

Queensland Heritage and Other Legislation Amendment Bill 2014

Report No. 55

**Transport, Housing and Local Government
Committee**

October 2014

Transport, Housing and Local Government Committee

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Contents

Abbreviations	v
Chair's Foreword	vi
Recommendations	vii
1 Introduction	1
1.1 Role of the Committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Queensland Heritage and Other Legislation Amendment Bill 2014	1
1.4 Consultation	4
1.5 Should the Bill be passed	6
2 Examination of the Queensland Heritage and Other Legislation Amendment Bill 2014	7
2.1 Collaborate with the community in promoting the value of Queensland places of cultural heritage significance	7
2.1.1 <i>The capacity of applicants to choose whether their name is made public</i>	7
2.2 Streamlining the statutory processes associated with the Queensland heritage issue	10
2.2.1 <i>Material that must accompany a heritage application</i>	10
2.2.2 <i>CEO can make minor changes to the entry for a place on the Queensland heritage register</i>	12
2.3 Reducing unnecessary regulatory burden and further encouraging appropriate development	14
2.3.1 <i>Council to make decision on heritage recommendation</i>	14
2.3.2 <i>Restriction on new applications (to enter or remove a listing) for 5 years</i>	16
2.3.3 <i>Exclusion of a place from entry on the Queensland heritage register</i>	18
2.3.4 <i>Exemption certificates</i>	21
2.3.5 <i>Differing penalty rates for exemption certificates</i>	24
2.4 Strengthening protections for the state's most important historic heritage places	25
2.4.1 <i>Notices about essential repair and maintenance</i>	25
2.4.2 <i>Costs of maintaining a heritage listed property</i>	30
2.4.3 <i>Protection for historic aircraft wrecks and historic shipwrecks</i>	31
2.5 Providing flexibility to local government in identifying and protecting places of local significance	33
2.5.1 <i>Expiry date for a heritage agreement</i>	33
2.5.2 <i>Inclusion of a mechanism for a local government to revoke its local heritage register</i>	34
2.5.3 <i>Option of providing a local heritage register online</i>	34
2.5.4 <i>Appeal rights for owners in relation to local heritage listing</i>	35
2.5.5 <i>No appeal recourse (compensation) for owners of places entered in local heritage registers</i>	37
2.5.6 <i>Cultural heritage criteria used for local heritage listing</i>	37
2.5.7 <i>Places entered in both the state register and a local register (duplication)</i>	40

2.5.8	<i>Updating the 'Making and Amending a Local Planning Instrument' Statutory Guideline</i>	41
2.5.9	<i>Issuing of non-development orders</i>	42
2.5.10	<i>Flexibility and fees - general exemption certificates for local heritage places</i>	43
2.5.11	<i>Consequential amendment of the Sustainable Planning Act 2009 and the Sustainable Planning Regulation</i>	44
2.5.12	<i>Publishing a notice about an exemption certificate</i>	45
2.5.13	<i>Recording of local heritage agreements and guidance</i>	46
2.5.14	<i>Guidelines made by the chief executive in relation to local government</i>	46
2.5.15	<i>Assistance to regional areas and to local governments</i>	47
2.6	Minor amendments to the Heritage Act	49
2.6.1	<i>Initial notice of application</i>	49
2.6.2	<i>Incorrect sectional reference in Clause 80</i>	49
2.6.3	<i>Typographical error – new section 199(1)(b)</i>	50
2.6.4	<i>Consequential amendments to other Acts</i>	50
3	Fundamental legislative principles	52
3.1	Rights and liberties of individuals	52
3.1.1	<i>Clause 46 – essential repair and maintenance notices</i>	52
3.2	Natural justice	53
3.2.1	<i>Clause 16 – information accompanying heritage applications</i>	53
3.3	Explanatory Notes	55
	Appendix A – List of Submissions	56
	Appendix B – Witnesses at public departmental briefing and public hearing – 1 October 2014	56
	Statements of Reservation	57

Abbreviations

the Department or DEHP	Department of Environment and Heritage Protection
FLPs	Fundamental Legislative Principles
IDAS	Integrated Development Assessment System
LGAQ	Local Government Association of Queensland
MALPI	Making and Amending Local Planning Instruments statutory guideline
OQPC	Office of the Queensland Parliamentary Counsel
QELA	Queensland Environmental Law Association
the Heritage Act	Queensland Heritage Act 1992
the Bill	Queensland Heritage and Other Legislation Amendment Bill 2014
the Council	Queensland Heritage Council
SPP	Queensland State Planning Policy
SPA or Sustainable Planning Act	<i>Sustainable Planning Act 2009</i>
the Committee	Transport, Housing and Local Government Committee

Chair's Foreword

This report presents a summary of the Committee's examination of the Queensland Heritage and Other Legislation Amendment Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear from members of the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

I would like to take this opportunity to acknowledge the extensive work undertaken by the Department of Environment and Heritage Protection in its review of the *Queensland Heritage Act 1992*, including the in-depth consultation it has undertaken with stakeholders. The Committee has reviewed the Bill and has made a number of recommendations which it believes will assist in adding value to the operation of the revised Heritage Act.

On behalf of the Committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the Committee's deliberations: the Committee's secretariat, officials from the Department of Environment and Heritage Protection and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Mr Howard Hobbs MP

Chair

October 2014

Recommendations

Recommendation 1 **6**

The Committee recommends the Queensland Heritage and Other Legislation Amendment Bill 2014 be passed.

Recommendation 2 **18**

The Committee recommends the Minister for Environment and Heritage Protection amend the Queensland Heritage and Other Legislation Bill 2014 to enable reconsideration of a decision by the Queensland Heritage Council *not to remove a place from the heritage register*, during the five year moratorium period ONLY in circumstances where significant new information comes to light.

Recommendation 3 **24**

The Committee recommends that the Minister for Environment and Heritage Protection amend the Queensland Heritage and Other Legislation Bill 2014 to reintroduce the word 'detrimental' into amended sections 72(2)(iv) and 72(3)(b).

Recommendation 4 **29**

The Committee recommends that the regulation provided for in section 83(2) of the Queensland Heritage and Other Legislation Bill 2014 clearly establish rules about the circumstances in which a local government can use the power to issue an essential repair and maintenance notice.

Recommendation 5 **32**

The Committee recommends that the Minister for Environment and Heritage Protection amend the *Queensland Heritage Act 1992* to ensure that World War II aircraft and ships wrecked in Queensland waters and the historic underwater articles associated with them are protected upon commencement of the proposed amendments to the *Queensland Heritage Act 1992*.

Recommendation 6 **37**

The Committee recommends that the Minister for Environment and Heritage Protection consult with the Minister for State Development, Infrastructure and Planning and the Minister for Local Government, Community Recovery and Resilience to investigate options for introducing appeal rights regarding a decision to enter a place into a local government heritage register or planning scheme.

Recommendation 7 **41**

The Committee recommends that the Minister for Environment and Heritage Protection consult with the Minister for State Development, Infrastructure and Planning on the draft Planning and Development Bill regarding the removal of unnecessary duplication from the development assessment process for the owners and managers of heritage places.

Recommendation 8 **42**

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department of Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning about implementing the Cairns Regional Council's proposal to include a similar administrative change (as the one proposed in Clause 64 of the Queensland Heritage and Other Legislation Amendment Bill 2014 on how to make a minor change) into the 'Making and Amending Local Planning Instruments' statutory guideline.

Recommendation 9**44**

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department for Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning in relation to the potential for charging of fees for local exemption certificates.

Recommendation 10**50**

The Committee recommends that the Minister for Environment and Heritage Protection amends proposed new section 199(1)(b) in the Queensland Heritage and Other Legislation Amendment Bill 2014 so that it refers to section 112(1)(a).

Recommendation 11**51**

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department for Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning regarding the definition of a local heritage place in the *Sustainable Planning Act 2009*.

1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) was established by resolution of the Queensland Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

1.2 Inquiry process

On Tuesday, 9 September 2014 the Minister for Environment and Heritage Protection, the Hon. Andrew Powell MP, introduced the Queensland Heritage and Other Legislation Amendment Bill 2014 (the Bill) into the Queensland Parliament. In accordance with Standing Order 131 of the *Standing Rules and Orders of the Legislative Assembly*, the Bill was referred to the Transport, Housing and Local Government Committee for detailed consideration.

On 10 September 2014, the Committee wrote to the Department of Environment and Heritage Protection (the Department or DEHP) seeking advice on the Bill. It also invited stakeholders and subscribers to lodge written submissions.

The Committee received 11 submissions (see Appendix A for a list of submitters). The Committee held a public hearing and a public briefing by the Department at the Queensland Parliament on 1 October 2014. The Committee heard from two witnesses and two departmental representatives at the hearing (see Appendix B for a list of witnesses).

A transcript of the hearing and briefing, as well as the submissions received can be accessed on the Committee's website: <http://www.parliament.qld.gov.au/work-of-committees/committees/THLGC>.

1.3 Policy objectives of the Queensland Heritage and Other Legislation Amendment Bill 2014

In his introductory speech on 9 September 2014, the Hon. Andrew Powell MP, Minister for Environment and Heritage Protection informed the House that the overarching objective of the legislative amendments is to *"reinvigorate our approach to conserving and promoting our important heritage assets, thereby forging strong connections with what is our living heritage"* and that the Bill *"better aligns the Act to its purpose of conserving Queensland's cultural heritage, putting it in the forefront of heritage legislation across Australia"*.¹

The intention of the Bill is to make changes to the *Queensland Heritage Act 1992* (the Heritage Act). The Explanatory Notes sets out the Bill's five core objectives and how they will be achieved:

- 'Collaborate with the community in promoting the value of Queensland's places of cultural heritage significance'. The Bill proposes to achieve this objective by:
 - *Articulating the function of the Queensland Heritage Council related to encouraging interest in, and understanding of, the state's cultural heritage to emphasise the value of this work.*

¹ Minister for Environment and Heritage Protection, Hansard Transcript, 9 September 2014: 2975

- *Providing access to material associated with nominations to the Queensland heritage register on the Department of Environment and Heritage Protection website to encourage interested members of the community to become involved by making a submission and track progress to its conclusion.*
- *Allowing for those purchasing property to be alerted to a current nomination affecting it through a standard heritage search undertaken as part of the conveyancing process.*
- *Including details in the Queensland heritage register of work covered by a heritage agreement for a state-registered place to raise awareness about what this means in terms of doing work to a place and assist new owners.²*
- 'Streamlining the statutory processes associated with the Queensland heritage register'. The Bill proposes to achieve this objective by:
 - *Emphasising the high level of heritage significance a place must demonstrate to be eligible for entry in the Queensland heritage register, to ensure it fits within the accepted framework of world, national, state and local heritage significance.*
 - *Improving the standard of information required of a nomination to the Queensland heritage register and clarifying what happens with nominations that do not comply with these requirements.*
 - *Improving the provisions about changing information in existing entries to ensure the Department of Environment and Heritage Protection can appropriately address those errors or omissions that do not impact on the heritage significance of the place or its heritage boundary.*
 - *Introducing part nominations (to remove parts of a State heritage place or add to one) to help manage changes to complex places involving many owners and ensure matters proceed in a timely and fair manner.*
 - *Removing the discrete archaeological place category and the separate process for assessing these kinds of places for entry in, or removal from, the Queensland heritage register; making the existing 14, State heritage places.*
 - *Introduce a mechanism whereby owners of nominated places can make a considered, written response to a recommendation made to the Queensland Heritage Council by the chief executive about the place's eligibility for entry in the Queensland heritage register.*
 - *Minor and technical amendments to ensure various parts of the nomination assessment process proceed more efficiently.³*
- 'Reducing unnecessary regulatory burden and further encouraging appropriate development'. The Bill proposes to achieve this objective by:
 - *Allowing the Queensland Heritage Council to have regard for whether certain cultural heritage values of a place that are also natural heritage values are effectively protected via other legislation.*
 - *Increasing the time following a decision of the Queensland Heritage Council from one to five years before which new applications cannot be accepted.*

