

Our heritage: A collaborative effort

Discussion paper - Review of the *Queensland Heritage Act 1992*



Prepared by: Heritage Branch, Department of Environment and Heritage Protection

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Foreword



Queensland’s heritage—embodied in its historic buildings, gardens, landscapes and shipwrecks—is unique and irreplaceable.

The stories these important places help to tell have always fascinated me. They make me mindful of the generations who have preceded us and the joys and hardships Queenslanders of the past experienced.

In my time as Minister for Environment and Heritage Protection I have gained a strong sense that many others around this state share my enthusiasm.

The Queensland Government is committed to lifting the profile and recognising the importance of heritage in this State. Acknowledging this commitment I have renewed the membership of the Queensland Heritage Council and dedicated funding through the Everyone’s Environment grants program to benefit heritage places. We have also included a heritage category in this year’s Premier’s Sustainability Awards.

Now I propose reform of the *Queensland Heritage Act 1992*. The purpose of this review is to keep Queensland’s heritage legislation at the vanguard nationally and to lead the way in protecting and managing heritage. By acknowledging where we have come from we can charter a responsible and meaningful way forward. We can do this without unnecessary regulation and deliver real benefits to Queensland communities.

The reforms we make today will ensure our heritage places are there to enable future generations to understand from where this state emerged. Early consultation with peak bodies, owners and community groups has been supportive of these reforms.

I urge all Queenslanders with an interest in the future of our heritage places to take time to consider the questions posed in this discussion paper. Your feedback will directly shape the outcomes of this legislative review process. I look forward to your response.

The Honourable Andrew Powell MP
Minister for Environment and Heritage Protection



View of the Story Bridge in Brisbane from above the Howard Smith Wharves.

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Introduction

Queensland's rich and diverse history includes some of Australia's most important heritage places. These places tell our story, one shaped by the environment, resources and social, economic and political forces as well as the tenacity and creativity of individuals and communities.

From the Town of 1770, where James Cook made his second landing in Australia to the many places associated with Australia's defence during World War II, Queensland's heritage contributes to our sense of place and connects us to a richer understanding of ourselves.

The *Queensland Heritage Act 1992* (Heritage Act) is the primary means by which the Queensland Government sets out its interest in identifying and protecting the diverse heritage places of importance to the Queensland community.

The Heritage Act provides for 'the conservation of Queensland's cultural heritage for the benefit of the community and future generations'. It does so primarily by establishing the Queensland Heritage Council (Heritage Council), creating the Queensland Heritage Register (Heritage Register) as an inventory of places of heritage significance to the entire state, and requiring local governments to keep local heritage registers.

It states how development applications for places in the state register are to be assessed with reference to the *Sustainable Planning Act 2009* (Planning Act), how development by the State is handled, and provides for certain work to be exempted from assessment. Other sections of the Heritage Act relate to protected areas, heritage agreements for places of state significance, and archaeological artefacts and shipwrecks.

The reform of the Heritage Act outlined in this paper responds to issues and suggestions raised by the Heritage Council, property owners, local and state governments, and the community. The aim of the review is to:

- modernise the Heritage Act
- reduce unnecessary regulatory burden, particularly on heritage property owners and proponents
- clarify the Heritage Act's intent and strengthen legislative protections for Queensland's heritage places, while also promoting development
- devolve particular heritage responsibilities to local government.

The proposals and questions outlined in this discussion paper build on the platform of changes made in 2008 after the last major review of the Heritage Act. The paper is structured around five parts:

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

The Queensland Government wants to keep the Heritage Act at the forefront of heritage legislation in Australia—ensuring that it supports vigilant, flexible and skilful protection of Queensland's important heritage places.

Have your say

Everyone in the community is invited to comment on the issues covered in this discussion paper. Each part contains various questions, which we would like people to address in making a submission.

Submissions can be made by:

- post to the Heritage Branch, Environmental Policy and Planning, Department of Environment and Heritage Protection, PO Box 2454, Brisbane QLD 4001 (Attention – Laura Listopad)
- email to heritage@ehp.qld.gov.au

Submissions should be received by close of business Friday 20 June 2014.

Copies of the discussion paper and a submission form are available at www.ehp.qld.gov.au.

Inquiries

Inquiries can be directed to Ms Laura Listopad on (07) 3330 5834.

