


16 June 2014

Hon Andrew Powell MP
Minister for Environment and Heritage Protection
GPO Box 2454
BRISBANE QLD 4001

2014 CORPORATE PARTNERS



Minister Powell, 

Our heritage: A collaborative effort

Thank you for the opportunity to provide feedback on the Department of Environment and Heritage Protection's discussion paper; *Our heritage: A collaborative effort* (the Paper). The Property Council acknowledges the importance of maintaining heritage places and the work that State and local government do to protect these properties.

The Property Council supports the Paper's focus on reducing unnecessary regulation in the identification, registration and protection of heritage places under the *Queensland Heritage Act 1992* (the Act). Additionally, the clarity provided on the management of heritage assets will be of significant benefit to owners.

Issues paper questions

The Property Council provides the following responses in regard to the questions raised in the Paper.

The process for reviewing the Heritage Register (Questions 1.3/1.4/1.5)

The Property Council supports the review of current entries in the Heritage Register to ensure that there is no duplication among the hierarchy of heritage legislation in Australia.

When an entry in the Register is reviewed, the Heritage Council should notify the owner, within a reasonable timeframe, and provide the owner with the opportunity for consultation. This is consistent with the process undertaken when nominating a heritage place.

Documentation required when nominating a project (Question 1.6)

The Property Council supports the identification of specific documents needed to nominate a property for the Heritage Register. To avoid onerous requirements being placed on State Government officials and to provide clarity for nominees the documentation required to submit a nomination should be clearly outlined.

Applications that do not include the required information should not be considered.

2014 CORPORATE PARTNERS



Anonymous nominations (Question 1.7)

The Property Council does not support the continued practice of 'anonymous nominations' for the Heritage Register. The Property Council recommends the public inclusion of the nominee's identity with the nomination.

Should an individual not give consent to publically releasing their name, then the nomination should not be considered.

Responding to a heritage recommendation (1.8/1.9)

Ensuring an owner is granted adequate time to respond to a heritage recommendation is critical to providing a balanced nomination process. The Property Council supports the inclusion of a legislative time period, during which an owner can seek professional assistance in preparing a submission.

The continued process of local government consultation on heritage recommendations, and council's notification of existing development approvals relevant to the site is also supported.

There is no need, however for council to provide their position on the application. Past experience has shown that, if a local government wishes to state its support or opposition to a heritage listing, it will do so. Some local governments do not have the resources to make an informed decision.

Certificates of immunity (Questions 1.10/1.11/1.12)

The certificate of immunity is essential for providing owners with certainty regarding the short term use of their asset.

By merging the certificate of immunity process with the nomination process the Property Council is concerned that owners will must effectively 'gamble' registering their own site to be granted immunity.

To avoid this, Property Council supports an improved certificate nomination process with guidelines and legislative timeframes in line with those utilised in the application process, but does not support the merging the application and certificate nomination process.

When assessing a nomination for a certificate of immunity the Property Council recommends local government not be consulted by the Heritage Council.

In addition, in the event that the 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 a certificate of immunity for five years.

2014 CORPORATE PARTNERS



All certificates of immunity should remain in place for the full five years, regardless of new information, for the duration of the five year period. To allow for the possible removal of the certificate eliminates the certainty and protection they were designed to provide.

Exemption Certificates (Questions 2.1, 3.4)

The scope of work allowed under an exemption certificate should be expanded from 'no detrimental impact' to 'minimal detrimental impact' under the Act. This is particularly critical in a situation wherein a heritage place is subject to ongoing activities, and ongoing improvement works (i.e. a school or industrial activity).

In addition, local governments should be provided the ability to issue exemption certificates for minor works on local heritage places.

Heritage Agreements (Questions 2.2/2.3/3.5)

Under the Act, heritage agreements are overly complex and include a significant amount of surplus information for an owner.

The Property Council supports 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.

However, these agreements must not preclude parties negotiating a specific agreement to deal with individual circumstances, if needed.

