SECOND READING SPEECH - THE HON BRIAN WIGHTMAN

HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2012

THE HON BRIAN WIGHTMAN MHA

MINISTER FOR HERITAGE

MR SPEAKER:

I move that the Bill now be read a second time.

As members from both sides of the House will appreciate, our historic heritage is a fundamental feature of Tasmania, our local communities and people.

In recent years a number of measures have been introduced to ensure that the management of our historic heritage is more contemporary and user-friendly. The time has come for these changes to be reflected in the legislation that governs the entry of places on the Tasmanian Heritage Register and the approval of works to those places.

The purpose of this legislation is four fold: to streamline the application, approval and appeal process for the owners of places to be entered in the Tasmanian Heritage Register; to bring Tasmania in line with National standards and best practice with respect to assessing historic heritage values; to better define the extent of heritage listings and create greater efficiencies in amending and removing places entered in the Tasmanian Heritage Register; and to introduce mechanisms that better define the State Government's expectations of the Heritage Council.

I shall talk briefly on each of these main issues dealt with in the Bill.

The most significant amendments are contained in Part 6 of the Bill. These deal with works to places that are entered on the Tasmanian Heritage Register. This Part is to be repealed and replaced with provisions which will simplify processes for property owners and developers, reduce red tape and streamline the approval process for works to heritage listed places.

The amendments have been developed and refined in association with the Local Government Association of Tasmania and some of our finest planners in Local Government. I thank these people for assisting in creating greater alignment between our heritage legislation and the *Land Use Planning and Approvals Act 1993*.

I am pleased that these amendments will finally realise the original intention of the legislation when it was introduced in 1995 and further build upon those amendments completed in 1999.

The amendments will create a single application, advertisement and permit process.

I am sure members will agree that the need to lodge two separate forms to two different approval bodies for the same work, then contend with two sets of assessment timeframes and await two separate decisions which may be at odds with each other is nonsensical and unreasonable. These amendments will put an end to this.

Only one application will be required. The Heritage Council will have seven days to inform the relevant planning authority whether or not it wishes to be involved in determining the application. This is an important aspect of these amendments. About 40 per cent of the works matters received by the Heritage Council are so minor in nature that they are deemed to have no impact on the historic heritage significance of a place. Through new provisions, the issuing of a certificate of exemption to the applicant will effectively mean the Heritage Council wishes to have no further input to the works. This will create great efficiencies for applicants and Local Government.

Where the Heritage Council does wish to be involved in determining the application, a single set of timeframes have been created based on the 42 day period under the Planning Act.

The amendment also means that for the first time the Heritage Council is able to request additional information and seek an extension of time to assess the most complex of cases through better alignment with provisions in the Planning Act. Importantly however, where planning authorities may seek numerous extensions of time, the Heritage Council may only receive an additional 14 calendar days and must advise of the need for those additional days as early as possible in the assessment process. This measure is again in line with the intent of the original Bill, ensuring the greatest possible alignment with the *Land Use Planning and Approvals Act 1993*.

The Heritage Council must forward its decision to the planning authority which will incorporate the decision into its permit. If the Heritage Council approves the application it may do so with conditions and the planning authority, if it decides to issue a permit, must do so consistent with the conditions set down by the Heritage Council.

If the Heritage Council refuses the application, the planning authority must also refuse the application. In this way, we can be assured that for our most important historic heritage assets, the expert advice of the Heritage Council is not compromised.

The improvements do not stop there. The amendments also more clearly define the Heritage Council as a joint respondent for any appeals. This is of course crucial as the applicant has a right to know to whom they are appealing and planning authorities must not be left to defend any decisions of the Heritage Council.

Overall the efficiencies gained through these amendments will be a bonus for owners, developers, Local Government and the Heritage Council itself. The process is much clearer, it will encourage Local Government and the Heritage Council to work more closely together to achieve consistent decisions and provide greater certainty for owners and developers.

The other major amendment to the Bill is the introduction of an additional criterion by which a place may be deemed to be of historic heritage significance. The addition would allow for a place to be entered in the Heritage Register because of its importance in exhibiting particular aesthetic characteristics.

I would like to spend some time discussing this point.

The original Bill to introduce historic heritage legislation included this criterion so there should be no doubt that the intention was to follow National best practice. Aesthetics is one of eight criteria universally adopted throughout Australia as the principle reasons for which a place may be deemed to be of historic cultural heritage significance. It is one of eight criteria listed in the Burra Charter – the best practice standard for cultural heritage management in Australia produced by Australia's International Council on Monuments and Sites. Importantly it is one of eight criteria which all Australian jurisdictions have agreed to adopt following the 1998 Conference on Heritage, commonly referred to as HERCON. Aesthetics is also included in the Planning Act as a key objective and one element of historic heritage significance that planning authorities must consider. A similar consideration is included in our *Mining (Strategic Prospectivity Zones) Act*.