1. Queensland Heritage Register

Australia's four-tier system to identify and manage heritage places is widely accepted as an effective response to the nation's diverse history. At the town and city level, local governments create and oversee registers for places of local importance. Places important to a state or territory as a whole are identified in a state heritage register—such as the one established under the Heritage Act. Places that are of outstanding heritage value to the nation as a whole are identified on the National Heritage List. At the top of this system stands the World Heritage List, managed by UNESCO, under the World Heritage Convention.

Queensland's Heritage Register was established in 1992, its first 970 places being those listed in the schedule to the *Heritage Buildings Protection Act 1990*. By 2014, the Heritage Register has expanded to include nearly 1700 places. Over that time, the Heritage Council has refined its understanding of the cultural heritage criteria and articulation of how these criteria should be applied, as the test for state significance and entry in the state register. In making these assessments, the council is guided by the document *Assessing cultural heritage significance: Using the cultural heritage criteria*. The Heritage Council ensures that the Heritage Register is a sound, representative, state-wide record of Queensland's heritage. Since 1992, Queensland local governments have widely recognised and protected local heritage places and the Australian Government has further defined its role by establishing the National Heritage List.

The 2008 amendments to the Heritage Act re-engineered the Heritage Register processes and introduced statutory timeframes for heritage nomination applications—delivering more certainty to applicants, place owners and the community. As a consequence, unlike most other states and territories, Queensland has no backlog of nominated places awaiting assessment. However, the Queensland Government believes there is scope to further revitalise and modernise the heritage registration processes—to provide even more timely and transparent outcomes, and enable regular review of the places in the Heritage Register and supporting information about them.



The former Burns Philp Building in Normanton.

Cultural heritage criteria

All Australian jurisdictions use similar criteria to assess the cultural heritage significance of places and then decide about entering them in the various lists and registers. This consistency arises from the widespread adoption of the Burra Charter principles that guide heritage practice in Australia, and the Australian Government's leadership in encouraging the use of standard criteria. The Heritage Act contains eight 'cultural heritage criteria' that define places as being 'important' in demonstrating certain attributes including the 'evolution', 'pattern' and 'understanding' of 'Queensland's history'.

Concept of a heritage management hierarchy

The Queensland Government considers that the roles and responsibilities of each jurisdiction, and how heritage

places are identified and managed, could be more clearly articulated in the Heritage Act. A heritage management hierarchy could work to differentiate between places significant at a national level (that is, those entered on the National Heritage list), Queensland’s Heritage Register places, and those entered in local registers managed by local governments (see Figure 1).

