

24/09/14

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Ms Kate McGuckin
Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Ms McGuckin

The 'Queensland Heritage and Other Legislation Amendment Bill 2014'

Thank you for the opportunity to provide comment on the *Queensland Heritage and Other Legislation Amendment Bill 2014* (the Bill).

The Property Council previously provided a submission to the Department of Environment and Heritage Protection (DEHP) in regards to the discussion paper, *Our Heritage: A collaborative effort*.

As outlined in this submission the Property Council is primarily interested in the Bill as it relates to:

- Streamlining the statutory process in regards to the Queensland heritage register (the heritage register)
- Reducing unnecessary regulatory burden on owners of heritage places and providing adequate support measures for them, and;
- Defining the role and responsibilities of local government.

Positive amendments

The following amendments are supported by the Property Council.

Making nominations and applying to remove a place

The Property Council supports the improved information requirements to properly make a heritage submission or to remove a place from the heritage register.

Maintaining clarity in the documents required for these processes is essential to ensuring reasonable timeframes for making nominations and preventing ill-conceived and vexatious applications from being made.

The Property Council believes the level of detail required for these applications under the amendments to Section 36 is appropriate. Any reduction in the complexity of these requirements (so as to cater for a wider group of nominators) would severely hinder the chief executive's ability to

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make an informed recommendation to the Heritage Council, or would require an increase in departmental resources to supplement the information.

We also support the inclusion of the processes for non-complying applications (Section 36A), the detail which has been previously lacking.

An owner's response to a recommendation.

Where a recommendation has been made to the Heritage Council by the chief executive of the Department of Environment and Heritage Protection, the Property Council strongly supports the ability for the owner of a heritage nominated place to make a written response.

Given the considerable impact on property rights that is imposed once a heritage place is entered onto the heritage register, the owner's response period is considered crucial to an equitable nomination process.

Therefore the increase in the timeframes for making a response to a recommendation to 20 business days is accepted, as is the necessary increase in the time taken by the Heritage council to make a final decision, from 60 to 100 business days.

The Property Council also supports the ability to increase the response timeframe to 30 business days if requested by the owner.

However, if an individual owner of a heritage place that includes multiple responding owners requires an extension it should be granted, without the need for a unanimous decision between all owners.

DEHP has made it clear throughout the Bill's explanatory notes and the discussion paper that on many occasions it is difficult to contact all owners of a heritage place. The Property Council considers it unreasonable to expect a single owner to gather unanimous support for an extension from all owners within the 20 day timeframe.

A destroyed place recommendation

The Property Council strongly supports the ability for the chief executive to make a destroyed place recommendation (Section 46A), on the basis that a place entered in the heritage register is completely or substantially destroyed by fire or natural disaster, or as a result of approved development.

The significant costs placed on the owner of a heritage place to restore their asset from such a state makes this a critical inclusion within the Bill.

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Moratoriums for re-nomination

The level of scrutiny afforded to each nomination assessed by the Heritage Council justifies the increase in the time following a decision before re-nominations can be accepted.

The Property Council therefore supports the five year moratorium on new applications for an already considered site (Section 37).

In the unlikely event that substantial new evidence comes to light and a heritage place is reviewed during the five year moratorium, the Property Council believes that the site should be either added to the register, or reissued with an additional five year protection.

While the inclusion of a five year moratorium on applications to remove places from the heritage register is reasonable, like nominations for *inclusion*, a person should have the ability to apply to have a place removed from the heritage register during the 5 year moratorium period if substantial new evidence comes to light.

The Property Council does not see any reason this ability should not be applied to both nominations for, and removal from, the heritage register.

Heritage Agreements and Local Heritage Agreements

The Property Council supports the simplification of Heritage Agreements and Local Heritage Agreements to provide greater certainty for owners.

Additionally we support the expansion of the purposes for which an agreement may be created, as outlined in the Bill.

Exemption Certificates

The Property Council strongly supports the expansion of the scope of work allowed under an Exemption Certificate from 'no detrimental impact' to 'minimal detrimental impact'.

This is a crucial issue for owners of heritage properties who will no longer be subject to Integrated Development Assessment System (IDAS) when ensuring their sites comply with mandated regulation including disability access and fire safety requirements.

The scope of 'minimal detrimental impact' and the 'agreed ways' of carrying out these works must be detailed to ensure certainty for building owners.

Stop Orders

The move to reduce duplication of regulation within in the Bill by merging the two existing stop orders in the *Queensland Heritage Act 1992* is supported by the Property Council.

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Key issues

The Property Council has identified the following key issues within the legislation.

Local government heritage registers

In the Bill's current form, the Property Council believes there will be very little removal of duplication between the State and local government heritage registers.

