

Implementing Tasmania's
Historic Cultural Heritage Act 1995

INFORMATION FOR LOCAL
GOVERNMENT

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Tasmanian Heritage Council

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Introduction.

The *Historic Cultural Heritage Act 1995* (the Act) was developed to ensure the historic places that are of importance to the whole of Tasmania are recognised, protected, and managed effectively as part of the Resource Management and Planning System (RMPS).

This approach is designed to complement the recognition, protection and statutory management of places of local, national or world heritage significance by Planning Authorities, State Government and the Australian Government.

The Act was proclaimed in 1997, and in 2014 amendments introduced even greater alignment and integration with the State's planning system, making it easier for property owners to seek approval for works to places entered in the Heritage Register. Those amendments have been well received, streamlined processes and introduced clear and consistent decision making frameworks that reflect how to best manage historic heritage.

Based on five years of experience with the amended Act, the *Historic Cultural Heritage Amendment Bill 2019* was introduced and adopted to further integrate heritage legislation with the *Land Use Planning and Approvals Act 1993* (Planning Act), as well as recognising the role of the Environmental Protection Agency (EPA) and the Tasmanian Planning Commission (The Commission).

This information package aims to provide an overview of the Heritage Act, inclusive of these most recent changes.

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Resource Management and Planning System.

The Resource Management and Planning System (RMPS) is the framework that guides all decisions about the use and development of land and natural resources in Tasmania. The statutory management of historic heritage is a part of this system.

The RMPS consists of a suite of legislation and policies, including the Heritage Act. One of the key pieces of legislation in the RMPS is the *Land Use Planning and Approvals Act 1993* (Planning Act), which outlines the objectives of the RMPS in Schedule 1, Part 1: as well as the objectives of the planning process established by that Act in Part 2.

All legislation under the RMPS, including the Heritage Act, requires all decision makers to have regard to these objectives.

Relevant bodies.

Planning Authorities.

Planning authorities have responsibility for recognising, protecting and managing local historic heritage places, and precincts under the Planning Act.

Planning authorities have assisted the Heritage Council by acting as points of contact for proponents of works to places entered in the Heritage Register, at the pre-application stage, at lodgement, and during the assessment of a permit application.

Amendments to the Heritage Act did not change this relationship, but they have expanded on the types of applications which must be referred to the Heritage Council. The amendments also ensure the responsibilities of the relevant bodies are better articulated.

Tasmanian Heritage Council.

The Heritage Council is an independent statutory body that is responsible for implementing the Heritage Act. Its members are appointed by the Minister for Heritage. The Heritage Council may be supported in its role by committees, advisory panels or other forums with endorsed Terms of Reference. The administration of the Heritage Council is vested in the Chairperson. This position is directly accountable to the Minister for Heritage.

The functions and powers of the Heritage Council are very broad and are defined in Part 2 (Section 7) of the Heritage Act. Principally, it is to administer the Heritage Register and regulate works proposed to be undertaken on places entered in the Register.

Heritage Tasmania.

Heritage Tasmania is a branch of the Department of Primary Industries, Parks, Water and Environment (DPIPWE). It is managed by a Director, who administers the historic heritage portfolio for the State Government.

Heritage Tasmania's main role, in relation to the Heritage Council, is to assist it to make informed statutory and strategic decisions, to liaise with local planning authorities and to implement the decisions made by the Heritage Council. The branch also has a broad responsibility for developing and implementing State Government strategies and initiatives relevant to historic heritage.

Tasmanian Planning Commission.

The Tasmanian Planning Commission is an independent statutory body established under the *Tasmanian Planning Commission Act 1997*. Its roles include considering draft planning scheme amendments, and combined permits. As the amendments to the Act give the Heritage Council responsibility to assess any development proposed at a heritage place, which has been applied for as part of a combined permit application, the work of the Commission and the Heritage Council is now more closely integrated.

The Environmental Protection Authority.

The Environment Protection Authority (EPA) is Tasmania's principal environmental regulator. The EPA administers the *Environmental Management and Pollution Control Act 1994* and is an integral part of Tasmania's RMPS.

The EPA's purpose is to regulate developments and activities that may impact on environmental quality and to promote best practice and sustainable environmental management. Its goals are clean air, clean water, clean land, acceptable noise levels and sustainable use of resources.

The Act is now integrated with the assessment of a proposal which involves the Board of the EPA and is at a heritage place (see Appendix A and B).

The Tasmanian Heritage Register.

Part 4 of the Heritage Act requires the Heritage Council to keep an inventory of places of historic cultural heritage significance, known as the Tasmanian Heritage Register (the Register). It is a list of places that are of State historic cultural heritage significance that demonstrate the historical development and identity of Tasmania, and have been recognised as contributing to the historic cultural fabric and historic identity of Tasmania and are important to the whole of the State.

The basic framework for the management of State historic heritage places in Tasmania consists of five steps:

- identify a property with potential to meet criteria for entry in the Register;
- investigate the property through research and inspection;
- assess its values against criteria for entry in the Heritage Register;
- enter the place in the Heritage Register;
- manage the significance of the place in accordance with the provisions of the Heritage Act.

To be entered in the Heritage Register, a place must meet at least one of eight criteria contained in section 16 of the Heritage Act. These are:

- a) the place is important to the course or pattern of Tasmania's history;
- b) the place possesses uncommon or rare aspects of Tasmania's history;
- c) the place has the potential to yield information that will contribute to an understanding of Tasmania's history;
- d) the place is important in demonstrating the principal characteristics of a class of place in Tasmania's history;
- e) the place is important in demonstrating a high degree of creative or technical achievement;
- f) the place has a strong or special association with a particular community or cultural group for social or spiritual reasons;
- g) the place has a special association with the life or works of a person, or group of persons, of importance in Tasmania's history;
- h) the place is important in exhibiting particular aesthetic characteristics.

Application to enter a place in the Heritage Register.

Any person or organisation may make an application to enter a property in the Heritage Register. To be entered in the Register a property must meet at least one of the eight Registration criteria that are contained in the Act. There is no guarantee that an application will result in the property being entered in the Heritage Register.

Assessment of heritage values.

Applications are assessed by Heritage Tasmania to determine if the property in question can meet one of the registration criteria for entry in the Heritage Register. Only a limited number of assessments can be undertaken in a given year. The Heritage Council maintains a Prioritized Assessment List (PAL) for each year that is compiled by considering factors such as the potential significance of the property, availability of information, as well as any known threats. There is no guarantee that an assessment can be undertaken within a year of an application being received.

An assessment usually involves:

- discussions with the owner and stakeholders;
- historical research;
- a site visit where possible to better understand the property's physical fabric and setting;
- assessment against each of the registration criteria contained in the Heritage Act; and
- identification of an appropriate statutory boundary.

The Heritage Council will then consider the assessment and decide whether a place should be provisionally entered in the Heritage Register.

Provisional registration.

Provisional entry means that the Heritage Council has made an interim decision to enter a place in the Heritage Register, while it seeks submissions from the owner, local planning authority, or the public.

From the moment a place is provisionally entered in the Register, the works provisions of the Heritage Act apply.

Upon provisionally entering a place, the Heritage Council must notify the owner and local planning authority and must place a public notice in the relevant local newspaper, calling for submissions.

The Heritage Council will consider any submissions received before making its final decision on whether to permanently enter the place in the Register.

Public comment on an entry in the Heritage Register.

Anyone can make a submission as to whether a provisionally entered place should be permanently entered in the Heritage Register.

Submissions may be made either to support or object to the intention to permanently enter a place. Importantly, an objection to the entry can only be made on the basis that the place does not satisfy any of the registration criteria on which the provisional entry is based.

Submissions may also be made in support of the intention to permanently enter a place in the Register, to correct information or to provide additional information.

Objections and submissions must be lodged directly with the Heritage Council and be received in writing within 60 days of the public notice. Any objections or submissions received will be considered by the Heritage Council and considered before it makes a final decision on permanent entry.

If the Heritage Council decides to permanently enter a place, any person, who lodged an objection or submission has a right of appeal to the Resource Management and Planning Appeals Tribunal (RMPAT). The appeal must be lodged in writing directly to RMPAT within 30 days of the date of notification of permanent entry.

The works provisions in Part 6 of the Act apply to places when they are provisionally entered in the Heritage Register.

Permanent entry.

Permanent entry means a place is permanently entered in the Heritage Register. If after considering any submissions received, the Heritage Council decides to permanently enter a place, anyone who had lodged an objection or submission may appeal the decision with RMPAT.

The works provisions of the Heritage Act apply to all provisional and permanent entries in the Register.

Removal from the Heritage Register.

Any person may request that a place be removed from the Heritage Register. The Heritage Council can remove a place if it considers the place no longer meets any of the registration criteria outlined in the Heritage Act. It is important to remember that a place only needs to meet one of the criteria to be entered.

The Heritage Council will notify owners and the planning authority in writing if it intends to remove a place from the Heritage Register. The Heritage Council will also place a public notice in the relevant local newspaper, inviting comment on the intention to remove a place from the Register. An owner or any other person may object to, or provide submissions in support of, this intent. Any objections or submissions received will be considered by the Heritage Council in making its final decision on whether to remove the place from the Register. Anyone who had lodged an objection or submission may appeal the decision with RMPAT.

Assessing works to heritage places.

Part 6 of the Act outlines the process for seeking approval for heritage works at a place which is either provisionally or permanently entered in the Heritage Register.

S35(1) of the Heritage Act states that, *a person must not carry out any heritage works unless those heritage works have heritage approval*. Approval may be in the form of a Certificate of Exemption (if the proposal will have no or negligible impact on the historic cultural significance of the place) or in the form of a permit issued by a planning authority.

Under the Heritage Act, heritage works includes:

- (a) any development¹; and*
- (b) any physical intervention, excavation or action which may result in a change to the nature or appearance of the fabric of a place; and*
- (c) any change to the natural or existing condition or topography of land; and*
- (d) any removal of vegetation or topsoil.*

¹ Development includes

- (a) the construction, exterior alteration or exterior decoration of a building; and*
- (b) the demolition or removal of a building; and*
- (c) the subdivision or consolidation of land, including buildings or airspace; and*
- (d) the placing or relocating of a building; and*
- (e) the construction, or putting up for display, of signs or hoardings;*

For any proposed development at a site entered in the Heritage Register, a development application will need to be lodged with the planning authority, unless those works already have heritage approval (certificate of exemption)

Where works are required in response to an emergency, the Act provides for a place to be made safe without approval prior to the works occurring. Heritage Tasmania should nevertheless be contacted to discuss the nature of the works required, and to discuss what approvals may be required after the place is made safe.

Planning authorities will operate as usual under the Planning Act, and may still require a development application irrespective of the works having an existing heritage approval.

A Summary of the discretionary permit application process.

STEPS IN THE PROCESS FOR DISCRETIONARY PERMIT APPLICATION.	NOTES
Applicants are actively encouraged to seek pre-lodgement advice from the planning authority and Heritage Tasmania (HT), including checking if the works are exempt.	Encourage applicant to discuss works with a Heritage Tasmania advisor before lodging their application.
The planning authority receives the development application (DA). When the DA is considered valid, the 42-day assessment period starts.	
The planning authority confirms if the place is entered in the Heritage Register.	
The planning authority refers a copy of the DA to the THC/HT if the place is entered in the Heritage Register as soon as practicable and in any event within 5 days.	Referral later than 5 days will cause for the assessment period under LUPAA to halt until the referral is made.
THC advises the planning authority if it has an interest and if any additional information is required within 7 days.	If THC has no interest the DA reverts to its status under LUPAA.
The planning authority requests any additional information required on behalf of the THC as soon as practicable and in any event within 5 days.	The assessment period ceases to run until the THC provide a notice that they are satisfied with the further information.
Once all information is received, the planning authority advertises the DA as required under LUPAA.	Any period which the application has been on hold (s54) must be conveyed to the THC for the accurate calculation of the assessment period.

<p>The planning authority refers representations to the THC, and HT completes its assessment of the DA.</p>	
<p>THC makes its determination on the DA and forwards its decision to the planning authority.</p>	
<p>The planning authority reviews its assessment, incorporates the THC's decision and makes its own decision.</p>	
<p>If at any time prior to the decision of the planning authority any new information is supplied to the planning authority, this information must be forwarded to the THC for consideration.</p>	<p>The THC may review their Notice of Interest or, where relevant, their Notice of Decision.</p>
<p>Single permit or refusal issued by the planning authority.</p>	<p>The planning authority must ensure any conditions it may impose do not conflict with those of the THC.</p>
<p>Standard appeal periods run their course.</p>	
<p>If an appeal is lodged on heritage grounds, the planning authority and THC defend decision as joint parties.</p>	
<p>Minor permit corrections or amendments can be made.</p>	<p>The planning authority is to liaise with THC if minor amendments are requested.</p>

A Summary of the combined permit application process.

STEPS IN THE NEW PROCESS FOR COMBINED PERMIT APPLICATIONS.	NOTES
Applicants actively encouraged to seek pre-lodgement advice from planning authority and HT, including checking if the works are exempt.	Encourage applicant to check exemptions on-line and discuss works before lodging their application.
Planning authority receives a combined permit and amendment of planning scheme application, with planning authority lodgement fee paid and 42-day assessment period starts.	
Planning Authority confirms if place is entered in the Heritage Register.	
Planning authority refers a copy of the application to the THC if the place is in the Heritage Register within 5 days.	Referral to THC later than 5 days will cause for the assessment period to halt until the referral is made.
THC advises the planning authority if it has an interest and if any additional information is required within 7 days.	If THC has no interest the DA reverts to its status under LUPAA.
The planning authority requests any additional information required on behalf of the THC as soon as practicable, and in any event within 5 days.	The assessment period ceases to run until the THC provide a notice that they are satisfied with the further information.
Planning authority refers representations to the THC and HT completes its assessment of the DA.	
THC provide a report to the TPC recommending any modifications and a statement of the merit of relevant representations.	
TPC hold hearings where necessary.	

<p>TPC make decision on the granting or refusal of a permit including modifications.</p>	<p>The TPC is not obliged to carry forward a THC recommendation that the application should be refused.</p>
<p>Single permit or refusal granted by the Tasmanian Planning Commission.</p>	
<p>Minor amendments or corrections to the permit can be made.</p>	<p>The planning authority is to liaise with THC if minor amendments are requested.</p>

Pre-application advice.

Heritage Tasmania has heritage advisors based in Hobart and Launceston. Advisors are drawn from a range of disciplines and can provide owners or site managers of places in the Heritage Register with initial architectural or conservation advice, including on-site consultation.

It is strongly recommended that people applying for works approval seek pre-application advice. This can assist in identifying areas of concern, as well as potential design solutions and options early on in the design process.

Proponents may find discussing an application with an advisor prior to lodgement to be very beneficial. It may help them better understand the values of the place and the matters that the Heritage Council will consider in assessing any application. Pre-application discussions also allows proponents to present their ideas for the place to advisors in an informal manner and find alternative solutions to potentially challenging issues.

The application process.