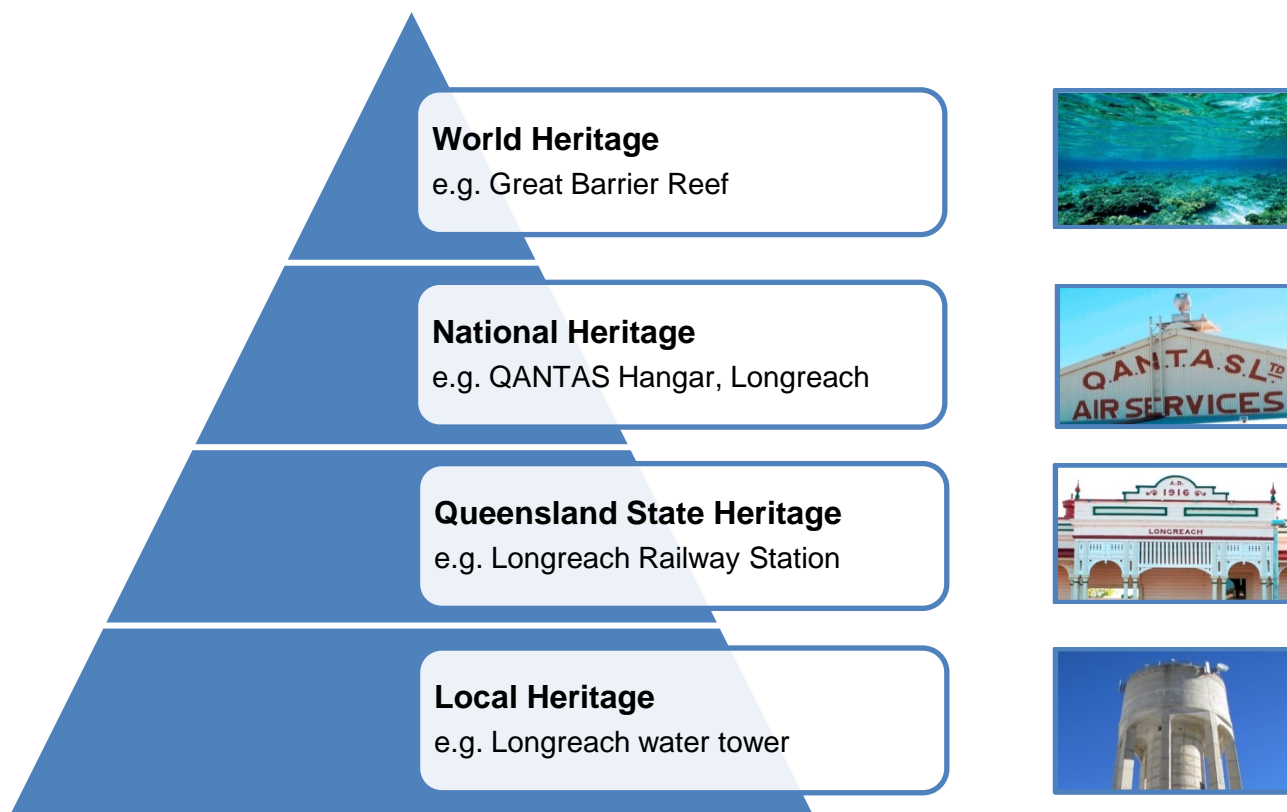


Figure 1 Hierarchy of heritage register places

Section 1: Questions for discussion

- 1.1 Is it clear that the Heritage Register is a list of places that are important to the Queensland community as a whole?
- 1.2 Would a heritage management hierarchy be useful in clarifying the various levels at which cultural heritage significance is managed?

Reviewing the Heritage Register

To enable appropriate protection and management of Queensland’s heritage places, the Heritage Register must feature up-to-date information about the places entered in it. A process of regularly reviewing the details about these registered places is required because changes occur at many of them due to approved development. It is essential to ensure that the nature and extent of places entered in the Heritage Register remains current and the process by which this is achieved is fair and efficient.

Currently, the Heritage Act requires that changes to existing entries in the Heritage Register that involve statements of heritage significance upon which the listing is based, and/or the heritage boundary, only occur with the written agreement of all owners and the approval of the Heritage Council. To help maintain the currency of Heritage Register information, the Queensland Government is considering a revision to this approach, which would mean place owners are fully consulted but their agreement is not required before these changes are decided by the Heritage Council. This would match the process currently undertaken when a heritage nomination application is received and would not involve additional areas of land being included in the Heritage Register. All owners will continue to have the rights afforded them through the registration process before their land and property becomes part of a place entered in the Heritage Register.

The revised approach to changing existing Heritage Register entries will facilitate revision of existing entries for complex places. The definition of ‘owner’ in the Heritage Act is broad, and includes many kinds of interests in a property, including those related to mining activities such as geothermal tenures held under the *Geothermal Energy Act 2010*. The current provision for changing entries in the Heritage Register means that if any of these owners cannot be contacted to obtain agreement, or simply do not reply to correspondence, no change can take place. This clearly frustrates the intent of keeping the Heritage Register up-to-date and can be detrimental to other owners

where, for example, the boundaries of the place are too extensive and cannot be reduced as agreement of the other owners cannot be obtained. This requirement is inconsistent with the requirements applying to the registration process, which provides for full owner notification and consultation.

Early entries in the Heritage Register may encompass places that would now be considered only of local heritage significance. The growing strength of local heritage protection means that these places are more appropriately protected through local heritage registers and planning schemes. Consistent with the hierarchy outlined above, there is a question as to whether these 'legacy' places should continue to feature in the state's Heritage Register, given the protection afforded at a local level.

Section 1: Questions for discussion

- 1.3 Should current entries in the Heritage Register be reviewed in light of the proposed hierarchy and protection offered at other levels?
- 1.4 Who should be notified when an entry in the Heritage Register is being reviewed?
- 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?



Anzac Square Shrine of Remembrance in Brisbane.

