17 May 2016

Tasmanian Planning Commission

By email: tpc@planning.tas.gov.au

Dear Sir/Madam

AICOMOS Comments relating to Heritage Matters, the Heritage Code and the State-wide Planning Scheme of Tasmania

We, Australia ICOMOS, would like to take the opportunity to provide some feedback relating to the proposed Draft Tasmanian Scheme Planning Provisions [DTSPP].

As you would be aware, Australia ICOMOS – the Australian chapter of the International Council for Monuments and Sites – is Australia’s key non-government professional organisation for cultural heritage practice. Since its formation in 1976, Australia ICOMOS has been committed to improving conservation philosophy and practice for culturally significant places. Our Mission Statement is ‘… to lead cultural heritage conservation in Australia by raising standards, encouraging debate and generating innovative ideas’. For further background, please refer to australia.icomos.org.

There are a number of issues identified with the DTSPP, not least the question of transparency for removing places from the Tasmanian Heritage Register and the lack of Local Government ability in not being able to consider developmental impacts on internal works. We note that the prudent and feasible alternative (previous Heritage Act 1995 at Section 41 - see Appendix) is not present in the current Heritage Act. We argue that this must be reinstated.

Terminology, Scheme Planning Provisions (SPP) Objectives and Performance Criteria Statements

The Heritage Code is very narrow in its interpretation of heritage values and it would be best practice to reflect the terminology of The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013 (Burra Charter) as this is accepted and adopted throughout Australia with tested legal precedence in other jurisdictions Tribunal appeals. Our belief is that the Burra Charter must be placed in the 29 local council schemes in any future translation of the SPPs. Discretionary use status for all listed places, either in local or state registers, must also become mandatory.

Terminology found in clauses of the Objectives and Performance Criteria will be difficult, if not impossible to apply in many situations. The common use of the term “having regard to” is not explicitly defined within the Scheme and creates a great deal of uncertainty. The term may be interpreted as simply requiring consideration as a matter of process, not substance and not conferring any duty of care or legal obligation to further the performance criteria in a meaningful manner. The wording “must take into account” would be preferable in that it at least indicates that the issue is “accountable” and that the development proposal must have demonstrated that the issue has been seriously considered. The use of the word “amenity” is a similarly difficult word. Your attention is drawn to the Brisbane City Council’s definition of “amenity” shown in Appendix 1 of this document.

It does appear that in the drafting of these standards, clauses reflect little experience in the application of performance based planning schemes. Words such as “tolerable risk”, “reasonable”, “appropriate”, “adequate” and so forth, can all be interpreted quite differently and will generate future disputes. For example, Kingborough Council [2004 Scheme] provides 12 year on-the-ground illustrations where less...
rigour has been applied in relation to development. Proposed standards as in the DTSPP have the potential at present to be even less rigorous on which to base an objective assessment of disputes over the interpretation of planning scheme clauses. Therefore, there is significant concern that the DTSPP is being rushed, creating unforeseen gaps in the policy. Policy needs to be at the forefront of any planning reform such as that at present. Any planning policy – if forthcoming – needs to have statutory status. Not to have such checks will result in the potential loss of cultural significance if and when a developer states that they have “regarded the place”. This could result in additional time and legal costs within an appeal situation if that becomes a last option.

**Urban focus and residential zones**

A particular concern for Australia ICOMOS in relation to SPPs and standards is property lot size reduction within residential zones and the potential for multi residential development in three residential zones (Inner residential, General Residential, Low Density Residential). If a development application meets the SPP standard regulations, there will be no permit issued. This situation will stretch across Tasmania. Lot sizes in the General Residential Zone (the zone most applied by local government in Tasmania) will be lowered to 400m² (near a transport route) or 450m² otherwise. Australia ICOMOS recommends change in this respect, especially in historic villages and towns but also for older suburbs, for inner residential areas which have historic buildings set amidst mature gardens and surrounds. Lower Sandy Bay is a good example.

