Lyons' cottage in Stanley, or archaeological remains associated with an important activity, such as the York Town settlement.</p> <p>To the heritage professional, places of state significance will be those where the assessed significance includes a broad range of values, satisfying several and not just one criteria. Where only one criteria is satisfied, the place may be an exceptional example of that criteria.</p>
<p>Local</p>   	<p>Places of local significance are those 'places of notable historical character' that individually or as part of a streetscape, contribute to the local built environment. Local places help define the underlying character of a streetscape or rural area.</p> <p>Local places also include 'places of historical interest' or great community value. These places are those typically associated with a local event or identity not widely recognised outside of the community.</p> <p>To the lay person, local places are reasonable examples of historical public places such as schools and health institutions, hotels, halls, memorials and recreational places that are a common gathering place. They may extend to include streetscapes or broader precincts, along with places associated with major local personalities, for example a monument, their house or place of achievement.</p> <p>To the heritage professional, local places are important because of their community values or as reasonable, but not outstanding, representative qualities in demonstrating an historical period or style.</p>

4.2 Non-statutory records

In addition to these two statutory categories the retention of non-statutory records is proposed to capture relevant historical information on places other than 'local' or 'state' places, but without any management implications.

This recognises that information for rejected nominations or de-listed places is important and contributes to the broader pool of Tasmania's historical information.

It would also include places deemed to be of limited or low significance (less than local), but for which there is merit in retaining some information on the nomination or assessment or those places that have suffered physical change to the point where they no longer satisfy the criteria for heritage listing, but there is value in recording their existence from an historical perspective. Examples from Burnie include the former high school, demolished by fire, and the former theatre which has substantially changed over time to the point that its integrity has been greatly diminished.



Former high school: Left to right: before and after images



Former theatre: Left to right: before and after images

4.3 Boundaries of listed places

The Mackay Report highlighted the importance of having greater flexibility in being able to set and define the boundaries of a listed place. This reflects the diversity of heritage places and the need to respond to this diversity.

A common misconception is that listing on the Register only relates to specific 'listed' features or a façade, when often a listing relates to a title boundary or multiple boundaries and is inclusive of all features within that boundary.

As part of this reform, listings will be more explicit or focused where this is practical or desirable. For instance, with rural properties or industrial sites, the boundaries for listings may be able to be defined in a manner that focuses the listing on that portion of the place that is of greatest heritage significance. This reduces the impact on the wider site unless an assessment proves it is warranted.

It is also recommended that a provision be introduced to ensure that places currently entered on the Heritage Register remain lawfully entered, regardless of changes to the title, until a request to amend the entity is made. This would mean that if a larger listed title is sub-divided all the resultant titles following sub-division will remain listed until an amendment is requested.

4.4 Heritage areas

Professor Mackay recommended the removal of Part 5 of the current legislation. This part provides for the creation of heritage areas but limits protection for a maximum of five years.

In making this recommendation, Professor Mackay was not advocating for non-listing of heritage areas, but rather the need to better manage such listings.

The proposed reforms including better defining heritage, completing heritage surveys and working in collaboration with local government, will address the fundamental issues currently existing in Part 5 of the Heritage Act. The notion of interim protection will provide a more appropriate protective mechanism during the assessment period.

5. MANAGING HERITAGE

Change in the historic environment is inevitable, whether caused by natural processes, the passage of time, through use, changing needs, or by people responding to social, economic or technological advances.

Decisions on changing a place involve balancing heritage values, the public interest in the place, and other social and economic benefits. As there is rarely a single, right answer, more appropriate processes that make it clearer for owners, developers and local government are needed.

At present the Heritage Act has a primary clause that directs how we approach development of heritage listed places: *A person must not carry out any works in relation to a registered place or a place within a heritage area which may affect the historic cultural heritage significance of the place unless the works are approved by the Heritage Council [s32(1)].*

However, this provision does not adequately reflect the practical reality that some works to heritage listed buildings are permitted. The Act also fails to clearly define that the greater the significance of a place, the greater the need for applying tighter conservation principles. Conversely, those places of lesser significance should have less stringent principles applied to them.