² QHOLA Explanatory Notes:2

³ QHOLA Explanatory Notes:3-4

- *Expanding the scope of work covered by exemption certificates issued to owners and managers of places entered in the Queensland heritage register to include that which will have a minimal detrimental impact on its significance.*
- *Giving local government greater flexibility in how it identifies and manages places of local cultural heritage significance in its area, as well as clarifying the application of local heritage provisions in the Queensland Heritage Act 1992.*
- *Providing for local government to also use exemption certificates with local heritage places identified in a planning scheme or entered in the local heritage register established under the Queensland Heritage Act 1992.*
- *Also providing for local governments to enter heritage agreements with owners and custodians of local heritage places to further reduce unwarranted involvement in the development assessment system.⁴*
- 'Strengthening protections for the state's most important historic heritage places'. The Bill proposes to achieve this objective by:
 - *Integrating the certificate of immunity provision into the registration process to provide certainty to property owners and developers while also ensuring a decision of the Queensland Heritage Council is the culmination of a fair and timely process to which all interested stakeholders have contributed.*
 - *Revising the essential maintenance provisions to ensure a range of minor work that will prevent deterioration of a state-registered place can, in the rare circumstances where no other options have been found, be required of certain owners.*
 - *Establishing a process associated with the discovery of underwater cultural heritage artefacts (these are defined as historic shipwrecks and aircraft wrecks, and the articles associated with them, in Queensland waters for 75 years or more).*
 - *Creating a single 'stop work' order issued by the Minister and clearly aligned with the registration process to reduce confusion and duplication.*
 - *Revising provisions related to appeals against Queensland heritage register decisions to clarify applications about parts of places (adding to existing state-registered places and removing parts from them).*
 - *Refurbishing existing orders (restoration and non-development) following conviction for a serious heritage offence and introducing two new orders—public benefit and education orders—to provide the court a more contemporary and flexible palette of penalties for heritage offences.⁵*
- 'Providing flexibility to local government in identifying and protecting places of local heritage significance'. The Bill proposes to achieve this objective by:
 - *Allowing local government to choose the mechanism appropriate to their circumstances with which to identify and protect places of local heritage significance: either a planning scheme as per the requirements of the Sustainable Planning Act 2009 or a local heritage register established under the Queensland Heritage Act 1992.*

⁴ QHOLA Explanatory Notes:5

⁵ QHOLA Explanatory Notes:6

- *Providing for local governments to issue exemption certificates for minor work to local heritage places thereby reducing unnecessary engagement with Integrated Development Assessment System.*
- *Providing local governments the option to enter agreements about the future management and development of local heritage places, again reducing unnecessary engagement with Integrated Development Assessment System.*
- *Creating a system whereby chief executive officers of local government can opt-in to using a last-resort power to issue notices requiring owners to conduct essential repair and maintenance on their local heritage places. This option will be exercised by regulation.⁶*

The Explanatory Notes provides the overarching reasons and background for these objectives:

Firstly they deliver on the Queensland Government's commitments to significantly reduce the regulatory burden on industry and the community by 2018, to open data reform and promoting the state's heritage as a driver of the economy.

Secondly they make the regulatory tools in the Queensland Heritage Act 1992 more proportionate to the impact of development on the heritage significance of state and locally registered places.

And thirdly the objectives of the Bill related to local government and local heritage places respond to changes in the planning and development system into which the Queensland Heritage Act 1992 and the Queensland heritage register are integrated. They draw on the growing recognition of heritage at a local government level combined with the introduction of Queensland's State Planning Policy (SPP) in December 2013. The SPP delineates the state's interest in relation to cultural heritage matters at all levels of government. In particular, it requires local governments preparing or amending their planning schemes to identify local heritage places in their area, facilitate the conservation and adaptive re-use of these places, and include development requirements that avoid or minimise adverse impacts on their cultural heritage significance.

The objectives distil the results of a recent public review of the Act initiated with release of the discussion paper 'Our heritage: A collaborative effort', the views of the Queensland Heritage Council and the experience of the Department of Environment and Heritage Protection in administering the Queensland heritage register processes and timeframes and regulating development at places on the register.⁷

1.4 Consultation

Given that the last review of the Heritage Act was completed in 2008, a new review is considered appropriate and timely.⁸

The Department released a discussion paper framed around review of the Heritage Act.⁹ Consultation on the discussion paper was undertaken for six weeks from 8 May to 20 June 2014. A broad range of stakeholders provided submissions (numbered 48, plus a small number of late

⁶ QHOLA Explanatory Notes:8

⁷ QHOLA Explanatory Notes:2

⁸ QHOLA Explanatory Notes:1

⁹ The discussion paper canvassed opinion from stakeholders based around five themes: the Queensland Heritage Register, doing work to heritage places, local government, archaeology and enforcement. Thirty one individual questions were asked in relation to each theme and to the core aspects of the operation of the Heritage Act (QHOLA Explanatory Notes: 10)

responses), including members of the community, industry groups, heritage professionals, local government and representative organisations. The Department published the results of the consultation on the discussion paper in a report titled “Consultation Report - Our heritage: A collaborative effort - Review of the *Queensland Heritage Act 1992*”. (A copy of the report is available on the Department’s website and on the Committee’s website).¹⁰

As set out in the Explanatory Notes, the Department consulted extensively as part of its review of the Heritage Act:

- *The Department met with representatives of 11 organisations [Local Government Association of Queensland (LGAQ), Brisbane City Council, Ipswich City Council, City of Gold Coast, National Trust of Australia (Queensland) Ltd, Urban Development Industry Association, Queensland Division of Property Council of Australia, the Government Architect in the Department of Housing and Public Works, and Museum and Gallery Services Queensland and the Abandoned Mines Unit in the Department of Natural Resources and Mines] to collect direct feedback on the discussion paper.*
- *The Queensland Heritage Council has been consulted throughout the review of the Queensland Heritage Act 1992; providing detailed recommendations before the Authority to Prepare submission, making a submission on the discussion paper, and commenting on a draft of the Bill prior to the Authority to Introduce submission.*
- *Three individuals made submissions. The community organisations that made responses were the: Far Northern Branch of the National Trust Queensland, National Trust of Australia (Queensland) Ltd, Sunshine Coast Heritage Reference Group, The Corporation of the Synod of the Diocese of Brisbane, Buderim Historical Society, Buderim-Palmwoods Heritage Tramway Inc., Spring Hill Community Group and Royal Historical Society of Queensland.*
- *Eleven industry consultants made submissions (e.g. conservation architects and archaeologists). The industry organisations that made submissions were the: Australian Institute of Architects, Queensland Tourism Industry Council, Australian Institute of Maritime Archaeology, Australasian Society for Historical Archaeology, Queensland Division of Engineers Australia, Urban Design Alliance of Queensland, Urban Development Institute of Australia Queensland, Museum and Gallery Services Queensland, Queensland Division of Property Council of Australia, and Australian International Council on Monuments and Sites.*
- *Twelve individual local governments made responses (Cassowary Coast Regional Council, Brisbane City Council, Cairns Regional Council, Gladstone Regional Council, Ipswich City Council, Logan City Council, Mackay Regional Council, Townsville City Council, City of Gold Coast, Sunshine Coast Regional Council Cultural Heritage Services, Fraser Coast Regional Council and Mareeba Shire Council) as well as the LGAQ on behalf of its members.*
- *The other government agencies or companies that made submissions were the Great Barrier Marine Park Authority, Queensland State Archives, the Department of Natural Resources and Mines, and Queensland Rail.*¹¹

Committee comment

The Committee would like to take the opportunity to acknowledge the considerable (and ongoing) work by the Department of Environment and Heritage Protection who have consulted broadly with stakeholders to improve and update the *Queensland Heritage Act 1992*. The Committee notes the substantive support for change by stakeholders, and the willingness of the Department to listen and respond to those involved in the consultation process.

¹⁰ QHOLA Explanatory Notes:9-10

¹¹ QHOLA Explanatory Notes:10

1.5 Should the Bill be passed

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

Committee comment

The Committee considers the policy objectives being pursued by this Bill will better align the *Queensland Heritage Act 1992* with its purpose of conserving Queensland's cultural heritage by improving the operation of the legislation; bringing a welcome reduction in regulatory burden, particularly on the owners of heritage listed places; strengthening protections for the state's heritage places; and providing more flexibility to local government to identify and establish appropriate protections for places of local heritage significant.

The Committee therefore makes the following recommendation.

Recommendation 1

The Committee recommends the Queensland Heritage and Other Legislation Amendment Bill 2014 be passed.

2 Examination of the Queensland Heritage and Other Legislation Amendment Bill 2014

This Bill proposes to make a number of legislative amendments to the Heritage Act to achieve discrete policy objectives.

This section examines the main issues that were raised during the Committee's examination of the Bill. The issues are discussed under each of the key policy objectives of the Bill:

- Collaborate with the community in promoting the value of Queensland places of cultural heritage significance
- Streamline the statutory processes whereby places are considered for entry in, or removal from, the Queensland heritage register
- Reduce unnecessary regulatory burden, particularly on owners of heritage places, and further encourage appropriate development of these places
- Strengthen protections for the state's most important historic heritage places to ensure they can be appreciated by present and future generations of Queenslanders
- Provide greater flexibility to local government in carrying out its important role of identifying and protecting places of local heritage significance.

2.1 Collaborate with the community in promoting the value of Queensland places of cultural heritage significance

2.1.1 The capacity of applicants to choose whether their name is made public

Clause 21 of the Bill proposed to replace section 40 of the Act to enable the chief executive to publish applications made under section 36 of the Act to be published on the website rather than having to make physical copies available. Proposed new section 40(2) has the same intent as the existing section 40(2) of the Heritage Act in that it provides that an applicant's personal information should not be published unless the applicant has given written consent.

The Queensland Environmental Law Association (QELA) does not support this provision stating:

If a person wishes to make an application to enter a place in the Register or an application to remove a place from the Register, that person should be prepared to make their identity known. The consequences of an application being made can be significant for the owner of the place and the owner is entitled to know the identity of the person who has initiated the response.¹²

The Department responded to this issue stating that the proposed replacement of section 40 does not change the current circumstance in the Heritage Act where the Department can include an applicant's name only if they consent and that applicants must provide this information on the application form and the information is provided to the Queensland Heritage Council.¹³ The Department also pointed out that the majority of stakeholders have indicated support for this provision.

¹² QELA, submission 6:2

¹³ DEHP, written brief (appendix 1), 29 September 2014:8

This question about whether applicant's should be able to choose whether their name is made public was included in the discussion paper to gauge the community's views on the subject. Submissions expressed very strong opposition to the prospect of changing the current situation. Of the 48 total submissions received, 13 made no response on this question, 29 were strongly opposed and six were in favour of requiring applicant's names to be made public.

The majority of submissions on the discussion paper that support the current arrangement expressed very strong opposition to the prospect of applicants having to reveal their identities because of the potential for them to be exposed to some form of retribution or retaliation, particularly individuals in small communities. It was suggested that this would lead to the loss of significant places because applicants would not be willing to risk some form of reprisal. The six in favour of requiring applicant's to be publically identified suggested it would improve transparency. The Queensland Environmental Law Association Inc. asserts that owners have a right to know who has made an application.

The department's analysis of applications made since 2009 shows that half of all applicants do not consent to their name being made public in relation to a heritage application, and that this has changed slightly over the last year. More applicants are now choosing to be publically identified, in part because the department has improved the information it provides about what level of detail is revealed (i.e. names are provided but not contact details). This demonstrates what can be achieved without regulation.¹⁴

The Department further advised the Committee that it believes the current situation strikes a reasonable balance between the rights of owners and those of applicants, made even firmer by the additional requirements being set out in relation to what information must support an application for it to be accepted (see Clause 16 of the Bill). This information is all based on the applicant making a reasoned argument that a place has potential state heritage value and is worthy of consideration.¹⁵

The Property Council of Australia (Queensland) raises a similar issue stating:

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 nominations cannot be considered.¹⁶

¹⁴ DEHP, written brief (appendix 1), 29 September 2014:8

¹⁵ DEHP, written brief (appendix 1), 29 September 2014:8

¹⁶ The Property Council of Australia (Qld), submission 10:6

The Department responded:

The Property Council states in its submission that its members have provided anecdotal evidence that applications are being made 'without due cause'. The amendments proposed in Clause 16 relate to the information that must accompany an application for it to be accepted. This supporting information is precisely focussed on establishing there is a good reason for an application to be accepted and for the registration process to be undertaken. By strengthening these application requirements, the ability for an application to be made without due cause will be extremely difficult due to the evidence necessary to support an application.

It is acknowledged that a heritage application puts a strain on owners of places and that they may disagree with the potential state heritage significance asserted in it. Because of this, the department must have the discretion to accept only the best applications to reduce this to a minimum. The improvement to the assessment process proposed with Clause 25 in providing for owners to make a response on heritage recommendations provides further natural justice for them while also ensuring the object of the Queensland Heritage Act 1992 is achieved.

The strong concern expressed in the submissions on the discussion paper question on this issue aligns with the experience of the department over many years in relation to the sometimes vexed issue of release of the identity of heritage applicants.

Further changes proposed with the Bill will mean application material will be even more readily available for public scrutiny (refer to Clause 21) than they currently are and ensure only properly made applications are being accepted.¹⁷

Committee comment

The Committee notes the concerns raised by the Queensland Environmental Law Association and the Property Council of Australia (Queensland) regarding the removal of the applicant's personal information from published applications. However, the Committee is also cognisant of the strong response in the submissions to the Department of Environment and Heritage Protection opposing the mandatory naming of applicants on their published submissions. The Committee notes that the names of applicants are provided to the Queensland Heritage Council and also the Department's advice that there is a trend toward applicants allowing their names to be published but not their contact details. The Committee is of the view that the proposed amendments of section 36 of the Heritage Act, which will require applications to include a well-researched and evidenced case, will reduce the risk of nominations being made without due cause.

The Committee believes that the Heritage Act strikes a reasonable balance between the rights of owners and those of applicants that there are adequate provisions to ensure natural justice is provided to owners of properties.

