



25 September 2014

Ms Kate McGuckin
The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: thlgc@parliament.qld.gov.au

Dear Ms McGuckin

Thank you for your time discussing the Local Government Association of Queensland (LGAQ)'s request for a lodgement extension of the LGAQ's submission on the Queensland Heritage and Other Legislation Amendment Bill 2014 (the Bill). We would appreciate you raising our request with the Committee and seek leave to have this submission included in the Committee's deliberations.

It has been pleasing to see the Government, via the Department of Environment and Heritage Protection consult with the LGAQ and individual members in line with the spirit of the Partners in Government agreement. The opportunity to meaningfully consult and negotiate in both the policy development and legislative development stages over a reasonable period of time is appreciated.

The LGAQ raised a number of issues with the department on this initiative most recently via the on-line consultation/submission process (**Attached**). The LGAQ is pleased to see the key policy issues have been adequately addressed within the Bill. Key policy issues and the manner in which they were addressed are:

1. Councils' inability to effectively resource (staffing and external specialists) the management of essential repair and maintenance orders.
 - a. It was pleasing to see the Bill reflect the LGAQ's concerns, primarily by ensuring councils have the ability to 'opt-in' and use these tools if desired. This flexibility will ensure councils with adequate resources wishing to avail themselves of these tools are able to do so and those without the resources are not forced to do so.
2. Concerns that the proposed either/or approach to managing local heritage places via either planning schemes or the Heritage Act would result in possible confusion, for example, by providing different tools to manage the same issue.
 - a. The Bill clarifies councils are able to utilise essential repair and maintenance orders and issue exemption certificates whether or not local heritage places are managed under a council planning scheme or the Heritage Act.



The LGAQ identified a number of issues in relation to consequential amendments to the Sustainable Planning Act and/or Regulation, the development of relevant supporting Heritage Act guidelines and Making and Amending Local Planning Instruments. The LGAQ has clarified with departmental officers that operational policy/implementation matters such as these will be dealt with in due course, for example, as part of the development of the supporting Heritage Regulation in the near future and the Government's planning reform process.

Should you require any further details in relation to this matter, please contact Mr Logan Timms – Strategic Policy and Intergovernmental Relations, on [REDACTED] or at [REDACTED] who will be pleased to assist.

Yours sincerely

[REDACTED]

Greg Hoffman PSM
GENERAL MANAGER - ADVOCACY



**‘Our heritage: A collaborative effort.’
Discussion paper – Review of the
*Queensland Heritage Act 1992***

**LGAQ Comments provided to the State
Department of Environment and Heritage
Protection**

Local Government Association of Queensland Ltd

Monday, 23 June 2014

From: Beth Norman
Sent: Monday, 23 June 2014 12:54 PM
To: [REDACTED]
Cc: Logan Timms
Subject: LGAQ submission - Discussion paper - Review of the Queensland Heritage Act 1992

To whom it may concern

Thank you for the opportunity to comment on the 'Our Heritage: A Collaborative Effort' Discussion paper – Review of the *Queensland Heritage Act 1992*.

The Local Government Association of Queensland (LGAQ) is pleased to provide the attached submission.

If you have any queries, please do not hesitate to contact Logan Timms, Team Leader – Strategic Policy and Intergovernmental Relations, on [REDACTED].

Kind regards
Beth



Beth Norman

Executive Officer/Project Coordinator - Advocacy

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Submission Form: Our heritage: A collaborative effort. Discussion paper – Review of the *Queensland Heritage Act 1992*

This submission form should be used to provide responses to the questions posed in *Our heritage: A collaborative effort*, a discussion paper about review of the *Queensland Heritage Act 1992*. The discussion paper and submission form are available at the Department of Environment and Heritage Protection website and the consultation features on the Get Involved website.

How to make your submission

Submissions can be made via email or in writing. To complete this form electronically:

- save this form as a new file
- click on the grey highlighted sections and enter your comments/responses
- save file and return by one of the two options below.

Email: heritage@ehp.qld.gov.au

Post: Att: Laura Listopad
Heritage Branch
Environmental Policy and Planning
Department of Environment and Heritage Protection
PO Box 2454
Brisbane QLD 4001

It would be convenient to save a copy of the discussion paper at the same time as you save a copy of the submission form as a new file.

Refer to the Department of Environment and Heritage Protection and Get Involved websites for the closing date for submissions.

Please call Ms Laura Listopad, Principal Heritage Officer, with any queries relating to the submission process on (07) 3330 5834.

Privacy statement

Any personal information in your submission will be collected by the Department of Environment and Heritage Protection for the purpose of the review project. The department may contact you for further consultation on the issues you raise, and your submission and/or comments may be provided to others with an interest in the review, for example other Queensland Government agencies involved in the project.

Submissions provided to the department in relation to this project will be treated as public documents. This means that in all but exceptional cases, they may be published on the department's website, together with the name and suburb of each person making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. Please note, however, that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Your contact details

Please provide your contact details below (to add electronically, click on grey boxes).

