



# Consultation Report

## Our heritage: A collaborative effort *Review of the Queensland Heritage Act 1992*

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# 1. Overview

The Queensland Government is dedicated to promoting and protecting our state's diverse heritage places. This is primarily achieved through operation of the *Queensland Heritage Act 1992* (Heritage Act).

The government is committed to reforming Queensland's heritage legislation to ensure it is fit for purpose and delivers real benefits to communities by streamlining processes and reducing red tape.

Since its introduction in 1992, the Heritage Act has fostered growing appreciation and recognition of heritage. In particular the role of local governments in managing the protection of local heritage places is now firmly established. Last reviewed in 2008, it is now timely to assess the currency of provisions in the Heritage Act to further support best practice and effective implementation.

This current review of the Heritage Act was announced in May 2014 along with the release of a public discussion paper ***Our heritage: A collaborative effort Discussion paper – Review of the Queensland Heritage Act 1992***. The paper structured discussion points across five themes with questions to assist respondents with their submissions.

Consultation on the discussion paper generated solid stakeholder engagement and included face-to-face meetings and a large number of detailed written submissions. Feedback from the consultation highlights the shared interest in, and commitment to, cultural heritage by all stakeholders.

This report provides a synthesis of the key issues raised by stakeholders during consultation. It does not seek to respond directly to the issues raised but will be used as an important reference to directly guide preparation of the legislative review of the Heritage Act.

The Department of Environment and Heritage Protection (EHP) would like to sincerely thank all consultation participants who provided highly constructive and considered responses. The importance of heritage issues and the Heritage Act to the community, to local government and to industry, was expressed in the enthusiastic feedback.

*NB. The jurisdiction of the Heritage Act does not include Aboriginal or Torres Strait Islander cultural heritage, which are covered respectively under the Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003.*

## 2. Background

In 2013 Minister for Environment and Heritage Protection Andrew Powell invited the Queensland Heritage Council (Heritage Council) to provide advice on ways to improve the protection of the state's heritage and to assist with a review of the Heritage Act. The Heritage Council provided the Minister with a range of suggestions, including a review of how the object of the Heritage Act is achieved, refinement of Heritage Register provisions, better recognition of local government's role in local heritage, and reconsideration of register appeal provisions.

The ***Our heritage: A collaborative effort*** discussion paper was prepared by EHP to outline the options related to these issues, as well as other ideas and suggestions that have been raised by property owners, local and state governments and the community over the past few years.

## 3. Objectives

The purpose of the consultation process was to:

- Inform and involve key stakeholders and the community in the review of the Heritage Act
- Seek contributions and feedback from across governments, industry and the community on issues relating to heritage protection to guide reform and modernisation of the Heritage Act.

## 4. Method

The discussion paper ***Our heritage: A collaborative effort*** opened for public comment on 8 May 2014 for a period of six weeks.

The discussion paper was divided into five topic areas:

1. Queensland Heritage Register
2. Doing work to heritage places
3. Local government
4. Archaeology
5. Enforcement.

Each topic area was divided into key themes. An explanation for each key theme was given to inform respondents of main issues and review considerations. Each key theme was accompanied by specific questions for respondents to complete.

Public notification of consultation was undertaken via:

- Media release on 23 May 2014
- The Queensland Government's Get Involved website [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)
- A dedicated web page on the EHP website [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au)
- Announcements on the EHP Twitter and Facebook accounts
- Announcements through monthly backbenchers email through the Minister's Office
- Published articles in industry and peak body e-newsletters and email posts
- Direct email contact with 44 organisations to inform them of the consultation, encourage submissions and to invite them to meet directly with the department. Representatives contacted included:
  - key government departments responsible for owning and managing heritage places
  - industry organisations (heritage peak bodies, building and development bodies, representative owners and managers)
  - local governments
  - local government organisations.

EHP held meetings with representatives of 12 organisations (Local Government Association of Queensland, Brisbane City Council, Ipswich City Council, City of Gold Coast, National Trust of Queensland, Queensland Heritage Council, Urban Development Industry Association, Property Council, the Government Architect, and Museum and Gallery Services Queensland, Department of Natural Resources and Mines) to collect direct feedback.

## 5. Consultation summary

### 1. Queensland Heritage Register

There was general support among stakeholders for clarification of the levels at which heritage significance is managed, including the introduction of a heritage management hierarchy. There was also endorsement for review of the heritage register and for improving the currency and consistency of register content and giving greater consideration to 'representativeness' (variety of types of places represented on the register). There was also a call for a single heritage register of all heritage-listed places in Queensland.

### 2. Doing work to heritage places

There was general support among stakeholders for increasing the scope of work allowed under a general exemption. However, many respondents' support was on the proviso that a clear definition of 'minor or minimal impact' in describing work allowed under an exemption certificate was included.

Many respondents supported establishing a simple form of heritage agreement for places made at time of entry to the register, stating this would give clarity and certainty to owners. However, many qualified their support suggesting that the form of agreement should address the individual circumstances of a place if it was to be effective. Reference to heritage agreements in the heritage register was seen to promote transparency and accountability for work at heritage places and ensure information was openly and easily accessible.

Strengthening essential maintenance requirements for places on the Queensland Heritage Register was supported as a means to reduce wilful damage or demolition of places by neglect. However this view was counter balanced with concern over the potential burden this may place on owners without means to maintain their properties. Suggestions for what should be done prior to undertaking emergency work at heritage places emphasised the need to seek advice from qualified professionals (such as engineers or architects) and recording of work. There was a strong call for a clear and accurate definition of what constitutes an 'emergency' to be provided in the Heritage Act.

### 3. Local government

Stakeholders gave robust acknowledgement to local governments' vital role in heritage protection. However there was significant concern over local government capacity and resourcing to undertake this work. The need to build capacity in matters of local heritage identification and management was raised, as was the complexity of the planning system as it relates to local heritage, and the need to ensure that changes in the Heritage Act will align with the requirements in revised planning legislation and the single State Planning Policy.

The theme of many respondents regarding several of the local government issues was support for powers to be given to local government (for example, regarding essential maintenance works and exemption certificates), coupled with concern over the impost on local government, and their ability to exercise these powers.

### 4. Archaeology

There was strong support for the proposed integration of archaeological places into the State Heritage Place category in order to simplify the current system, as well as support for more clearly defined processes and outcomes regarding the discovery of archaeological artefacts. Additionally, respondents supported the protection through the Heritage Act of aircraft that have crashed into the sea, but many questioned the proposed 75 year timeframe.

### 5. Enforcement

Support for the integration of the stop order and interim protection order was seen as a means to reduce red tape, remove duplication and improve efficiency. However caution was expressed that the order would need to address the individual circumstance and heritage significance of a site. Support was given to more targeted court orders related to offences against a heritage place, however the need for more clarity over enforcement parameters was raised. A majority of submissions called for the current financial penalty system to be retained and the inclusion of a requirement that offenders directly restore or reconstruct the heritage place that was damaged.

### Additional feedback

Many stakeholders provided further comments on issues beyond the scope of questions presented in the discussion paper. These included suggestions for the review to consider:

- Additions to the Heritage Act:
  - the provision for the heritage listing of diverse types of places as well as moveable heritage items not kept at a registered place (e.g. pieces of equipment from railways and ships).
  - more recognition of significant architecture of the twentieth century and the recent past
  - recognition of the value of industrial and geological heritage, and information on their management (e.g. mining heritage, including abandoned mines)
  - a greater focus on adaptive reuse.
- Revision of the make-up of the Queensland Heritage Council:
  - to include an architect and an engineer with heritage expertise and experience.

In addition, stakeholders also:

- identified deficiencies in Queensland's cultural heritage, including:
  - a lack of a museum dedicated to Queensland's history (e.g. like New South Wales' Powerhouse Museum)
  - publicly accessible and well-curated classic Queensland timber houses
- suggested the state develop and establish online processes to simplify and streamline heritage protection procedures and forms to ensure an efficient and consistent approach across government levels, help support resource poor local governments, and minimise costs over the long term.
- called for financial support and incentives for owners of heritage-listed buildings, to ease the disadvantage which is at times associated with ownership.
- proposed the need for a licensing system to be introduced to ensure competent professional advice is provided for assessment of heritage-listed places and their maintenance, modification and conservation.

## 6. Participation summary

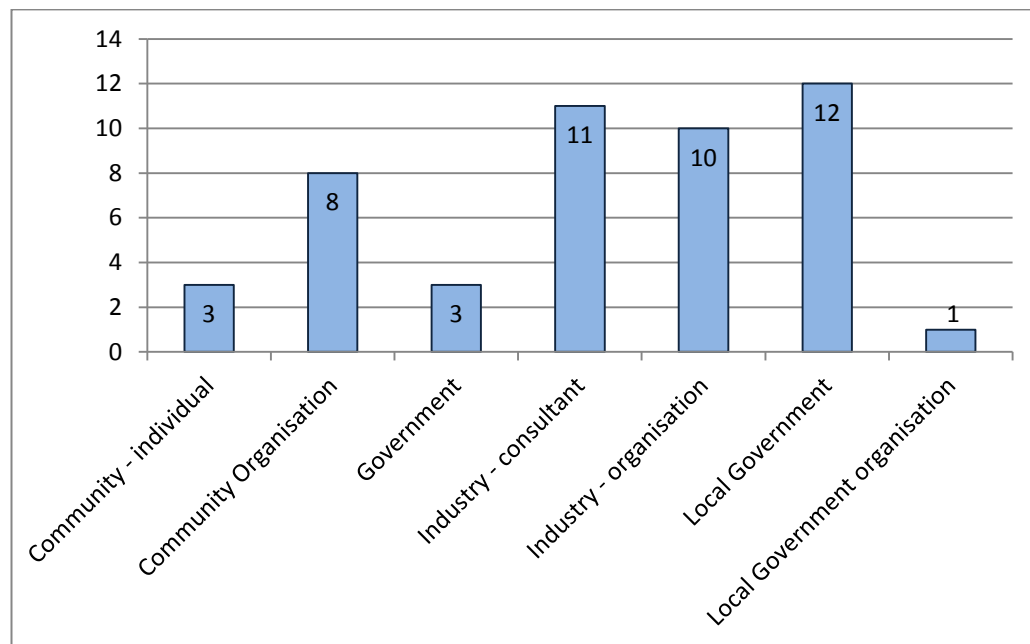


Figure 1: Consultation participation summary

A total of 48 formal submissions were received. Refer to Appendix 1 for the full list of respondents.

Divided into representative groups, the distribution of submissions are as follows:

- Three community individuals - individual members of the public
- Eight community organisations - groups collectively representing a particular community concern (of these, four own and manage heritage places)
- Three state government departments
- Eleven industry consultants - individual consultants and/or professionals with a working knowledge of the heritage industry
- Ten industry organisations - organisations representing collective professional interest areas of building and development, archaeology, tourism and heritage
- Twelve local governments – representing predominantly larger authorities along the east coast. Of these, submissions were prepared by a range of divisions within local government including policy, strategy, planning and cultural heritage services. Despite direct contact to encourage input from remote and far west local governments, no submissions were received.
- One local government organisation - representing the collective interest of Queensland local governments.

## 7. Analysis method

Analysis of submissions was undertaken by EHP by dividing and quantifying responses to each question into four categories:

- Supported (a “yes” response)
- Not supported (a “no” response)
- Alternative/unclear (including mixed or unsure responses and heavily qualified responses)
- No response.

Many responses provided extensive qualifying comments. These comments were divided into themes as a basis for isolating key issues raised by the question.

Each question (where applicable) has been summarised in a pie chart with segments coloured according to category (supported, not supported, alternative/unclear, no response). Each segment is labelled with the number of responses to provide a quick reference/summary of overall submissions. A ‘total response’ figure shows how many submissions provided a written comment to the question (e.g. ‘Total responses: 38/48’ is 38 written comments on this question out of the total 48 submissions).

