

## CLAUSE NOTES

### *Historic Cultural Heritage Amendment Bill 2019*

**Clause 1      Short title**

Provides the title of the proposed Act.

**Clause 2      Commencement**

The Act will commence upon receiving Royal Assent.

**Clause 3      Principal Act**

The *Historic Cultural Heritage Act 1995* is the Principal Act.

**Clause 4      Section 6 amended (Constitution of the Heritage Council)**

- This provision aims to ensure the smooth, consistent and effective operation of the Heritage Council and gives the Heritage Council the capacity to appoint a deputy chairperson. The Act currently only allows a person to act as chairperson for a single meeting, if the chairperson is not present.
- This provision allows a deputy chairperson to be appointed for the Heritage Council. This will help to give continuity to its meetings and the work that it is responsible for between meetings, if the chairperson not available.
- The provisions in Schedule 2 are being amended and moved into Part 2 of the Principal Act to be more up-front, recognising the importance of these provisions to the sound governance of the Heritage Council.

**Clause 5      Section 32 amended (Interpretation of Part)**

These amendments introduce a number of new definitions and amend some of the current definitions contained in s32(1) of the Principal Act.

They have a primary focus on ensuring the Principal Act recognises combined permit applications and the effect other Acts may have on the assessment of an application. These amendments recognise the need to introduce definitions in the Act for the notion of: *assessment period*, *combined permit*, *combined permit application*, the *former Planning Act* and *permit application*.

**Clause 6      Section 35 amended (Heritage works require heritage approval)**

- s35 (2)(b) recognises that, as a result of these amendments, the Heritage Council will be able to consider and determine a combined permit application once the Bill has been proclaimed.

**Clause 7      Section 36 amended (Permit applications to be sent to and considered by Heritage Council)**

The amendment to Section 36 ensures the language used in Part 6 of the Principal Act is consistent with the definitions introduced by the Bill and applies the broader definition of *permit application*, rather than the more narrow definition of *discretionary permit application* currently used.

It also includes a provision that gives the Heritage Council time to consider a permit application, if the planning authority fails to provide the Heritage Council with the application within five days of the application date.

**Clause 8      Section 37 amended (Procedure if Heritage Council requires additional information to consider permit application)**

This section is being amended to allow the Heritage Council to seek additional information for a combined permit application and ensure that the administration of additional information requests for all applications occur in a timely manner.

**Clause 9      Section 38 amended (Procedure if Heritage Council has no interest in permit application)**

This amendment ensures the definitions applied in section 38 of the Principal Act allow for combined permit applications. This is consistent with the definitions being amended in Section 32 – *Interpretation of Part*.

**Clause 10      Section 39 amended (Procedure if Heritage Council wishes to be involved in determining for discretionary permit application)**

This section of the Act is proposed to be amended so that:

- under s39(5) if any intervening Act extends the assessment period, such as a referral to the Board of the Environment Protection Authority (EPA) by the planning authority, this provision requires the planning authority to notify the Heritage Council to ensure that all statutory decisions affected by this decision are made at the appropriate time.
- under s39(6) this amendment gives the Heritage Council a reasonable period of time to assess an application, while retaining the commitment to local government that Heritage Council decisions are referred to the planning authority seven days before their decision needs to be made.
- under s39(8) the amendment ensures consistency of terms in the Act and reinforces the timeframe which the Heritage Council has to make a decision, following its assessment of an application.
- The removal of subsection 12 from the Principal Act recognises that to rely on a set number of days for an assessment period is no longer of relevance,

as the assessment period is now tied to the period which a planning authority has to assess a permit application.

## Clause 11 Sections 39A, 39B and 39C inserted

### 39A. Procedure if Heritage Council wishes to be involved in determining combined permit application

This section of the Act is proposed to be amended so that the Principal Act allows for a combined permit application, as at present it does not.

- under 39A(1) if a combined permit application has been referred to the Heritage Council, and the Heritage Council has declared an interest, this amendment gives it the ability to determine the application.
- under 39A(2) the points of consideration for the Heritage Council in making a decision on a combined permit application are introduced. These are consistent with the provisions in the Principal Act for discretionary permit applications.
- under 39A(3) provision is made to allow the Heritage Council an extra 14 days to assess a combined permit application. This provision exists for discretionary permit applications and gives the Heritage Council the time needed to consider complex or contentious applications.
- under 39A(4) if the Heritage Council requires an extra 14 days to consider an application, the assessment period available to the planning authority is similarly affected. This ensures the timeframes for both statutory bodies are aligned.
- under s39A(5) if any intervening Act extends the assessment period, such as a referral to the Board of the Environment Protection Authority (EPA) by the planning authority, this provision requires the planning authority to notify the Heritage Council to ensure that all statutory decisions affected by this decision are made at the appropriate time.
- under 39A(6) the Heritage Council is to provide its notice of decision to the planning authority seven days prior to the expiration of the assessment period. This provision already applies to discretionary permit applications and ensures the planning authority is able to take the Heritage Council's decision into consideration when it makes its own decision.
- under 39A(7) the types of conditions that can be imposed by the Heritage Council against a combined permit application are introduced. This list matches the types of conditions that already apply to discretionary permit applications under s39 of the Principal Act.
- under s39A(8), where the Heritage Council consents to an application without conditions, or fails to provide a decision to the planning authority, this provision precludes the Heritage Council from being involved in the decision

making of the planning authority. This introduces procedural fairness and matches the provisions contained in the Act for discretionary permit applications.