Much of Tasmania has historic and/or older settlements. There were villages and towns designated and defined as areas in the former Register of the National Estate for example. It has been left to the local council to list property within such towns, but not the town as a whole as was formerly the case. That means that streetscapes, properties containing mature and established gardens, trees, curtilage as defined in the **Burra Charter** will be able to be subdivided and infilled, given the present Local Historic Heritage Code. This is unacceptable to Australia ICOMOS. Australia ICOMOS further understands that data sheets (either those of local government and/or Heritage Tasmania) most likely will not reflect the surrounds, settings, curtilage, extended curtilage, streetscapes and their significance of town, village or rural properties.

**Desired Future Character and Place meaning**

The **Burra Charter** in Article 1 has defined “place” as a geographically defined area. It may include elements, objects, spaces and views. Place may have tangible and intangible dimensions. This is the standard that must be set for Tasmania, the second colony settled in the nation.

The one size fits all approach of the DTSPP appears very developer-focused, has significant implications on the land use management and the inability to allow for existing landscape character. It fails to be consistent with the objectives of the RMPS in their entirety. Although historically Desired Future Character Statements have been poorly written within Tasmania, they are one method of reducing ambiguity of Performance Criteria. Desired Future Character Statements are a succinct description of expectations of development, outlining a vision for the future of a discrete zone, policy area or precinct, which will allow for local variation across the state wide planning scheme and provide a means retaining the historical cultural context of a place.

Whether in urban or rural settings, Desired Future Character Statements have an instructive role that extends beyond their descriptive content. They are aimed at giving the Planning Authority, applicants and the community real guidance about the development outcomes envisaged for an area, clarifying the future of areas for investors and their communities alike. The statements also reinforce the role of the potential Local Development Plans as a strong determinant of an area’s physical appearance and performance. Australia ICOMOS believes that Desired Future Character must not be exempted from the DTSPP.

**Rural and Agriculture zones, Rural Living Zones, Landscape Protection Zone: The Woodbridge Area, an example**

Tasmania’s settlement pattern is such that there are many smaller rural residential properties, close to, but outside, the urban growth limit of Hobart and the new SPP subdivision requirements provide very little flexibility to match this settlement pattern. When setting the Local Planning provisions, it will be necessary to choose between a zone that enables further subdivision or one that potentially introduces inappropriate land uses into local areas. The implications of this are examined in particular context with Woodbridge Heritage Precinct and the surrounding that would most likely be zoned Rural Zone.

However, the Rural Zone provisions do not encourage residential development, but to zone it Rural Living opens up the area to high levels of subdivision that would dramatically alter the landscape character. In accordance with the zone purpose statements, provisions for the Rural Zone are to support agricultural or
resource development. It effectively replaces the current Rural Resource Zone in the KIPS2015. Accordingly, the development standards anticipate rural activities that are not designed to protect residential amenity.

A similar issue existed under the previous KPS2000 where extensive rural areas were zoned Primary Industries with a minimum lot size of 40 hectares. This zone did not reflect the actual land use pattern in many instances and at times was in conflict with the existing land use. The KIPS2015 had essentially resolved this inconsistency but it does now appear that it will be reintroduced by the DTSPP proposals without the guiding provisions of Desired Future Character Statements.

Therefore, it is likely that this Rural Zone will be applied to rural areas surrounding Woodbridge and Channel Settlements that contain existing properties across a very wide range of lot sizes – from about 2ha up to well over 40ha – and to properties that are not being used for a productive purpose and are essentially residential in nature. This gap in minimum lot sizes is too wide and can be avoided if there is a Rural Living Zone that has a larger minimum lot size, which would better reflect the historic landscape development patterns.

In regard to the development standards, this Rural Zone enables a maximum building height of 12 metres, with setbacks from all boundaries at 5 metres as an acceptable solution. Given that this Zone is likely to be applied to lots down to almost 2ha in size, there will be many instances where future development will be inconsistent with existing development patterns that are mainly rural residential in nature – in that a 12-metre high dwelling or building could be built within 5 metres of an adjoining residential property. This issue will generate conflict with close neighbours, bearing in mind the many scattered smaller lots in rural areas and that this Zone will adjoin areas zoned Low Density Residential.

As well as this, many coastal properties further down the Channel will be zoned Rural up to the coastline. This will result in future dwellings up to 12 metres in height affecting the visual landscape of the coast and have significant impact on the cultural values that are attributed to that landscape.

The Rural Zone also allows for the value adding or diversification of an existing resource development, extractive industry or resource processing use on existing land or onto adjoining land with a relatively easy approval pathway. This in itself is not a major issue in terms of heritage management but it becomes a problem if a Council is forced to apply the zone to areas that are predominantly residential (e.g. hobby farms) in nature – creating future amenity and conflict problems and also fettering appropriate primary industry uses.

Areas such as Woodbridge and Middleton that are currently zoned Rural Living under the KIPS2015 surrounding the residential area of the townships will need to be zoned Rural in order to limit subdivision potential under the minimum lot size proposed for the Rural Living zone. In applying the Rural Zone up to the township boundary, there is the potential for Resource Processing (such as a cheese factory, abattoir or animal saleyard) within 500m of the residential area as a Permitted Use. Further to this a fish filleting processing business could be within 250m of the township. The Rural Living Zone would form a more effective buffer around existing residential areas. It is acknowledged that the Scenic Protection Code will potentially provide some provisions for scenic landscape management. However, it does not address the implications of small lot subdivision, and exempts agricultural buildings, which could be 12m in height 5m from a boundary, that would have a significant impact on any cultural landscape the Scenic Protection Code would apply. Effectively, the Scenic Protection Code is very limited in landscape management, protecting only a restricted tourist gaze of Tasmania’s landscape.

**Cultural Landscapes**

Tasmania’s heritage settlement pattern across the nineteenth century needs to be fully understood at senior planning and government levels. It is unique to this island and given that Tasmania was the second state settled, the significance is of national importance. Many rural properties including large estate properties have contiguous extant grant boundaries. Some stretch back to 1811 with Governor Macquarie and Norfolk Island re-settlement. These boundaries may be marked out by hawthorn hedges or other vegetative material. There are established mature gardens with sometimes unusual, if not rare plants and trees and there are many old mature trees which frame the dwelling. In the south the grounds are of different sizes and also have distinct patterns, patterns that are equally as important to understand given the present changing planning intent.

ICOMOS, at the international World Heritage Area level, has been undertaking serious research and assessment and has completed listings of world rural landscapes as well as urban historic landscapes. Tasmania may well offer future listings. Cultural heritage is not just limited to “buildings” and listing a place is not necessarily the only way of preserving the heritage significance. The Local Historic Heritage...
Code (LHHC) has developed a different set of heritage type categories. The new ones can be compared to the Interim Planning Schemes (Southern region) these agreed to by the twelve southern councils. The interim planning scheme types are as follows:

- Heritage place
- Heritage precinct
- Cultural Landscape precinct
- Place of Archaeological Potential

These appear to be a clear and comprehensive set of heritage types because they use standard heritage wording in a standard way, and the terms have been clearly defined.

The change of ‘Cultural Landscape Precinct’ to ‘historic landscape precinct’ is not a recognised heritage type while the term ‘cultural landscape’ is. The definition of ‘historic landscape precinct’ in the Draft SPP Code is essentially the definition of a cultural landscape. It is argued that the term ‘historic landscape precinct’ adds confusion to differentiating between ‘heritage precincts’ and ‘historic landscape precincts’. Cultural landscape is recognised internationally by ICOMOS as it forges ahead with listings on the world.

Woodbridge and hinterland has already been mentioned, but land zoning and subdivision requirements in the DTSP provide an example of a clumsy means of managing a Cultural Landscape for this area but similarly for other rural landscapes of: the D’Entrecasteaux Channel; Bruny Island; Huon Valley region; the extensive cultural landscapes of the Midlands; and northern Tasmania. The potential loss of cultural landscape as an overlay, able to be used by local government, the added incapacity for desired character statements further exacerbates the significant impact. There will exist the potential to allow for use or development that is inconsistent with the rural landscape character. The proposed zoning regime does not allow for a steady progression of the peri-urban region surrounding the greater Hobart region. Australia ICOMOS finds what would appear to be less rigorous assessment in the LHHC detrimental.

The Burra Charter makes provision for assessment of place, settings, memories and perceptions of place. Australia ICOMOS definitions have been adopted internationally in respect of place. Inherent in assessment of place must be the curtilage of a property, the extended curtilage of a property, one which details aspects of dwelling surrounds including gardens, and mature older trees, shrubs and flora. Tasmania, from earliest times, was importing plants from the other side of the world. This really took on a very intensive aspect via nurseries, the Royal Society’s Gardens and the Launceston Horticultural Society during the 1860s-1940s such that plants were disseminated outwards both in urban and rural situations. This is an equally important heritage legacy in Tasmania, not one that will currently be considered in the Local Historic Heritage Code. Australia ICOMOS finds that detrimental.

**Aboriginal heritage**

Additional concern is that the DTSPPP has once again left out any reference to Indigenous Tasmanian Heritage, which was also the case with the Interim Planning Schemes. Whilst the wording of the Kingborough Planning Scheme 2000 was by no means adequate, it did at least make reference to Aboriginal Heritage. It appears apparent that Aboriginal Heritage is adequately managed under the Aboriginal Relics Act 1975. Ideally the planning approval process must be designed so that as many relevant issues as possible relating to a development are considered as part of the assessment of a development application. This would enable a thorough up-front assessment of the development proposal and would help in avoiding the possibility of other legislation requiring subsequent changes to that proposal.Where such changes are required then there is the very real chance that an approved planning permit becomes invalid and/or there is the need for a fresh or amended planning application. This situation only adds to resentment and further tensions.

**Archaeological heritage**

While ‘place or precinct of archaeological potential’ may be clearer in recognising potential scales, it is more wordy and ‘place of archaeological potential’ should be quite adequate if a ‘place’ is defined as site or parcel of land. Note that in relation to this:

1. the definition of ‘precinct’ differs for the different heritage types, which further reduces consistency
2. unlike in the Interim Planning Scheme, there is no definition of ‘place’ in the Draft SPP Code, which would appear to be a serious omission.

It has been a failure of planning schemes generally to provide adequately for the conservation of significant archaeological sites or other remains. While generally planning schemes have included this
type of heritage within ‘heritage places’ (this is not clear in the Draft SPP Code), the standards and other provisions relating to ‘heritage places’ generally respond only to built heritage and do not work well, or do not work at all, for significant archaeological remains. It is suggested that this is best remedied by including new heritage type category of ‘archaeological heritage place’, as this would allow for unambiguous standards and other provisions to be established for each type of heritage.

Architectural interiors
Internal works are exempt from requiring a planning permit and this is applicable to heritage places. The interiors of buildings are an integral component of the cultural significance of the place and need to be considered in any assessment of heritage impact of a listed place, regardless whether it is of local or state significance.

Summary and Recommendations
The Code will not adequately protect historic heritage significance if it applies only to ‘local heritage’. This is because heritage places should be treated as single entities and all values considered (refer to the Australia ICOMOS Burra Charter), and because a place/precinct/landscape/archaeological place can have both local and state significance and these may be quite different values so that what may be an acceptable development or use for one may not be appropriate for the other. It is also the case that the THR does not have the remit to consider local values of THR listed places, and there are also a number of pragmatic reasons around discrepancies in how the places, etc. are identified and defined.

Most of the performance criteria fail to consider ‘heritage significance’ which is the key underpinning of Australia’s approach to heritage management, and the foundation of the Burra Charter, the core principle of which is that "conservation means all the processes of looking after a place so as to retain its cultural significance" (article 1.4). When taken with other Burra Charter Articles, in particular the definition of significance (Article 1.2), it is difficult to see how the DSPP Code provides for retention of significance.

Australia ICOMOS cannot support the DTSSP approach of it being optional for a Council to exempt all dual-listed places (that is places on the THR-Heritage Tasmania but also listed by local government) in a planning application. We believe that all heritage property either listed by Heritage Tasmania or by a local council must become a discretionary use in any planning development or use application.

For significant archaeological remains, it is suggested that this is best remedied by including a new heritage type category of ‘archaeological heritage place’, as this would allow for unambiguous standards and other provisions to be established for each type of heritage.

Overall Recommendations:
That, in the interest of clarity and consistency, in the DTSSP Heritage Code:

1. the SPP, including the Code and standards, apply to all places listed under the Code; there be no exemptions for THR listed places; and the term ‘local’ be removed from the SPP in all cases where it is used to imply a restriction of scope to heritage of local level significance.
2. the terminology, Objective Clauses, Performance Criteria clauses become more rigorous and contain clarity such that the ambiguity currently present is removed.
3. essentially the same definitions for place, and the different heritage type categories used in the Interim Planning Schemes (Southern Region) be used (and that all be included in the list of definitions). Thus heritage precinct, cultural landscape, heritage place and the new category, (see 4) all become a part of the Local Historic Heritage Code and be translated into the 29 local government schemes.
4. a new category of ‘Archaeological Heritage Place’ be created to respond to conservation needs for significant non-built heritage.
5. all listed heritage property (either at the state or local level) become a discretionary use.
6. the Burra Charter be inserted in all 29 local government planning schemes in the translation of the DTSSP; its insertion in the Local Historic Heritage Code must be mandatory.
7. Indigenous heritage be considered fully and be included in an appropriate manner that accords to the Land Use Planning and Approvals Act 1993 (LUPAA).
8. Desired Future Character not be exempted from the Draft Tasmanian State Planning Provisions; that it be reinstated.
9. very real problems, as shown in this representation, in relation to the various rural zones be fully realized and changed such that anomalies in lot sizes, other anomalies be rectified and changed such that character of place is retained.

10. Section 41 of the 1995 Heritage Act which allowed for a 'prudent and feasible alternative' be reinstated. See Appendix 1.

11. any forthcoming policies to be effective, must be afforded statutory status.

12. all the standards are comprehensively reviewed to ensure that the acceptable solutions and the performance criteria will provide for heritage conservation - as per the stated objective of the Code.

If you require any further information, please do not hesitate to contact us at the Australia ICOMOS Secretariat at georgia.meros@deakin.edu.au.

Yours faithfully

MS KERIME DANIS
President, Australia ICOMOS

Appendix 1.

Clauses at 7.4.3. (6 clauses) made reference to the statement of historic significance in the Local Heritage Code at (a), a statement by a “suitably” qualified person on a place or precinct [landscape not mentioned] at (b), a conservation plan J. Kerr etc at (c), change to the historic significance at (d), likely impact on the “amenity of the surrounding uses” at (e), any Heritage Agreement in place at (f)

Note “amenity of the surrounding uses” is a confusing phrase.

The definition has to be changed. It is suggested that the definition used by Brisbane City Council or alternative be used. As defined by Brisbane City Council, Queensland: www.qld.gov.au in their Neighbourhood Planning Glossary:

Amenity
The overall quality of the built form and natural environment impacting on the level of human enjoyment including on-site and off-site, and public and private spaces. Other elements of amenity include landscape amenity (features such as trees, planting and lawn that add to the quality of the landscape in a city environment), level of noise, air quality and sunlight. The word ‘amenity’ is often used to describe a pleasing or agreeable environment. This could be redrafted to include towns, villages and rural country properties in Tasmania.

Historic Cultural Heritage Act 1995. Clause 41

The Heritage Council, or planning authority, may only approve a works application in respect of works which are likely to destroy or reduce the historic cultural heritage significance of a registered place or a place within a heritage area if satisfied that there is no prudent or feasible alternative to carrying out the works.