Heritage Tasmania recommends all application forms or portals for lodging development applications include the following questions. These are intended to encourage applicants to discuss their proposal with Heritage Tasmania before lodgement, as well as to serve as an indicator to the planning authority that the provisions of the Act apply:

1. Is the place on the Tasmanian Heritage Register?
2. Have you sought advice from Heritage Tasmania?

When an application is considered valid by the planning authority, and that application involves heritage works, it must be referred to the Heritage Council within five days. If the application is not referred within five days, the assessment period halts until a referral is made.

Ascertaining whether a place is entered in the Heritage Register.

The LIST Tasmania provides an indicative, map-based representation of registered places across Tasmania. Where LIST Tasmania indicates a parcel is entered in the Heritage Register, it should be assumed that the entire parcel is registered, pending further confirmation from Heritage Tasmania.

Please note that although all effort is made to ensure that the LIST Tasmania information is accurate and current, it should not be relied on as the definitive record of places entered in the Register.

Further information can be obtained by contacting Heritage Tasmania if you are unsure as to whether a property is entered in the Register.

Exempt works (s42).

Many works matters considered by the Heritage Council are deemed to have no impact on the historic heritage significance of a place.

Issuing Certificates of Exemption, through sections 42 and 43 of the Act greatly reduces the administrative workload for planning authorities and cost to applicants when the works do not otherwise require any form of approval from the planning authority (ie exempt under the planning scheme).

It is expected that most proponents will apply to the Heritage Council for a Certificate of Exemption prior to lodging an application with the planning authority; however it is not a requirement that they do so.

Where a development application is supported by an existing Certificate of Exemption, the application still must be referred to the Heritage Council. The content of the application will be checked with regard to the existing exemption, and a notice stating that the Heritage Council has no interest may be issued.

It is important to still refer the application, as a proposal may change in the time between the issuing of the Certificate of Exemption and the lodging of an application.

As a matter of course, Certificates of Exemption will not be recommended to be applied for where developments are complex and likely to result in numerous iterations of plans.

Works Guidelines (s90A).

The Heritage Council's *Works Guidelines*, offers a transparent means of categorising works, as well as outlining the appropriate outcomes which, as a matter of best practice, a designer should seek to achieve. As well, the *Works Guidelines* include criteria which give some clarity as to the works which will be considered to have a negligible impact, thereby being eligible for a Certificate of Exemption.

Applicants are encouraged to consult the *Works Guidelines* available online at: www.heritage.tas.gov.au

Discretionary permit applications (s34 – s39).

Section 34 of the Act provides that all works to a place listed in the Heritage Register, are to be considered as discretionary, unless approved by a certificate of exemption, **regardless of the provisions of the local planning scheme.**

If a receives a valid application for a place listed in the Heritage Register, it must refer that application to the Heritage Council within five days.

The Heritage Council then has seven days from the date it receives the referral in which to tell the planning authority if it:

- a) has no interest in the application (in which case the application is dealt with purely by the planning authority and the Heritage Council may not have any further part in the assessment process, including making representations);
- b) has an interest in the application; or
- c) has an interest and requires further information in order to undertake an assessment.

Requests for additional information (s37).

If the Heritage Council notifies the planning authority that it needs additional information, the planning authority must request this of the applicant for the Heritage Council.

When the additional information is received by the planning authority, it must pass it on to the Heritage Council as soon as practicable, and in any event within five days. The Heritage Council must advise the planning authority whether the information is acceptable as soon as practicable and in any event within 14 days of receiving that further information.

Importantly, the assessment period does not run until the Heritage Council provides notice that the additional information answers the requirement of that request.

Advertising.

When both the planning authority and the Heritage Council are satisfied that they have all the information they require to make their assessment, the application must be advertised.

It will be up to each individual planning authority to determine how they will advertise these applications. Separate advertisements referencing both the Planning Act and the Heritage Act are not necessary.

Extensions of time (s39(3)).

If the Heritage Council advises the planning authority that they have an interest in an application that has been referred to them, they have the opportunity to also advise that they require an additional 14 days in which to undertake their assessment. In this case, rather than a total time of 42 days under Section 57 in which to make a decision, the period is extended to 56 days. The Heritage Council may only request one extension of time (i.e., one 14-day period).

