

228/2019 TASMANIAN PLANNING COMMISSION DIRECTION – DRAFT MEANDER VALLEY LOCAL PROVISIONS SCHEDULE – LOCAL HISTORIC HERITAGE CODE

1) Introduction

Following the Tasmanian Planning Commission (TPC) hearing held 29 May 2019 into the Draft Meander Valley Local Provisions Schedule (LPS), the TPC have requested further information regarding Council's position on the exclusion of listings under the Local Historic Heritage Code, in the preparation of Council's Draft Local Provisions Schedule.

This report formalises Council's further submissions to the TPC.

2) Recommendation

It is recommended that Council endorse the officer's comments as its submission to the Tasmanian Planning Commission, in regard to the exclusion of listings under the Local Historic Heritage Code as part of the preparation of the Draft Meander Valley Local Provisions Schedule.

DECISION:

Cr Cameron moved and Cr Kelly seconded ***"that Council endorse the officer's comments as its submission to the Tasmanian Planning Commission, in regard to the exclusion of listings under the Local Historic Heritage Code as part of the preparation of the Draft Meander Valley Local Provisions Schedule."***

The motion was declared CARRIED with Councillors Bower, Cameron, Johnston, Kelly, King, Synfield and Temple voting for the motion.

PLANNING AUTHORITY 8

Reference No. 228/2019

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AUTHOR: Jo Oliver
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3) Background

Following the hearing held 29 May 2019, the TPC have issued the following direction:

Historic Heritage Code – further submission on the application of code, addressing how the following have been considered:

- (a) Section 34(2)(b) of the Act – “furthers the objectives set out in Schedule 1”
An objective of Part 2 of Schedule 1 – Objectives of the Planning Process is
(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historic interest, or otherwise special cultural value.

- (b) Section 34(2) (e) *"as far as practicable is consistent with the regional land use....."*

The Northern Tasmanian Regional Land Use Strategy at the section on Regional Planning Policies for Social Infrastructure and Community Policy contains the following Cultural Heritage Policy –

CH-P01 Recognise, retain and protect cultural heritage values in the region for their character, culture, sense of place, contribution to our understanding of history.

The following action is required –

CH-A01 Investigate planning means to recognise and list places, precincts of heritage significance within planning schemes and spatially define them with associated map overlays.

- (c) Section 32(f) *"has regard to the strategic plan prepared under section 66 of the Local Government Act 1993"*

The Meander Valley Council Community Strategic Plan 2014 to 2024 contains Future direction (1) – A sustainable natural and built environment. It states –

Managing the balance between growth and the conservation of our natural and built environment is a key issue. Decisions will respect the diversity of community values, will be fair, balanced and long term in approach. Specific areas are forestry, protection of our natural, cultural and built heritage, scenic landscape protection, karst management, salinity, water quality, infrastructure and building design.

A listed Strategic Outcome 1.3 is –

The natural, cultural and built heritage of Meander Valley is protected and maintained.

The listed Council role is Provider Facilitator.

Council is required to make further submissions in regard to each of the matters listed in the direction.

This matter was discussed in Council workshop on 22 October 2019.

4) Representations

Representors to the Draft Meander Valley Local Provisions Schedule have participated in the TPC hearings relating to the Local Historic Heritage Code.

5) Consultation with State Government and other Authorities

State Government agencies and other authorities were directly notified of the Draft Meander Valley Local Provisions Schedule. No submissions were made in regard to the Local Historic Heritage Code.

6) Officers Comments

The following comments further articulate the Meander Valley Council's position in regard to the preparation of its Draft Local Provisions Schedule. These comments expand on Council's consideration of local heritage matters in the original submission of the Draft LPS, the subsequent consideration of public representations in the report under s.35F and discussions in the hearings of the TPC (where the Council's position was conveyed by the Senior Strategic Planner).

The TPC direction requires further submissions in regard to the application of the Local Historic Heritage Code (or more specifically, the non-application of the code) and how the Schedule 1 Objectives of the *Land Use Planning and Approvals Act* (LUPAA) 1993, the Regional Land Use Strategy of Northern Tasmania and the Meander Valley Community and Strategic Plan 2014-2014 have been considered.