- under s39A(9) in circumstances where the Heritage Council gives its consent to an application with conditions, and the planning authority similarly approve the application subject to conditions, this provision ensures the conditions imposed by the planning authority do not conflict with those imposed by the Heritage Council. This provision aims to ensure that due recognition is given to the Heritage Council's decision.
- under 39A(10) if the Heritage Council refuses an application, the planning authority must also refuse the application. This ensures consistency with the discretionary permit application process. However, while a combined permit application may be refused by the Heritage Council and the planning authority, the final decision on the permit is vested in the Tasmanian Planning Commission, as allowed for under the provisions contained in the *Land Use Planning Application and Approvals Act 1993*.
- under 39A(11) after the planning authority makes a decision in relation to the application, a copy of the decision by the planning authority is to be provided to the Heritage Council for its records, along with a copy of any representations lodged in respect to the application.
- under 39A(12) the Heritage Council is to receive and respond to any relevant heritage representations it receives, and is able to modify its decision in response to these representations. This allows for consideration of new information that may need to be taken into account.
- under 39A(13) a report containing statements of opinion on the merit of the application made by the Heritage Council, is to be considered before the Tasmanian Planning Commission makes its decision.
- under 39A(14) this provision ensures the Heritage Council receives a copy of the Tasmanian Planning Commission's decision for its records.
- under 39A(15) a definition for the relevant exhibition period is introduced for combined permit applications. This amendment references the former and the current provisions given the transitional arrangements being used to govern the combined permit application under the *Land Use Planning Application and Approvals Act 1993*.

### **39B Provision of further information to Heritage Council**

This provision ensures that if new information relevant to an application is supplied to the planning authority, the information is provided to the Heritage Council, so it can consider and assess that information.

### 39C Substantial changes to proposed heritage works

- under s39C(1) it is recognised that an applicant may substantially change the nature of works proposed for the application after they have lodged the application, but before it is determined. This amendment recognises this and gives the Heritage Council the ability to reconsider the matter and revisit the decision it has made, if this is required, as long as this occurs before the planning authority has made its decision.
- under s39C(2) provisions are being introduced that give the Heritage Council the ability to revisit the notice of interest and notice of heritage decision for discretionary permit and combined permit applications, if required, as long as the planning authority has not made its decision.
- under s39C(3), where substantial changes to the application introduce an element which the Heritage Council requires additional information in order to fully assess the application, the Heritage Council may seek additional information in the new notice of interest on these changes. This is consistent with current provisions in the Principal Act.
- under s39C(4) these provisions give the Heritage Council up to 35 days to assess and consider any substantial changes proposed by an applicant before they determine it. This avoids the need to lodge a fresh application, saving the applicant time and fees. However, it does not give the Heritage Council the ability to intervene and alter, amend or change their decision once a permit has been granted. These provisions match the amendments being introduced under s39C(3), to allow for the recognition of a combined permit application.
- under s39C(5) the same provisions as contained in s39C(3) are also introduced for combined permit applications. This ensures the Heritage Council has sufficient time to consider the changes being proposed for these types of applications, not just discretionary permit applications.
- under s39C(6) this provision ensures that if the Heritage Council requires additional time to consider a substantial change to an application, this time is afforded by halting the periods referred to under the *Land Use Planning Approvals Act 1993* and where relevant, the *Environmental Management and Pollution Control Act 1994*.

### Clause 12      Section 41 amended (Correction and minor amendment of permits)

This provision requires that if a permit is proposed to be corrected or amended and a notice has been issued by the Heritage Council, the Heritage Council must be consulted by the planning authority prior to the correction or minor amendment being made. This aims to ensure that the Heritage Council's views on applications are allowed for and not disregarded, should a correction or minor be needed.

**Clause 13      Section 44 amended (Contravention of heritage works conditions)**

This amendment ensures that contravention of a condition for a combined permit is treated in the same way as for a discretionary permit.

**Clause 14      Section 46A inserted**

***Applications made before the commencement of the Historic Cultural Heritage Amendment Act 2019***

This amendment introduces transitional provisions that mean the provisions of the amended Act do not apply to permit applications lodged before the proclamation of the Bill. The processes that applied prior to the proclamation date will continue to apply. This amendment aims to limit the risk of confusion about the status of applications lodged during the transition period. This means that discretionary permit applications will continue to be able to be determined by the Heritage Council, but the Principal Act will not apply to combined permit applications lodged until after the Bill has been proclaimed.