If an extension of time is requested by the Heritage Council, it does not impact on the ability of the planning authority to seek its own extension of time from the applicant under Section 57(6A). Where an extension of time is made by the planning authority, the assessment period available to the Heritage Council will be similarly extended.

Decisions (s39(6)).

An applicant will receive one permit from the planning authority which incorporates both its and the Heritage Council's decision. There are three possible outcomes:

1. *The Heritage Council consents to the discretionary permit unconditionally*

In this case the planning authority can approve or refuse the application on planning grounds. The planning authority may add its own conditions.

2. *The Heritage Council consents to the discretionary permit with conditions*

In this case the planning authority may approve or refuse the application, but where approved must ensure that:

- a) the Heritage Council's conditions are included in the permit; and
- b) no additional conditions set by the planning authority conflicts with any condition required by the Heritage Council.

3. The Heritage Council or the planning authority may refuse the application.

But where the Heritage Council refuse, the planning authority must refuse to issue a permit, irrespective of whether it otherwise would have approved the application.

Appeals (s45).

Section 45 of the Heritage Act is relevant to appeals relating to planning applications, where the Heritage Council was involved in making the decision. The Heritage Council is automatically joined as a respondent to any appeal.

Where an application is refused solely on the grounds of the Heritage Council's refusal to give consent, with no other planning scheme considerations, the Heritage Council will be the sole respondent. Where an appeal is lodged against a decision of the planning authority, the planning authority will take the lead role with the Heritage Council's involvement as determined by the grounds of appeal. In matters where there the grounds for appeal involve heritage and planning matters, both are a party to the appeal.

The Heritage Council will also be joined as a respondent to any appeals relating to requests for further information, as determined by the grounds of the appeal.

Correction and minor amendments of permits (s41)

If the planning authority wishes to make a correction to a permit under Section 55 of the Planning Act, or if an application is made for a minor amendment under Section 56, where the change may have an impact on the heritage significance of the place (or a heritage condition) the planning authority must consult the Heritage Council and have regard to any submissions made by them.

Although not provided for in the Act, if the Heritage Council has issued a Certificate of Exemption or notified the planning authority that it was not interested in being involved with the assessment, the planning authority is still encouraged to refer the minor amendment request to the Heritage Council. The amendment may propose works which would not necessarily have been exempt or for which the Heritage Council, had it known, would have been interested in being party to the assessment. Where possible, the Heritage Council will endeavour to work with the planning authority and the applicant to negotiate a solution which will allow the process to remain as an amendment to an application rather than requiring a new application.

Compliance.

Part 8 of the Act gives the Heritage Council power to undertake enforcement action, including issuing stop work orders and notices to take or stop action. However there are no provisions in the Heritage Act which provide guidance on how the Heritage Council should liaise with planning authorities with respect to compliance matters.