## 8. Submission analysis

### 8(a) Queensland Heritage Register

#### Concept of a heritage management hierarchy

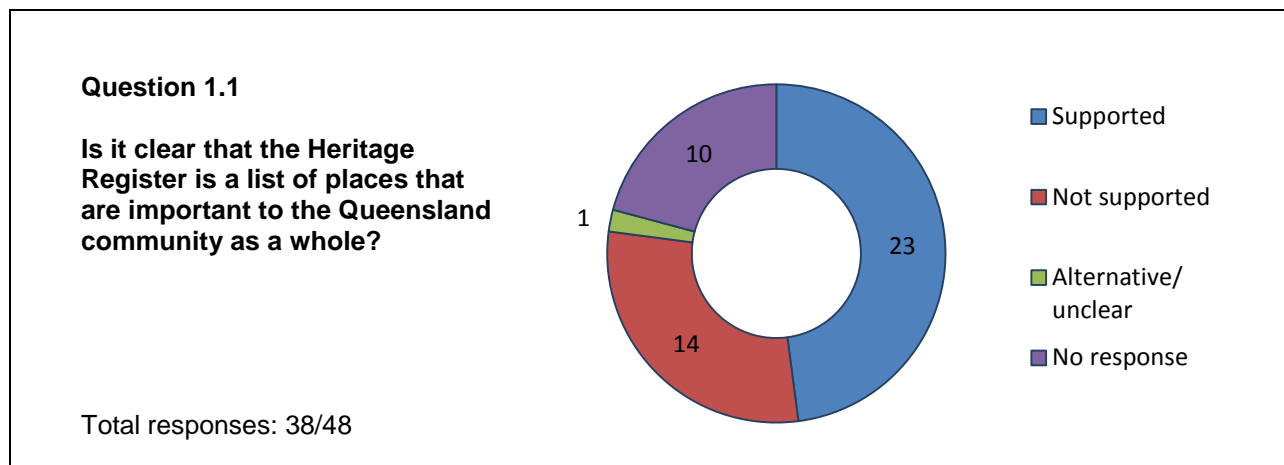


Figure 2: Question 1.1 summary of responses

#### Key issues:

- Representativeness**—While some respondents stated that the Heritage Act should include a best of the best principle *‘under which there is a set quantum to the number of listings of any one property type’*, a greater number of respondents supported expanding listing and including multiple examples of places of a particular type. These respondents stated this would ensure diversity amongst types and across regions, insure against accidental loss or damage of a type (as there is more than one of the type on the register), strengthen Queensland’s heritage *‘story’* and provide a fairer representation of heritage places throughout the state to include regional variations. A number of respondents suggested increasing the *‘representativeness’* of the register. Comments included: not all Queensland history themes are represented; there is a need to integrate forward planning in the listing process by considering places likely to be important in the future; there needs to be better representation of significant 20<sup>th</sup> century places; and, moveable objects (not kept at a registered place) need to be included. Some suggested that resources (for example, consultant reports) existed to assist listing. It was also suggested that it may be helpful for the department to collaborate with other professional organisations in developing the register to ensure it is truly representative.
- Up-to-date**—It was stated that the register needs to contain reliable and up-to-date information that is readily available.
- Single register for all heritage places**—Several respondents suggested a need for a central database to list all heritage places, to assist with clarity and dispel prevalent community confusion and misconception about heritage listing and its implications. A single register where places were clearly marked with their level of significance (local, state, national) would assist community understanding of the levels of heritage significance and promote streamlined and consistent heritage listings and in turn improve development outcomes.

Respondents stated that the current hierarchy of multiple registers was confusing and exacerbated misunderstandings about levels of heritage significance. A number of respondents stated there is community confusion over what constitutes local or state significance and a general lack of understanding of the criteria used to assess significance and called for the assessment criteria be simplified.

- Local heritage places**—Some respondents stated greater clarity and streamlining of local registers is needed to relation to local government planning schemes. It was suggested that the Queensland Heritage Council have the authority to recommend to local governments that a place be listed on its local register where that place does not meet state significance threshold but is worthy of protection.
- Education and publicity**—A number of suggestions were made for the need for continuing and greater public education on the importance of the register and what is on it, to help embed the importance of

protecting cultural assets within the wider community. A number of respondents stated that while those who work in the heritage field have an understanding of the register, the wider community does not. It was stated that embedding the register in government policy and planning would enhance and promote heritage places and their potential for *'expansion and/or improvement'*, dispelling the idea that heritage listing is a *'restrictive measure'*.

*The Heritage Act should include.... "a greater focus on adaptive reuse. Place-sensitive adaptive reuse would assist in offsetting the cost of maintaining ageing heritage assets, without subjecting them to major works."*

(Industry organisation)

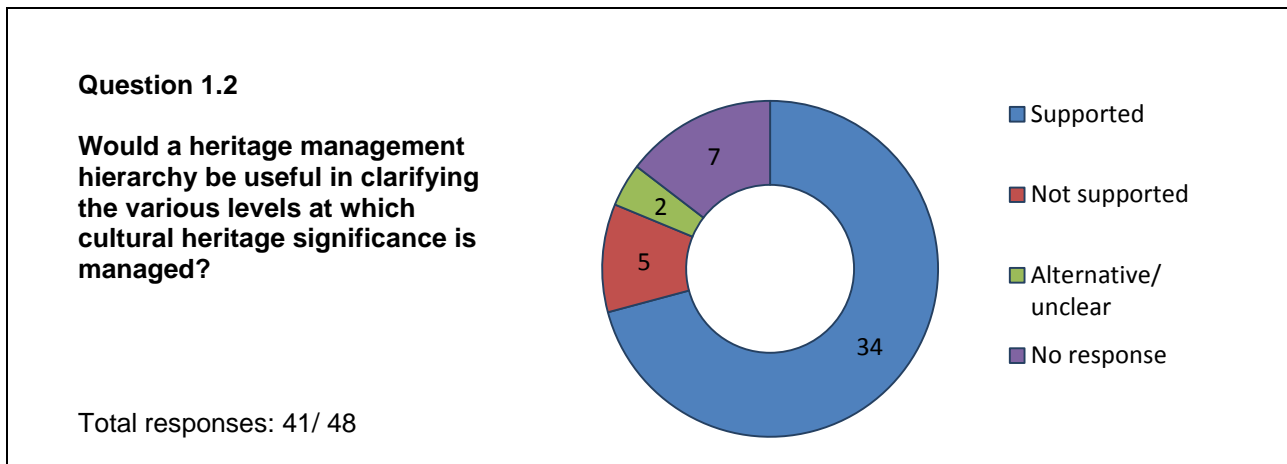


Figure 3: Question 1.2 summary of responses

**Key issues:**

1. **Greater clarity**—The concept of a heritage management hierarchy was overwhelmingly supported with many respondents stating the hierarchy would be useful in *'clarifying the levels at which cultural heritage significance is managed and the relationship between each level'*. A number of respondents stated that including the hierarchy within legislation would make it enforceable and *'have the capacity or the will to resource the level of management required'*. Conversely some respondents stated that the hierarchy would not be useful if it was used to *'reduce or transfer'* responsibilities for heritage management between levels of government. One respondent suggested the word *'hierarchy'* be replaced by *'framework'*.

Some respondents stated if the hierarchy was to be legislated it would require additional definitions and a standardised, clear decision process for designating the *'level'* of a place (particularly state or local). A number of respondents stated that the criteria to assess state significance could be adapted to assess local significance; however a consistent methodology to apply the criteria is needed. One respondent suggested the hierarchy be complemented by a simpler heritage classification system such as that which occurs in the United Kingdom.

Of the alternative/unclear responses, all commented that a hierarchy already existed so it was not clear what the question was suggesting. However, these respondents also unanimously stated the current system could benefit from clearer explanation.

2. **The role of local government**—A large number of respondents indicated a concern about the capacity of local governments to fulfil their role in local heritage protection. A lack of consistency in heritage management processes across different local governments, issues of resourcing and a lack of available heritage expertise were consistently raised. Many respondents stated there was a need for sufficient resources to be provided to implement ongoing, skilled, professional heritage assistance to local governments. One suggestion was to establish a network of heritage advisors. Some concern was raised that while there was a requirement for local governments to establish a heritage register under the Heritage Act, there was no requirement to actually have anything in a register or for regular updates to registers.
3. **Guidance material**—Several respondents stated that it was not appropriate to include the management hierarchy in legislation and that it would be best presented in supporting material or spelt out clearly in training or departmental guidelines



## Reviewing the Queensland Heritage Register

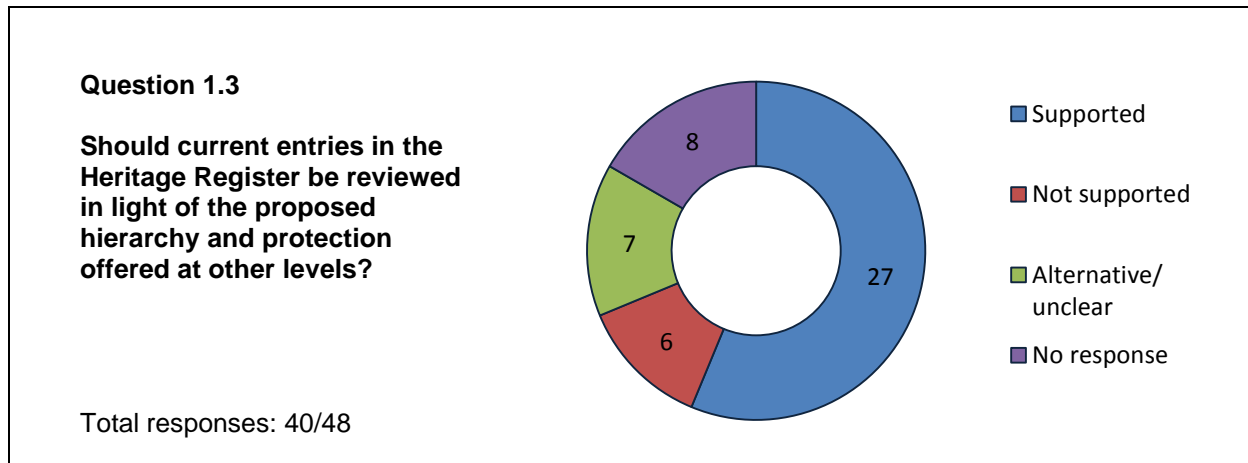


Figure 4: Question 1.3 summary of responses

### Key issues:

1. **Opportunity to improve the register**—A number of respondents saw the review as an opportunity to improve the content of register entries by bringing them up to date and making them consistent. One respondent suggested developing a mechanism for entering precincts into the register. By clarifying levels of heritage significance of places and reinforcing the hierarchy, a review would also provide the opportunity to better clarify, allocate and reinforce responsibilities for heritage management.
2. **Removal of places**—The possible removal of places on the register during a review process raised some concern amongst a number of submissions. In particular, issues regarding ‘*devolvement*’ of a place from state to local significance were consistently raised and concern over the potential for a place to lose heritage protection during and after transition. Responses included the need for a clear mechanism to be developed to ensure places being devolved from one register to another received ongoing protection during and post-transition. Several respondents stated that if places were to be removed, a clear process would need to be developed which included full consultation with owners and a ‘*thorough and consistent applied assessment*’. While some respondents stated this should be based on the established criteria, others stated the current criteria needed simplifying to improve community understanding.
3. **Impact on local government**—The impact and potential outcomes of review of the Heritage Register on local government was raised several times. Concern was expressed over the ability of local governments to list and manage places that were moved from the state Heritage Register to a local register. Some thought local government protection capabilities varied across the state and many local governments did not have the resources and expertise to deal with new local heritage listings. One respondent stated a place should not be devolved to local governments if this was going to result in undue burden or it caused an anomaly with listings in an existing planning scheme. Other respondents noted that shifting a listing from a state to local register would have a knock-on effect and would require amendments to local planning schemes.
4. **Undermines current processes**—Some respondents did not support the review suggesting it undermines current registration and assessment processes and brings into question the integrity of decisions made by previous Queensland Heritage Council members.

*“Many of the entries in the Qld Heritage Register are out of date and inconsistent. A review is good in principle but only if protection offered is real and appropriate. There is concern regarding the capacity and expertise of local government – some Councils are doing excellent work in this area while others do not have the resources or capacity, or have other priorities in their communities.”*

(Industry organisation)

**Question 1.4**

**Who should be notified when an entry in the Heritage Register is being reviewed?**

*NB. Open ended question cannot be represented by a pie chart*

Total responses: 37/48

**Key issues:**

**Owners to be notified**—Of responses, all but one stated the owner needed to be notified. The majority of responses also listed the local government, state government, those with an interest in the place, original nominees/applicants, occupiers, neighbours, active community groups and the general public, should be notified. A range of means of notification were suggested but most common were: direct contact with owners and local governments and public notices in the media and websites. Some respondents stated that no notification should be required if the review was a simple desktop analysis and no changes to the entry in the register were being considered.

**Question 1.5**

**Should the same requirements for notifying an owner apply when reviewing and potentially removing existing entries, as apply when a place is entered in the Heritage Register?**

Total responses: 39/48

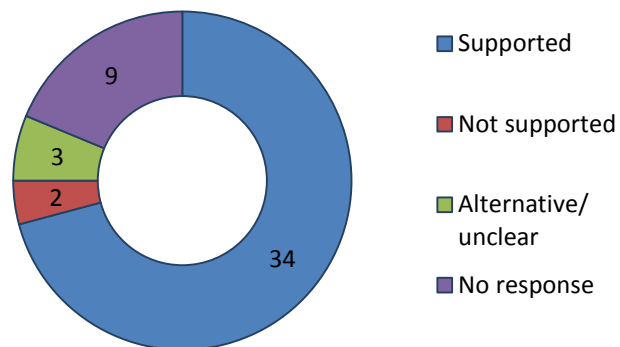


Figure 5: Question 1.5 summary of responses

**Key issues:**

1. **Notification requirements**—Responses indicated that increasing heritage boundaries of existing places should generate different requirements to proposals to decrease a boundary. Two respondents recommended notification requirements could be minimised so that the process is not as lengthy or detailed as that required for adding a property. One respondent noted that the form of notification should be changed dependent on a place’s ownership— publicly-funded places or publicly-funded institutions should require notification to the owner as well as the public.
2. **Retain appeals provisions**—A number of the affirmative responses noted that appeals provisions for owners should be maintained.