To address this deficiency, proposals include:

- managing works as a set of defined “classes”;
- managing places at the level of their significance, with a higher onus on places of state significance and a lesser onus on local places;
- aligning heritage provisions more with LUPAA provisions; and
- redefining management accountabilities.

The benefits include:

- clarifying for owners, planning authorities and other stakeholders what kind of maintenance or works can be undertaken without approval;
- reducing the number of works applications, enquiries and confusion;
- avoiding the dual assessment of works applications; and
- allocating resources more appropriately with a greater focus on those places considered to be of the highest heritage significance.

Each of these concepts is explored in more detail below.

5.1 Managing works as “classes”

The principle of managing works as “classes” is beginning to increasingly be adopted interstate to assist in communications with owners and managing workloads. The Heritage Council’s Works Approval Assessment Committee has also begun to apply these principles in assessing work applications.

The proposed work classes for managing heritage are presented on the next page.

<p>'Permitted' works</p>	<p>Permitted works are those that are deemed to have negligible risk of impact to heritage values. Examples include replacement of electrical/plumbing services, changing signage content, removing non-significant fabric, spot repairs or removal of damaged trees.</p> <p>The current Act already defines two specific types of work that are permitted: forestry practices being conducted in accordance with forest practices as defined in the <i>Forestry Practice Act</i>, and works required solely for liturgical purposes. These provisions will remain at this time. In particular, the permitted approval of forestry practices is consistent with provisions in the <i>Environment Protection and Biodiversity Conservation Act</i>.</p> <p>However, to improve equity, it is proposed that the Heritage Council will publish guidelines that list permitted works for heritage owners. These are likely to draw on the 'Exclusion Guidelines' currently used to define this type of works.</p>
<p>'Minor' works</p>	<p>'Minor' works are those that are deemed to have a minor impact or are works that can be easily agreed or negotiated. Examples might include painting pre-painted surfaces, the demolition of fabric of no or low significance or signage.</p> <p>The inclusion of minor works not only simplifies approval processes, but it may also allow for the delegation of certain responsibilities. This would be consistent with similar provisions within LUPAA. It may also result in ceasing the present requirement to advertise most works.</p>
<p>'Major' works</p>	<p>Major works are those that are deemed to have, or will create, a substantial visual and physical change. Examples include whole-of-site conservation works, large-scale development or demolition. In line with the objectives of LUPAA, it is consistent that 'major' works will continue to be advertised for public comment.</p> <p>There is also the potential for owners and developers to enter into proactive agreements on works with the relevant authority. Examples of this might include: undertaking works in line with an endorsed conservation management plan, implementing an endorsed annual maintenance, conservation or restoration program; or endorsing up-front several stages of a major redevelopment that is expected to occur over an extended period of time.</p>

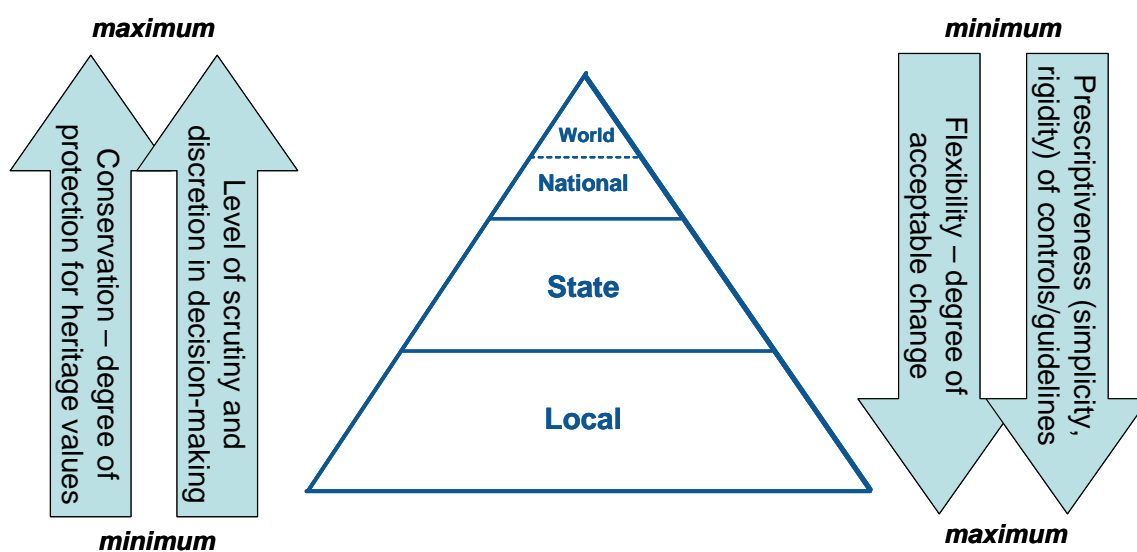
If this notion of having classes of works is supported, it is proposed that the Heritage Council would publish guidelines that define 'minor' and 'major' works.