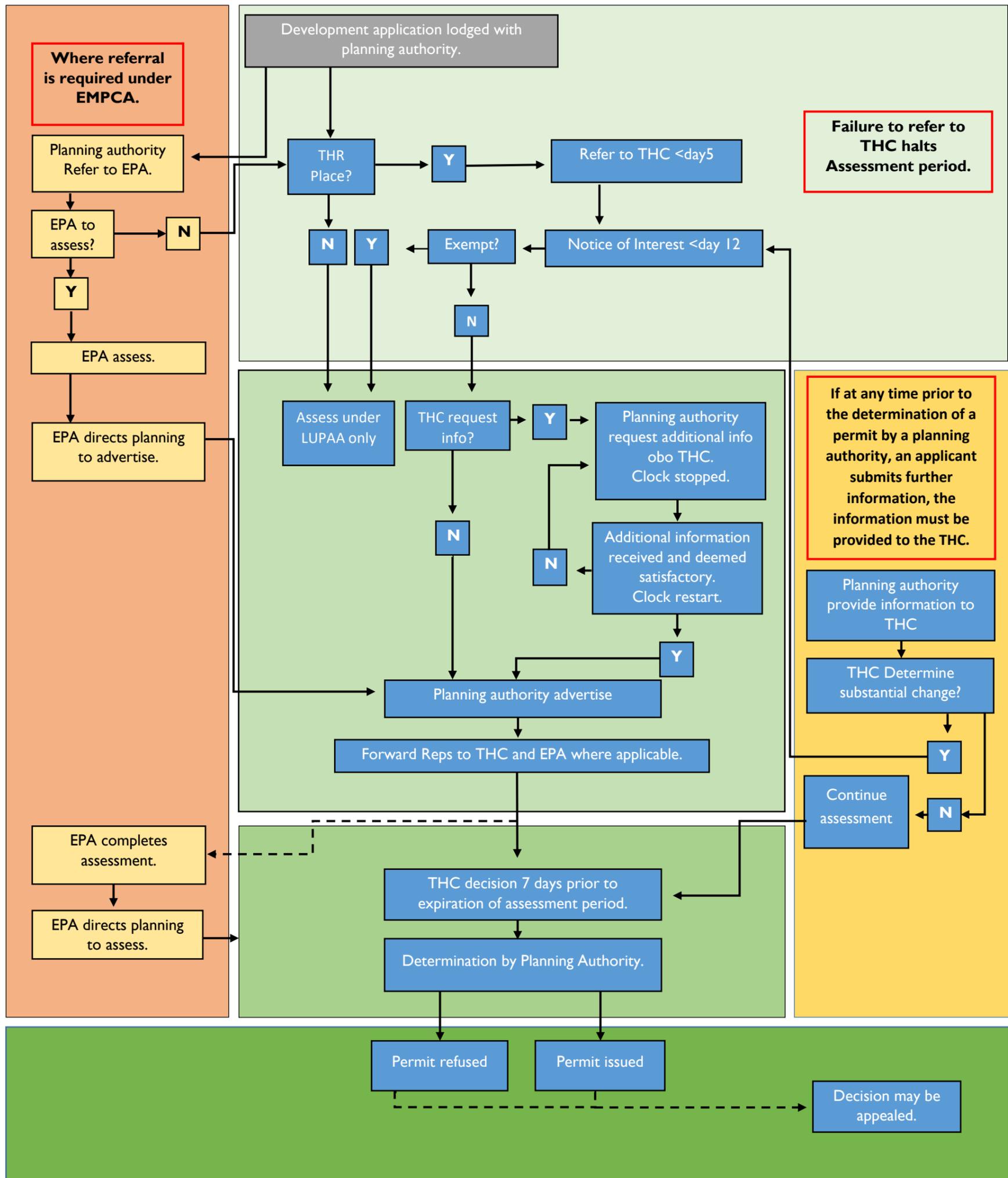
The preferred approach is to discuss the matter with the relevant planning authority to coordinate a response and attempt to negotiate a satisfactory outcome prior to formally pursuing orders and penalties under the Heritage Act.

Orders and penalties may not be pursued unless there is an extremely severe breach in compliance. The Heritage Council works with owners to reach a suitable solution rather than take punitive action in the first place. As such, a planning authority should expect that even for those compliance matters for which the Heritage Council takes the lead, the Heritage Council will first try to negotiate a suitable solution with the owner.