¹⁷ DEHP, written brief (appendix 2), 29 September 2014:23

2.2 Streamlining the statutory processes associated with the Queensland heritage issue

2.2.1 Material that must accompany a heritage application

Clause 16 proposes to amend subsections 36(2)(c) and (d) of section 36 (Applying to enter place in, or remove place from, register). The amendments propose to insert new requirements regarding what material must accompany a heritage application (either to add or to remove the whole or part of a heritage listed place from the Queensland heritage register). Specifically, proposed new (c)(i) requires that an application to enter (add) a place in the register be accompanied by

- (i) *a written statement, that is based on and refers to historical research, about how the place satisfies each of the cultural heritage criteria the applicant considers relevant for the place...*¹⁸

and proposed new section 36(2)(d) requires that an application to remove a State heritage place from the register be accompanied by—

- (i) *a written statement, that is based on and refers to the following, about how the place does not satisfy each of the cultural heritage criteria the applicant considers relevant for the place—*

- (A) *information in the entry for the place in the register;*

- (B) *historical research; and*

- (ii) *copies or details of material used for the historical research, including, for example, photographs, maps, plans and historical titles information.*¹⁹

The additional information requirements proposed in the Bill were supported by the Property Council of Australia (Queensland):

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 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 make informed recommendations to the Heritage Council, or would require an increase in departmental resources to supplement the information.*²⁰

The Cassowary Coast Regional Council raised concerns about the proposed new provisions stating:

The requirement for an application to be accompanied by the written statement outlined in proposed subparagraph (c)(i) is too onerous on applicants, especially if they are an individual. In particular, the requirement for historical research should be removed.

*The proposed new section 36(2)(d) should not be included as an amendment to the Queensland Heritage Act 1991...The same requirements are stated in a much more succinct way in the current section 36(2)(d)...*²¹

¹⁸ QHOLA Bill 2014, Clause 16, section 36:14-16

¹⁹ QHOLA Bill 2014, Clause 16, section 36:14-16

²⁰ The Property Council of Australia (Queensland), submission 10:1-2

²¹ Cassowary Coast Regional Council, submission 1:1

The National Trust of Queensland shared these concerns stating:

NTA(Q)'s main concerns are... increasing the information required for a compliant nomination to the Queensland Heritage Register could make the process even more onerous and daunting for some members of the community interested in heritage and could put an increased load on the resources of the NTA(Q) as it tries to help members of the community prepare nominations.²²

The Explanatory Notes explain that:

... These changes will improve transparency and assist applicants, as well as cutting administrative burden by eliminating inadequately documented applications from the registration process.

Experience administering the statutory processes and timeframes since 2008 has shown what information must be part of an application to enable the chief executive to provide the Queensland Heritage Council with a sound recommendation, upon which it can base a sound decision. The amended section 36 details that an application proposing entry of a place in the Queensland heritage register must include a statement about why the place is significant that refers to the cultural heritage criteria the applicant believes apply. This statement must be supported by a researched history, references or copies of the historical material used to prepare the history, and a considered description of the place and the features that make it important. There must also be a plan showing the features of the place as compared to the cadastral boundaries and the proposed heritage boundary. This visual illustration is key to ensuring the soundness of the notification aspects of the registration process as it clearly depicts what land is affected and allows the Department of Environment and Heritage Protection to involve all affected owners from the beginning. The requirements are slightly different for an application proposing removal of a place from the register, as an entry explaining the significance of the place already exists. An application proposing to remove part of a state-registered place requires a plan to show exactly what area of land and features are proposed for removal.²³

In regards to the concerns about the burden these new provisions will place on community members or individuals considering making an application, the Explanatory Notes state that:

... The Department of Environment and Heritage Protection provides guidance and direct assistance to applicants about the material required with an application and will continue to do so. However, given the effort and expense of undertaking the registration process, and the consequences of the resulting decision for property owners, a heightening of initial application requirements is considered reasonable and appropriate.²⁴

The Department has further advised that:

... The requirement in new section 36(c)(i) to base a statement about why the applicant believes a place is worthy of entry in the Queensland heritage register on historical research is not too onerous for most individuals. Those who have made applications in the past have met this requirement, despite having varying skill levels. Modern applicants are aided by the increase in historical research material available online or in local studies libraries and by the ready access to entries for places on the Queensland heritage register provided via the department's website. The reference material used to assess the heritage significance of the places is progressively being made part of all entries and provide a valuable resource to

²² National Trust of Queensland, submission 7:2

²³ QHOLA Explanatory Notes:19-20

²⁴ QHOLA Explanatory Notes:19-20

researchers... Update of the existing form and guidelines for individuals or groups wishing to make a heritage application will occur in time for commencement, should the Bill be passed. This will make the new requirements clear to applicants and provide guidance as to how to access a range of historical information on which to base an application. In addition, department officers provide guidance to potential applicants and will continue to do so.²⁵

Committee comment

The Committee has noted concerns raised by some submitters and the strong support for the amendment by others. On balance, the Committee is satisfied that the additional information is necessary for an effective decision about whether or not a place should be registered, that the information required is not too onerous and there will be sufficient support provided by the Department of Environment of Heritage Protection to community members and individuals making heritage applications.

2.2.2 CEO can make minor changes to the entry for a place on the Queensland heritage register

Clause 14 proposes to amend section 34(2) to clarify that the chief executive can make minor changes to the details in an entry for a place on the Queensland heritage register in order to update it and correct errors or omissions without needing the agreement of the owner or the Queensland Heritage Council.

... This capacity to make minor changes already exists under section 34(1) and Clause 14 simply elucidates the difference between a minor change and one of substance. If the latter is proposed—one that alters the extent of the heritage boundary or affects the assessment of significance (why the place is on the register)—the written agreement of the owner or owners and the Queensland Heritage Council is required.²⁶

The Queensland Environmental Law Association expressed concern about these amendments stating:

... QELA does not support this amendment. The matters referred to (sic) sections 34(2) and 34(2)(b) involve matters of substance that should not be altered without the opportunity for meaningful input from the owner and the Queensland Heritage Council (Council). Further, the definition of “minor change” in new section 34(3) is not adequate. If a “minor change” is to be made to the matters referred to sections 34(2)(a) and 34(2)(b), without input by the Owner or Council, the definition of “minor change” should be carefully confined.

It is noted that Clause 64 of the Heritage Bill proposes amendments to section 122 of the Heritage Act [re. a local government’s heritage register] that correspond to the changes made to section 34, namely to allow a “minor change” to be made to an entry for a place in the local heritage register. QELA’s comments made above apply equally to this proposed amendment.²⁷

The Explanatory Notes provide that:

There are now nearly 1700 places entered in the Queensland heritage register and at least half the entries associated with these places were prepared a decade or more ago. Information about places has become far more readily available due to the digital revolution. An entry features location details for a place, a statement of heritage significance that describes why the place fulfils the cultural heritage criteria it was

²⁵ DEHP, written brief (appendix 1), 29 September 2014:6

²⁶ QHOLA Explanatory Notes:18

²⁷ QELA, submissions 6:2

determined to satisfy, a history from which this statement derives, a description of what features and qualities about the place are significant and a heritage boundary map that shows the area of land affected by the listing. Photographs and other drawn material can be part of the entry, including scaled plan and section drawings. An example of a minor change in a register entry would be adding an additional paragraph to its history that reflects a new use to which the place has been put after it was entered. This new paragraph might describe how a school, entered in the register because it demonstrates some key aspects of how school design changed over time in Queensland, is closed and becomes part of a residential development. An example of a change of substance in a register entry is when a review of the significance of a place shows a reduced boundary will more appropriately encompass what is important about a place at a state level. A revision of the statement related to why a place is on the Queensland heritage register in the first place would constitute a change of substance.²⁸

The Department further advised that:

The definition of the term minor change provided for in the proposed revision to section 34 makes it clear that the kinds of changes proposed without the written agreement of the owner or the Queensland Heritage Council are not ones of substance. The information for a place on the Queensland heritage register referred to in subsections 34(2)(a) and (b) is the statement of heritage significance, which relates to the relevant heritage criteria, and the heritage boundary. These will only be changed without the written agreement of the place's owner when the change will have no impact on the reason the place is in register and the real extent of the heritage boundary.

The Explanatory notes accompanying the Bill, further underline the purpose of the changes proposed to section 34, which is to ensure the department can maintain the information contained in the register as efficiently as possible without eroding the property rights of owners. If a change alters the statement of heritage significance and thereby the underlying reason the place is considered significant, or if it alters the extent of the heritage boundary, the written agreement of the owner and the Queensland Heritage Council must still be obtained before the change is made.

... The Judicial Review Act 1991 provides a mechanism for checking administrative decisions and would provide a safeguard against a minor change to a statement of heritage significance or heritage boundary being incorrectly made.²⁹

Committee comment

The Committee notes the concern raised by Queensland Environmental Law Association regarding the proposed new ability of the chief executive officer to make minor changes to important information, namely information that identifies a boundary or to statements about the cultural heritage significance of a place (if it is a State heritage place) or to statements about the cultural heritage significance of a place relevant to the declaration of the protected area (if it is a protected area).

However, the Committee is satisfied that the definition of 'minor change' is sufficiently constrained and that there are sufficient safeguards available, including through the *Judicial Review Act 1991* mechanisms.

²⁸ QHOLA Explanatory Notes:18

²⁹ DEHP, written brief (appendix 1), 29 September 2014:5-6

2.3 Reducing unnecessary regulatory burden and further encouraging appropriate development

2.3.1 Council to make decision on heritage recommendation

Clause 26, subclause (3) proposes to insert a new section 51(4) to include another matter the Queensland Heritage Council may have regard to before making a decision on a heritage recommendation. The Explanatory Notes explain:

Without limiting existing section 51(2)(b), which relates to any other information the council considers relevant to its decision of a heritage application, the council may consider whether a place's cultural heritage significance is chiefly because of its natural features and protected under other legislation. For example, if the place is a national park under the Nature Conservation Act 1992 (Qld) or included in the National Heritage List under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), the Heritage Council can consider whether its heritage values need additional protection under the Heritage Act.³⁰

Two separate issues were raised in submissions regarding Clause 26.

Firstly, the Queensland Tourism Industry Council sought clarity about the process in determining whether cultural and natural heritage values will be effectively protected by other legislation and that this follows an approach that satisfies the principles and criteria of heritage protection.³¹

The Department responded:

As set out in the Explanatory notes accompanying the Bill, heritage values can sometimes involve natural features. The amendment of section 51 simply gives explicit recognition to the fact that the historic heritage values of some places may already be protected by other legislation because they are important natural values too. The Queensland Heritage Council is given scope to consider whether it is necessary to add another layer of regulation to management of a place (or part of one) in terms of entry in the Queensland heritage register. An example of where this kind of overlap may occur would be a national park.

It should be noted that the submissions on the discussion paper generally did not support this approach.³²

Secondly, the Property Council of Australia (Queensland) submitted that while it generally accepts the considerations undertaken by the Queensland Heritage Council when evaluating a potential heritage place for entry onto the heritage register, it 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.³³

³⁰ QHOLA Explanatory Notes:23

³¹ Queensland Tourism Industry Council, submission 5:3

³² DEHP, written brief (appendix 1), 29 September 2014:9

³³ The Property Council of Australia (Queensland), submission 10:5-6

The Department responded:

The concept of 'best of breed' has been given considerable attention during this review of the Queensland Heritage Act 1992, having been raised by the current Queensland Heritage Council. The Explanatory notes accompanying the Bill, particularly the discussions on page 4 (under the heading 'Streamlining the statutory processes associated with the Queensland heritage register') and about Clause 4 and its amendment of section 2 (entitled Object of this Act) refer to this issue. These discussions about levels of heritage significance, and the governmental jurisdictions best equipped to protect the places associated with them, encapsulate this concept and its support of application of the heritage criteria in deciding which places should be entered in the Queensland heritage register.

Nothing in the current construction of the Queensland Heritage Act 1992 or in the proposed amendments preclude the Queensland Heritage Council considering one place in relation to others like it that may exist around the state. The current council requires this kind of contextual analysis from the department when it makes its recommendation and it is a key component of the council's deliberations about whether a place satisfies the heritage criteria.

Readers are also referred to Assessing cultural heritage significance: Using the cultural heritage criteria, a guide developed by the department to assist analysis of heritage applications and where the 'best of the best' tenant plays an integral part (<http://www.qldheritage.org.au/assets/files/pdf/using-the-criteria.pdf>).

The prospect of introducing into the Act a definition of 'heritage management hierarchy' or 'framework' was considered in drafting the Bill, however Office of the Queensland Parliamentary Counsel (OQPC) advised the bar or threshold set out in the eight cultural heritage criteria (section 35) was sufficiently high. The additions in section 2 are intended to further clarify that places on the Queensland heritage register are important to the state as a whole.³⁴

Further, the Department advised that after undergoing a mid-term review, the updated Queensland Heritage Strategy is soon to be released. It will feature the heritage management framework, which emphasises what level of significance places must demonstrate to be on the Queensland heritage register.³⁵

Committee comment

In relation to the issue raised by the Queensland Tourism Industry Council about the process for determining whether cultural and natural heritage values will be effectively protected by other legislation, the Committee is satisfied that the Queensland Heritage Council will have the necessary scope to consider whether its heritage values need additional protection under the Heritage Act.

In relation to the suggestion by the Property Council of Australia (Queensland) that the 'Best of the Breed' principle be included when the Queensland Heritage Council evaluates a potential heritage place for entry onto the heritage register, the Committee accepts the advice of the Office of the Queensland Parliamentary Counsel that the bar or threshold set out in the eight cultural heritage criteria are sufficiently high.

³⁴ DEHP, written brief (appendix 1), 29 September 2014:24

³⁵ DEHP, written brief (appendix 1), 29 September 2014:24

2.3.2 Restriction on new applications (to enter or remove a listing) for 5 years

Section 37 (Particular restriction on application) of the Heritage Act currently provides that where an application (to either enter a place into the register or remove a place from the register) has been decided by the Queensland Heritage Council, a person or other entity cannot reapply to have the same place entered or removed (whichever the original application requested) until at least one year after either the decision or the day the council's decision was executed (that is the place was added to or removed from the register).

Clause 18 of the Bill proposes to amend section 37 to extend the moratorium on re-applications from one year to five years.³⁶

A number of submitters supported the amendment including the Property Council of Australia (Queensland):

*The level of scrutiny afforded each nomination assessed by the Heritage Council justifies the increase in the time following a decision before re-nominations are accepted.*³⁷

The Queensland Tourism Industry Council raised concerns about the proposed increase in the moratorium period stating:

The significant increase from one to five years could have substantial effects, particularly where the heritage status of a place is necessary to avoid further possible destruction to the place. Given the current timeframes of development, and furthermore the quick turnaround for new policies and legislation to be introduced, a five year restriction on a new application could mean that there may be no provisions in the Act or any other Act that could prevent detrimental development on the basis of preserving potential cultural or environmental values of a place.

*An increase in the time following a decision is supported for a lesser period of 2 years instead, which still takes into account the recommendations made by the chief executive and the Queensland Heritage Council. It is to be recognised that the heritage register is a means to protect significant heritage places in Queensland, rather than to be seen as an impediment to development.*³⁸

The National Trust of Queensland also raised concerns stating:

*NTA(Q)'s main concerns are increasing the time following a decision of the Queensland Heritage Council before which new applications cannot be accepted from 1 year to 5 years is substantial and NTA(Q) recommends an alternative period of 3 years, which may also avoid some confusion that may arise around the exceptional circumstances under which such applications may be accepted.*³⁹

The Explanatory Notes explain that:

*... It was a matter that raised concern amongst some submitters, a number of whom suggested a shorter moratorium period be applied. This increase to five years is justified given the quality and breadth of the recommendations made by the chief executive, and the careful consideration given to register matters by the Queensland Heritage Council...*⁴⁰

³⁶ QHOLA Bill 2014, clause 18, section 37:16-17

³⁷ Property Council of Australia (Queensland), submission 10:3

³⁸ Queensland Tourism Industry Council, submission 5:3

³⁹ National Trust of Queensland, submission 7:2

⁴⁰ QHOLA Explanatory Notes:20-21

The Department has further advised that:

... it is justified that the moratorium period on new applications be increased to five years... because the comprehensiveness of information the assessment process provides in terms of the opportunity for all stakeholders to have a say through submissions, the quality of research and analysis undertaken when the chief executive makes a recommendation, the formal opportunity owners will have to make a written response on this recommendation (refer Clause 25 of the Bill), the chance for oral representations to be made directly to the Queensland Heritage Council and the comprehensiveness of its decision-making. There is very little chance that important information that may influence this decision has not been taken into consideration.

As the Explanatory notes also outline, if substantial new evidence is discovered before the end of the five year moratorium period, which raises a question about the state heritage significance of the place, and it is threatened with imminent destruction, the Minister can issue a stop order and initiate a new application (refer to Clause 67 of the Bill).⁴¹

The QELA and the Property Council of Australia (Queensland) are supportive of the extension of time before reapplications to enter a place on the register can be considered but are concerned that an owner should have a right to reapply to have a place removed from the register if significant new evidence comes to light.⁴² QELA submitted:

In relation to clause 18 of the Heritage Bill, QELA supports the extension of the moratorium in section 37 of the Heritage Act from one year to five years before the chief executive can accept a new application to enter a place after the Council decides not to enter that place in the Register. QELA however does not support the moratorium period applying to prevent an owner seeking to remove a place from the Register within five years after the Council decides not to remove a place from the Register. An owner should have the ability to apply to have a place removed from the Register if new evidence becomes available. QELA submits that it is not acceptable for an owner of a State heritage place to be deprived of an opportunity to reapply, where material evidence is later discovered.⁴³

In relation to the absence of a mechanism to trigger a reapplication to remove a place from the register before the end of the five year moratorium if new information comes to light, the Explanatory Notes state that:

In relation to applications about removing places from the Queensland heritage register, the interaction between the increased moratorium period and stop order provision will not provide any mechanism for substantial new information about why the place should be removed to be investigated. This is appropriate given the comprehensiveness of a council decision on these matters (and the assessment that has led to that decision) and because there are other mechanisms for removing places that are totally or substantially destroyed by fire, natural disaster, or through approved development (refer sections 46A and 56A of the Queensland Heritage Act 1991 and Clause 24).⁴⁴

⁴¹ DEHP, written brief (appendix 1), 29 September 2014:6-7

⁴² QELA, submission 6:2 and Property Council of Australia (Queensland) submission 11:3

⁴³ QELA, submission 6:2

⁴⁴ QHOLA Explanatory Notes:20-21

Committee comment

The Committee notes concerns raised by some submitters about the proposal to extend the moratorium on reapplication from one year to five years and also the concerns raised that there is no ability for an owner to reapply to have a place removed from the register during the moratorium period even if significant new information comes to light.

The Committee is satisfied that the extension of the moratorium to five years is justified but is concerned that, while there is an opportunity for a decision on *inclusion* to be reconsidered within the moratorium period if substantial new evidence comes to light, there is no equivalent opportunity for review of a decision *not to remove* a place from the register, even if there is significant new information.

The Committee has been somewhat reassured by advice from the Department that there is no impediment to owners making a development application (including an application to demolish) while the place is on the register and while a moratorium is in place and, that the inclusion of a place on the state register does not stop a council from approving a development application (including demolishing) based on health and safety concerns or for economic reasons. However, the Committee also understands that the requirements for assessing and making a decision on a development application are more onerous for places listed on the heritage register as the definition of building work contained in section 10 of the *Sustainable Planning Act 2009* is currently far broader for a place entered in the Queensland heritage register than normally applies due to the concern about the impact building work can have on fabric of heritage significance and provides a mechanism for regulating it where necessary.⁴⁵

The Committee accepts the advice from the Department that the application process is extremely thorough and comprehensive but is of the view that if significant new information comes to light, a decision not to remove a place from the register should be able to be reconsidered during the moratorium period.

Recommendation 2

The Committee recommends the Minister for Environment and Heritage Protection amend the Queensland Heritage and Other Legislation Bill 2014 to enable reconsideration of a decision by the Queensland Heritage Council *not to remove a place from the heritage register*, during the five year moratorium period ONLY in circumstances where significant new information comes to light.

2.3.3 Exclusion of a place from entry on the Queensland heritage register

Clause 30 proposes to omit section 57 of the Heritage Act which currently provides for owners to apply for a certificate of immunity which gives a place 'immunity' from future applications for a period of five years. The capacity provided by a certificate of immunity for a place is created as a new process through proposed new section 56B (Clause 29). The Explanatory Notes explain that:

*The previous concern about these certificates being issued without the adequate involvement of others with an interest in conserving Queensland's state-registered heritage places is resolved by the integration into the registration process wherein submissions can be made and considered by the Queensland Heritage Council.... The new process strikes a good balance between the rights of property owners and those people with an interest in the conservation of Queensland's cultural heritage.*⁴⁶

⁴⁵ QHOLA Explanatory Notes:11-12

⁴⁶ QHOLA Explanatory Notes:25

Clause 29 proposes to insert division 5A in part 4 about excluded places, or those the Queensland Heritage Council decides should be excluded from entry in the heritage register for a period of five years, without the Minister having the discretion to later issue a stop order as provided for in proposed new section 154(1). An owner may apply to the chief executive to have a place excluded and this is treated as if it were an application to have a place removed from the register, given the case is essentially the same – the place does not satisfy any of the cultural heritage criteria set out in the Act. The Explanatory Notes explain that:

This provision integrates the certificate of immunity into the registration process (refer Clause 30); matching the certainty it provides to owners and development proponents about the future of a place while also ensuring the final decision is made openly and informed by a wide spectrum of views. The immunity provision has not been reviewed since 1992 and never been linked with the Queensland Heritage Act 1992 best practice registration processes, despite both processes culminating in a decision about whether or not a place is of state-level heritage significance. This disconnect has led to circumstances where both processes are running simultaneously, resulting in duplication of resources, as well as frustration and confusion among owners and the community about the Queensland Government's role in conserving heritage places.⁴⁷

The Cassowary Coast Regional Council raised concerns with the proposed new part 4 stating:

It is submitted that the owner of a place should not be able to apply to exclude that place from being included on the Queensland heritage register. A place may not satisfy the criteria for registration now, but over time this may change.

The five year bar on the nomination of a place where an application to enter the place on the register has failed is sufficient to protect a property owner's rights.⁴⁸

The Property Council of Australia (Queensland) also raised concerns with the removal of the certificate of immunity process stating that:

While certificates of immunity are not widely sought by property owners, they provide an essential security for owners who require short-term use of their asset.⁴⁹

The Property Council further submitted that a separate certificate of immunity application process that is improved through the addition of legislative guidelines and timeframes would be suitable.⁵⁰

The Regional Strategy and Planning Department of the Sunshine Coast Council sought further clarification on the purpose of replacing the original clauses for the exclusion of identified heritage places and specifically asked whether this would change the maximum time period that the place remains excluded.⁵¹

The Department responded to submitters concerns as follows:

As the Explanatory notes accompanying the Bill make clear, new section 56B replaces the existing certificate of immunity provision in section 57 that allows an owner (or someone acting with their consent) to obtain 'immunity' from state heritage listing. The policy intent is to maintain this capacity, but the effect of new section 56B is to ensure decisions on these matters are made by the Queensland Heritage Council at the culmination of a transparent process in which all stakeholders have their say before a decision is made. This mechanism is

⁴⁷ QHOLA Explanatory Notes:24

⁴⁸ Cassowary Coast Regional Council, submission 1:1

⁴⁹ The Property Council of Australia (Queensland), submission 10:6-7

⁵⁰ The Property Council of Australia (Queensland), submission 10:7

⁵¹ Regional Strategy and Planning Department of the Sunshine Coast Council, submission 8:2-3

considered as a reasonable option for owners wishing to gain certainty about the heritage status of a place before embarking on a development application process.

There is a difference between the moratorium period that would apply after a heritage application is decided by the Queensland Heritage Council and what would occur when the council decides to exclude a place. For an excluded place there would be no capacity for the Minister to issue a stop order within the five year moratorium period. However, for places where an application has been decided in the previous five years, the Minister must be satisfied substantial new evidence has been found that suggests they have potential state heritage value. A stop order issued in these circumstances would trigger a new application process for the place. Only the Minister issues stop orders.

The process for assessing heritage applications, including with this Bill those proposing to have a place excluded from the Queensland heritage register, involves extensive historical research, site investigation, consideration of submissions from all interested parties and application of a well-defined method for establishing whether a place meets one or more of the cultural heritage criteria. The breadth of work undertaken means the heritage significance of a place is unlikely to change over a five year period.

It is asserted that providing for certain places to be excluded strikes a reasonable balance between the conservation of Queensland's cultural heritage and the imperative for development to progress once a decision of the Queensland Heritage Council has found a place is not part of the state's heritage.

The large majority of submissions on the question in the discussion paper about integrating the certificate of immunity provision into the application process were supportive of this approach.

New guidance material will be produced to inform those wishing to make an excluded place application in time for commencement, should the Bill be passed. This will explain what material must accompany the application (similar to that required for an application to remove a place from the register) and the steps in the process leading to a decision of the Queensland Heritage Council.⁵²

The Department responded to the suggestion by the Property Council that a certificate of immunity be retained and given a separate set of unique processes as follows:

The Property Council suggests that the certificate of immunity be retained and given a separate set of unique processes. This option was investigated as part of drafting of the Bill; however it was found to introduce unnecessary duplication of the registration process, which already affords all participants natural justice and establishes transparency of process and outcome. One of the key objectives of the Bill has been to reduce unnecessary duplication in the processes associated with the Queensland heritage register and provide for regulatory burden reduction.