5.2 Managing places to their level of heritage significance

Managing places to their level of heritage significance aims to produce a more equitable outcome for heritage property owners

In general, the greater the significance of the place the greater the level of scrutiny required in decision making and the greater the protection of heritage values. Discretion in decision-making will be limited, in line with the Burra Charter.

Conversely the lesser the significance of a place the greater the flexibility in determining controls and the greater the ability to accept change.



As a general rule, local government uses heritage schedules to identify places, precincts and zones to address specific management issues. Management provisions may be in the form of either: discretionary decision provisions, the provision of set conservation policies or development controls.

Approaches, however, vary considerably and this can cause considerable confusion for property owners and developers in particular when they are seeking to develop properties across numerous municipalities.

The creation of the Heritage Register adds a further layer of complexity.

It is proposed that local places will move from a discretionary model to one of development controls, with acceptable solutions and performance criteria.

The adoption of statements of heritage significance for all places listed, as discussed in 3.4, allows the requirements of conservation or adaptability to be clearly defined alongside the heritage values requiring protection.

Again, it is proposed that the Heritage Council will publish guidelines that clearly define the principles to be applied in managing places to their level of significance.

5.3 Alignment with LUPAA

It is imperative that heritage legislation is more closely aligned with LUPAA, as recommended by Professor Mackay, with a number of provisions that must be added to align processes now, rather than in the future.

Ultimately this will create a clearer and easier Resource Management and Planning System for the State. Proposed changes include:

- ensuring timelines are integrated (concurrent decisions, advertising arrangements and "stop the clock" provisions for the Heritage Council);
- revoking the requirement for separately advertising for heritage works, thereby reducing duplication of process and negative impact on property owners;
- improving assessment guidelines for dealing with amended works applications;
- removing duplicated assessment processes; and
- removing all references to National Trust classification and the Register of the National Estate from planning schemes.

Some distinct functions will remain as they assist owners rather than regulatory bodies. In particular, it is expected that planning authorities will continue to:

- receive works applications;
- advertise works applications; and
- issue final decisions.

Longer-term directions are also acknowledged, including creating:

- uniform heritage schedule provisions for planning schemes; and
- municipality specific heritage provisions.

An additional amendment proposed would give the Heritage Council the right to make a representation on developments on a place adjacent to a place entered on the Heritage Register.

5.4 Proposed management accountabilities

It is proposed that the Heritage Council will retain statutory responsibility for assessing works to places of state heritage significance. It is also proposed that the local government decision in respect to heritage matters for these places should not be inconsistent with a decision of the Heritage Council.

Places assessed as being of local significance and listed in planning scheme schedules will continue to be managed by the relevant planning authority.

The planning authority could manage this body of work by either:

- in house staff, a process that may suit larger authorities;
- a shared resource arrangement across planning authorities; or
- a service agreement with Heritage Tasmania.

The assessment of heritage matters could be subject to specific provisions within the planning scheme or by compliance with published guidelines in accordance with heritage legislation provisions.

It is also proposed that the Heritage Council should continue to be allowed to make representations or appeal a decision of a planning authority.

6. ROLES AND RESPONSIBILITIES

6.1 Role of the Minister

In line with Professor Mackay's recommendation that the Heritage Council should remain independent, all other recommendations proposing Ministerial intervention have been rejected. However, the Minister will continue to appoint members to the Heritage Council.

6.2 Role of the Heritage Council

The role of the Heritage Council is defined in the Act, which creates and governs its deliberations. Professor Mackay's recommendations relating to its independence, role, makeup and responsibilities have been accepted, including reducing the number of members from 15 to nine and the appointment of a deputy chairperson.

It is proposed that the Heritage Council will be composed of:

- a chairperson;
- the Secretary of the relevant government agency (currently the Department of Tourism, Arts and the Environment) or delegate;
- a community representative;
- three persons who together have expertise in the areas of architecture, archaeology, engineering, history, planning, building surveying, or local government; and
- three persons drawn from either the building development industry, the mining industry, the Tasmanian Farmers and Graziers Association, the Tourism Council of Tasmania and the Tasmanian Council of Churches.

These changes will bring the Heritage Council in line with more contemporary management bodies. To ensure appropriate representation across all stakeholder groups, it will be required to hold an annual forum with key stakeholders with an interest in heritage to gauge community, industry and interest group concerns.

6.3 Role of planning authorities

Managing local heritage is one of the many responsibilities assigned to planning authorities. Heritage Tasmania's engagement with local government reflects this diversity, assisting individual ratepayers, strategic asset management, economic development, community education, tourism initiatives, local projects, heritage profiles, surveys and conservation grants.

6.4 Role of Heritage Tasmania

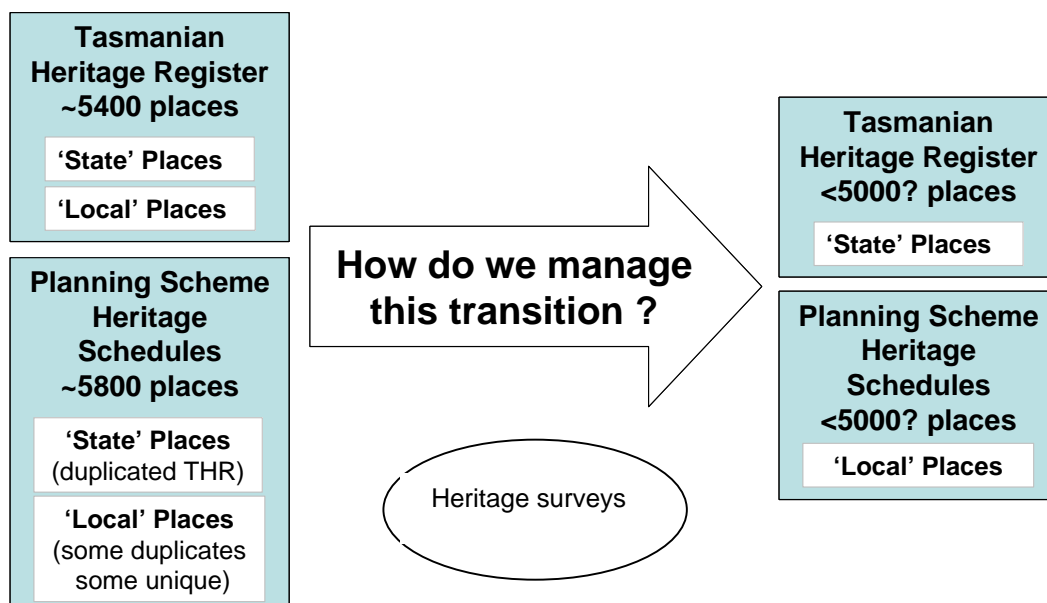
Heritage Tasmania is a division of the Department of Tourism, Arts and the Environment. It coordinates historic heritage strategy and activity for the State Government; supports the Heritage Council implement the Heritage Act; and supports the development of the Tasmanian historic heritage sector.

Depending on the outcomes of the proposed reforms, it is anticipated that the role of Heritage Tasmania will change to support any new approaches.

7. TRANSITION ARRANGEMENTS

The proposed reforms present an immediate challenge for the State's Resource Management and Planning System. If adopted, there will be a need to develop an integrated system, work towards completing the identification of Tasmania's heritage and revisit all heritage lists to remove duplication to achieve a situation where:

- The Heritage Register lists only places of state significance; and
- Heritage schedules only list places of local significance.



Where possible it is envisaged these arrangements will be coordinated and implemented statewide to ensure consistency. Where it is desirable or needed, they may link to and be governed by local government partnership agreements to recognise and allow for the diverse needs of local government areas.

The support and resource arrangements proposed are at chapter 8.

7.1 Revising current heritage lists and schedules

As discussed previously, the heritage survey process is considered to be a useful tool to deliver an integrated review of local and state places in a given municipality or a defined geographical area.

It is estimated that over 40 per cent of local government areas have commenced or completed a survey in recent years. It is hoped that the balance would be covered in the next decade, followed by an ongoing process of reviewing and updating records.

It is proposed that aligning heritage surveys with planning scheme reviews will assist in streamlining additions or amendments to planning scheme schedules.

A number of surveys are currently progressing in collaboration with planning authorities and need to be implemented. It is also the case that the findings of older surveys may need to be reviewed against new thresholds. However, these surveys

still provide a substantial pool of information that will be useful in updating heritage schedules and the Heritage Register.

This process will require dedicated resources and time. As such, it may be desirable to explore more simple and expeditious options. One such option would be to create a provision that allows the direct transfer of existing places of local significance on the Heritage Register into a heritage schedule, subject to owner and planning authority agreement.

In line with Professor Mackay's recommendations, it is further recommended that existing records in the Heritage Register should be able to be updated, except for the property identification and significance assessment. It is proposed that where an owner does not consent and the entry still needs to be updated then the full process of listing needs to be repeated.

It is also the case that many current entries for very significant places are inadequate in terms of their content. While the Heritage Register is a statutory mechanism, it is also a public-funded information repository on heritage places, and as such there is an onus to work to redress this situation.

7.2 Implementing a heritage management framework

The key process requirements for implementing a framework for a more integrated approach to heritage management include:

- developing an overarching strategy that outlines the reforms and related guidelines for consistency in heritage listing and management;
- establishing and publishing clear definitions for 'local' and 'state' heritage places, including defining the corresponding criteria and thresholds;
- reaching agreement with the State Government on the process of implementation, associated timeframes and support mechanisms; and
- identifying and confirming the processes for handling operational issues that may arise during the transitional stage, such as the determining of development approvals for nominated places awaiting assessment.

Any amendments to the Act will need to provide a level of flexibility and opportunity to address these and other matters through the transitional period.

7.3 Future directions towards planning scheme consistency

A strategic and collaborative approach between local government and the State Government will be required over the next decade to develop consistent, but not necessarily uniform, heritage provisions across the planning system.

The development of a standardised heritage schedule template, potentially through a planning directive but populated on a consensual basis, is one possibility of ensuring greater consistency across the State.

Another option is to develop a state heritage policy that brings together the various threads of legislation and government functions for historic heritage. The aim will be to achieve a formal and integrated management approach for the protection and conservation of heritage.

8. SUPPORT AND RESOURCES

8.1 Support arrangements

It is expected that the level of support needed will vary between local governments. Some have managed heritage for many years and are more able to resource this work, while others have limited resource bases and find it difficult to secure professional services.

For this reason a mandatory approach to heritage management is not being pursued. However, every effort should be made to ensure consistency.

The joint development of a heritage management strategy, listing guidelines and management guidelines are three tools that will ensure that a clear and consistent approach is adopted. It is expected these products will be developed and trialed alongside pilot projects.

Heritage Tasmania will broaden its role to coordinating a whole-of-government approach to heritage management and providing heritage expertise to local government, from staff architects, historians, archaeologists and administrators. It is expected that it might be useful to provide heritage training, orientation and open workshops for elected officials, officers and consultants.

Work undertaken with local government in the past three years has reinforced the importance and value of pursuing joint projects including heritage surveys and community education activities. It is envisaged that that such work will continue and expand in the future, with the potential to have greater involvement of the Local Government Association of Tasmania (LGAT).