Council's further submissions are as follows:

Schedule 1 Part 2 - Objective (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historic interest, or otherwise special cultural value.

Council maintains its position as submitted in its supporting report to the Draft LPS and in its s.35F report, that the State heritage register is the appropriate mechanism to conserve those places that are of historic interest or special cultural value. The Historic Cultural Heritage (HCH) Act does not recognise local and State thresholding and describes in the criteria to ascertain significance for registration, "*a strong or special association with a particular community or cultural group*", which has particularly local focus. Schedule 1 Part 2 of LUPAA refers to objectives for the planning process under the Resource Management and Planning System, of which the HCH Act is part. This is not limited to planning schemes and there are co-ordinated and consolidated processes for assessment of State heritage listed places through the LUPAA application process.

The LUPAA provides that a planning scheme may, as a planning instrument, include provisions relating to the conservation of *buildings, areas or other places*. The objective does not mandate that it must. It is implicit in the application of planning scheme controls that the purpose and appropriateness of the statutory control can be demonstrated.

Objective c) of Schedule 1 Part 1 is "*to encourage public involvement in resource management and planning*". In the notification of its Draft LPS, Council sent 8,500 notification letters to Meander Valley landowners as well as the statutory notification requirements. Six (6) submissions were received advocating the inclusion of local heritage places in the draft LPS. Council considers that there is no community imperative to regulate local heritage places and that the need for the regulation has not been demonstrated.

Regional Land Use Strategy of Northern Tasmania (NTRLUS)

Policy CH-P01 can also be met through listing of places on the Tasmanian Heritage Register. *Character, culture, sense of place and contribution to our understanding of history* are values that are considered in the assessment of places nominated for inclusion on the Tasmanian Heritage Register.

Action CH-A01 is ambiguous in its intent and confounds normal meaning. Despite this, Council considers that there are only 2 'planning means' by which places of heritage significance can be recognised and listed within planning schemes (i.e. the LPS), either as individual properties by populating the table of places, or by spatially defining precincts. The operation of the State Planning Provisions (SPP's) in regard to the type of 'listing' is different, with individual places being subject to a high degree of detail in the assessment of development applications and precinct provisions being focussed on streetscape impacts.

Council considers that the appropriate 'means' to manage significant places is through the Tasmanian Heritage Register. It is not practicable to comply with the NTRLUS as it does not provide a coherent explanation of how any distinction between State and local significance is to be made and the outcome to be achieved through planning schemes.

A Note on the Davies Heritage Study 2005 - This study was never endorsed by Meander Valley Council and as such, it does not exist in any official capacity. Council's view is that it has significant flaws in regard to properly establishing the threshold between State and local significance and the outcomes to be achieved in doing so. It is noted that the 'local' data entries only identify the applicable criteria of the State HCH Act.

Meander Valley Council Community Strategic Plan 2014 to 2024:

Council's consideration of its Community Strategic Plan for the purposes of the Draft LPS is in the context of the broader statutory considerations discussed above. The LUPAA requirement is to have 'regard' to the strategic plan prepared under section 66 of the Local Government Act 1993.

Central to Council's consideration is 'respecting the diversity of community values'. Council's concerns regarding the veracity of the Davies study, echo the concerns that were raised by substantial numbers of landowners of identified properties in 2005. The lack of public submissions supporting listing of places in the planning scheme, through both the Interim Planning Scheme and Draft LPS processes, confirms for Council that there is no community imperative to include local heritage places or precincts in the Draft LPS.

Having regard to the Community Strategic Plan, Council maintains its position that the appropriate instrument to provide for heritage protection is that items of significance are included on the State Tasmanian Heritage Register under the HCH Act. Council has facilitated this through the co-funding of the Davies study, which despite its flaws, has identified many items worthy of inclusion on the Tasmanian Heritage Register, which were forwarded to the Tasmanian Heritage Council.

DECISION: