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29 September 2014

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

Via Email: thlgc@parliament.qld.gov.au

Dear Ms McGuckin

Attached is Brisbane City Council's (Council) submission on the *Queensland Heritage and Other Legislation Amendment Bill 2014* (the Bill).

Council broadly supports the provisions proposed in the Bill. The key comments made in Council's submission include:

- enabling a local government to make non-development order,
- not requiring a local government to be prescribed before being empowered to issue essential repair and maintenance notices,
- matching penalty units for local heritage places with that of state heritage places, and
- several improvements to reflect how Council operates (such as publishing information on its website rather than in newspapers).

Should you require further information about Council's submission, please contact Mr Marcus Mulholland, Council's Strategic Planning Manager, City Planning and Economic Development Branch on [REDACTED] or via email [REDACTED]

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Att.

Submission on the *Queensland Heritage and Other Legislation Amendment Bill 2014*

Brisbane City Council (Council) provides a submission on the *Queensland Heritage and Other Legislation Amendment Bill 2014* (the Bill). This submission builds upon the input Council has provided through previous submissions and engagement to inform the Queensland Government's regulatory reform agenda and focuses on supporting the key improvements that are proposed in the Bill.

Council has established a proactive approach to managing heritage matters. Effective operation of the Act is of significant interest to Council. Several key aspects of the Bill have been previously suggested by Council. Council requests opportunities to have ongoing input to the effectiveness of the Bill should it be enacted.

Specific Comments

The following table outlines specific comments on provisions of the Bill. Adoption of the following recommendations would enable Council to effectively implement the legislation.

No.	Chapter/Part/Clause	Comment	Recommendation
1.	Clause 40 (section 75 – new subsection 5)	This clause indicates requirements including publishing a notice in a newspaper. Council considers that such a requirement does not reflect current and effective practice where electronic notification is also provided by Council's website. Council's experience is that such web based notification can be more effective and expeditious in communicating such matters.	Amend the clause to identify publishing the notice on the local government's website to also satisfy this requirement.
2.	Clause 41 (section 76)	Section 76(2) provides the maximum penalty is a tenfold difference for not complying with a condition of an exemption certificate issued by the chief executive as opposed to a local government. From a local government perspective, this significantly lower penalty is a less effective deterrent relative to a State matter. This also substantially restricts a local government's capacity to recover costs to remedy the non-compliance. This does not reflect the significance of local heritage to local communities.	Amend the penalty units to be equal.
3.	Clause 46 Part 8	The ability for a local government to issue notices for essential repair and maintenance is strongly supported. The need for a local government to be prescribed before having this power (section 83) is questioned as there does not appear to be any benefit from this additional regulatory step.	Amend section 83 to remove the need for a local government to be prescribed before being empowered to issue notices under the Act.

		<p>State legislation typically provides powers to local government for similar notices under other legislation. Local governments issue notices as a matter of course on a wide variety of matters. This situation is generally no different to existing practice.</p> <p>Section 84(1)(b) provides for a range of matters that can give rise to the need to issue a notice under this provision. In Council's experience, animals other than insects can cause the need for such a notice. Birds, possums and bats cause damage to structures and should be recognised in this provision.</p>	<p>Amended section 84(1)(b) to include animals such as bats, possums and birds.</p>
No.	Chapter/Part/Clause	Comment	Recommendation
	Clause 46 Part 8	<p>Section 84(6)(b) provides penalty rates for 75 or 50 penalty units where the same offence for a state heritage place is 100 or 1,000 penalty units. There is no justification for this variation in penalty. A lesser penalty is less effective as a deterrent and provides less opportunity for a local government to recover costs for remedying the offence.</p> <p>Non-development orders are supported. There are enhancements to the effectiveness of these provisions that will assist in these being more accessible via certificates and notations in planning schemes. There are already requirements for other matters to be noted in planning schemes (such as community infrastructure designations) and this improvement would be consistent with that approach.</p> <p>Non-development orders should also be an order</p>	<p>Amend the penalty units to be equal.</p>
4.	Clause 71 (new section 164C Non-development orders)	<p>Non-development orders are supported. There are enhancements to the effectiveness of these provisions that will assist in these being more accessible via certificates and notations in planning schemes. There are already requirements for other matters to be noted in planning schemes (such as community infrastructure designations) and this improvement would be consistent with that approach.</p> <p>Non-development orders should also be an order</p>	<p>Amend section 164C so:</p> <ul style="list-style-type: none"> • The relevant local government also be given copy of non-development order • The local governments are required to note the order on Planning and Development Certificates • The local governments are able to impose non-development orders for local heritage places

		<p>that a local government can make for local heritage places. The Bill proposes to extend other powers previously only able to be exercised by the State. Considerations should be given to extending this power.</p>	
5.	<p>Clause 76 (addition to section 173)</p>	<p>Guidelines are identified in section 173. It is not clear if these have a statutory effect. Experience of the term 'statutory guideline' used under other legislation such as the <i>Sustainable Planning Act 2009</i> (SPA) is potentially confusing. Clarification is requested.</p>	<p>Amend section 173 to clarify the status of guidelines identified in this section.</p>
6.	<p>Clause 80 (transitional provisions - section 199(1)(b))</p>	<p>Section 199(1)(b) appears to include a typographical error.</p>	<p>Amend section 199(1)(b) to refer to section 112(1)(a).</p>

No.	Chapter/Part/Clause	Comment	Recommendation
7.	Clauses 56, 57 and 80	<p>Council is a not a prescribed local government under section 112. As a result, it has identified places of cultural heritage significance in a local heritage register made under section 113 as well as identifying those places of cultural heritage significance in its planning scheme (<i>Brisbane City Plan 2014</i>).</p> <p>The amendment proposed to section 112 makes it unnecessary for Council to continue to keep a local heritage register as places of cultural heritage significance have been identified in its planning scheme.</p> <p>As there is currently no mechanism for Council to revoke its local heritage register made under section 113, unnecessary duplication has occurred which causes confusion.</p>	<p>Amend clauses 56, 57 and 80 to provide a local government, that has identified places of cultural heritage significance in both its planning scheme and a local heritage register, the ability to revoke its local heritage register if it chooses and without the need for State consent.</p>
8.	Consequential amendments to Schedule 3 of SPA	<p>The definition of a local heritage place should not be amended as, for local governments who do not maintain a local heritage register (but have local heritage places identified in their planning schemes), the penalty provisions in section 578(3) of SPA and the emergency building work provisions in section 583 of SPA will not apply. This is unacceptable to Council and the limitation of the definition to a place on a local heritage register is unnecessary.</p>	<p>Delete the amendment to the definition of a local heritage place from the consequential amendments to SPA.</p>