## Making a heritage application

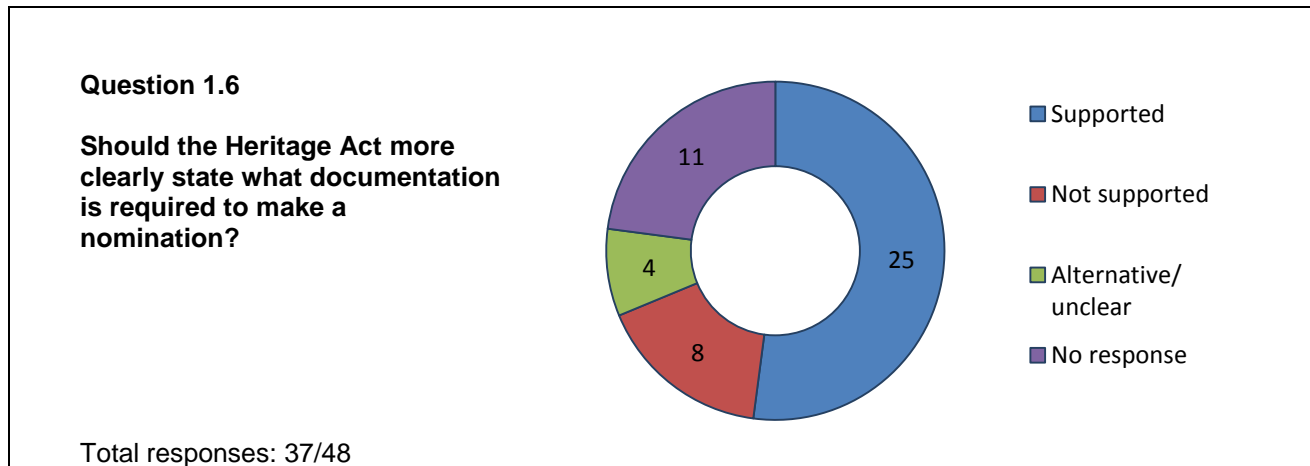


Figure 6: Question 1.6 summary of responses

### Key issues:

**Concern regarding onerous requirements**—A significant number of respondents stated their concerns about the onerous requirements of the nomination process. Some respondents called the requirements overly-prescriptive, demanding, burdensome, daunting and intimidating. Several suggested that the nomination process would be improved by the provision of a policy document and guidelines, and a more user-friendly nomination application form.

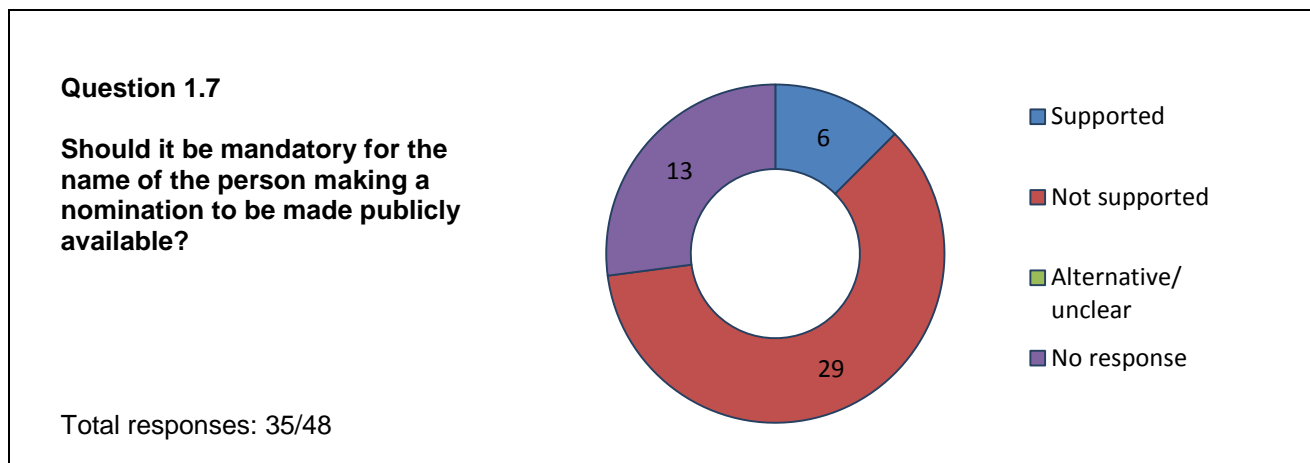


Figure 7: Question 1.7 summary of responses

### Key issues:

- 1. Exposure to potential retribution or retaliation**—The majority of unsupportive responses expressed strong opposition to the prospect of nominators having to reveal their identities because of potential exposure to some form of retribution or retaliation, particularly for individuals in small communities. It suggested this prospect would lead to the loss of significant places because nominators would not be willing to be publicly known.
- 2. Transparency of process**—Of the six submitters in support of mandatory identification of applicants, two asserted this would support greater transparency. A further response recommended consideration of the *Right to Information Act 2009*. Another supportive submitter suggested the process should mirror the process followed under the *Sustainable Planning Act 2009* (the Planning Act) for submissions made on advertised development applications. This process allows discretion as to whether a submitter’s name and contact details are disclosed.

## Responding to a heritage recommendation

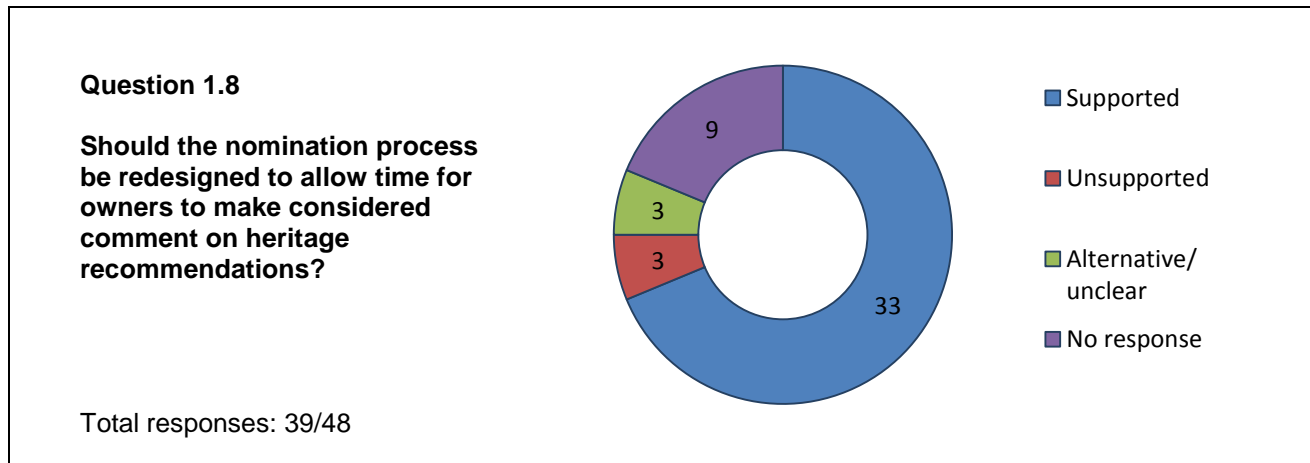


Figure 8: Question 1.8 summary of responses

### Key issues:

1. **Longer timeframes**—The suggested timeframes for owners to consider the heritage recommendation ranged from 30 to 60 days, however several stakeholders expressed concern that the overall processing time should not be increased.
2. **The department’s heritage recommendation**—Several respondents noted that it was necessary and equitable for owners to be given the opportunity to respond to the informed department recommendation put forward to the Queensland Heritage Council, rather than the original nomination.
3. **Local governments and owners**—Several respondents noted the need for local governments as well as owners to be given the opportunity to respond to the department nomination that is put to the Queensland Heritage Council.

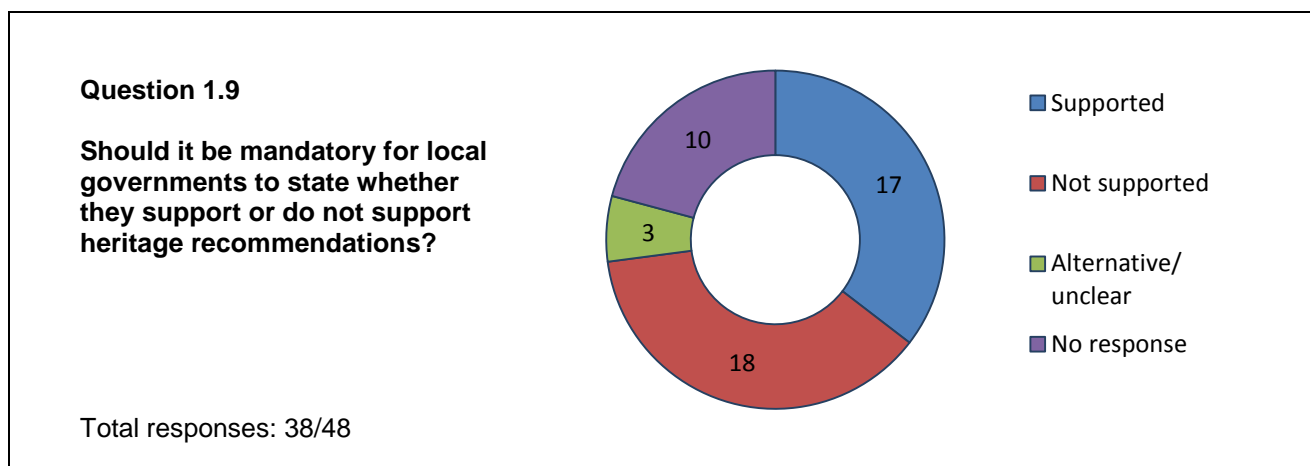


Figure 9: Question 1.9 summary of responses

### Key issues:

1. **Lack of local government resources**—Several respondents raised concern that many local governments do not have adequate resources or expertise to respond. Additionally, many respondents suggested local government’s response, if required to be mandatory, was unlikely to be considered or useful, and may cause delay in the processing of heritage recommendations.
2. **Local government’s support**—Several respondents mentioned that the support of local government should be irrelevant to the assessment of heritage significance, although they should be offered the opportunity to contribute. There was a suggestion that the response from local government could be either to support, not support or neutral.

3. **Not mandatory**—Two of 13 local government respondents supported the mandatory proposal. Nine directly stated they were against the proposal.

## Certificate of immunity

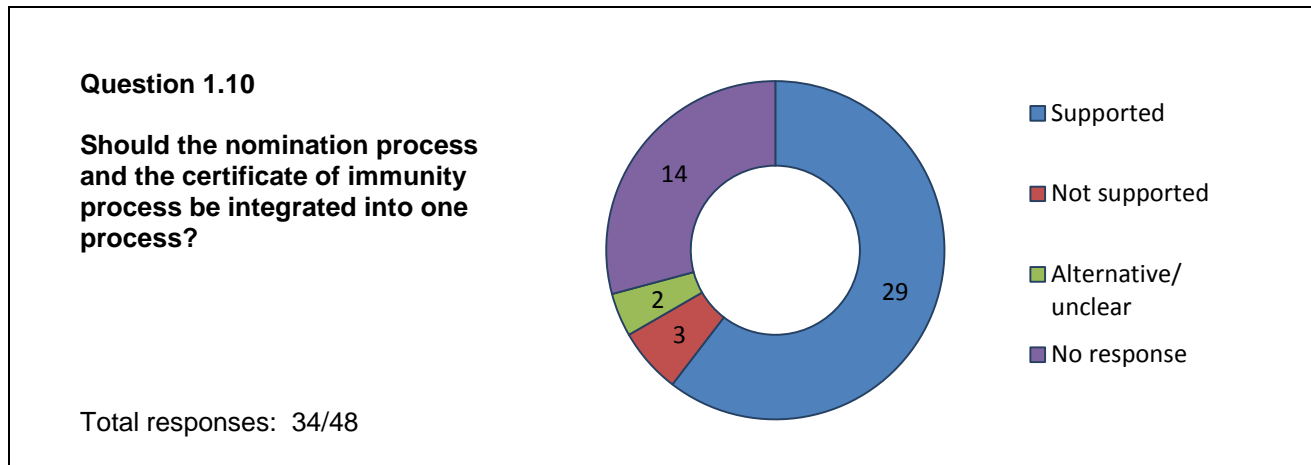


Figure 10: Question 1.10 summary of responses

### Key issues:

1. **Qualifying responses**—The majority of submissions were supportive of the merge but many qualified their responses. There was some comment that support was contingent on the capacity to review nominations under five years. Six submitters suggested the exclusion period should be between two and three years. Other’s stated that if a place is not entered into the heritage register it *‘should not automatically result in immunity, particularly where it might be of local heritage significance’*. Others questioned how the process would work.
2. **Immunity process and impact on owners**—Positive respondents commented this would increase certainty and clarity for owners on the heritage status of their place at time of registration and would *‘reduce administrative burden’*. However, close to half of these respondents cautioned that more information and detail was needed about the process. Some respondents questioned if owners would still have the opportunity to apply separately for a certificate of immunity. One respondent stated that integration would mean owners would *‘need to effectively gamble registering their site to be granted immunity’*. It was also noted that combining the processes may potentially give the community an opportunity to comment on the immunity process. Given the *‘considerable ramifications’* in providing immunity to a site, some respondents stated that the same transparent process and careful assessment against criteria in registration, should also be applied to the process of granting immunity.

*“Yes - The integration of the heritage nomination recommendation, and the certificate of immunity, would increase certainty for owners and applicants regarding the status of new applications. It is however, difficult to fully support the change without knowing more about how the process would be implemented. If an owner of a place wants to ensure a place is not entered into the Qld Heritage Register, do they still have the opportunity to apply for a certificate of immunity, or is this proposed to be part of the heritage nomination application process, requiring the owner to complete all the application documentation of a full appraisal?”*

(Local government)

*“This proposal is logical and has merit. The certificate of immunity application, while driven by an owner/developer wanting certainty, is essentially a nomination in reverse, and in practice, this is how it is dealt with. Accordingly, as the decision has considerable ramifications for a place, it should ideally go through the same transparent process, and be subject to the same timelines.”*

(Industry consultant)

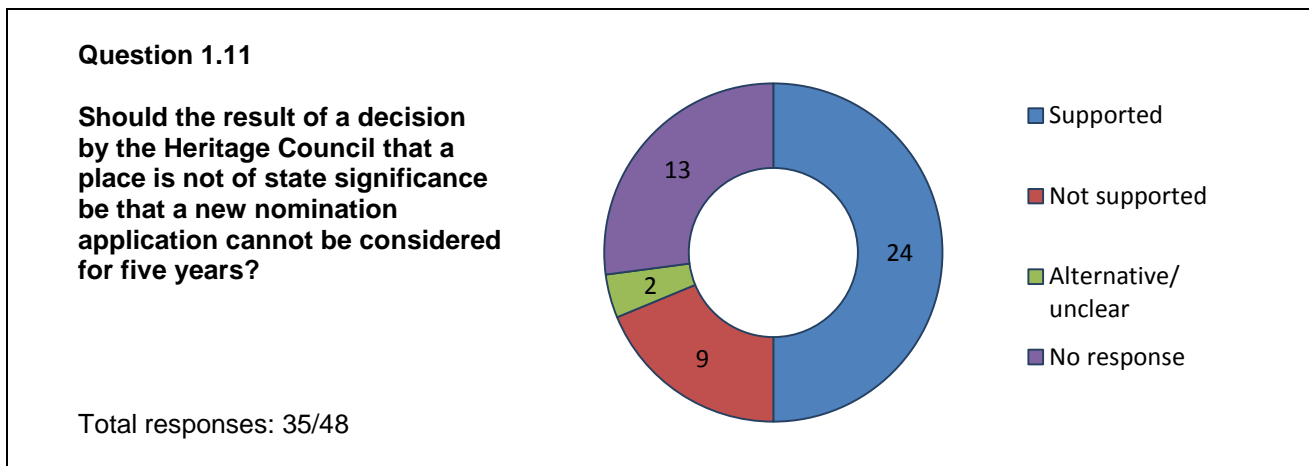


Figure 11: Question 1.11 summary of responses

**Key issues:**

1. **Time limit**—Of 24 affirmative respondents, just under half questioned or qualified their answer in relation to the five-year timeframe. Of these a majority suggested decreasing the time limit for re-consideration. The most common proviso was that a new nomination should be considered if exceptional new information or evidence about a place comes to light. One respondent also recommended that five years is too long in high growth environments. Eight submissions did not support a *'blanket restriction'* citing this was *'too strict'* as new research and information may come to light that warrants re-consideration.
2. **Local government protection**—Two responses suggested that the Queensland Heritage Council be given powers to recommend a place be listed on a local register if it was considered worthy of local protection (but did not have state level significance). However, concern was raised that this may result in a time gap where places had no protection due to the time taken to process the entry of a place onto a local register. Conversely one respondent recommended that the Queensland Heritage Council should not consult local government when assessing a nomination for a certificate of immunity.
3. **Integrated process**—One respondent stated that they did not support integration of the certificate of immunity and heritage registration process but that *'in the event that the Queensland Heritage Council deems a place to be not of heritage significance, through either the heritage register application process or the certificate of immunity nomination process, then it should be considered to have immunity for five years'*.

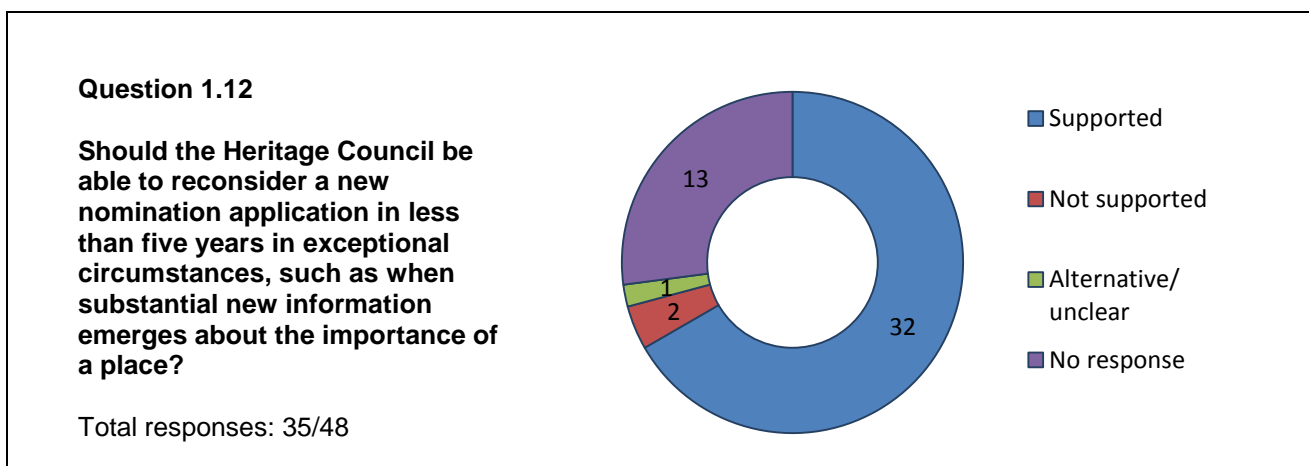


Figure 12: Question 1.12 summary of responses

**Key issues:**

1. **Clear definitions needed**—Many respondents called for a clear definition of *'exceptional circumstances'* and *'substantial new information'* suggesting these definitions be included in the legislation or explained in guidelines.

2. **Impact on owners**—Both affirmative and negative respondents recognised the need for ‘*medium term security*’ for owners of heritage places. A number of comments acknowledged the impact of this provision on owners’ ‘*certainty*’ over the short-term use of their assets. However, differences were noted in how this matter should be dealt with. Some recommended careful consideration should be given to process and triggers. Others clearly stated that if exceptional new information came to light then reconsideration should be undertaken regardless and not be limited by previous decisions or by time frames. Others felt this provision diluted certainty for owners regardless and questioned the point of immunity provisions if reconsideration within five years was allowed. One respondent stated that this provision could be abused resulting in developers and owners ‘*facing considerable expense*’.

## Natural heritage places with historic heritage values

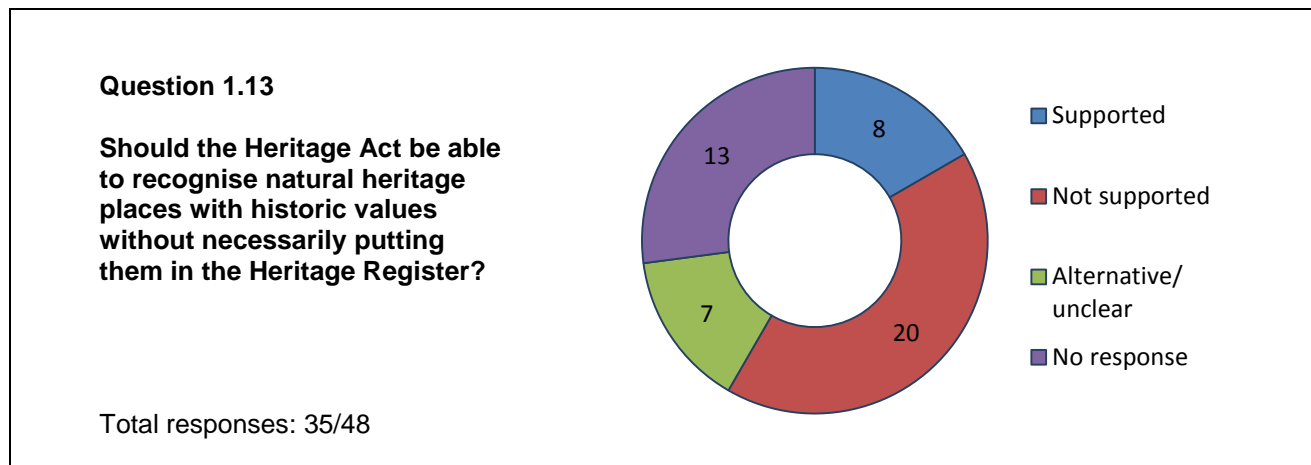


Figure 13: Question 1.13 summary of responses

### Key issues:

1. **Confusion**—There was confusion over the value of this suggestion, with many questioning the purpose of recognising a natural heritage place if there is no protection and the site is not listed in the Heritage Register. Many respondents (answering both yes and no) qualified their response, stating they only supported the proposal if the Heritage Act afforded some form of protection to recognised natural heritage places.
2. **Duplication**—Respondents advised that “*natural heritage places are already managed through other legislation and it would seem to be a waste of resources to duplicate by adding them to the Queensland Heritage Register*”. Places like parks and botanic gardens are cultural places and are not included in this category, although they may also contain significant natural heritage.
3. **Ensuring protection**—Some respondents were concerned about the level of protection that would be offered, and that “the current framework should be maintained until it can be verified that alternate protections carry the same legislative impact.” Otherwise, increased potential vulnerability for heritage places may result. It was also noted that “sometimes cultural values and natural values are in conflict (i.e. historic mine tailing sites and exotic trees in national parks and reserves), and if these places are not managed in a holistic fashion that recognises all values, cultural elements are at risk of being removed.”

*“Recognising’ natural heritage places is of little value and meaningless without legislative protection. Passing responsibility to other authorities (National Parks) seems sensible but do these authorities have the same level of protection that the Heritage Act provides. The ‘same protection objectives’ does not always equate to the same legislative outcome. Care should be taken with ‘reducing overlap’ until convinced that the protection offered is indeed equivalent.”*

(Industry organisation)



## 8(b) Doing work to heritage places

### Exemption certificates

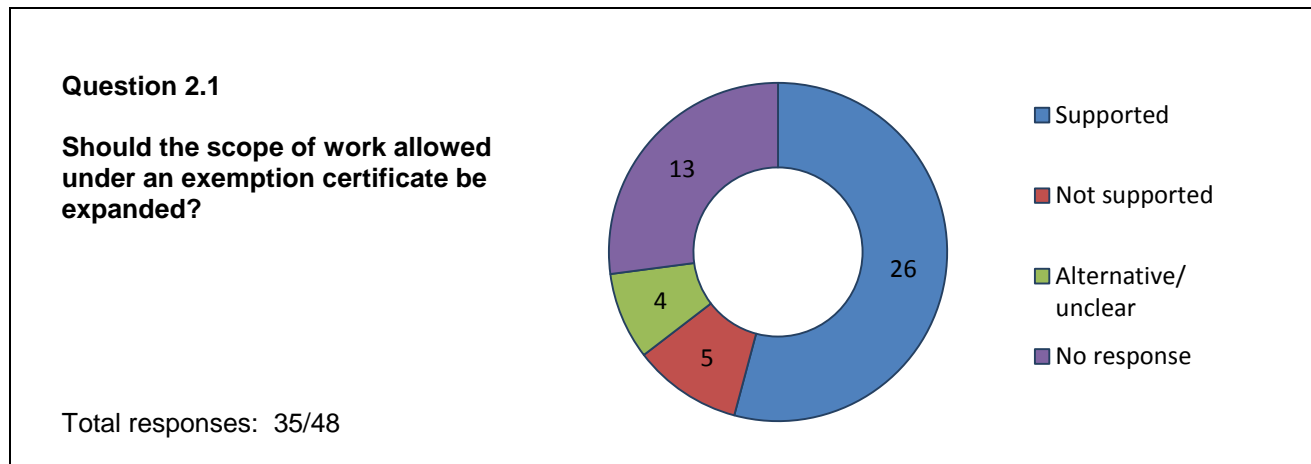


Figure 14: Question 2.1 summary of responses

**Key issues:**

**Definitions and support needed**—Across all responses a key issue was the lack of a clear definition of ‘*minor or minimal impact*’ when describing work allowed under an exemption certificate. Unsupportive and alternative/unclear respondents stated these terms were subjective, open to interpretation and resultant work conducted would have the potential to erode heritage values over time. A large number of affirmative submissions qualified their responses, stating that it was crucial to have very clear definitions in place with support and guidance available to ensure only appropriate work was undertaken so that ‘*exempted work does not put the significance of a place at risk*’. Suggestions to support expansion of the scope of work included: providing written guidance in Heritage Register entries that addressed development issues and clearly identified significant and non-significant elements of a place; availability of experienced department heritage assessment officers (including in the regions) to give advice and support; including certain types of work such as disability access in the definition of minor work; and, development of clear, ‘*strong*’ guidelines and criteria by the department.

### Heritage agreements

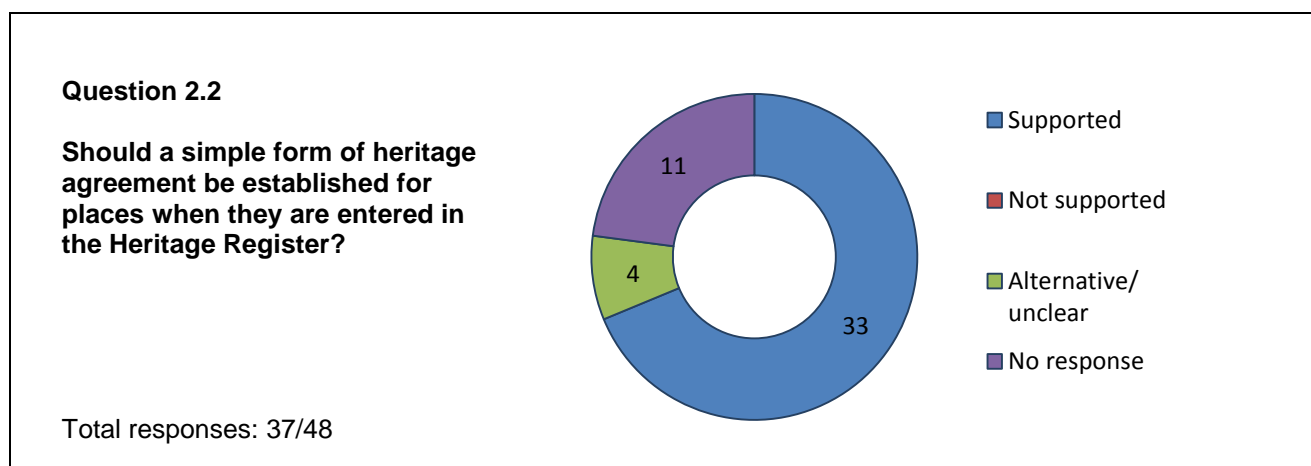


Figure 15: Question 2.2 summary of responses

**Key issues:**

- Provides clarity**—The establishment of a simple form of heritage agreement at time of registration was supported as an effective way of ‘*streamlining the process by which works are approved*’. The heritage



agreement was seen to provide greater clarity and certainty for owners by enabling advanced understanding of what future works and development would be allowed at a place.

2. **Develop a model/pro forma agreement**—Support for developing simple models for agreements was cautioned with the importance of ensuring agreements were written to directly address the individual circumstances of a place to be effective. A number of respondents stated the making agreements would require expert input and questioned who would bear the cost of this—was it a service provided by the department or would owners have to pay a consultant? A number of respondents stated existing requirements for drawing up a heritage agreement under the Heritage Act were onerous and overly complex and a more streamlined process and simpler model of agreement would be beneficial.
3. **Review details**—Some respondents stated it was preferable agreements were not mandatory but developed on request by an owner. Some noted agreements should be attached to a place rather than an owner in case of ownership change, and the opportunity to review agreements should be provided. There were suggestions that existing places on the register should have the opportunity for retrospective heritage agreements to be made.

*“A simpler form of heritage agreement would provide greater clarity. This should be applicable to council owned properties to inform management responsibilities. Consideration should be given to retrospective heritage agreements being put in place for listed places in LGAs”*

(Community organisation)

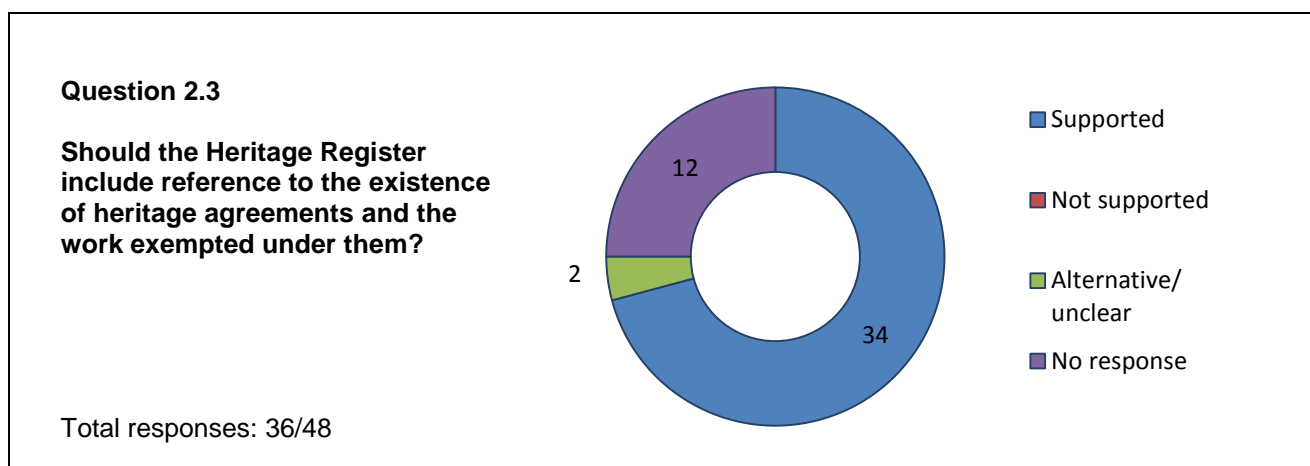


Figure 16: Question 2.3 summary of responses

**Key issues:**

1. **Promote transparency**—Many respondents supported including a heritage agreement in the Heritage Register as it would promote openness and accountability. It may also encourage more owners to develop agreements and potentially reduce the risk of unauthorised work as the community would have a better understanding of what was or was not allowed at a place.
2. **Single source of information**—A number of respondents stated that using the register as a high level, single reference point would allow easy access and effectively form a valuable archive of information about a place, particularly over time and as ownership changes. It was noted, however, that the register would need to be kept up to date for this to be effective.
3. **Level of detail**—A number of respondents commented on the level of disclosure of agreements provided in a register entry. Of these, all but one respondent supported full disclosure of the content of agreements, with one suggestion of a direct link to a full copy of the agreement document.
4. **Potential issues**—One respondent commented that attaching heritage agreements as part of the registration process may provide opportunity for third party objections during the public comment phase of the Queensland Heritage Council decision process (e.g. raising an objection to the scope of work in an heritage agreement). This was said to be the experience of another state with similar legislation. Another respondent raised the issue that public access to agreements may prompt owners to compare and argue for similar exemptions despite the circumstances of individual places being quite different.

## Essential maintenance requirements

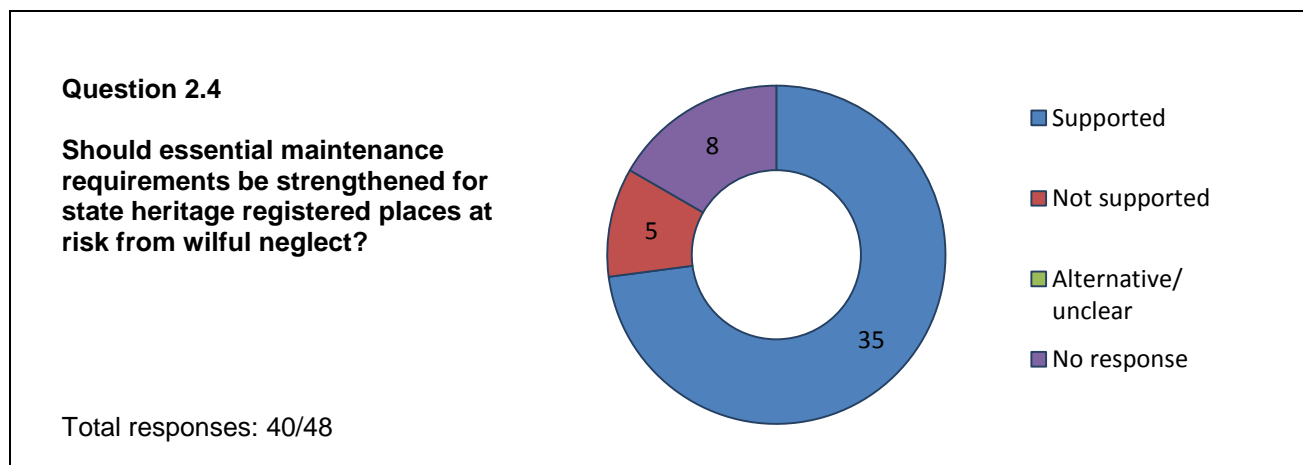
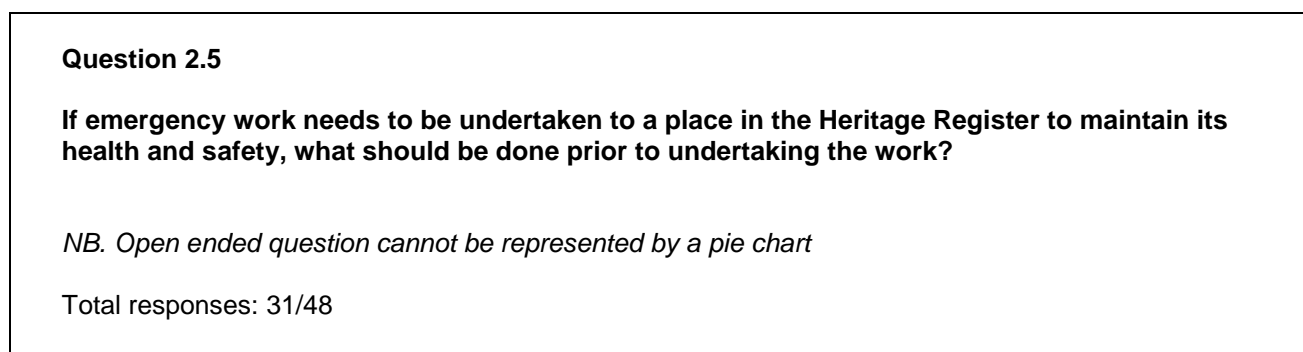


Figure 17: Question 2.4 summary of responses

### Key issues:

1. **Burden on owners**—Despite strong support, a general concern on the impact of this provision on owners was expressed. It was suggested this impact should be offset by providing assistance to owners of properties in the form of grant funding and putting checks in place to ensure owners were not required to do work that was beyond their means. One suggestion included that if these powers were strengthened there should be capacity for owners to appeal a notice. Of the five submitters that did not support this provision, two believed this would place additional burden on owners to maintain properties they did not wish to maintain and three believed the current provisions were adequate.
2. **Demolition by neglect**—Of those in support, a good number of submissions implied (or stated outright) that some owners purposefully neglected their heritage-listed properties with a view to arguing their property could not be salvaged and should therefore be demolished. Some indicated these strategies were understood to be in operation by the community at large and that strengthening essential maintenance requirements may be a deterrent.

## Emergency work to a heritage place



### Key issues:

1. **Suggestions**—A number of submitters believed more recording of the emergency work done should take place, and several suggested engineers or architects experienced with heritage properties should be consulted.
2. **Define emergency**—A number of comments suggested a clearer definition of emergency would be of assistance.
3. **Expanding requirements**—Supporting submissions stated a change to the current system was needed with a quarter arguing for expanding the scope of requirements prior to undertaking emergency work as outlined in the Planning Act (providing there was no imminent threat to life or health).

## 8(c) Local government

### Local government

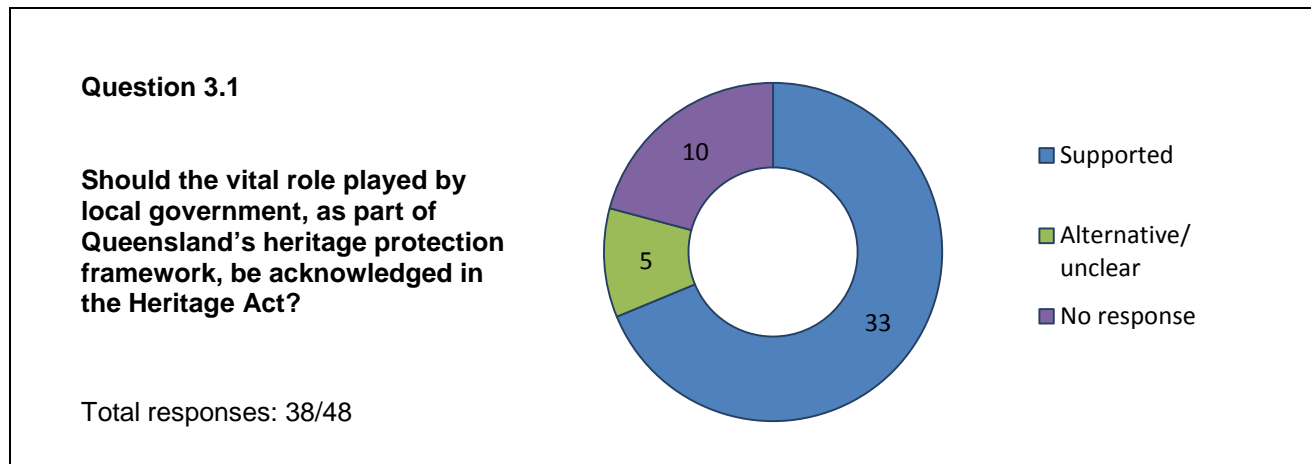


Figure 18: Question 3.1 summary of responses

#### Key issues:

1. **Agreement about role of local government**—A majority of submitters acknowledged local government has an important role to play in protecting places of local heritage significance. Of 12 local government submissions, eight directly supported this question, two did not respond and two believed the current Heritage Act sufficiently described the role. Local governments raised a general concern about what this would mean in practice.
2. **Capacity of local governments**—A strong theme in the majority of submissions was concern that local governments were not resourced to meet their obligations in relation to places of local heritage significance. Some suggested that the Queensland Government assist in building this capacity in partnership with local government. Others commented that this may result in additional burden on local governments who may not be able to meet requirements. Some respondents expressed uncertainty over what ‘*acknowledgement*’ actually entailed.
3. **Complexity in the current system of local heritage protection**—An emergent theme related to the complexity of the system and process of development assessment of local heritage places (primarily in relation to those protected through planning schemes, rather than those identified in local heritage registers made under the Heritage Act). Concerns included that places listed in heritage overlays or other planning scheme mechanisms did not afford property owners the capacity to appeal the listing on the grounds of a place’s heritage significance (or not). Suggestions included that the Heritage Act mandate criteria for assessment for listing in local heritage planning scheme provisions and that these be modelled on the current state cultural heritage criteria outlined in the Heritage Act.
4. **Duplication/listing overlap**—A number of submissions considered there was unnecessary duplication of regulation as places entered in the State heritage register were also listed in local heritage registers or planning scheme provisions related to heritage. *‘There is no justification for properties to be listed on both the State and local heritage registers, where the citation or reasons for nomination are identical.’*

*“If the local governments are expected to identify, record, protect and maintain additional heritage entries, they will also require the powers and resources in the Act to support them.”*

(Local government)

## Local heritage places and registers

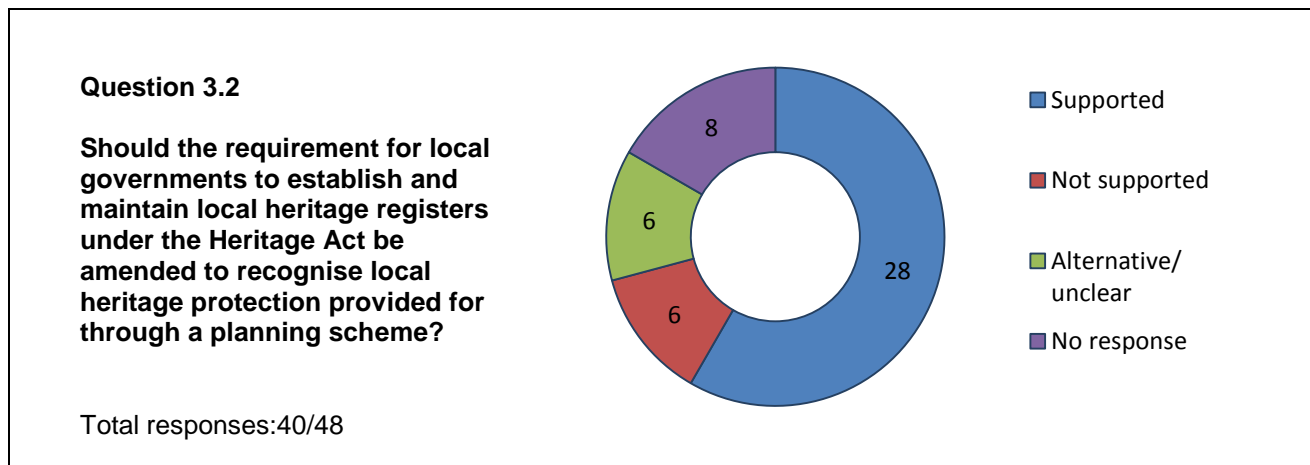


Figure 19: Question 3.2 summary of responses

### Key issues:

- Adding places and changing place details**—A number of submissions made points about the process for adding places into a relevant planning scheme provision and then managing the details about these places via the planning scheme amendment process.
- Integrated development assessment system (IDAS) code of local heritage places**—A concern was raised that in fulfilling the policy intent of recognising both local heritage registers and local heritage planning scheme protections it was important to ensure local government could choose the code to apply to development assessment.
- Opt-in system**—One submission asked for an opt-in system to be established under the Heritage Act to allow local governments to choose when they took up various legislative powers and tools for local heritage place identification and management.
- Complexity of system and capacity building**—A strong theme in submissions was the need to build capacity amongst some local governments in matters of local heritage identification and management. Many submissions also described the complexity involved in the planning system as it relates to local heritage and the need for changes in the Heritage Act to align with the requirements in revised planning legislation and the single State Planning Policy.

## Essential maintenance requirements for local governments

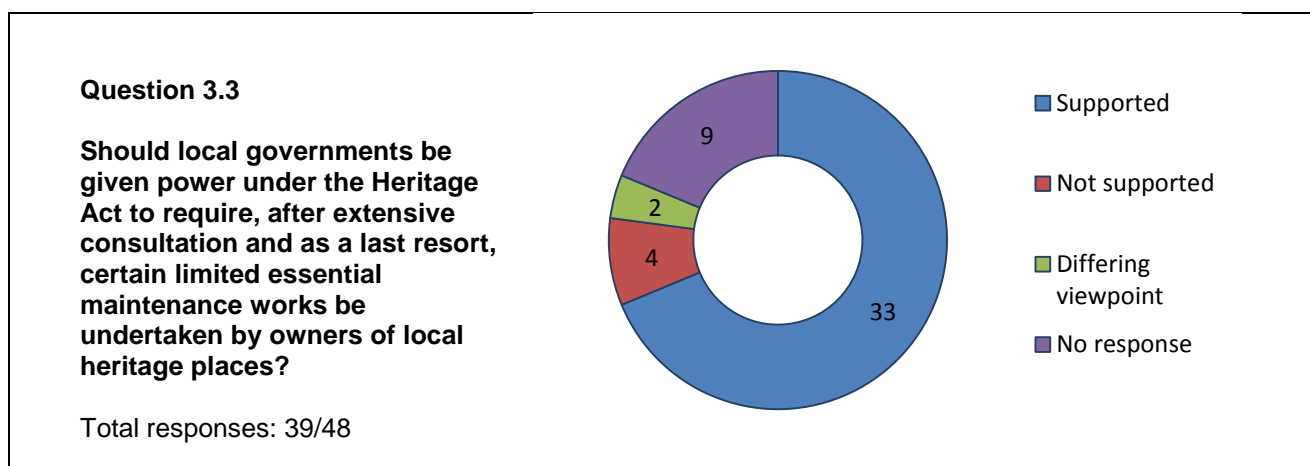


Figure 20: Question 3.3 summary of responses

**Key issues:**

1. **Impost on local government**—This theme emerged in many responses to all the questions under this general heading. Of the four submitters opposed to essential maintenance powers being provided to local governments, two were local governments that believed they and many of their counterparts in different areas lacked the resources or capacity to use them, although they recognised their value in principle. Another local government regarded it as a compliance impost and suggested many local governments would lack the expertise to use them.
2. **Relationship with planning system**—A number of submissions cautioned against introducing further complexity to the existing planning system and potentially creating requirements for doing work to local heritage places that put the Heritage Act in conflict with the Planning Act and the *Building Act 1975*.

**Exemption certificates for local government**

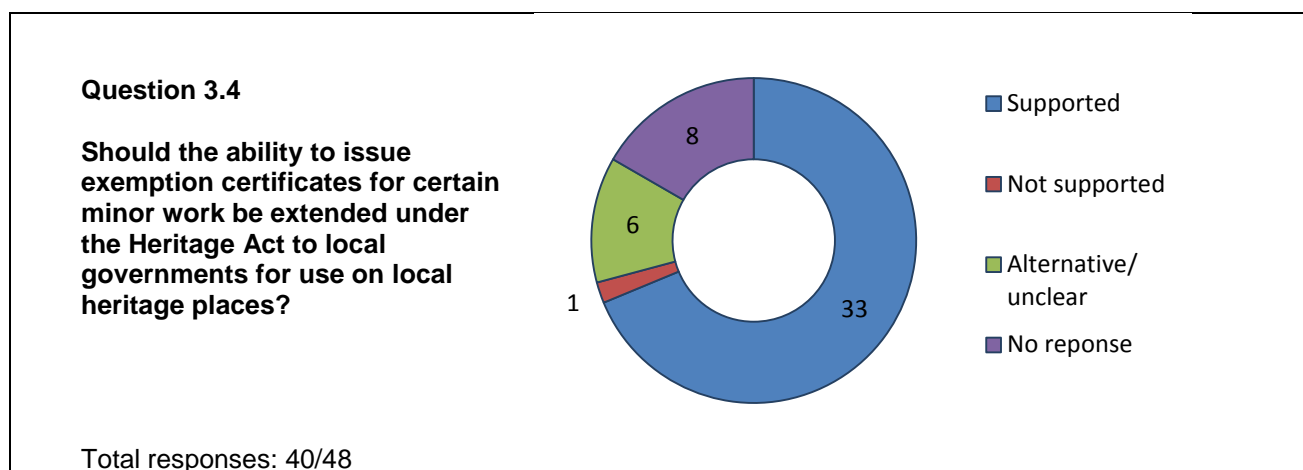


Figure 21: Question 3.4 summary of responses

**Key issues:**

1. **Local government resources/assistance**—While the extension of powers to local governments was supported thirteen of all supportive and differing viewpoint responses expressed concern over the ability of local governments to exercise these powers. It was noted there are *‘practicle difficulties faced by local governments in preparing and updating local registers’* and the information on local heritage places will need to have a greater level of detail than currently provided for under the Heritage Act. *‘the lack of information for local heritage places will potentially make transitioning to use QH (sic) management tools costly’*. A general lack of *‘in house’* local heritage knowledge coupled with a lack of resources to implement and administer exemption certificates (particularly in *‘rural, remote and indigenous councils’*) was also raised. Some respondents recommended support would need to be provided to local governments for this provision to go ahead.
2. **Complexity of planning system**— Generally submissions reflected on the complexity of the planning system and a need to ensure any changes in the Heritage Act did not have unintended consequences in terms of how it operated for lcoal government and local heritage places. A number of respondents stated that clear guidance on what constitutes *‘no or minimal detrimental impact’* was needed. Two respondents suggested that exemption certificates which are most often issued for buidling work would not be particularly helpful as minor works on local heritage places are not subject to application as they are not regarded as building work under the Building Act.

*“The mechanisms used by local governments for heritage conservation have never been properly integrated with mainstream State heritage conservation processes, but rather operates through the planning system. While places that are listed for heritage conservation by the Commonwealth, State or Local Governments should trigger particular considerations for planning and development purposes, primary heritage conservation ought to be achieved by the same processes regardless of the level of government which causes the listing.”*

(Industry organisation)

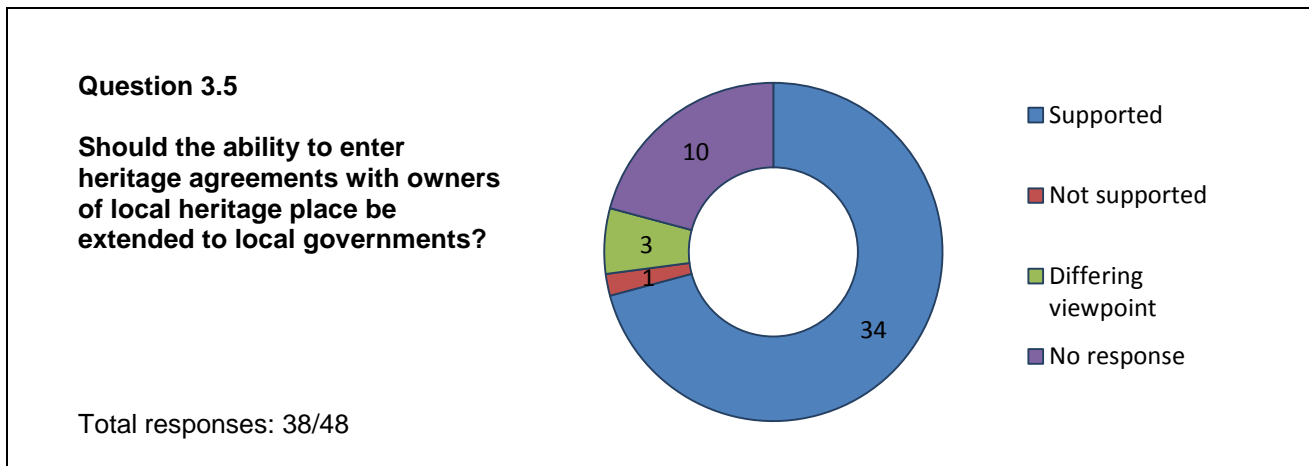


Figure 22: Question 3.5 summary of responses

**Key issues:**

1. **Local government support**—Whilst this extension of powers to local governments was supported, a third of respondents expressed concern over the ability of local governments to exercise these powers. A lack of in-house expertise and limited resources within local governments were cited as key issues needing address if these powers were to come into force. Some respondents recommended access to technical support or professional heritage advice would be needed. Others suggested the department was best placed to provide advice to local governments in the form of direct guidance, publications and assistance from regional staff. One respondent suggested a ‘*simple form of user friendly heritage agreement which addresses the concerns and requirements of an owner*’ and the ‘*inclusion of agreed future work*’ provided there was still the ability to negotiate individual circumstances
2. **Responsibility**—Three respondents suggested the provision be made available to local governments as long as it was not mandatory and at a local government’s discretion as to whether a heritage agreement was entered into. Conversely two respondents stated the state government should be involved, one stating the state should have the overall responsibility for establishing heritage agreements, whilst the other suggesting agreements should be ‘*first vetted by the Queensland Heritage Council*’.
3. **Streamlining**—Two respondents suggested if this power directly mirrored state government process and requirements then it would reduce potential confusion about what works were allowed at heritage places.
4. **Is it necessary?**—Two respondents questioned the need for heritage agreements if exemption certificates were made available for local heritage places.

*“Yes...but only if the local government has access to professional heritage advice either from its own staff, or from a heritage advisor or from EHP and its regional officers.”*

(Local government respondent)

*“Under the Act, heritage agreements are overly complex and include a significant amount of surplus information for an owner. ‘(we)’ support the introduction of a ‘simple form’, user friendly heritage agreement which addresses the concerns and requirements of an owner. Additionally we support the inclusion of agreed future work in these agreements to ensure certainty is maintained for the owner.”*

(Industry organisation)

## 8(d) Archaeology

### Archaeological places

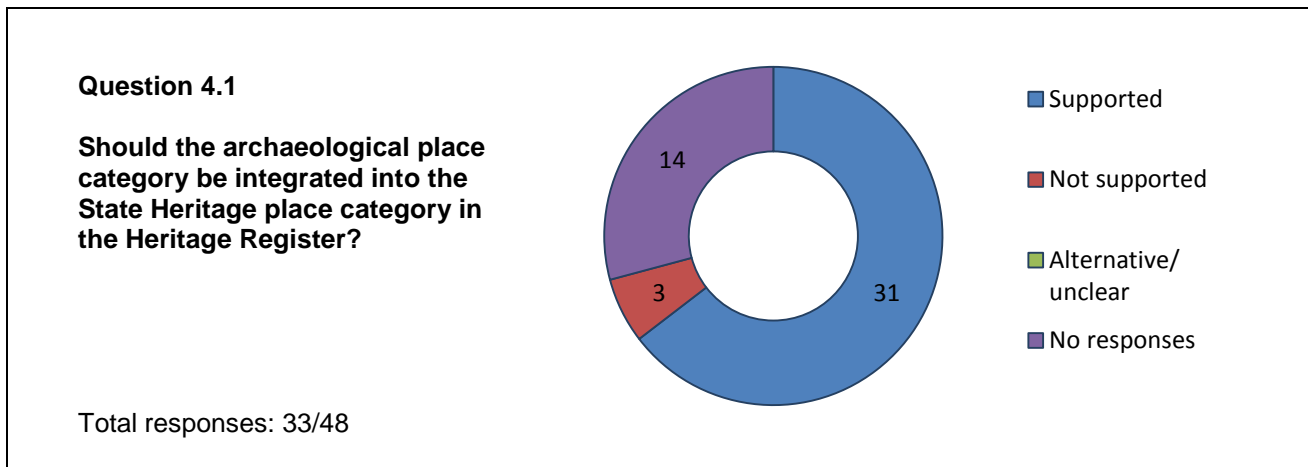


Figure 23: Question 4.1 summary of responses

#### Key issues:

1. **Simplification**—Supportive respondents stated integration would simplify the current system and remove duplication. One respondent noted it would *‘allow the history and heritage values to be incorporated into the stories of the places’* and *‘to some extent alleviate the issues in managing archaeological sites’*. A number of respondents noted that the process for nominating archaeological places to the heritage register would be integrated with the process for nominating a State Heritage Place which would also remove unnecessary duplication. Of note is the comment that this would also allow the community to nominate archaeological places to the Heritage Register (currently the Act does not allow this).
2. **Maintain levels protection**—It was noted that current development assessment provisions for Archaeological Places and State Heritage Places are separate with one respondent cautioning that there should be no loss of statutory protection for archaeological places or their artefacts if the Heritage Act integrated the two place types.
3. **Expanding Heritage categories**—Whilst supporting integration in the Heritage Act, a number of respondents recommended categories of place types within the Queensland Heritage Register be expanded to include natural heritage (including unique rock formations), urban places, cityscapes and landscapes.

*“This would be helpful because it would allow the history and the heritage values to be incorporated into the stories of the places.”*

(Community organisation)

*“It is confusing to have two categories and frequently archaeological places also have some above ground features of note.”*

(Industry organisation)



## Archaeological artefact discovery provisions

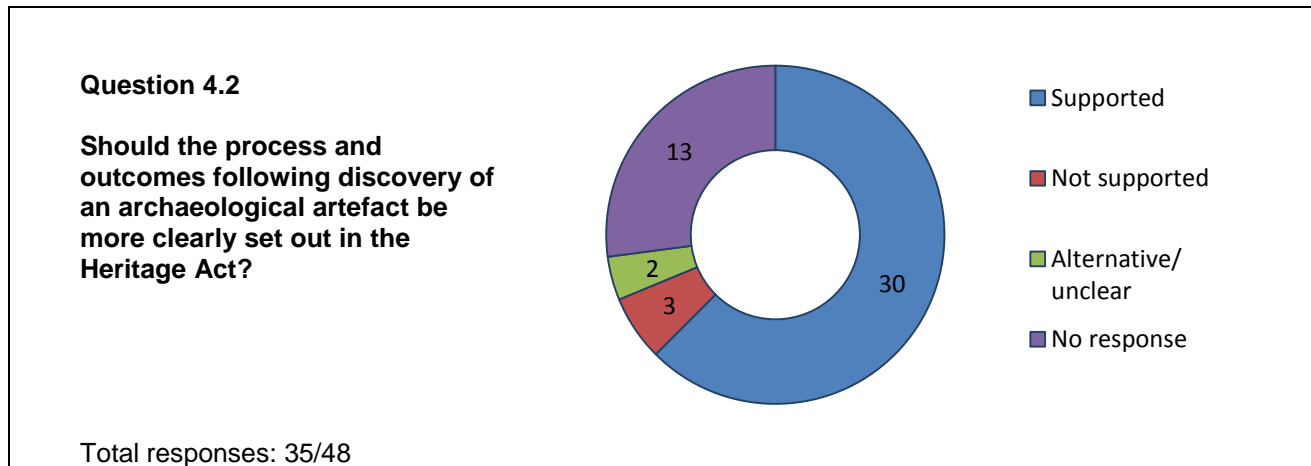


Figure 24: Question 4.2 summary of responses

### Key issues:

**Enforcement** - One respondent commented that this section of the Heritage Act was unenforceable, and that the protection of important artefacts and sites can only be improved with the mandatory requirement for assessment, prior to disturbance as it is with Aboriginal heritage.

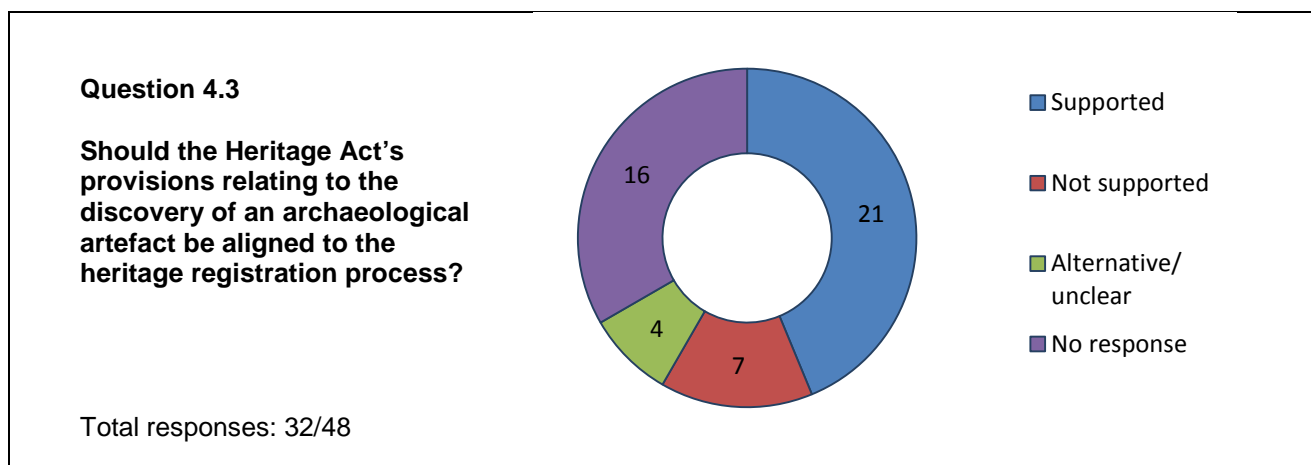


Figure 25: Question 4.3 summary of responses

### Key issues:

**Simple process needed**—Issues raised by respondents for and against this question was the importance of keeping the notification/discovery process simple and non-onerous in order to encourage people to come forward and provide information on a discovery of an archaeological artefact. Additionally, archaeological artefacts should have a separate, more streamlined process by which they are assessed and protected.

*“Archaeological artefacts should have a separate, more streamlined process by which they are assessed and protected. The heritage registration process can be lengthy, and in the case of the discovery causing works to cease while a full registration process is carried out might be unduly onerous on owners of such places.”*

(Local government)



## 8 Shipwrecks

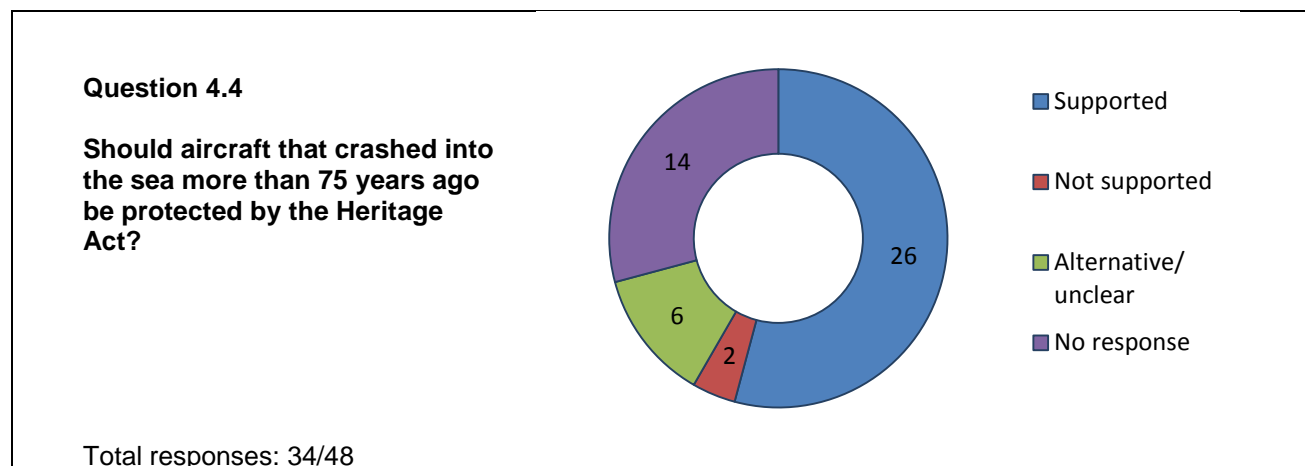


Figure 26: Question 4.4 summary of responses

### Key issues:

1. **Timeframe**—Whilst there was strong support for this proposal, many questioned the 75 year timeframe, with some seeing it as an arbitrary period of time, and most suggesting a lesser time of 65 or 70 years. It was suggested that using the principles of the Burra Charter or other agreed international principles as a method for establishing protection, would be better than protection based on age.
2. **Definition of underwater cultural heritage**—A suggestion was provided that there is a need for a broad and encompassing definition of underwater cultural heritage, and that Australia should become a signatory to the UNESCO Convention for the Protection of the Underwater Cultural Heritage.

*“There are around 2000 shipwrecks from the 18<sup>th</sup> and 19<sup>th</sup> centuries alone along the Queensland coast, and the location of the vast majority is still not in official records. There needs to be some kind of incentive program such as an award for reporting wrecks, and some kind of monitoring system.”*

(Community organisation)

*“Aircrafts that were part of the war effort and crashed along the Queensland coastline should be protected by the Heritage Act. Listing these aircraft crash sites may allow for tourism operators to identify opportunities to better showcase their destination and Queensland.*

(Industry organisation)

## 8(e) Enforcement

### Stop orders and interim protection orders

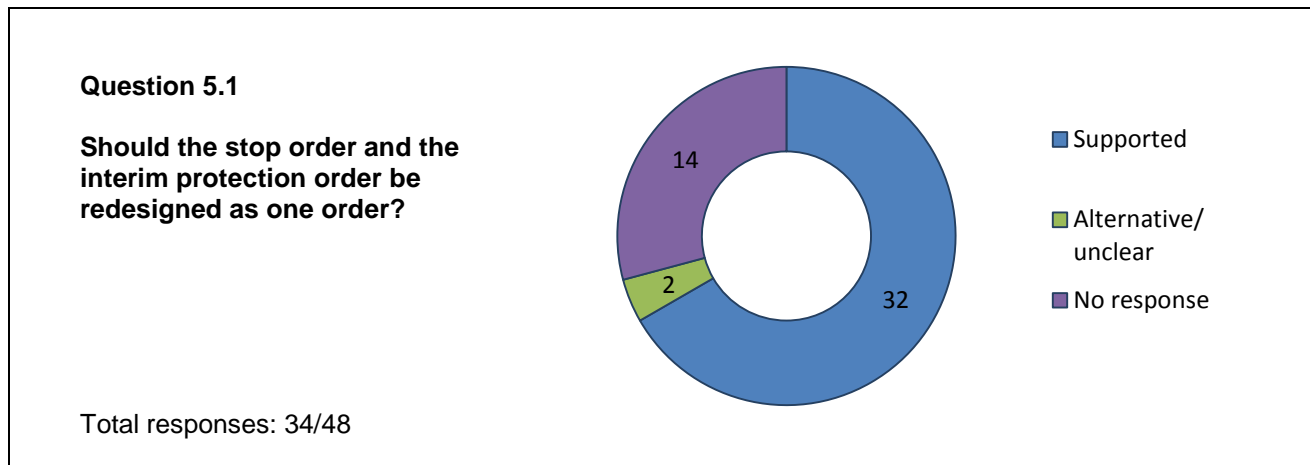


Figure 27: Question 5.1 summary of responses

#### Key issues:

1. **Efficiency**—There was strong support for this proposal, with no respondents were against the integration of the two orders. Chiefly, respondents noted that a single order would reduce red tape, remove duplication and improve efficiency.
2. **Greater clarity needed**—In particular, clarity is needed on the time span of how long the order should remain active, who issues the order and penalties for non-compliance.
3. **More enforcement**—The order should be enforced not just threatened and its name should clearly identify its purpose and the seriousness of the issue.
4. **Timing of the order**—Respondents were concerned about the impact of an order served late in the process, which would be great, with significant delays and financial loss experienced as a result. If it is found that an order could have been reasonably issued at an earlier stage, one respondent suggested the legislation should require compensation to those suffering the loss. It was further suggested this would create a disincentive for last minute nominations by proponents wishing to ‘block a project’.