The Property Council suggests there is no risk associated with the current certificate of immunity provision in relation to a place being entered. This is not the case as the Queensland Heritage Council is bound to achieve the object of the Queensland Heritage Act 1992 and would not ignore a place brought before it that it believed was eligible for entry in the Queensland heritage register. A previous council has entered a place in the register for which it had received a certificate of immunity application (affording the owners the right of

⁵² DEHP, written brief (appendix 1), 29 September 2014:9-10

appeal in the Planning and Environment Court). The amendment proposed in the Bill regarding excluded places simply makes this risk clear, which will benefit property owners.⁵³

Committee comment

The Committee notes the concern raised by the Property Council of Australia (Queensland) about the proposed removal of section 57 of the Act which entitles owners to apply for a certificate of immunity and inserting a new division 5A in part 4 about applying to have a place excluded from the Queensland heritage register. However, the Committee has also noted the Property Council's advice that applications for certificates of immunity are not widely sought and accepts, on balance, the Department of Environment and Heritage Protection's justification for proposing the amendments that they integrate what is currently two processes that run simultaneously, resulting in a duplication of resources, as well as causing frustration and confusion amongst owners and the community.

The Committee is satisfied that the process for applying to have a place excluded should be treated the same as if it were an application to have a place removed (given the case is essentially the same – that the place does not satisfy any of the cultural heritage criteria set out in the Heritage Act) AND on the basis that recommendation 2 of the Committee is accepted by the Minister for Environment and Heritage Protection.

Error in drafting

A number of submissions also pointed to an error in drafting at the end of new section 56B(2)(c) where the words 'heritage place' have been left off the end of the new subsection following the word 'State'.⁵⁴

The Committee notes the Department of Environment and Heritage Protection's advice that the error in drafting at the end of new section 56B(2)(c) will be corrected in the Bill.

2.3.4 Exemption certificates

2.3.4.1 Application for exemption certificate

Clause 37 of the Bill proposes to amend section 72 of the Heritage Act to insert the terms defined in proposed new section 71A with Clause 36 as necessary to also allow the owner, or a person acting with the permission of the owner, to apply for an exemption certificate for a local heritage place. The Explanatory Notes explain that through division 2 of part 6, the Heritage Act provides for certain development on state registered places to be exempted from the Integrated Development Assessment System (IDAS) in relation to the level of impact it has on a place's heritage significance, or if they are covered by a heritage agreement.

This is an important greentape reduction tool because, under the Sustainable Planning Act 2009, the definition of building and operational work for a place entered in the Queensland heritage register is far broader than generally applies. Application of this tool means minor, low-impact work on a heritage place, or that provided for under a heritage agreement, does not have to unnecessarily be approved through the Integrated Development Assessment System. This does not affect the need to get approval or certification for other aspects of development of the place under either the Sustainable Planning Act 2009 or the Building Act 1975.⁵⁵

⁵³ DEHP, written brief (appendix 2), 29 September 2014:25

⁵⁴ See submissions 6 and 10.

⁵⁵ QHOLA Explanatory Notes:26-27

The proposed amendments in Clauses 36 to 41 also extend the power to issue exemption certificates to local governments managing local heritage places (see section 2.5.10 of this report for discussion on the local government power).

Subclause (4) of Clause 37 proposes to expand the scope of work that can be covered by an exemption certificate, whether it is one issued for a Queensland heritage place or one issued for a local heritage place. The Explanatory Notes explain that:

By its very nature, all work undertaken at a place will have some impact on significance. Revising the wording of the exemption certificate provisions to reflect this gives more scope for minor impacts to be exempted rather than the work being treated as development and put through the Integrated Assessment System process. This will significantly cut the regulatory burden for owners of State and local heritage places who will be able to undertake a greater range of activities without unnecessary development approval in relation to heritage matters.⁵⁶

It should be noted that the majority of submitters were supportive or raised no concerns in relation to these amendments. For example, the National Trust of Australia (Queensland) submitted that they strongly supported:

Expanding the scope of work covered by exemption certificates, thereby supporting owners that make good quality and thoughtful applications with an expedient approval process.⁵⁷

However, a number of submitter's raised issues with the proposed amendments or sought further clarification. The Cassowary Coast Regional Council submitted that the proposed amendments should not be endorsed:

Section 72(2)(b)(iv) and (3)(b) should be left as they are now in the QH Act. The requirement for the development to not have a detrimental impact is much more appropriate than (sic) allowing the development to have minimal impact. It is possible to undertake development on a heritage place without impacting its cultural heritage values. If the development is of a scale that it will have an impact, then it should be subject to a development application, and not an exemption certificate.⁵⁸

The Department responded:

All work to a Queensland heritage place will have some impact on its heritage significance. The amendment proposed in sections 72(2)(b)(iv) and (3)(b), acknowledges this and provides a regulatory tool that will allow the decision-maker to offset certain minor detrimental impacts on one aspect of significance against gains in relation to another aspect. For example, the benefits of changes like increasing a classroom size to allow its continued use as a classroom can be efficiently weighed against other minor impacts on heritage significance.

The policy intent behind this amendment is to make exemption certificates better tools with which to reduce regulatory burden on owners of heritage places, while maintaining appropriate protection for Queensland's heritage places. It is asserted that the proposed change maintains that balance. It was also a proposal strongly supported by the majority of submissions made on the discussion paper. The overall effect of Clause 37 means this capacity would also apply to local exemption certificates issued by local government for local heritage places.⁵⁹

⁵⁶ QHOLA Explanatory Notes:26-27

⁵⁷ National Trust of Australia (Queensland), submission 7:1

⁵⁸ Cassowary Coast Regional Council, submission 1:1-2

⁵⁹ DEHP, written brief (appendix 1), 29 September 2014:10-11

A number of submitters support the proposed expansion of the scope of work but raised concerns about definitions in relation to this proposed amendment.

The Property Council of Australia (Queensland) indicated that it strongly supports the expansion of the scope of work allowed under an Exemption Certificate from 'no detrimental impact' to 'minimal detrimental impact' on the basis that owners will no longer be subjected to IDAS when ensuring their sites comply with mandated regulation including disability access and fire safety requirements. However, they added that the scope of 'minimal detrimental impact' and the 'agreed ways' of carrying out these works must be detailed to ensure certainty for building owners.⁶⁰

The Regional Strategy and Planning Department of the Sunshine Coast Council agreed that a definition should be provided as to what constitutes a 'minimal impact'⁶¹ as did the Queensland Tourism Industry Council which supported the expansion of the scope of work covered by exemption certificates but suggested that:

*... the definition of "minimal detrimental impact" will need to be further articulated and more accurately enforced. As understood, the current use of the term 'a detrimental impact' is being omitted and replace (sic) with 'any impact, or only have a minimal impact', meaning the test for detriment is now lost.*⁶²

QELA also raised a concern that the reason for removing the word "detrimental" is unclear stating:

QELA is concerned that the amendment may result in exemption certificates being refused in a wider range of cases, when it is only in cases involving detrimental impact on cultural significance that an exemption certificate should not be granted.

To address this concern, QELA suggests that section 72(2)(b)(iv) be amended to read:

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

*And that section 72(3)(b) must be amended.*⁶³

The Department responded that the clarity of the Clause had been reduced in redrafting:

*The policy intent described in the Explanatory notes accompanying the Bill, make it clear that the purpose of this amendment is to expand the usefulness of exemption certificates. In the drafting process the word detrimental has been lost from revisions to sections 72(2)(iv) and 72(3)(b) and it is accepted this has reduced their clarity.*⁶⁴

The Department has advised that it will recommend that the Bill be amended to reintroduce the word 'detrimental' into amended sections 72(2)(iv) and 72(3)(b) and further, that existing guidance material for exemption certificates will be updated to communicate their expanded scope in time for commencement, should the Bill be passed.⁶⁵

Committee comment

The Committee is supportive of the policy intent behind the expansion of the scope of work that can be covered by an exemption certificate which aims to make exemption certificates better tools with which to reduce regulatory burden on owners of heritage places, while at the same time maintaining

⁶⁰ Property Council of Australia (Queensland), submission 10:3

⁶¹ Regional Strategy and Planning Department of the Sunshine Coast Council, submission 8:2-2

⁶² Queensland Tourism Industry Council, submission 5:3

⁶³ QELA, submission 6:3

⁶⁴ DEHP, written brief (appendix 1), 29 September 2014:12

⁶⁵ DEHP, written brief (appendix 1), 29 September 2014:11

appropriate protection for Queensland's heritage places. The Committee notes that this amendment was strongly supported by the majority of stakeholders during consultation by the Department of Environment and Heritage Protection and believes that the proposed change maintains an appropriate balance.

However, the Committee is concerned about the issues related to the clarity of the clause 72 and recommends that the word 'detrimental' be reintroduced into amended sections 72(2)(iv) and 72(3)(b).

Recommendation 3

The Committee recommends that the Minister for Environment and Heritage Protection amend the Queensland Heritage and Other Legislation Bill 2014 to reintroduce the word 'detrimental' into amended sections 72(2)(iv) and 72(3)(b).

2.3.5 Differing penalty rates for exemption certificates

The Regional Strategy and Planning Department of the Sunshine Coast Council raised a concern about the difference penalty rates between offence for noncompliance with the conditions of a local and state exemption certificates.

Section 76(2)(b) sets the maximum penalty for non-compliance with an exemption certificate. The penalty for an exemption certificate given by a chief executive officer of a local government is 100 penalty points, compared to 1000 penalty points for an exemption certificate given by the chief executive of the Qld Heritage Council.⁶⁶

Brisbane City Council also raised a concern about the different penalty rates:

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.⁶⁷

The Department advised:

The difference in the penalty rate associated with the offence of not complying with the conditions of an exemption certificate issued for a place on the Queensland heritage register, as compared to that for a local heritage place, is proportionate to the relative seriousness of the offences and relative heritage significance of the places. The maximum penalty that could be applied to punish the local offence is about \$11,385.00 [$\113.85×100 penalty units, given the current value of a penalty unit as per the Penalties and Sentences Regulation 2005], which would serve as an effective deterrent.⁶⁸

Committee comment

The Committee is satisfied with the Department of Environment and Heritage Protection's explanation for the difference in penalty rates for non-compliance for local and state places being due to the relative seriousness of the offences and relative heritage significance of the places; and also considers that the proposed penalty will serve as an effective deterrent.

⁶⁶ Regional Strategy and Planning Department of the Sunshine Coast Council, submission 8:2-2

⁶⁷ Brisbane City Council, submission 11:3

⁶⁸ DEHP, written brief (appendix 1), 29 September 2014:12

2.4 Strengthening protections for the state's most important historic heritage places

2.4.1 Notices about essential repair and maintenance

Clause 46 of the Bill proposes that part 8 of the Heritage Act be replaced to remove reference to interim protection orders, as the operation of these orders are now subsumed into a single 'stop work' order. The proposed new part 8 provides for notices about essential repair and maintenance of State heritage places and local heritage places. The replaced section proposes to:

- expand the scope of work covered by such a notice
- reduce the emphasis on the urgency with which work is required to prevent damage
- provide the refurbished power to certain prescribed local governments.

2.4.1.1 Scope of essential repair and maintenance orders

The Explanatory Notes to the Bill state that proposed section 84 sets out what the relevant decision maker must do before issuing an essential repair and maintenance notice and otherwise corresponds very closely to the existing section apart from clarifying that the scope of the work that can be issued includes minor repair and maintenance. The proposed section defines "essential repair or maintenance work" as meaning work of a minor nature that, if carried out on the place, would help to prevent damage to, or deterioration of, the place and provides examples of the types of repairs and maintenance work referred to.

The purpose of these changes is to give the chief executive or chief executive officer discretion to intervene with the owner of a place before the damage caused by neglecting standard repair and maintenance works becomes too serious and expensive to be feasibly rectified..... The definition of essential repair or maintenance work and the examples provided show that the standard range of work an owner would need to undertake on a non-heritage listed property⁶⁹

QELA and the Property Council of Australia (Queensland) raised an issue about the expansion of the scope of work to be covered by essential repair and maintenance notices. They argued that the threshold for giving an essential maintenance and repair notice as provided for by the Bill will substantially increase the impact on owners of state and local heritage places. The Property Council submitted:

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.⁷⁰

The Department advised the Committee that:

While the scope of work such a notice can cover and at what stage in the deterioration of a place these notices can be issued has been expanded, it is not to a large degree. This is evidenced by the retention of the word 'essential' in the title of the notice, the two additional examples included with this provision relating to the repair of wall and roof framing, and the cleaning and repairing of gutters and downpipes. Also there was no change made to the penalty associated with noncompliance of this notice.⁷¹

⁶⁹ QHOLA Explanatory Notes:30-31

⁷⁰ Property Council of Australia (Queensland), Submission 10:5

⁷¹ Hansard Transcript, 1 October 2014:3

The Department also pointed out that the power to issue notices is one of last resort. For the State, the power is not delegated below the chief executive and for local government the power cannot be delegated by the chief executive officer.

This serves as an important safeguard to their judicious use, as evidenced by the fact that only three have been issued by the chief executive during the six years the power has been available.⁷²

Section 84(1) of the Bill states that a notice can only be issued if the decision-maker reasonably believes that the work is required to be carried out to protect the place from damage or deterioration caused by weather, fire, vandalism or insects. Brisbane City Council submitted that the causes of damage to a heritage place for which a notice can be issued should be expanded to include animals such as bats, birds and possums.⁷³

The Department responded:

This prospect has not been raised in previous consultation on the Bill. Given that no policy consideration has been given to what the implications are for expanding this list, what work might be required to prevent damage by these animals and whether it fits the scope currently set out, it is proposed that further discussion occur with Brisbane City Council.⁷⁴

Right of appeal

QELA and the Property Council of Australia (Queensland) also raised a concern that there is no right of appeal for an owner issued with a notice or capacity to stay the effect of a notice through the appeal process.

QELA considers it essential that an owner have the right to appeal the decision to give an essential repair or maintenance work notice to the Planning and Environment Court and for the lodgement of such an appeal to act as a stay of notice.⁷⁵

The Department responded that:

Given that the policy intent is not to expand the scope of work that can be covered by such a notice beyond that which is ultimately minor, no change is proposed to the current situation in relation to appeal rights. The fact that only three essential maintenance notices have been issued in the six years the power has existed is clear evidence that it is one of last resort; used judiciously and only after consultation with an owner. A stay of the work described in a notice would delay essential work to prevent a place deteriorating to a more serious level.

The results on the question in the discussion paper related to strengthening the essential maintenance notice power strongly supported this approach. Of the 48 submissions received 35 supported this approach.⁷⁶

⁷² DEHP, written brief (appendix 1), 29 September 2014:14

⁷³ Brisbane City Council, submission 11:4

⁷⁴ DEHP, written brief (advice on BCC issues), 30 September 2014:2

⁷⁵ QELA, submission 6:3

⁷⁶ DEHP, written brief (appendix 1), 29 September 2014:14

Committee comment

The Committee notes that the majority of stakeholders strongly supported the strengthening of the essential maintenance notice power and is satisfied with the Department of Environment and Heritage Protection's advice that the power to issue notices is one of last resort following consultation with the owner; and that these notices only apply to work of a minor nature (essential repair and maintenance) required to protect heritage places from damage and deterioration and is within the standard range of work an owner would need to undertake on a non-heritage listed property.

The Committee is also satisfied that given the minor nature of the works that can be included in the notice, no appeal rights are required.

The Committee has noted the intention of the Department Environment and Heritage Protection to undertake further discussions with Brisbane City Council about the implications for expanding the list in section 84(1)(b) to include damage from animals such as bats, birds and possums to investigate what work might be required to prevent damage by these animals and whether it fits within the scope of minor works currently set out in this section.

2.4.1.2 *Extension of essential repair and maintenance notice powers to local government*

The Bill proposes a new section 83(1) which explains that the provisions in part 8 relating to essential repair and maintenance notices applies to a local government prescribed under a regulation. Proposed section 83(2) enables the Minister for Environment and Heritage Protection to make a regulation under section 83(1) only if the Minister is satisfied the local government has appropriate procedures in place for exercising this power.

The bill provides the power to issue essential repair and maintenance notices to local governments with local heritage places but only once they have been prescribed by regulation as having demonstrated they have the skills and procedures to utilise them appropriately. Local governments will also be required to report to the chief executive about the use of these notices.⁷⁷

While Brisbane City Council strongly supports the ability for a local government to issue notices for essential repair and maintenance, it questioned the requirement that a local government be prescribed before being empowered to issue essential repair and maintenance notices requirements on the basis that there does not appear to be any benefit from this additional regulatory step.

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.⁷⁸

The Department responded:

New section 83 requires that the Minister be satisfied a local government has appropriate procedures in place for exercising a power before recommending to the Governor in Council that they be prescribed to use it.

The inclusion of new section 83 requiring that local government be prescribed before it employs this power was a response to concerns raised by a number of submissions on the discussion paper and that of the Queensland Heritage Council. The concerns expressed were about use of the power by local government without there being appropriate procedures in

⁷⁷ Hansard Transcript, 1 October 2014:3

⁷⁸ Brisbane City Council, submission 11:3-4

place to, for example, ensure consultation had occurred with the owner before a notice is issued. The other concern expressed was that some local governments lacked the capacity or expertise to use the power and it should not be forced on them. The prescription approach was the solution devised to balance these concerns with what was otherwise strong support expressed for extending the power to local government for use with local heritage places.

Once prescribed to use the power, local governments have the lifetime of the regulation before which they have to be prescribed again.⁷⁹

The Property Council of Australia (Queensland) raised a concern in its submission that local government are not adequately resourced to make decisions relating to essential maintenance on heritage sites and that 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*”.⁸⁰

In response, the Department advised the Committee:

The requirement that local governments be prescribed to use this power will help ensure they have the resources and capacity to use them appropriately. The department will also maintain an oversight role as any prescribed local governments will be required to report to the chief executive about their use of the power.

The department believes these safeguards answer the concerns of the Property Council, which have been raised by submissions on the discussion paper and by the Queensland Heritage Council, which itself suggested an opt-in approach to provision of the power.⁸¹

A number of local governments, in their submissions to the Committee, questioned what kind of procedures would be considered appropriate, why prescribed local governments would be required to report on the use of these notices to the chief executive and whether guidance material would be produced.⁸²

The Department responded that new guidance material will be produced to inform those local governments wishing to be prescribed to use the local essential repair and maintenance notices in time for commencement, should the Bill be passed.

The matters that a local government would need to prove in order to be prescribed to use the essential repair and maintenance power would include:

- *How an assessment is made about the places where essential repair and maintenance may be warranted.*
- *Policy and procedure setting out how the owner of a local heritage place is consulted before a notice is issued.*
- *Options for alternative solutions to be agreed forestalling the need to issue a notice.*
- *The types and extent of work that can be required of an owner by a notice.*
- *Processes about ensuring compliance with a notice.⁸³*

⁷⁹ DEHP, written brief (advice on BCC issues), 30 September 2014:2-3

⁸⁰ Property Council of Australia (Queensland), submission 10:4

⁸¹ DEHP, written brief (appendix 2), 29 September 2014:26

⁸² See Cassowary Coast Regional Council, submission 1 and Cairns regional Council, submission 4.

⁸³ DEHP, written brief (appendix 1), 29 September 2014:13

In relation to the requirement to report to the chief executive officer, the Department advised:

To ensure appropriate safeguards are in place in relation to use of the essential repair and maintenance notice power by local government, a requirement to report their use to the chief executive was included in the Bill. It is not anticipated that this requirement will be onerous, but will assist the department understanding how they are being used, ensuring appropriate process are being followed and will assist it in providing consistent and relevant information to all local governments that express an interest in being prescribed to use them.⁸⁴

Brisbane City Council was also concerned that the penalty rates for non-compliance of a notice are less for local heritage places than for state heritage places.⁸⁵ The Department advised that the reason for the different maximum penalty rates for the offence of non-compliance with an essential repair and maintenance notice between the state and local jurisdictions is proportionate to the relative seriousness of the offences and relative heritage significance of the places.

Note that for this offence, whether related to a state or local heritage place, there are different penalty rates applied to individuals and corporations. The maximum rates for the local offence are three-quarters that of the maximum rates for non-compliance with a state notice, reflecting the need for them to act as reasonable deterrents but also to match the extent of work that can be covered by such a notice.⁸⁶

Committee comment

The Committee notes the concern raised by the Property Council of Australia (Queensland) about the capacity of Councils to make a decision about the issuing of an essential repair and maintenance notice. On the other hand, Brisbane City Council strongly supports the delegation of the power to local government but submits that the proposal that local government be prescribed by regulation should be removed from the Bill.

The Committee has carefully considered the proposed delegation of power and has some concerns about the application of such a power by local governments. The Committee is therefore recommending that the proposed regulation should clearly establish rules about the circumstances in which a local government can use the power to issue an essential repair and maintenance order.

The Committee is satisfied that the Department of Environment and Heritage Protection will provide adequate guidance material and support to ensure local governments are able to assess their capacity to undertake this new role and if they so choose, are able to appropriately issue essential repair and maintenance notices.

The Committee is satisfied with the Department of Environment and Heritage Protection's explanation for the difference in penalty rates for non-compliance for local and state places and the difference between individual penalty rates and those for corporations.

Recommendation 4

The Committee recommends that the regulation provided for in section 83(2) of the Queensland Heritage and Other Legislation Bill 2014 clearly establish rules about the circumstances in which a local government can use the power to issue an essential repair and maintenance notice.

⁸⁴ DEHP, written brief (appendix 1), 29 September 2014:13

⁸⁵ Brisbane City Council, submission 11:4

⁸⁶ DEHP, written brief (advice on BCC issues), 30 September 2014:2

2.4.2 Costs of maintaining a heritage listed property

The Anglican Church of Southern Queensland affirmed its support for the principle of formal heritage protection and conservation but wanted to emphasise:

... that the proposed amendments to the heritage legislation continue to take insufficient account of the costs associated with maintaining heritage places and there are inadequate financial incentives for their active conservation and development.

... The costs associated with maintaining and developing heritage places will continue to escalate whilst the requirements are fixed on replacing like with like – a requirement we consider to be counterproductive to effective property management. Due to the age of most heritage buildings original manufacturers, materials or tradespeople are either no available locally or no longer exist which make maintenance a time consuming and costly exercise. To contain costs we suggest amendments to the Act and Queensland Heritage place state code include the option for owners to use reasonable alternatives to heritage materials which utilise new technologies but are visually similar.....We urge that the grounds for grant funding be revisited to ensure they are more reasonably accessible.⁸⁷

The Department acknowledged the role the Anglican Church of Southern Queensland plays in conserving some of the state's most important places and its efforts to responsibly manage these places into the future. It responded to the issues raised stating:

Like for like replacement

The Queensland Heritage Act 1992 does not mandate 'like for like' replacement of failing elements of a building or place and anticipates that modern materials may sometimes have to replace older materials that are no longer sound to ensure a place stays in active use. Also, the scope it provides for work of a liturgical nature to be exempted from heritage approval remains unchanged with the Bill.

The expansion of the scope of work to be covered by an exemption certificate, which is provided for in Clause 37 of the Bill, will affect those certificates issued upon application as well as those covering all places on the Queensland heritage register (these are known as General Exemption Certificates). This change will reduce burden on owners and managers of State heritage places, while still also safeguarding the state's most important places. It may assist the Anglican Church of Southern Queensland to engage with the department to ascertain if some of its maintenance and repair issues can be eased through the application of the General Exemption or through a place-specific exemption.

Funding for heritage places

The criteria for awarding grants funding through the Heritage stream of the Everyone's Environment grants program, of which there has been two rounds, are not legislative and are outside the scope of this Bill.⁸⁸

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that the Heritage Act does not mandate 'like for like replacement', and on the amendments to the scope of exemption certificates that should reduce the burden on owners and managers of State heritage places. The Committee also notes the advice provided by the Department that the heritage grants program is not legislative and are therefore outside the scope of this Bill.

⁸⁷ Anglican Church Southern Queensland, submission 3:1

⁸⁸ DEHP, written brief (appendix 1), 29 September 2014:20

2.4.3 Protection for historic aircraft wrecks and historic shipwrecks

Queensland's maritime and underwater heritage is protected and managed under provisions of the Heritage Act and the Commonwealth's *Historic Shipwreck Act 1976*. The Bill proposes to differentiate between archaeological artefacts and what are termed underwater cultural heritage artefacts (which are historic shipwrecks, historic aircraft wrecks and the articles associated with them). Protection that is currently afforded to historic shipwrecks under the Heritage Act (whether reported or not) is proposed to be extended to historic aircraft wrecks, which will protect these wrecks in Queensland waters for 75 years or more (i.e. from late 2016 those aircraft wrecked during World War II).