Name: Logan Timms

Organisation/Affiliation: Local Government Association of Queensland

Phone number: 3000 2222

Email address: ask@lgaq.asn.au

Please provide your responses on any of the following questions. These questions are grouped and numbered as per the discussion paper. Refer to it for the relevant background material associated with each question.

1. Queensland Heritage Register

Question 1.1 - Is it clear that the Heritage Register is a list of places that are important to the Queensland community as a whole?

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Question 1.2 – Would a heritage management hierarchy be useful in clarifying the various levels at which cultural heritage significance is managed?

Hierachies are used to manage a spectrum of criteria, usually from broad to specific. The Heritage subject area is not structured this way. It is difficult to see its usefulness in this context.

Question 1.3 – Should current entries in the Heritage Register be reviewed in light of the proposed hierarchy and protection offered at other levels?

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Question 1.4 – Who should be notified when an entry in the Heritage Register is being reviewed?

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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?

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Question 1.6 – Should the Heritage Act more clearly state what documentation is required to make a nomination?

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Question 1.7 – Should it be mandatory for the name of the person making a nomination to be made publically available?

While it is arguable that consistency should be enhanced between, for example, Sustainable Planning Act requirements, Heritage matters can often be very sensitive and localised. A public interest test should be applied

Question 1.8 – Should the nomination process be redesigned to allow time for owners to make considered comment on heritage recommendations?

LGAQ does not object to granting the owners of a potential heritage property sufficient time to address concerns that they may have with the proposed heritage listing of that property. However, it is of concern that increasing the owner's time for assessing a proposed listing without increasing overall processing times will either reduce assessment times for other entities having an interest in the listing or result in the property owner's

response being based on incomplete assessment reports. Redesigning the registration process is unlikely to negate the need for a land owner to engage the services of suitably qualified consultants to prepare their response to the proposed listing

Question 1.9 – Should it be mandatory for local governments to state whether they support or do not support heritage recommendations?

No. In the current resource constrained environment, many local governments do not have sufficient resources to employ a dedicated Heritage Officer. At a minimum, local governments should be given the opportunity to comment on heritage recommendations. Their circumstances will determine whether or not they exercise this opportunity. This matter will need detailed consideration prior to implementation of any proposed changes.

Question 1.10 – Should the nomination process and the certificate of immunity process be integrated into one process?

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Question 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?

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Question 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?

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

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2. Doing work to heritage places

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

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Question 2.2 - Should a simple form of heritage agreement be established for places when they are entered in the Heritage Register?

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Question 2.3 - Should the Heritage Register include reference to the existence of heritage agreements and the work exempted under them?

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

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Question 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?

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3. Local government

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

The benefits of adding local government into the objectives of the act are unclear, particularly since the current policy is to have a dual Planning Act/QH approach to this matter. It may be more useful to have a clearer link and description of the association between the “valuable features” and the local heritage registers required of council.

As discussed later in this response, clarity needs to be provided regarding the primary mechanism for management of local heritage places. The LGAQ understands that the policy intent is an either/or approach namely providing councils with a choice between a primarily Planning Act approach or primarily a QH Act approach. The Single State Planning Policy finalised late in 2013 imposes a State interest, namely that planning schemes give consideration to national, state and local heritage, as well as indigenous cultural heritage. While LGAQ supports the ability of Councils to have maximum tools, it is difficult to see how the either/or approach will work in practice in light of the SPP requirements.

Regardless, any proposed changes need to be clearly communicated to minimise the chance of misunderstandings over whom has responsibility for State and local heritage responsibilities.

Question 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?

LGAQ is of the view that councils currently exempt from the requirements of Part 11 of the QH should be given the choice to opt-in to any proposed regulatory changes. This is vital and the issue should be included in the discussion paper.

In general terms, the reduction of duplication between planning and QH requirements is welcomed. Given the proposal to identify local heritage places in planning schemes, rather than a separate distinct register, it is recommended that:

- It be clarified that the requirement to keep a local heritage register separate from the planning scheme is abolished;
- Clarify that notification actions under the Queensland Heritage Act do not apply and that the planning scheme amendment process provided for under the Sustainable Planning Act applies (so that there is no duplication of notification requirements);
- It is recommended that a Statutory Guideline outlining a process to list/remove properties on a local heritage register be developed under SPA, following the planning scheme amendment transitional process but providing for the notification of land owners;
- To remove any duplication, provide for an opportunity to repeal along with appropriate transitional provisions, existing local heritage registers upon adoption of a planning scheme that appropriately reflects the requirements of the single SPP to identify local heritage places in planning schemes. Local Governments should still have the ability to include provisions over and above the minimum.

LGAQ has identified a number of further questions on this matter.

(a) will the requirements for making a submission under Section 117(3) QH still be carried across to the Planning Act ?

(b) will minor changes to entries under Section 122 QH be considered to be an administrative amendment under

MALPI/ SPA.