Making a heritage application

Since 2008, the Heritage Act has contained statutory timeframes for making decisions about heritage nomination applications, and requirements for information to be provided with the applications. This has ensured that decisions are timely and transparent.

Operating this redesigned process has also demonstrated what technical information, such as accurate land title information, must be included in an application to enable the department's chief executive to provide the Heritage Council with a sound recommendation. There is also an onus on the applicant to ensure that they provide well-researched information to avoid government and the council wasting time and effort on inadequately documented nominations. The Queensland Government believes that there is scope to further clarify what information should be provided with a heritage application.

Whether a place is entered in the Heritage Register is decided by the Heritage Council if the nomination satisfies the cultural heritage criteria. However, concern has been raised by some owners that it is unfair or unreasonable for people to be able to make heritage nominations without the owners of the place knowing who the applicants are.

The Heritage Act currently requires that the identity of an applicant making a heritage nomination not be disclosed

by the department unless the applicant gives consent. This process aligns with the *Information Privacy Act 2009* that requires personal information only to be disclosed when a law authorises it, or when the person who is the subject of the information gives consent. The applicant's identity is considered irrelevant when a heritage nomination is accepted, as the nomination must first meet the requirements of the Heritage Act, and prove there is potential for the place to be of significance to the state as a whole.

Section 1: Questions for discussion

- 1.6 Should the Heritage Act more clearly state what documentation is required to make a nomination?
- 1.7 Should it be mandatory for the name of the person making a nomination to be made publically available?

Responding to a heritage recommendation

The Heritage Act's registration process is designed to give early notice to owners, local governments and other interested parties about a heritage nomination application, and allow them to make submissions. These submissions often provide useful historical information and can indicate community attitude. The process also allows those who make a submission to request to make an oral representation to the Heritage Council before it makes its decision.

While this process provides for early notification, it does not allow owners much time after the heritage recommendation is made to prepare a response to be considered by the Heritage Council. This concerns some owners and can create negative perceptions of the natural justice afforded to owners within the process. The situation is most critical when there is substantial variation between the heritage nomination application made by a member of the public at the start of the process, and the heritage recommendation made after a full assessment has been conducted. Owners sometimes commission consultants to prepare submissions on their behalf; however, resources would arguably be more efficiently directed to addressing the recommendation to the Heritage Council rather than the original heritage nomination.

The Queensland Government believes there is scope for the registration process to be redesigned to allow owners enough time to comment on heritage recommendations without increasing overall timeframes for processing heritage nomination applications.

The Heritage Act's registration process requires that a local government is notified when a heritage nomination is made for places that are within its jurisdiction. The local government is sent a copy of the nomination application and is required to notify the department of any current development approvals relevant to the place. Then, when the heritage recommendation is made to the Heritage Council, the local government is also sent a copy of the documentation.

Local governments frequently make submissions responding to heritage nominations, often indicating if they support or do not support the nomination, and providing historical material about the place. However, this is not always the case and the nomination process proceeds in the absence of a formal view being articulated by the relevant local government.

Section 1: Questions for discussion

- 1.8 Should the nomination process be redesigned to allow time for owners to make considered comment on heritage recommendations?
- 1.9 Should it be mandatory for local governments to state whether they support or do not support heritage recommendations?

Certificate of immunity

A place's owner can apply to the Heritage Council for a certificate of immunity from heritage registration for that place for a period of five years. This certificate is issued if the council believes the place is not of state cultural heritage significance. Certificates of immunity have been part of the Heritage Act since it was first introduced and help an owner gain certainty about a place's state heritage status.

The Heritage Act provides little guidance about the process for accepting a certificate of immunity application—how the application should be considered, and how the certificate should be issued. Unlike the heritage registration processes, the immunity provisions do not allow for public comment and contain no timeframes to give certainty about when the matter will be decided. The certificate of immunity process is not linked to the heritage registration process, although they both end in a decision about whether or not a place is of state level heritage significance. Situations have arisen where both processes run simultaneously, duplicating resources and confusing the community about the Heritage Act and its role in conserving heritage places.

Inconsistency between the two processes arises in relation to a decision that a place does not have state level

heritage significance. Whereas a certificate of immunity is granted for five years, when the Heritage Council decides not to enter a place it is only restricted from reconsidering a new heritage nomination application for the place for one year.

The Queensland Government believes, given the quality of the heritage recommendations made to the Heritage Council and the careful consideration it gives to register matters, the certificate of immunity process could effectively be merged into the registration process. Thus, an assessment could have one of two possible outcomes; either a place is entered in the Heritage Register or, if not entered, then no new application can be made for five years (except under specified exceptional circumstances such as the emergence of substantial new information on a place's heritage status). This would give certainty to owners of places that are assessed as not being of state level heritage significance and represents a reduction in red tape.

Section 1: Questions for discussion

- 1.10 Should the nomination process and the certificate of immunity process be integrated into one process?
- 1.11 Should the result of a decision by the Heritage Council that a place is not of state level heritage significance be that a new nomination application cannot be considered for five years?
- 1.12 Should the Heritage Council be able to reconsider a new nomination application in less than five years in exceptional circumstances, such as when substantial new information emerges about the importance of a place?



Chillagoe Smelter site in the Mareeba Mining District of North Queensland.

Natural heritage places with historic heritage values

The Heritage Act protects places that are of state level cultural heritage significance, the definition of place including buildings, structures, precincts and natural and landscape features. This means that a variety of types of places can be protected in the Heritage Register, including some landscapes that have both natural and historic heritage values (e.g. the Glasshouse Mountains).

As a result, potential exists for overlap in management systems for places that have both natural and historic heritage values, where both systems achieve the same protection objectives. This is most apparent where a place is within a national park or in a world heritage area. The Queensland Government believes there is an opportunity in an amended Heritage Act to reduce the overlap of regulatory regimes and minimise any unnecessary administrative and regulatory burden by recognising other legislative protection regimes and management systems that provide an equivalent level of protection to listing in the Heritage Register.

Section 1: Question for discussion

- 1.13 Should the Heritage Act be able to recognise natural heritage places with historic values without necessarily putting them in the Heritage Register?

2. Doing work to heritage places

Development work undertaken at state heritage registered places is regulated in different ways. For places that are in private ownership, applications must be made through the Planning Act, while development being undertaken by the Queensland Government is controlled by the Heritage Act. Work that does not affect the cultural heritage significance of a place can be exempted through the Heritage Act. The Queensland Government wants to ensure that the development approval processes for heritage registered places are strong and robust—while also cutting red tape—by providing far greater scope for certain work to be exempted from the development approval process controlled by the Planning Act.



Cairns Wharf Complex redevelopment as a Cruise Liner Terminal.

Exemption certificates

The Heritage Act contains a type of development approval called an ‘exemption certificate’, which provides a simple, cost-effective process for allowing work that will not impact on the state heritage registered place—and applies across different classes of activities from building work to reconfiguration of a lot. Depending on the place and its significance, the scope of this exempt development can be quite broad. It can range from painting and plastering through to building large extensions and, in some cases, new buildings.

By its very nature, all building and development work undertaken at a state heritage registered place will have some effect on the place’s significance. The Queensland Government believes that the scope of the work covered by exemption certificates should be expanded from the current restrictive category of work that will have ‘no detrimental impact’ to work that will demonstrably have ‘minimal detrimental’ impact. This will significantly cut the regulatory burden for owners and proponents, who will be able to undertake a greater range of activities without unnecessary development approval relating to heritage matters.

Section 2: Question for discussion

2.1 Should the scope work allowed under an exemption certificate be expanded?

Heritage agreements

The Heritage Act contains a type of arrangement called a heritage agreement intended to promote conservation, appropriate management and appreciation of state heritage registered places. One of the objectives of heritage agreements is to give certainty to owners of state heritage registered places by describing work that can be carried out at the place without further approval under the Heritage Act.

Historically, heritage agreements have been legalistic, complex and bound to the land associated with the heritage

place. Owners have suggested that there is a strong need for a more streamlined and concise form of heritage agreement to address their property management concerns, particularly at the time the place is entered in the Heritage Register. Currently, the heritage agreement process is separate from the heritage registration process.

The Queensland Government believes that there is scope to develop a simple form of heritage agreement for a place when it is entered in the Heritage Register. Recording details of the agreed future work in the register would give certainty to owners and increase transparency for the community.

Section 2: Questions for discussion

- 2.2 Should a simple form of heritage agreement be established for places when they are entered in the Heritage Register?
- 2.3 Should the Heritage Register include reference to the existence of heritage agreements and the work exempted under them?



Centenary Pool Complex in Brisbane.

Essential maintenance requirements

The Heritage Act requires essential maintenance be undertaken to prevent state heritage registered places deteriorating due to wilful and deliberate neglect. A rigorous process, including consultation, is required before an essential maintenance notice is issued and only the department's chief executive has the power to do so.

However, experience in administering the essential maintenance requirements has shown that the Heritage Act does not adequately describe the scope of the work sometimes required to ensure deterioration that cannot be rectified is prevented. For example, the Heritage Act specifies 'minor works', when more substantial works may be needed to ensure a place is adequately protected from weather (to attach new roof sheeting, repair of weather-damaged timber battens is required)

The Queensland Government is proposing that a broader range of maintenance works be allowed under essential maintenance notices on a case-by-case basis. These would be tightly targeted at preventing and protecting a place against damage that would detrimentally impact its heritage significance. Combined with a rigorous approval process, this will ensure that the notices are used only when absolutely necessary. The timing set out in the Heritage Act to trigger the notices also needs to be reconsidered to allow early intervention, as the longer a building or structure is left unmaintained, the more expensive it can be to rectify.

Section 2: Question for discussion

- 2.4 Should essential maintenance requirements be strengthened for state heritage registered places at risk from wilful neglect?

Emergency work to a heritage place

Under the Planning Act, if an emergency occurs at a place entered in the Heritage Register that endangers the life or health of a person, the safety of one of its buildings, or the safety or operation of other infrastructure there, work to remedy this situation can be carried out without prior approval. The Planning Act places some caveats on exercise of this power as the advice of a professional engineer should be sought beforehand, the work done should be reversible or the impact on the heritage significance of the place should be limited.

Section 2: Question for discussion

- 2.5 If emergency work needs to be undertaken to a place in the Heritage Register to maintain its health and safety, what should be done prior to undertaking the work?

3. Local government



Childers streetscape.

Local governments play a key role in protecting Queensland's heritage. The largest category of heritage places in the state includes those that are only important to their local communities, such as town halls, main street shops, hotels and cemeteries. The Heritage Council has strongly championed the critical role played by local governments to identify and protect local places, and the Queensland Government wishes to empower local government to sustain and enhance this role in the future. The heritage management hierarchy (see Figure 1) helps position local government's role.

Section 3: Questions for discussion

- 3.1 Should the vital role played by local government, as part of Queensland's heritage protection framework, be acknowledged in the Heritage Act?

Local heritage places and registers

In 2008, the Heritage Act was changed to require that all local governments, unless specifically exempted, establish local heritage registers. Twelve local governments are currently exempted from keeping a local heritage register under the Heritage Act; because it was shown they already make proper provision for local heritage protection in their planning schemes. Since 2008, local governments across Queensland have made substantial and commendable advances in establishing local heritage registers under the Heritage Act, and providing for the protection and appropriate development of heritage places in their planning schemes.

In 2013, the Queensland Government also introduced the single State Planning Policy (SPP), setting out policies on matters of state interest in relation to cultural heritage. The state interest in relation to cultural heritage requires that planning schemes consider national, state and local heritage, as well as Indigenous cultural heritage.

The Queensland Government proposes to recognise that local governments are now required to identify local heritage places in their planning schemes, and is considering whether to change the Heritage Act to specify that places identified in local planning schemes, in accordance with the single State Planning Policy, are taken to be local heritage places under the terms of Heritage Act.

As this change would make an exemption from keeping a local heritage register under the Heritage Act redundant, it is also proposed to remove the list of exempted local governments from the Heritage Act Regulation. The provision these local governments had the foresight to make is now formally required under the SPP. Local governments that have established local heritage registers under the Heritage Act—like Fraser Coast Regional Council—will not be disadvantaged as a result of this reform. Nor will those—like Charters Towers Regional

Council—that are currently exempted because their planning schemes already provide for protection of local heritage places.

The single State Planning Policy will be the decisive factor in local governments establishing appropriate regimes for identifying and protecting local heritage places.

Section 3: Question for discussion

- 3.2 Should the requirement for local governments to establish and maintain local heritage registers under the Heritage Act be amended to recognise local heritage protection provided for through a planning scheme?

Essential maintenance requirements for local governments

The state has powers under the Heritage Act to issue a notice to owners requiring that a limited scope of works be carried out to prevent serious or irreparable damage or deterioration of a place (as described earlier in Part 2). Some local governments have sought to have extended to them these essential maintenance powers under the Heritage Act for use with local heritage places. They argue that the community expects local governments will act to protect local heritage places and essential maintenance requirements are a tool to do this.

The Heritage Council strongly supports local government's role in protecting local heritage places and supports these powers being extended to them. It would also be consistent with strengthening recognition of the protection role local government's play under the Heritage Act.

It is also important to note that the essential maintenance requirements are intended to be used after all other options for resolving the issue have been exhausted. A rigorous process, including consultation, is required before an essential maintenance notice is issued. Consistent with the 'last resort' nature of the essential maintenance requirements, only three notices have been issued at the state level since their introduction in 2008. The department expects that local governments will also use the essential maintenance requirements sparingly. If the requirements are extended to local governments, the department will monitor their use to ensure that they are being used appropriately.

Section 3: Question for discussion

- 3.3 Should local governments be given power under the Heritage Act to require, after extensive consultation and as a last resort, certain limited essential maintenance works be undertaken by owners of local heritage places?

Exemption certificates for local government

Some local government has also asked that consideration be given to extending to them the power to issue exemption certificates for local heritage places, similar to those used with places on the state Heritage Register described earlier under Part 2. Development on local heritage places is assessable development under the Planning Act. This would give local governments the means to keep certain work that will have a 'minimal detrimental' impact on the heritage significance of local heritage places, out of the Planning Act approval system. This will cut the regulatory burden for owners of local heritage places, enabling them to undertake a greater range of activities without development approval.

Section 3: Question for discussion

- 3.4 Should the ability to issue exemption certificates for certain minor work be extended under the Heritage Act to local governments for use on local heritage places?

Heritage agreements for local government

As with essential maintenance and exemption certificate powers, the Queensland Government is considering whether to give local government the capacity to use heritage agreements with owners of local heritage places—to give those owners certainty about what work can progress without further development assessment in terms of heritage significance.

Section 3: Question for discussion

- 3.5 Should the ability to enter heritage agreements with owners of local heritage place be extended to local governments?

4. Archaeology

Archaeological places

This category of heritage place was introduced into the Heritage Act in 2008. Since that time, 14 archaeological places have been entered in the Heritage Register.

Experience with some of these places has shown that a separate place category may not be necessary to achieve the original policy objectives and that a separate category is confusing for the community. The registration process for the two categories is almost identical. The Queensland Government believes that integrating the two categories and their registration processes would simplify the Heritage Act, remove unnecessary duplication, and continue to provide strong protection for archaeology.

Section 4: Question for discussion

- 4.1 Should the archaeological place category be integrated into the State Heritage place category in the Heritage Register?



Pyrites Works at Towers Hill in Charters Towers.

Archaeological artefact discovery provisions

The section of the Heritage Act that deals with reporting the discovery of an archaeological artefact and temporarily protecting it from further disturbance was introduced in 2008. The provision was aimed at improving management of historical archaeology through the Heritage Register and the Planning Act.

Archaeological artefacts are often not discovered until work is underway as part of a development. The Heritage Act requires that discoveries of artefacts, believed to be an important source of information about Queensland's history, are reported. Work that will destroy the discovery must be stopped for 20 business days to allow an archaeological investigation. Clarity is needed about the outcomes of such archaeological investigations, as the process is reactive, does not adequately protect archaeological artefacts, and does not provide those who discover them with certainty about what should be done following a discovery.

There are three possible outcomes from a reported discovery—the artefact is:

- not important and the person who discovered it can deal with it in any manner they choose.
- on a state registered place, important and the Queensland Government declares ownership.
- part of an important place and a heritage nomination application is made.

Section 4: Questions for discussion

- 4.2 Should the process and outcomes following discovery of an archaeological artefact be more clearly set out

- in the Heritage Act?
- 4.3 Should the Heritage Act's provisions relating to the discovery of an archaeological artefact be aligned to the heritage registration process?

Shipwrecks



Wreck of the *Normanby*, Moreton Island.