The Bill proposes to establish a simple process for discoveries of historic shipwrecks and historic aircraft wrecks to be reported to the chief executive that is separate from the discovery reporting requirements and temporary protection afforded archaeological artefacts. The Bill provides for historic shipwrecks and historic aircraft wrecks (and their associated articles) to be considered for entry in the Queensland heritage register if it can be shown they satisfy at least one of the cultural heritage criteria.⁸⁹

Clause 81 of the Bill proposes to amend the schedule (dictionary) to reflect a number of new terms and definitions that are related to the protection afforded to underwater cultural heritage artefacts.⁹⁰ The proposed new term *historic aircraft wreck* will mean:

... the remains of a aircraft or part of the remains of a aircraft that –

(a) is in Queensland waters; and

(b) has been in the waters for at least 75 waters.⁹¹

Consequently, the definition of *historic underwater article* is proposed to change to mean an article that is associated with a historic shipwrecks *and* historic aircraft wrecks.⁹²

As proposed in the Bill, the expansion of the definition *underwater cultural heritage artefact* would afford protection to historic shipwrecks (and the historic underwater articles associated with them) in Queensland waters for 75 years or more. The National Trust of Australia (Queensland), however, pointed out at the public hearing on 1 October 2014 that this time frame would exclude World War II planes until 2016.⁹³ The Trust also stated its strong support for this concern in its submission:

Protecting aircraft that have crashed into the sea, although the 75-year timeframe for an artefact to be defined as significant is considered to be too long and somewhat restrictive.⁹⁴

At the public briefing, the Committee asked the Department for the reason for the 75-year time frame.⁹⁵

The Department responded:

I suppose we are just aligning with the Commonwealth legislation, which is 75 years for shipwrecks. The first aircraft will start being protected by 2016. So it does not seem that long away. It is a year and a bit. So I think having them all aligned with the same time frame is appropriate.⁹⁶

⁸⁹ QHOLA Explanatory Notes:7

⁹⁰ QHOLA Explanatory Notes:42

⁹¹ QHOLA Bill 2014:56

⁹² QHOLA Bill 2014:56-57

⁹³ National Trust of Australia (Queensland), QHOLA Hansard transcript, 1 October 2014:9

⁹⁴ National Trust of Australia (Queensland), submission 7:2

⁹⁵ Mr Anthony Shorten MP, QHOLA Hansard transcript, 1 October 2014:14

⁹⁶ DEPH, QHOLA Hansard transcript, 1 October 2014:14

The Committee also clarified with the Department that, until the World War II aircraft are afforded protection in 2016, currently it is not an offence to salvage or interfere with those World War II aircraft wrecks (unless they are registered on the Australian National Shipwrecks Database).⁹⁷ The Department confirmed it was not.⁹⁸

The Department further advised:

*... there are about 1,600 historic shipwrecks along the Queensland coast. Our department is undertaking a survey to try to locate these, but we really only have accurate locations for about 10 per cent of them, because often ships leave port, sail off and are never seen again and no-one knows where they go down. So we depend a lot on recreational divers who are interested in shipwrecks. Now with GPS and everything we are able to get some locations.*⁹⁹

Committee comment

The Committee welcomes the Bill's proposal to safeguard underwater cultural heritage with underwater aircraft wrecks 75 years or older to be protected by the expansion of the definition 'underwater cultural heritage artefact' underwater aircraft wrecked 75 years or more ago. This means that from 2016 those World War II aircraft wrecked in Queensland waters, regardless of whether reported or not, will be protected by the Heritage Act.

The Committee notes, however, that there about 1,600 historic shipwrecks along the Queensland coast, with only accurate locations for about 10 per cent of them, and that there is currently no offence provisions or protection afforded to World War II aircraft until 2016.

The Committee is concerned at the potential damage that may occur to underwater wrecks (and the historic underwater articles associated with them) less than 75 years old, especially given most World War II wrecks are less than 75 years old.

The Committee therefore makes a recommendation to the Minister for Environment and Heritage Protection to amend the Heritage Act to ensure that World War II aircraft and ships wrecked in Queensland waters and the historic underwater articles associated with them are protected upon commencement of the proposed amendments to the Heritage Act.

Recommendation 5

The Committee recommends that the Minister for Environment and Heritage Protection amend the *Queensland Heritage Act 1992* to ensure that World War II aircraft and ships wrecked in Queensland waters and the historic underwater articles associated with them are protected upon commencement of the proposed amendments to the *Queensland Heritage Act 1992*.

⁹⁷ Mrs Desley Scott MP, QHOLA Hansard transcript, 1 October 2014:14

⁹⁸ DEPH, QHOLA Hansard transcript, 1 October 2014:14

⁹⁹ DEPH, Hansard transcript, 1 October 2014:14

2.5 Providing flexibility to local government in identifying and protecting places of local significance

The policy intentions proposed in the Bill responds to a recent shift in the role played by local government in relation to places of local cultural heritage significance and as part of the overall conservation of Queensland's cultural heritage. The changes proposed in the Bill aim to better recognise the important role that local government plays, as well as respond to reforms underway in the planning and development realm including the introduction of the Queensland State Planning Policy (SPP) in December 2013, which places an obligation on local governments to identify and protect places of local cultural heritage significance in planning schemes.¹⁰⁰

It should be noted that submitters were in general agreement with the proposed amendments to provide local governments with greater flexibility to choose appropriate mechanisms to identify and protect places of local heritage significance, in particular providing the opportunity to local governments to issue exemption certificates and enter into heritage agreements, and to issue essential repair and maintenance notices.

This section of the report considers issues raised by submitters in relation to clauses in the Bill that relate to local heritage, including some broader issues not specifically related to the Bill.

2.5.1 Expiry date for a heritage agreement

The Cassowary Coast Regional Council would like to amend the proposed Clause 43 (amendment of section 80) in the Bill to include a timeframe in which a heritage agreement might lapse.¹⁰¹

The Department responded:

The intent of Clause 43 and its amendment to section 80 is to provide for local governments to enter heritage agreements with owners of local heritage places. This will increase the options available to local government to facilitate the conservation and adaptive re-use of local heritage places in a way that keeps the regulatory burden on their owners to a minimum.

Nothing in the current construction of Clause 43 or section 80 precludes an expiry date being set for a heritage agreement. The only requirement is that both parties to the agreement concur on that date. If some disagreement arises that cannot be resolved through discussion between the parties there is scope to seek an order from the Planning and Environment Court under section 82 (which is amended by Clause 45 to provide for local heritage agreements to also have this facility). State heritage agreements have different currency periods¹⁰²

Committee comment

The Committee notes the response provided by the Department of Environment and Heritage Protection advising that the proposed clause 43 (amendment of section 83) of the Queensland Heritage and Other Legislation Amendment Bill 2014 will not preclude an expiry date being set for a heritage agreement provided both parties to the agreement concur on that date.

¹⁰⁰ DEPH (written brief), 29 September 2014:15-16

¹⁰¹ Cassowary Coast Regional Council, submission 1:2

¹⁰² DHEP (written brief), 29 September 2014:13

2.5.2 Inclusion of a mechanism for a local government to revoke its local heritage register

In their submission, the Brisbane City Council raised a concern that the proposed Bill did not include the ability for a local government to ‘revoke’ its a local heritage register kept under the Heritage Act.¹⁰³

The Department responded:

*Clause 56 requires a local government to identify local heritage places either in its planning scheme or in a local heritage register. There is no impediment in the Bill for a local government to revoke its local heritage register if it identifies places in its planning scheme.*¹⁰⁴

Committee comment

The Committee is satisfied with the advice provided by the Department of Environment and Heritage Protection that there is no impediment in the Queensland Heritage and Other Legislation Amendment Bill 2014 for a local government to revoke its local heritage register if it identifies places in its planning scheme.

2.5.3 Option of providing a local heritage register online

Clause 57 proposes to replace section 113 to set out the requirement for a local government to keep its local heritage register in the form it considers appropriate, including electronic form, and revise in a minor way the further requirement about how that register is made available for public inspection.¹⁰⁵

The Cassowary Coast Regional Council would like to amend Clause 57 (replacement of section 113) of the Bill “so that a local government has the option of only providing its local heritage register on its website”.¹⁰⁶

The Department responded:

In line with the overarching intention of giving more flexibility to local government in its identification and conservation of local heritage places, Clause 57 provides for it to choose how it makes a local heritage register available for public inspection, whether online or as a physical copy. It was determined during the drafting process that requiring local governments only keep their registers online would place an unnecessary burden on some.

If a local government determines the best approach is to make their local heritage register available online, and can provide for public inspection of this online register, it would meet the requirements set out in Clause 57.

*The department is currently conducting the Living Heritage data reform project, which will provide infrastructure for local governments to store local heritage place data and make aspects of it available online in a format similar to the online Queensland heritage register.*¹⁰⁷

Committee comment

The Committee is satisfied with the advice provided by the Department of Environment and Heritage Protection that, in line with the Bill’s policy intent to provide more flexibility for local governments, proposed Clause 57 will allow a local government to best determine how it makes a local heritage register available for public inspection, whether online or as a physical copy.

¹⁰³ BCC, submission 11:6

¹⁰⁴ DEHP, written brief (advice on BCC issues), 30 September 2014:3

¹⁰⁵ QHOLA Explanatory Notes:34-35

¹⁰⁶ Cassowary Coast Regional Council, submission 1:2

¹⁰⁷ DHEP (written brief), 29 September 2014:15

2.5.4 Appeal rights for owners in relation to local heritage listing

Mr David Nicholls and the Queensland Environmental Law Association raised the issue of introducing appeal rights for owners of places entered in local heritage registers or those included in local planning instruments (instead of relying on the compensation of injurious affection provisions contained in the *Sustainable Planning Act 2009*).¹⁰⁸

Mr Nicholls explained at the public hearing on 1 October 2014:

... in most instances people do not want to develop anything; they just want to challenge the listing. ... In commercial situations there are people who own CBD buildings, for example, who have leased them out—it might be a hotel or something that is leased for years—who cannot redevelop. But they do not want the listing: they want to be able to test the listing. This is about fairness and equity and being able to test a listing.

...a decision to list a local place, either by scheme amendment or in the register, should be subject to an appeal to the Planning and Environment Court. It would be a much simpler appeal and easier to deal with than the process of going through a development application under the superseded scheme and then going through that whole process and then appealing that application to develop, because you do not want to develop. Why be appealing a decision not to allow you to develop, when you should be appealing the actual decision to list. You go back to the source and you attack it at the source, and you provide equity between the state and local levels at its source.

*So by tightening up the process for local heritage listing and the circumstances in which that can happen and allowing for judicial challenge to the listing, there should be really less need to rely on compensation. It is rarely ever relied on now....and it will become less relevant if there is an ability to challenge the listing at its source in the first instance.*¹⁰⁹

The Department responded:

The decision in 2008 was to provide owners of properties entered in a local heritage register with rights to seek compensation for a reduction in property value (and apply to have a development application assessed under the superseded planning scheme) through the Integrated Planning Act 1997 (repealed). This was soon after replaced by the Sustainable Planning Act 2009, which carried across similar provisions. This was considered the appropriate 'appeal' mechanism as it was assumed that a local heritage register would gain effect when adopted or incorporated into a planning scheme.

This capacity is not changed with the Bill and would not be unless a matching change occurred in relation to planning scheme amendments under the Sustainable Planning Act 2009 (or its replacement). The current draft Planning and Development Bill 2014 does not change the overall circumstances in which owners can seek compensation for adverse planning scheme amendments.

*Examination of other local governments aside from the Brisbane City Council, suggests that decisions about which places are entered in local heritage registers are subject to extensive oversight by the elected membership of each council. A number of local councils will not enter places in their registers without the owner agreeing, and others only contemplate entering places owned either by the local government itself or the state (e.g. City of Gold Coast).*¹¹⁰

¹⁰⁸ Mr Nicholls, submission 2; Queensland Environmental Law Association, submission 6:4

¹⁰⁹ Mr Nicholls, QHOLA Hansard transcript, 1 October 2014: 7-9

¹¹⁰ DEPH (written brief), 29 September 2014:17-18

At the public briefing, the Department contended the current approach to conserving places of local heritage significant is “well served by the inclusion in a local planning instrument” and that it “does not agree that local heritage protection should be treated differently in relation to the mechanisms owners have to oppose their inclusion in a planning scheme”.¹¹¹ Further:

The reforms in the bill give local governments flexibility to choose the mechanism best suited to their particular circumstances and communities. Queensland’s single planning policy now requires local governments making or amending their planning scheme to demonstrate satisfaction of a range of state interests, one of which is appropriate identification and conservation of local cultural heritage. The department recognises that the requirements in the SPP mean local governments will have to choose a planning scheme option over a local heritage register. However, this process will take a number of years. In that time there is scope for a local government to choose a local heritage register approach and ultimately to adopt that register into their planning scheme. The department believes replicating the Queensland Heritage Register process for local heritage places will only serve to increase regulatory and administrative burden for local government. The current provisions in the Queensland Heritage Act regarding local heritage anticipate that assessing development of places associated with it is a matter for a local planning instrument.

*Therefore, it connected into the planning provisions about compensation for injurious affection and the superseded planning scheme application process. These provisions seek to balance the development rights of property owners against the needs of local government to effectively and efficiently make planning scheme amendments for the benefits of the community they serve.*¹¹²

The Committee asked the Department if there are appeal rights for entry of places into a local heritage register kept under the Heritage Act but separate from the planning scheme. The Department responded that “there are no appeal rights in addition to the compensation provision for entry of places into a local heritage register kept under the Heritage Act but outside the planning scheme”.¹¹³ The Department further advised:

*The issue raised by submitters regarding local heritage listings and appealing them in the same way state heritage listings can be appealed are complex and run contrary to the current policy direction which is to incorporate local heritage protection into planning schemes. Further consultation will be undertaken with submitters, the Department of State Development, Infrastructure and Planning and local government given the close connection this issue has with the Planning reform agenda. It is contended the QHOLA Bill is not the appropriate vehicle for addressing this issue and that further investigation of options and implications must be undertaken before changes are made.*¹¹⁴

Committee comment

The Committee notes that owners of a place entered in the State heritage register have appeal and compensation rights under the *Queensland Heritage Act 1992*. However, the Committee is concerned that while owners of places entered into a local government heritage register or planning scheme have compensation rights they do not have the equivalent right to appeal.