Many sites are currently listed on both registers for identical reasons, leading to these places requiring assessment under two regimes. A process must be undertaken to ensure that this duplication is removed.

Local government should be restricted to identifying heritage places through their local planning scheme to ensure this information is easily accessible alongside all other relevant planning considerations.

Local government's ability to mandate essential maintenance

Allowing local government to issue exemption certificates and local heritage agreements to owners of places identified in the scheme is supported.

The Property Council does not, however, believe that local governments are adequately resourced to make decisions relating to essential maintenance on heritage sites.

In addition, local government chief executive officers are not appropriately placed to mandate or oversee these decisions, potentially leading to inappropriate delegation of the decision and exorbitant and unnecessary fees for owners.

Updating the heritage register

The chief executive's ability to make a "minor change" to the information contained in an entry in the Queensland heritage register for a heritage place is not supported.

The matters referred to in Sections 34(2)(a) and 34(2)(b) are matters of substance, and should not be altered without the consent of the owner and the Heritage Council.

Further, the definition of "minor change" in new Section 34(3) is not clear.

Essential Maintenance Notices

The Property Council does not accept the proposed increases in the scope of works covered by essential maintenance notices.

The lowering of the threshold for issuing an essential maintenance notice by removing reference to the work being "urgently" required and to protect a place from "serious or irreparable" damage or deterioration is not supported. These safeguards are necessary, as the giving of the notice may expose an owner of a place to substantial expense.

As only three essential maintenance notices have been issued since 2008, it is clear that adding additional strength to these provisions in order to protect sites is unnecessary.

A right for judicial review

If these changes to the scope of works covered by an essential maintenance notice are to be pursued then it is essential that the owner has the right to appeal the decision to give a notice to the Planning and Environment Court and for the lodgment of the appeal to act as a stay of the notice.

This is particularly relevant given that the thresholds for giving a notice have been substantially lowered, although the effect of the notice has been substantially increased.

The expansion of the list of examples of the work that might be required under an essential maintenance notice is evidence of the need for an owner to have a right of appeal.

Drafting errors

When discussing Excluded Places, there is an error at the end of paragraph 56B 2(c).

In addition, it is unclear why the word "detrimental" has been omitted from Sections 72(2)(b)(iv) and 72(3)(b).

Section 72(2)(b)(iv) should be amended to read:

if the application is for development other than development mentioned in subparagraph (iii) – information about the impact of the development on the cultural heritage significance of the place.

Section 72(3)(b) should be amended to read:

will not have a detrimental impact on the cultural heritage significance of the place.

Other options for consideration

The Property Council would support the inclusion of the following additional or alternate amendments, as outlined our submission to DEHP.

Considerations allowed to the Queensland Heritage Council

The Property Council generally accepts the considerations undertaken by

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Queensland Heritage Council (the Heritage Council) when evaluating a potential heritage place for entry onto the heritage register.

However, the Property Council would also support the inclusion of a 'Best of Breed' principle alongside the current considerations. This would allow the Heritage Council to assess the heritage significance of a nominated site against similar heritage sites to ensure only the best examples of specific uses are included on the heritage register.

The Property Council acknowledges the clarification of the intent of the heritage register in new Section 2(2)b, but believes this could be strengthened to be more discerning through the inclusion of this principle.

Anonymous nominations

Anecdotal information from Property Council members asserts that heritage nominations are, on occasion, made without due cause. Regardless of whether or not the Heritage Council rejects these nominations, the process applies unnecessary pressure on the place owner while it is assessed.

Proponents of this activity are protected due to the anonymity of the nomination process.

The Property Council sees no adequate reason why a member of the public, an organisation or interest group would abstain from having their name included alongside a reasonably made heritage application.

For this reason the Property Council would strongly support the mandatory public release of a nominator's name.

The Property Council would also support a clause under which if a nominator refuses to provide their name publically, the nomination cannot be considered.

Certificates of Immunity

While certificates of immunity are not widely sought by property owners, they provide an essential security for owners who require certainty regarding the short-term use of their asset.

The Property Council has previously outlined concerns that by integrating the certificate of immunity process and the heritage register nomination process, owners are forced to 'gamble' registering their own site to be granted immunity.

A possible result of this could be that owners choose not to take this risk, and instead continue to utilise their asset without consideration of possible heritage value.

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As a result the Property Council does not support integrating the certificate of immunity process with the heritage nomination process.

The Property Council instead believes a separate certificate of immunity application process that is improved through the addition of legislative guidelines and timeframes would be suitable.

Conclusion

The Property Council appreciates the level of consultation undertaken on the amendments to date.

If you have any questions regarding the Property Council or this submission, please do not hesitate to contact Ian Harvey Ross on iharveyross@propertyoz.com.au or 07 3225 3000.

Yours sincerely



Chris Mountford
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