**Clause 15      Sections 90B, 90C, 90D and 90E inserted**

**90B Authorised officers**

This section recognises the need to strengthen the Act to enable the Heritage Council to undertake compliance and enforcement activities and introduces a framework consistent with the compliance provisions in the *Land Use Planning and Approvals Act 1993* that will assist in the assessment of applications and the investigation of matters where compliance or enforcement is required.

- Section 90B(1) enables State Servants to be appointed as an Authorised officer for the purposes of this Act.
- Section s90B(2) gives Authorised officers the ability to enter any place, under the circumstances outlined. This provision recognises that the Heritage Council's responsibilities extend beyond places entered on the Heritage Register, such as the issuing of stopwork orders under section 57.
- under s90B(3) an Authorised officer is empowered to undertake a series of prescribed activities while fulfilling their duties under this section.
- under s90B(4) an Authorised officer is empowered to obtain a copy of documentation held in relation to the matter being investigated.
- under s90B (5) an Authorised officer is empowered to obtain information stored in the written form, by electronic or other specified means.
- under s90B (6) an Authorised officer is empowered to examine, copy or take extracts of written, electronic or other means prescribed.
- under s90B(7) an Authorised officer is empowered to require a person to supply information that relates to the Act and the enforcement activity.
- under s90B(8) sets some constraints on what it is reasonable that an Authorised officer asks a person in relation to an investigation.

- under s90B(9) empowers an Authorised officer to seek specific identifying information about a person connected with this section of the Act.

### **90C Entry and search warrants**

- under s90C (1) a magistrate is empowered to issue a warrant to enable an authorised officer to enter any land or premises the warrant allows. The involvement of a magistrate is a safeguard that constrains the use of these provisions to cases where it is justified to seek such authorisation.
- under s90C(2) the criteria under which a magistrate may issue a warrant under the provisions contained in this part of the Act are outlined.
- under s90C(3) the grounds for issuing a warrant to be verified by an affidavit to introduce a safeguard that limits the risk of these provisions being abused.
- under s90C(4) the details that must be included in a warrant are outlined. These include constraints and controls in respect to the warrant.
- under s90C(5) gives some flexibility as to the means by which a warrant may be issued, which can be important if responding to an urgent matter.
- under s90C(6) recognises that a warrant may be issued over the telephone, but there are a number of controls that govern this provision.
- under s90C(7) empowers an authorised officer to seek all reasonable assistance they need to fulfil their duties under this provision, including seeking the assistance of Tasmania Police, if this were to become necessary.
- under s90C(8) an authorised officer, who has executed a warrant, must prepare a notice that contains the details to the occupier or the person in charge of the land, so that they have the key details needed in relation to the matter being investigated.
- under s90C(9) a warrant issued expires within 28 days, if not executed. This ensures warrants issued are not open-ended and have an expiry date.

### **90D Additional requirements where persons**

#### **not fluent, &c., in English**

under s90D an amendment is introduced that matches provisions in the *Land Use Planning Approvals Act 1993*. It ensures that people who are not fluent in English, with whom authorised officers interact, are afforded the best possible opportunity to understand and effectively engage with an authorised officer, with the support of an interpreter or other representative.

### **90E Obstruction, &c., of authorised officers and others**

under s90E the standard of behaviour expected of people required to assist an authorised officer to undertake their duties is outlined. This recognises people may find this type of intervention contentious and gives authorised officers

comfort that they are to be treated with respect. It also provides a mechanism that enables a court to require a person to comply with these provisions.

**Clause 16      Schedule 2 amended (Provisions with respect to meetings of Heritage Council)**

**5A Resolutions outside of meetings.**

- under s5A the Heritage Council is provided a mechanism that enables it to conduct its business or determine a matter outside of a face to face meeting. For example, the amendments introduced to the Act in 2014 significantly reduced the time the Heritage Council has to determine a discretionary permit application. This provision will give the Heritage Council the option of considering and determining matters between meetings. They will still require a quorum of seven to determine a matter and the Heritage Council may still hold an extra-ordinary meeting, if one is required.
- under s6 these amendments are being introduced to extend the Act's current provisions to recognise conflicts of interest maybe actual or perceived, not just pecuniary. The Act does not currently recognise the range of conflicts of interest that might arise, so these amendments are being introduced to ensure the Act is contemporary and adopts a broader definition of a conflict that reflects current practice.

**7 Conduct at meetings**

- under s7 this amendment gives the Heritage Council the capacity to meet using current and emerging technology, through telephone, video conferencing or other means the Heritage Council approves.

**Clause 17      Repeal of Act**

This provision allows for the automatic repeal of this Bill, 12 months after its enactment, and essentially closes the loop on the legislative process.