Local governments should also be granted the ability to enter into a Heritage Agreement with an owner.

Essential maintenance requirements (Questions 2.4)

The Property Council does not support any additional onus on owners to maintain their asset beyond those prescribed in the Act.

Any expansion to the essential maintenance requirements under the Act adds scope for onerous requirements to be placed on owners, with no ability for the owner to challenge these requirements.

If an expansion of the essential maintenance requirements is instated during the review of the Act, owners must be granted a right of appeal on any maintenance mandated by the State. The action of filing the appeal must also stay the order for the works to be carried out. The Property Council also recommends the Act be amended to include all the relevant detail as to exceptional circumstances under which the works can be mandated.

2014 CORPORATE PARTNERS



The Property Council also holds serious concerns relating to granting local government the power to mandate essential maintenance. Most councils are not adequately resourced to provide informed decisions on heritage matters, nor do they have an appropriate executive staff member to oversee the decision (as is the case with the State Government). This may lead to inappropriate delegation of the decision and exorbitant and unnecessary fees for owners.

In addition to the current essential maintenance requirements, the Property Council also supports an economic feasibility test to assess the value of restoring a heritage listed asset that is substantially destroyed by fire or natural elements.

Given the unique nature of heritage buildings, the calculation of a market value maybe difficult to determine, therefore an example of an appropriate test may be a financial measurement linked to a percentage of the Unimproved Land Value.

Determining whether to reinstate a damaged heritage building under this example test, it would be considered Economically Feasible if the total cost of reinstatement is no greater than 75% of the rateable Unimproved Land Value, if the cost ratio exceeds this then the asset may be given a “destroyed place recommendation”.

Emergency Work to a heritage place (Question 2.5)

The Property Council believes the current provisions for emergency work are adequate.

Local government (Question 3.1)

Further clarification is needed regarding question 3.1 of the Paper. It is currently not clear as to what it would mean for local government to be ‘acknowledged’ under the Act.

Local heritage places and registers (Question 3.2)

The Property Council supports any measure to reduce duplication between heritage registers at all levels of government.

To this end the requirement for local governments to establish and maintain local heritage registers under the Heritage Act should be amended to recognise local heritage protection provided for through local government planning schemes.

Archaeological places and Shipwrecks (Questions 4.1 to 4.4)

The Property Council has no position on the protection of archaeological places or Shipwrecks.

2014 CORPORATE PARTNERS



Enforcement (Questions 5.1/5.2)

The move to reduce duplication and consistency by creating a single 'stop' order aligned with the heritage registration process is supported. Additionally, the legislation should provide more detailed direction as to the scope of works that can continue under a 'stop' order.

Court orders (Questions 5.3/5.4)

Alternative court orders, such as those introduced into the *Environmental Protection Act* would be appropriate for inclusion in the Heritage Act. These court orders should also apply to local heritage places.

Other issues

In addition to the issues discussed above the Property Council recommends the review into the Act consider:

- The removal of duplication between the State and local registers. Once a heritage place's level of significance has been established, any duplicate entries should be removed. 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.
- The excessive level of heritage protection within the Brisbane City Council Local Government Area (LGA). The Brisbane LGA is subject to 2 heritage registers (a *Local Heritage Register* and *Heritage Register Planning Scheme Policy*). This has resulted from previous changes to the heritage legislation in which Council's planning scheme policy was not recognised as being sufficient. One register for Brisbane should be established.
- Including a "Best of Breed" principle within the Act, under which there is a set quantum to the number of listings of any one property type.
- 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.

Conclusion

The Property Council would like to thank the Department of Environment and Heritage Protection for the opportunity to comment on the Paper.

Should you have any questions regarding the Property Council or this submission, please do not hesitate to contact me on 07 3225 3000, or kmacdermott@propertyoz.com.au.

Yours sincerely



Kathy Mac Dermott
Executive Director

CC: Laura Listopad, Heritage Branch – Environment Policy and Planning