Queensland's maritime and underwater heritage is protected and managed by both the Heritage Act and the Commonwealth *Historic Shipwreck Act 1976* (Shipwrecks Act), which protect all shipwrecks and associated artefacts older than 75 years and apply to all wrecks throughout Queensland. The Australian Government delegates powers under the Shipwrecks Act to Queensland so that protecting shipwrecks is seamlessly managed. Since 2010, the Queensland Government has been surveying historic shipwrecks to update official records about the more than 1400 ships believed to have been wrecked or abandoned along the Queensland coastline.

The shipwrecks survey has highlighted that some minor adjustments to the Heritage Act are required to better identify and protect shipwrecks, including those in rivers and bays, and to require that their discovery be reported. The survey has also revealed that Queensland's underwater heritage includes items that are not shipwrecks. In particular, Queensland's role as part of the frontline defence of Australia during World War II means that several aircraft that were part of the war effort crashed along the Queensland coastline.

Progressively from 2015 onwards, these aircraft crashes will have occurred more than 75 years ago. The Queensland Government believes that the definition of underwater cultural heritage in the Heritage Act should include both wrecked ships and aircraft, and their associated artefacts.

Section 4: Questions for discussion

- 4.4 Should aircraft that crashed into the sea more than 75 years ago be protected by the Heritage Act?

5. Enforcement

Stop orders and interim protection orders

The Heritage Act contains two types of order—the stop order and the interim protection order—that enable work to be stopped if it appears that this work will threaten a place’s cultural heritage significance. The interim protection order was introduced into the Heritage Act in 2008 but none have ever been issued. There is confusion in the community about the purpose of these orders and when and where it is appropriate to use them.

Both types of order run for different periods of time, are issued by different parties, and have different penalties for non-compliance. Yet both have the same purpose of allowing time for an assessment of the heritage significance of a place before any irreparable damage occurs.

It is proposed to remove duplication and inconsistency by creating one ‘stop’ order aligned with the heritage registration process. This order would be used in circumstances where work should be stopped to allow heritage significance to be assessed before development is undertaken. If development work has begun before an order to stop work is made by the Minister, it is proposed that the Heritage Act be amended to clarify what work could continue while the order is in place.

Section 5: Questions for discussion

- 5.1 Should the stop order and the interim protection order be redesigned as one order?
- 5.2 Should the Heritage Act give more direction as to what work can continue at a place when it becomes subject to an order to stop work?

Court orders

In relation to offences against the environment, there have been innovations enacted by various Australian jurisdictions to allow courts to impose ‘alternative’ penalties that punish but also deliver more suitable environmental outcomes. The types of orders derived from this approach include:

- restoring or rehabilitating the affected environment
- directing payments to offset an environmental wrong
- requiring monetary contribution to a conservation project or the undertaking of a project in a public area
- ordering details of the offence and the identity of the offender to be published.

These kinds of ‘alternative’ sanctions are attractive, as they can be tailored to a particular offence and actually circumvent the situation where a fine does not act as a sufficient deterrent because of the monetary benefit to be gained from engaging in the offence.

The Heritage Act gives the court powers to impose restoration orders on those convicted of an offence against it or the Planning Act relating to development on a state heritage place. It gives the Minister power to impose a ‘non-development’ order on those convicted of an offence resulting in destruction or damage of a state heritage place.

The Queensland Government proposes to provide the ‘non-development’ order to the court and align both these orders with contemporary judicial practice. It will also reconsider how to gain positive outcomes for heritage places from alternative orders issued by the court under the Heritage Act.

In Queensland, several alternative orders were introduced into the *Environmental Protection Act 1994* in 2011 and will be used as a model for those in the Heritage Act, including:

- A public benefit order, which would require someone convicted of damaging or destroying a state heritage registered place to carry out a stated project to restore or enhance a public place with heritage significance. An example could be a donation to a local heritage volunteer group, the National Trust of Queensland or a Trust responsible for a historic property (e.g. Newstead House).
- An education order, which would require someone convicted of damaging or destroying a state heritage registered place to conduct a stated advertising or education campaign to promote compliance. This could apply, for example, if a person fails to comply with an essential maintenance notice. In issuing an education order, the court might require the person to engage in an education campaign to promote the importance of carrying out regular maintenance and repair of a property as part of good building practice.

Section 5: Questions for discussion

- 5.3 Should more targeted court orders, such as a ‘public benefit order’ and an ‘education order’, be available to the court for the use in offences against heritage places that involve damage or destruction of them?
- 5.4 Should these court orders also apply to local heritage places?