*“...the replacement of the two orders with one consistent order will reduce confusion, improve the management of the stop order, and provide clarity as to what work may and may not be performed while the stop order is in progress.”*

(Local government)

*“...developments that respect a place’s heritage value will invariably see a greater return on investment, by appealing to those that appreciate those values and who are willing to pay more to enjoy them. A community character that has taken over 100 years to develop should be respected and preserved as a matter of principle.”*

(Community organisation)

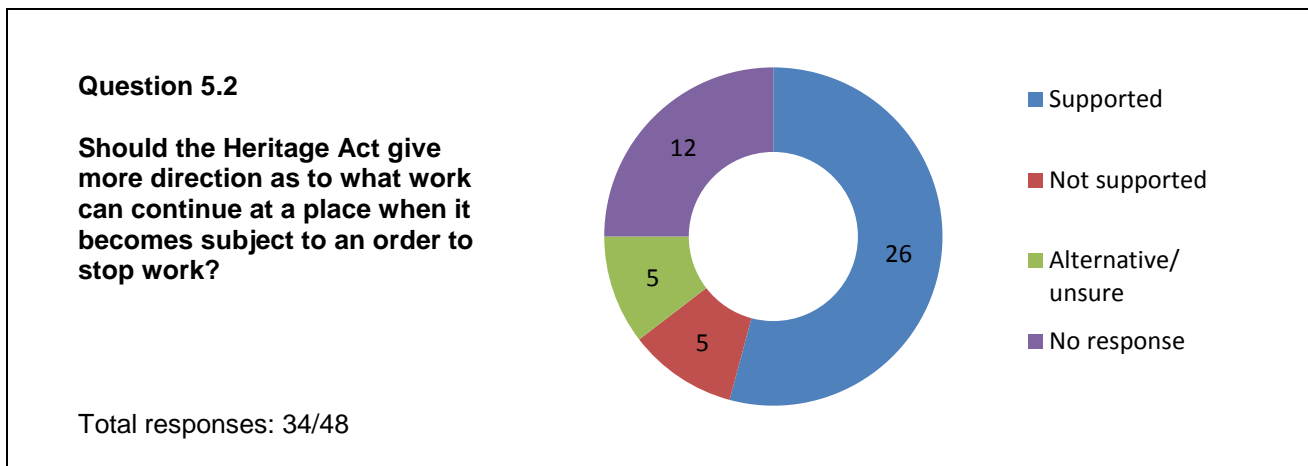


Figure 28: Question 5.2 summary of responses

**Key issues:**

1. **Site specific**—Six affirmative respondents and all negative respondents qualified their answers stating that direction for work should be given on a case by case basis as the heritage significance and risks associated with each work site are too individual to generalise in legislation. Several suggestions stated that orders should be individually drafted and amended to specifically state what work can and cannot take place. One comment noted that as much detailed information as possible should be included in the notice to provide owners with as much certainty as possible.
2. **Continuation of work**—Three respondents stated some work should be allowed to continue on a site where this work did not impact on heritage values. It was suggested the stop work area should be contained as close as possible to the area affected so other works can continue on site. It was also suggested that community groups and neighbours should be notified if this is the case to ‘ensure accountability and monitoring’ of the work. One respondent stated that all work should cease.
3. **Provide guidelines and stipulate duration**—It was suggested direction for work could be given in guidelines prepared by EHP. In relation to maritime heritage it was suggested the annex of the UNESCO Convention for Protection of Underwater Cultural Heritage should be consulted. One respondent stated an investigation under the order should be limited to a maximum of 20 days duration after which time owners should be compensated for loss of time. Two respondents noted there should be a requirement for a comprehensive photographic record of work.

**Court orders**

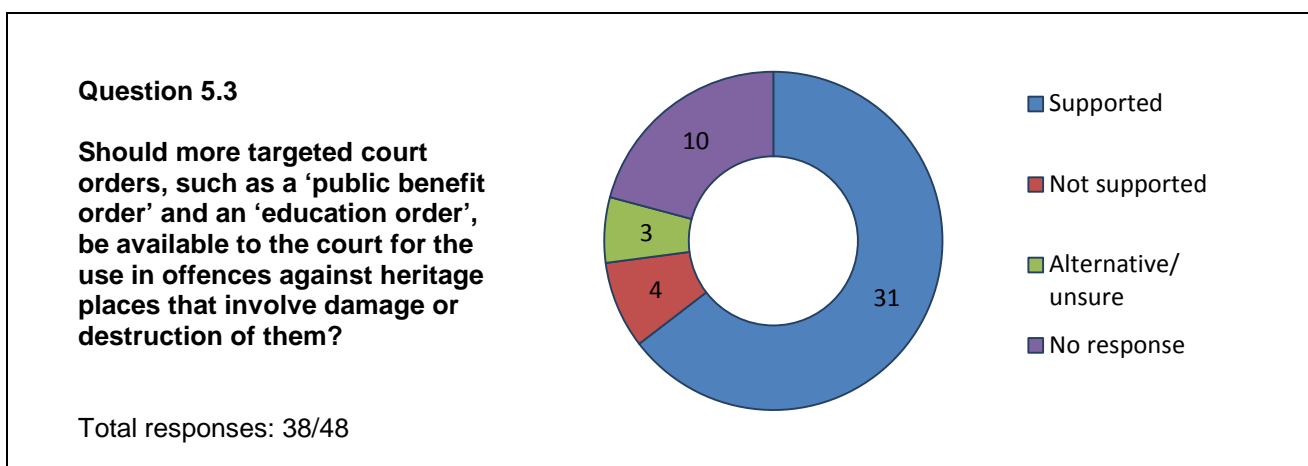


Figure 29: Question 5.3 summary of responses

**Key issues:**

1. **Limited effectiveness**—Despite overwhelming support there was some concern that these types of orders would not be a very effective deterrent if applied on their own without financial penalty - *'likely be regarded as soft solution and worked into the cost of a development'*. One respondent stated that they may add a layer of confusion to the process of law and that it would be preferable to reflect crime legislation in giving courts the power to *'relieve the offender of any profits (or potential profits) generated through the offence'*. Other suggestions included restricting development rights on a site or requiring exact reconstruction of the demolished part of the place. Two respondents supported the use of non-development orders with one of these respondents stating the current time of ten years should be increased or additional penalties applied to offenders.
2. **Not an alternative to fines**—A majority of comments stated court orders should be applied in addition to fines.
3. **Include restoration works**—In addition to court orders and fines a large number of respondents stated restoration or reconstruction of a place at the expense of the offender should be a requirement.
4. **Strengthen enforcement**—Some comments raised questions over enforcement and included that the Queensland Heritage Council *'needs to enforce far more'*, the need to communicate to the general public that heritage sites are *'responsibly'* and *'diligently'* protected and managed by authorities and that the State government can also be prosecuted for breaches even if they are carrying out work for and on behalf of the state.

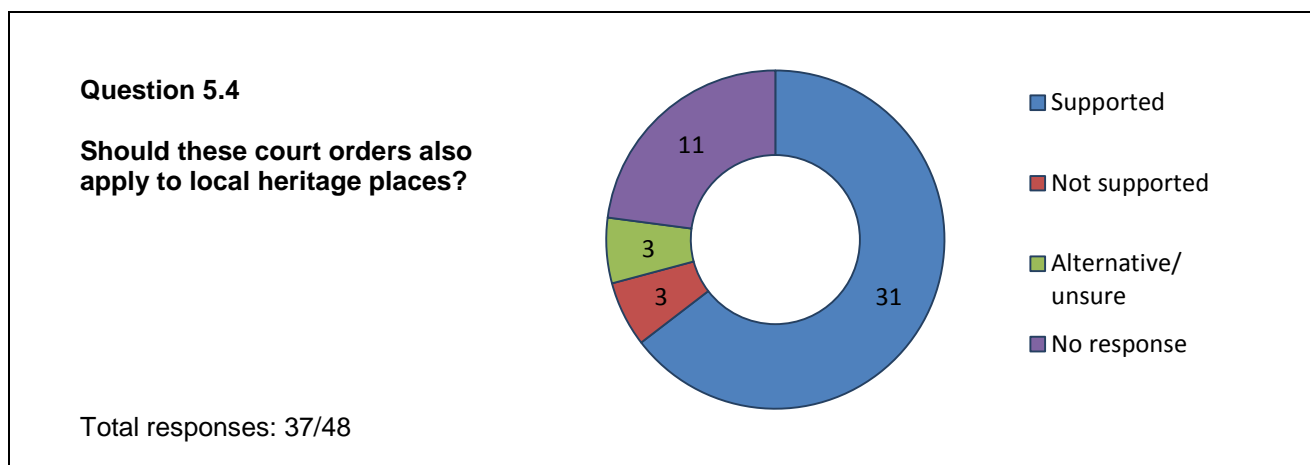


Figure 30: Question 5.4 summary of responses

**Key issues:**

1. **Enforcement**—While general consensus was that this would empower local government and improve protection of local heritage places, a large number commented about the role of enforcement by local government. A call for consultation with local government was raised in line with questions on the capacity of local governments, their varying expertise and the burden on resources to implement and enforce such orders. One respondent stated their support would be contingent on a legislative requirement for local governments to *'take a definitive position' in relation to supporting or opposing state and local listings'*. This would justify their experience and authority regarding heritage issues which in turn would be seen to justify the added legal consequences to local listings. One respondent stipulated the proviso that this was an optional rather than mandatory requirement.
2. **Lower severity**—Two respondents suggested the orders would have to be lower in severity as the *'level of significance is less'* for local places than places of state significance.
3. **Funding allocated locally**—A number of responses raised the need to provide greater clarity on how the orders would be decided and policed and that the provision any funding should be allocated locally.

## Appendix 1: List of respondents

### Community—individuals

Gail Pini  
Mike Gillies  
George Seymour

### Community—organisations

Far Northern Branch, National Trust Queensland  
National Trust Queensland  
Queensland Heritage Council  
Sunshine Coast Heritage Reference Group  
The Corporation of the Synod of the Diocese of Brisbane  
Buderim Historical Society  
Spring Hill Community Group  
Royal Historical Society Queensland

### Industry— Consultants

Ray Osborne  
Dr Richard Robins, Everick Heritage Consultants Pty Ltd  
Gordon Grimwade  
Corinne Unger, Centre for Mined Land Rehabilitation  
Jinx Miles  
John Petrie  
Leanne O’Brien  
P Dennis Architect  
Peter Marquis-Kyle  
Ruth Woods  
Watson Architects

### Industry—organisations

Australian Institute of Architects (AIA)  
Queensland Tourism Industry Council (QTIC)  
Australian Institute of Maritime Archaeology (AIMA)  
Australasian Society for Historical Archaeology (ASHA)  
Qld Division Engineers Australia (EA)  
Urban Design Alliance of Queensland (UDALQ)  
Urban Development Institute of Australia Qld  
Museum and Gallery Services Qld (MAGSQ)  
Property Council  
Aust. International Council on Monuments and Sites (ICOMOS)

### Local Government

Cassowary Coast  
Brisbane City Council  
Cairns Regional Council  
Gladstone Regional Council  
Ipswich City Council  
Logan City Council  
Mackay Regional Council  
Townsville City Council  
Strategy & Planning Officers from a regional council  
City of Gold Coast  
Sunshine Coast Regional Council Cultural Heritage Services  
Fraser Coast Regional Council

### Local Government Organisation

Local Government Association of Qld (LGAQ)

### Government

Great Barrier Marine Park Authority (GBRMPA)  
Queensland State Archives  
Queensland Rail

### \* Meeting with no formal submission

Queensland Government Architect, Department of Housing and Public Works

### \* Late submissions not included in report data

Mareeba Shire Council  
Abandoned Mines Unit of Natural Resources and Mines  
Buderim-Palmwoods Heritage Tramway Inc.