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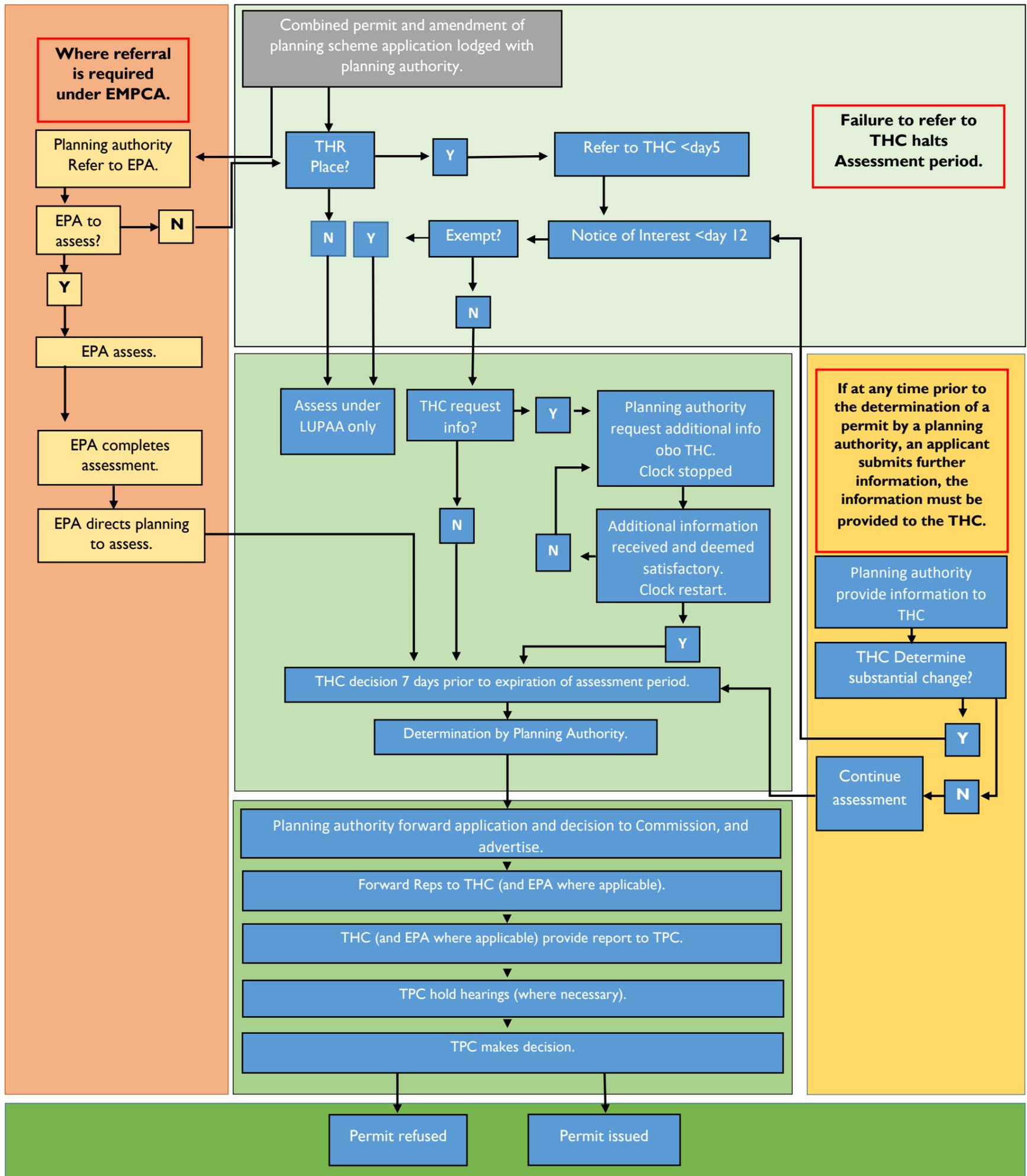
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FLOWCHART FOR THE ASSESSMENT OF DISCRETIONARY PERMIT APPLICATIONS.



This flowchart is a guide for the *Historic Cultural Heritage Act 1995*, and should not be solely relied upon in making decisions regarding an application for a discretionary permit.

FLOWCHART FOR THE ASSESSMENT OF COMBINED PERMIT APPLICATIONS.



This flowchart is a guide for the *Historic Cultural Heritage Act 1995*, and should not be solely relied upon in making decisions regarding an application for a discretionary permit.

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