Feedback has also been received to suggest that any opportunity to develop printed and web-based resources and information for heritage owners, developers and local government would be welcomed, especially those developed centrally and provided free of charge.

8.2 Proposed resources

While the provision of direct and indirect support is likely to be welcomed, it is also recognised that for some local government areas there will be a need to access additional resources to manage local heritage. This is especially likely to be the case where local governments have limited resources.

Part of the research undertaken to date has highlighted a number of areas where it is desirable to seek funding to implement and manage this reform process.

While access to such funds cannot be guaranteed at this time, it is expected that this will be part of the State Budget process for 2008/09. If the Budget Bid is not successful, elements of these proposals will need to be revisited.

There are a number of aspects of the proposed approach that will be able to proceed regardless of the resources available. This is assured by the fact the reforms are based on the consensual engagement of local government.

There are three main areas where funding is desired:

Heritage expertise

Access to heritage expertise can be difficult to secure and afford. It is desirable that financial support be provided to planning authorities as a grant to ensure access to jointly funded expertise and advice.

The grant model has been adopted interstate as a means of providing flexible arrangements that address current needs. The role can be flexible in terms of the means of engagement and whether they service an individual municipality, group of municipalities or a region. Likewise the role can be to support the development of a heritage strategy for an area; manage and implement planning scheme provisions; or provide free advice, information and support to heritage owners.

Local grants

The use of incentives, such as conservation grants, tax relief and rate rebates, are some ways by which governments support owners to manage public and privately owned heritage places.

Some local governments provide direct or indirect support including grants for conservation works, reduced fees or discounts. The Heritage Council operates a Heritage Funding Program for urgent and essential works.

The need to expand the range of incentives available is acknowledged and further work is needed at various levels. It is desirable that funds are sought to ensure such grants are more readily available.

Local communities have been active in supporting local heritage sites for many years. Volunteering helps sustain many places and is a critical element of the heritage sector. Volunteers generate considerable outcomes and the returns are often over and above the financial cost.

The opportunity to secure funding for local heritage initiatives is another area to be explored in line with the role of fostering links to community and economic development.

Information technology

Heritage Tasmania is in the process of developing a Heritage Management System. This integrated IT business system will also provide the platform for the Tasmanian Heritage Register and deliver the Heritage Register free to the public via the internet.

There are many potential benefits to developing the system as a central portal for local government to use this technology as their data base for local heritage places.

This would enable the development of a free, one-stop register or list for all 30 planning authorities and the Heritage Council. This would replace the potential need to maintain at least 31 separate lists. Such a move would be useful for all parties and would enhance customer service.

A further possible development to this proposal is the option to explore a heritage overlay in the Land Information System Tasmania (LIST), creating a fully integrated information system.

9. THE NEXT STEPS

Your views are now sought. To assist in focusing your comments, the following questions are provided:

1. Do you, or your organisation, support the principle that Tasmania needs to define heritage as being of 'local' or 'state' heritage significance?
2. Do the proposed reforms provide the opportunity to create a system that is clear, more consistent and integrated?
3. Do you, or your organisation, support the approach proposed for listing and managing places of 'local' and 'state' heritage significance?
4. Which of the reforms help to address current concerns and are worthwhile; and what is concerning or problematic?
5. Are there any major issues or reforms that are not addressed and need to be considered as part of this process?
6. Do the support or resource provisions proposed address your needs; are there others you would like included?

The closing date for written submissions is **31 October 2007**.

9.1 Future timeline

All submissions will be collated for the Minister to consider, before final conclusions are drawn and a proposal is provided for the State Government's consideration.

It is anticipated that a draft Bill will be made available to key stakeholders, with the Bill to amend the *Historic Cultural Heritage Act 1995* introduced to State Parliament in the autumn 2008 sitting.

The projected proclamation date of the Bill is 1 July 2008.

A transitional strategy will also be finalised, focusing on pilot projects and project teams that draws on representatives of local government, LGAT, relevant professional bodies and the State Government to support project management and the transition process.

Thank you for your time and consideration of this Position Paper as we work to achieve greater clarity, consistency and certainty in the way in which we manage Tasmania's historic heritage assets now and in the future.