As noted it was the original intent to include the aesthetics criterion in our legislation and given its existence in our principal legislation for planning and resource management I can see no reason for it to continue to be excluded from this legislation.

But looking closely at the context of the use of the term aesthetic as it is drafted in this Bill, it is clear that a rigorous test is required. A place has to exhibit a "particular aesthetic characteristic", not just any one person's view, but a shared view.

The examples often cited by other jurisdictions include award winning architecture, and indeed the Tasmanian Branch of the Australian Institute of Architects is pleased that this criterion is being added.

It might also include the recognition of important pieces of public art. The mural at the now UTAS Conservatorium of Music on Sandy Bay Road is a fine example of public artwork that is widely appreciated as one of Tasmanian artist George Davis' finest pieces of public art and from which the logo for the ABC mural is said to have originated. That is already on the Heritage Register. It was listed not because of the individual Heritage Council's views on whether the artwork was pretty or not, but because of the particular accolades attributed to the artist and that particular piece of work.

If the intent of amendments to the historic heritage legislation is to align it with the objectives of our planning legislation, the inclusion of the aesthetics criterion must be progressed. More importantly, it will bring Tasmania in line with best practice and given our rich heritage, that is crucial.

The third major area of amendments to the Principal Act is to better define the extent of heritage listings and create greater efficiencies in removing and amending places entered in the Tasmanian Heritage Register.

It is crucial that the extent of any heritage listing is appropriately defined. There have been a number of cases before the Resource Management and Planning Appeal Tribunal which have highlighted the need for legislation to more clearly identify how the boundary of a heritage listed place is identified. The proposed amendments will achieve this.

In urban areas this may be the whole property title and the title itself will define the extent of the listing. However there are many places, especially in rural areas or on large industrial sites where the historic heritage significance is limited to only a part of a title. For other places, such as bridges, there may be no title at all. Clearly in these cases a distinct boundary must be set to provide clarity for the owner. Where a boundary of a proposed listed place is larger or smaller than a single title or for places such as bridges where no title exists, the development of a Central Plan Register (CPR) will be mandatory.

But titles change; there are subdivisions and adhesions. There may be unfortunate circumstances that change the significance of the title, for example fire or flood. Our historic heritage is not static. The Principal Act recognised this and allows for the amendment of entries and the removal of entries. These amendments build upon that intent by clarifying what may be amended and by introducing administrative efficiencies for the most minor of amendments. So for example, if a property title changes as a result of the owner requesting a subdivision, the Heritage Council may update its records without notifying the owner, as clearly the owner already is aware of the fact.

Similar clarity has been provided with respect to those circumstances which may result in the Heritage Council removing a place from the Heritage Register and in so doing provides greater flexibility with respect to the process. Clearly the intent of the Principal Act was to allow community input into those places that might be removed from the Heritage Register. However in some cases this has caused a degree of anxiety for owners that is not warranted and surely was not the intention of the legislation.

I will give a most recent example where a fire destroyed a residence and business. Nothing remained – including any residual heritage values. Despite the obvious reality of the situation, the Act as it currently stands required the Heritage Council to advertise its intention to remove the place from the Heritage Register, provided the opportunity for people to appeal that intention and only after the representation period had expired could the Heritage Council remove the entry. The statutory process took 120 days. No property owner in this situation should be faced with such a bureaucratic scenario. The amendments will address this and other scenarios where such a lengthy process is not warranted.

The fourth major amendment is the insertion of provisions to allow for the development of a Ministerial Statement of Expectation and a corresponding Statement of Intent from the Tasmanian Heritage Council.

The introduction of these new provisions aims to ensure greater clarity and transparency in the expectations placed on the Heritage Council by the Minister and the State Government.

Notwithstanding the importance of maintaining the Heritage Council's ability to make independent statutory decisions, it is also important that the State Government identifies its objectives for historic heritage and the role of the Heritage Council in supporting those objectives as a statutory body of the State Government.

The development of a Ministerial Statement of Expectation will assist in clarifying the Government's expectations with respect to one of the functions outlined in the Principal Act which requires the Heritage Council "to perform any other function the Minister determines".

These are the main issues dealt with in the Bill. There are also a few relatively minor administrative matters.

In conclusion, I would like to make the point that public consultation has highlighted the support for these amendments. Of course submissions received noted that the amendments did not go far enough, that was expected. But even those submissions identified the Bill as an important first step in addressing the critical concerns of Local Government, the Heritage Council and the heritage sector.

Honourable Members, this Bill gives us the opportunity to introduce greater clarity into our historic heritage legislation and greater efficiencies through better alignment with our planning system. It will simplify processes for owners and developers. It will reduce duplication of effort for Local Government and the Heritage Council and it will result in more consistent decision making.

Most importantly it will ensure our historic heritage, one of our greatest assets in our tourism branding, will remain for the benefit of future generations.

I commend the Bill to the House.