(c) Will the IDAS code for development on a local heritage place remain in the QH Regulations or be included under Part H of the single SPP as a mandatory code?

Many local governments have made Building Work involving the demolition of a Local Heritage Place Impact Assessable in planning schemes. There is no administrative definition of “demolition” in the heritage or planning legislation. Consideration should be given to any legislative changes ensure consistency between Acts.

Question 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?

Subject to general comments on clarity regarding the legislative instrument primarily used to manage local heritage places, LGAQ supports actions that prevent the serious or irreparable damage or deterioration of places of local cultural heritage significance subject to a number of issues that require addressing. If the heritage place is on the state register then local government should not be expected to utilise the essential maintenance powers for State responsibilities.

Again, clarity and appropriate transitional provisions will need to be considered in applying these provisions. A number of local governments are exempt from Part 11 of the QH and have their own Cultural Heritage Overlay Code and Policies in planning schemes which provide adequate protection without requiring the additional proposed provisions. In these circumstances the removal of the Part 11 exemption may unnecessarily complicate local government management of local heritage matters and could result in increased compliance responsibility for local governments arising from a general community expectation.

It would also be preferable for the extension of the proposed powers by the State to be accompanied by training for Council officers and, perhaps, the implementation of a grants support system to aid owners of significant places in maintaining their properties. Appropriate resourcing and training is a key issue for local government in addressing heritage matters and it is considered that the State can play an important supporting role in this regard.

Finally, many local governments do not have access to reasonably priced expertise in heritage matters. The use of either internal or external resources is expected to have a financial impact on local governments.

As previously discussed, planning schemes are currently the primary, and in some cases the only, regulatory mechanisms for the heritage component of local heritage places. To extend QH “essential maintenance power” is likely to confuse the regime which currently sits under the Planning Act. LGAQ is of the view that the extended power may be beneficial to councils but it may work more effectively if utilised under the Planning Act. This is a question that should be canvassed within the discussion paper.

Any new provisions need to be supported by sufficient detail/guidance to enable effective implementation of this complex area of responsibility.

Question 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?

Appropriate changes to reduce the regulatory burden on land owners is a commendable objective. It is noted that many of the existing general exemption provisions relating to State heritage registered properties are not applicable to places on a Local Heritage Register, particularly given the definition of what constitutes development under the Sustainable Planning Act. Given this, and therefore what is ultimately assessable against the IDAS Code in the Queensland Heritage Regulation and applicable planning scheme provisions, it is suggested that the DEHP work with Councils to develop a General Exemption Certificate and associated technical note with specific application to works on local heritage places.

Also, application of the General Exemption Certificate is founded on the assumption that good information about the significance of a place exists. If exemption certificates are to be extended to Local Heritage Places, the information required to be recorded for Local Heritage Places will need to have a greater level of detail than currently provided for under Section 114 QHA.

While it is acknowledged that it is the policy intent for Councils to choose an either/or approach to the primary regulatory mechanism for local heritage place management, the lack of information for local heritage places will potentially make transitioning to use QH management tools costly.

If reforms continue to be contemplated in relation to this matter then consideration should be given to ensure the

information for Local Heritage Places is better aligned with the criteria for State Heritage Places set out in Section 31(c) of the QH. However implementing such an initiative could potentially have enormous resource implications.

Should this proposal proceed, clear guidance around the circumstances where exemption certificates can be issued needs to be provided. Many local governments do not have relevant expertise or staff. This is particularly true of rural, remote and Indigenous councils. The assessment process for Exemption Certificates should:

- (a) not involve a technical assessment on heritage grounds; or
- (b) require a heritage report to be prepared by a suitably qualified professional as part of the application to demonstrate the proposed development will only have minor impact on the heritage values.

As reiterated earlier though, this proposal would not be necessary if the overlap between development regulated under a heritage overlay in a planning scheme and regulated as development involving a local heritage place under the QH was resolved. Ideally, development involving local heritage places should be regulated entirely through a planning scheme, with the QH only regulating State heritage places.

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

LGAQ supports the genuine empowerment of Queensland local governments. It is LGAQ's position that the size and geography of Queensland and the resulting diversity of Queensland communities means local governments require as many policy levers as possible to deal with local conditions to tailor make policy responses for those local conditions. An increase in available tools will positively impact on Council's ability to adequately address issues facing local communities. .

4. Archaeology

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

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Question 4.2 - Should the process and outcomes following discovery of an archaeological artefact be more clearly set out in the Heritage Act?

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

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

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5. Enforcement

Question 5.1 - Should the stop order and the interim protection order be redesigned as one order?

LGAQ supports any changes aimed at simplification and clarity without denying natural justice.

Question 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?

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Question 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?

LGAQ supports the proposal to extend the powers available to the Courts. However, consideration should be given to extending those powers to local heritage places regulated by the Planning Act.

Question 5.4 - Should these court orders also apply to local heritage places?

Yes, however please also see comments regarding application of enforcement tools under the Planning Act.

Thank you for your time in making this submission.