The Committee understands that the reason for this is that there is a uniform process undertaken by all local governments for consulting on, making decisions about, and compensating owners, in relation to all amendments to local planning schemes including heritage listing decisions and that

¹¹¹ DEHP, QHOLA Hansard transcript, 1 October 2014: 3

¹¹² DEHP, QHOLA Hansard transcript, 1 October 2014: 3-4

¹¹³ DEHP (correspondence), 15 October 2014:1

¹¹⁴ DEHP (correspondence), 15 October 2014:1

local heritage listings is not treated differently to other planning scheme amendments in relation to the mechanisms that owners have to oppose the decision or seek compensation.

The Committee understands that mandating for local governments to introduce appeal rights on all amendments to local plans could be onerous and costly; however it is concerned about the inequity between the State and local government heritage listing appeal rights and believes this issue deserves further consideration.

The Committee notes the Department of Environment and Heritage Protection's advice that any decision to change the current local government heritage listing processes to allow appeals, would require consultation with all local governments and that the Queensland Heritage and Other Legislation Amendment Bill 2014 is not the appropriate vehicle for addressing this issue. Therefore the Committee is recommending that further investigation of options and the implications be undertaken.

Recommendation 6

The Committee recommends that the Minister for Environment and Heritage Protection consult with the Minister for State Development, Infrastructure and Planning and the Minister for Local Government, Community Recovery and Resilience to investigate options for introducing appeal rights regarding a decision to enter a place into a local government heritage register or planning scheme.

2.5.5 No appeal recourse (compensation) for owners of places entered in local heritage registers

The Queensland Environmental Law Association raised a related concern that there is no appeal recourse (compensation) for owners of places entered in local heritage registers that are kept outside the planning scheme.¹¹⁵ The Department clarified that:

The submission of the Queensland Environmental Law Association Inc suggests that owners of places entered in the local heritage registers kept outside the planning scheme will not be able to apply for compensation and submit an application to have a development assessed against the superseded planning scheme under the Sustainable Planning Act 2009 (or its replacement) This is not the case. Owners have that right under the Queensland Heritage Act 1992 (refer to section 124) and the Bill does not alter that right. It does include a new subsection (with Clause 65) making it clear that only one such application can be made (to remove confusion about local heritage registers being adopted into a planning scheme).¹¹⁶

Committee comment

The Committee accepts the advice of the Department of Environment and Heritage Protection that there is an appeal recourse (compensation) for owners of places entered in local heritage registers that are kept outside the planning scheme, and considers it appropriate that owners only have the right to make one application for compensation.

2.5.6 Cultural heritage criteria used for local heritage listing

Mr Nicholls and QELA argued that the cultural heritage criteria, as prescribed under section 35 of the Heritage Act, should be mandated for local heritage listing.¹¹⁷

Mr Nicholls explained at the public hearing that the Bill gives the local government greater flexibility in the way it lists or what it lists.

¹¹⁵ QELA, submission 4:4

¹¹⁶ DEPH (written brief), 29 September 2014:18

¹¹⁷ Mr Nicholls, submission 2; QELA, submission 6

...however, the changes will affect the balance between heritage protection and individual rights because the listing mechanisms at the local level are quite loose and quite inadequate.

... Unfortunately, no such provisions exist in the act in relation to local heritage listings because no criteria are proposed. My question is how is the high level of heritage significance a place must demonstrate for entry in the Queensland Heritage Register replicated at the local level? What are the criteria and how are they to be applied at the local level? It is really left up to each local government to decide what they are going to do.

Whilst public and private landowners have some confidence in the rigour surrounding the entry and removal from the state register of places, such confidence is not likely to exist in relation to local heritage listings because the same processes are not necessarily required to be used. Giving local governments greater flexibility in how they manage places of local heritage significance in their areas and clarifying the application of local heritage provisions in the QHA, it is proposed that this ability be provided for by firstly identifying local heritage places in a planning scheme, that is, by making a scheme amendment; or alternatively, by establishing a local heritage register under the act. Each of those two alternatives is a fundamentally different concept and process. The former relates to town planning and is effectively like a piece of laser surgery on the planning scheme which takes a particular property—it might be someone's house—and says, 'That is going to be treated in a particular way for heritage reasons.' The other is a proper process of actually saying, 'That house has heritage significance and it needs to be protected.' The latter process, that is, the heritage listing process, is well understood and is the preferable process under the scheme amendment process. The former process, the scheme amendment process, is essentially a political one and is not attended by any appropriate checks and balances.

Clause 112 of the bill requires a local government to identify places in its local government area that are of cultural heritage significance for the area by one of those two means that I have just mentioned. The important things to note about this provision are that firstly, as I have said, no criteria are specified for local heritage listing and accordingly they may vary between local governments. Who determines these criteria? For entry into the Queensland Heritage Register one or more of the criterion in section 35 have to be satisfied. There is no such provision for local heritage listing. For local governments it involves giving notice, having a public consultation and submissions have to be considered. But how do owners know if the proposed listing is fair, given that there are no criteria to be considered? To give the notice the local government must reasonably consider the place to be of heritage significance—but again based on what—and entry of the place ultimately after considering submissions merely requires the local government to be 'satisfied' that the place is of cultural heritage significance for its area. Again, based on what? It is completely open-ended and capable of extremely wide variation. It is not subject to the same rigour as the state listing process.

...The criteria for local heritage listing should be the same as those contained in section 35 of the act, with appropriate amendments to relate the criteria to the local circumstance. So instead of saying 'importance to the state' it should be 'importance to the local government area'. That would be a very simple provision to draft and easy to put into the act.¹¹⁸

The Department responded in their written brief to the Committee that:

The Bill proposes no change to the current situation where each local government can choose the heritage criteria it sees fit to apply when considering inclusion of places in its

¹¹⁸ Mr Nicholls, QHOLA Hansard transcript, 1 October 2014:7-8

local heritage register or planning scheme overlay. The department has released Carrying out a heritage survey, a guide which recommends that local governments use eight criteria for assessing heritage significance modelled on those eight contained in section 35 of the Queensland Heritage Act 1992. This is to encourage consistency across the state without the need for unnecessary prescription. Queensland's criteria correspond very closely to those applied throughout all other Australian jurisdictions.

And:

This has proven a successful approach; as evidenced by a number of local heritage registers established by the Fraser Coast Regional Council; City of Gold Coast; and Whitsunday, Scenic Rim and Bundaberg Regional councils. All these registers have used eight heritage criteria modelled on those used to assess heritage significance in relation to the Queensland heritage register. This demonstrates what can be achieved without mandating the criteria to be used. Given that many of these local heritage registers will ultimately be adopted into planning schemes, it is expected that the criteria, along with the rigour used in applying them, will continue in use. A review of the places entered in these local registers and the information supporting them shows clearly that the system Mr Nicholls describes, where not enough care is taken before listing a place, is being replaced by a greatly improved one, where careful analysis and consultation is being undertaken before places are heritage listed.¹¹⁹

Committee comment

The Committee acknowledges the concerns raised by Mr Nicholls and the Queensland Environmental Law Association that the cultural heritage criteria described under section 35 of the Heritage Act is not mandated for local heritage listing.

However, the Committee is also aware that one of the key objectives of the proposed Environment and Heritage Protection Bill 2014 is to provide flexibility to local government in identifying and protecting places of local heritage significance.

The Committee notes that the Department of Environment and Heritage Protection's recent guide for local governments on heritage assessment titled 'Carrying out a heritage survey', recommends that local governments should choose criteria for assessing heritage significance (modelled on those eight contained in section 35 of the Heritage Act) as it applies to their local situation when considering inclusion of places in its local heritage register or planning scheme overlay. Of note, a number of local governments (Fraser Coast Regional Council; City of Gold Coast; and Whitsunday, Scenic Rim and Bundaberg Regional councils) have established a local heritage register using the criteria prescribed in the Department's guide.

The Committee recognises that local governments need some flexibility and believes that allowing local government to choose the criteria to assess their local places of heritage significance supports this key objective of the Bill. Therefore, the Committee does not agree that the cultural heritage criteria described under section 35 of the Heritage Act should be mandated for local heritage listing as it is for state places. If the criteria were to be mandated, further consultation would be required with local government.

The Committee is satisfied with the flexibility afforded to local government by the guidance material provided to local government that suggests rather than mandates that they use criteria that mirrors section 35 of the Heritage Act.

¹¹⁹ DEHP written brief (appendix 1), 29 September 2014:16-17

2.5.7 Places entered in both the state register and a local register (duplication)

Some submitters raised concern about the duplication between State and local heritage registers. In their submission, QELA pointed out that, “it is often the case that places are listed on both the State and local heritage registers for identical reasons” and that “this leads to the potential for places to require assessment under two regimes”.¹²⁰ The Property Council of Australia (Queensland) also shared this concern stating that in the proposed Bill: “there will be very little removal of duplication between the State and local government heritage registers”.¹²¹ The Property Council explained that:

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.*¹²²

The Department responded:

This issue was raised by a small number of submissions made on the discussion paper. Places may have values at a state level and at a local level. For example, a school building may be important as a rare example of a structure built in accordance with an educational philosophy that had great currency during a certain period of history, but may also have a special association with a person that made a special contribution to the local community but not necessarily to the state as a whole. In these circumstances it is reasonable to expect that this place might feature in the Queensland heritage register as well as a local heritage register kept by the local government.

The nature of the concern expressed involves the situation where an owner wishes to develop this property and faces two levels of heritage regulation, and how to ensure both sets of values are considered with as little regulatory burden as possible.

And:

*The department is undertaking further consultation with the Queensland Division of the Property Council of Australia in relation to the issue it raised in its submission about places being entered in the state register and the relevant local heritage register. The department recognises the need to remove duplication from the development assessment process for the owners and managers of these places, but contends the matter is more appropriately resolved through the Planning reform agenda and the Planning and Development Bill in consultation with the Department of State Development, Infrastructure and Planning.*¹²³

Committee comment

The Committee acknowledges the concerns of submitters in relation to issues pertaining to duplication between State and local heritage registers.

The Committee notes that the Department of Environment and Heritage Protection is undertaking further consultation with the Property Council of Australia (Queensland) in relation to this issue.

The Committee also notes that the Department of Environment and Heritage Protection acknowledges the need to remove duplication from the development assessment process for the

¹²⁰ QELA, submission 6:4

¹²¹ Property Council of Australia (Queensland), submission 10:4

¹²² Property Council of Australia (Queensland), submission 10:4

¹²³ DEHP (correspondence) 13 October 2014:2

owners and managers of heritage places. Therefore, the Committee believes that the Department of Environment and Heritage Protection, in consultation with the Department of State Development, Infrastructure and Planning, is best placed to resolve the matter through the Planning reform agenda as part of the draft Planning and Development Bill, which will review plan making, development assessment and dispute resolution.

Recommendation 7

The Committee recommends that the Minister for Environment and Heritage Protection consult with the Minister for State Development, Infrastructure and Planning on the draft Planning and Development Bill regarding the removal of unnecessary duplication from the development assessment process for the owners and managers of heritage places.

2.5.8 Updating the ‘Making and Amending a Local Planning Instrument’ Statutory Guideline

In its submission the Cairns Regional Council refers to proposed clause 64 (amendment of section 122) in the Bill, which clarifies how to make minor changes in entries for places in a local heritage register (which do not change the statement of significance for a place, or the extent of its heritage boundary).¹²⁴ The Cairns Regional Council suggests that consideration should also be given to including a similar example about making a minor change into the ‘Making and Amending Local Planning Instruments’ (MALPI) statutory guideline¹²⁵ (under the *Sustainable Planning Act 2009*) “to provide the similar operational efficiencies for making changes to the statement of significance for places included within a planning scheme”.¹²⁶

The Department responded:

*Possible amendments of the Making and Amending a Local Planning Instrument (MALPI) Statutory Guideline had been countenanced and the issue related to what constitutes an administrative change in relation to local heritage places featured in a planning scheme is to be raised with the Department of State Development, Infrastructure and Planning, which oversees this guideline.*¹²⁷

Committee comment

The Committee notes that the Department of Environment and Heritage Protection is considering the Cairns Regional Council’s proposal to include a similar administrative change (as the one proposed in clause 64 of the Queensland Heritage and Other Legislation Amendment Bill 2014 on how to make a minor change) into the ‘Making and Amending Local Planning Instruments’ statutory guideline.

The Committee also notes the Department of Environment and Heritage Protection’s advice that it intends to raise this proposal with the Department of State Development, Infrastructure and Planning, which oversees the guideline.

¹²⁴ QHOLA Explanatory Notes:35-36

¹²⁵ The MALPI guidelines sets out the minimum requirements which must be followed by a local government for making or amending a local planning instrument, in accordance with section 117 of the *Sustainable Planning Act 2009*.

¹²⁶ Cairns Regional Council, submission 4:2

¹²⁷ DEPH written brief (appendix 1), 29 September 2014:20-21

Recommendation 8

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department of Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning about implementing the Cairns Regional Council's proposal to include a similar administrative change (as the one proposed in Clause 64 of the Queensland Heritage and Other Legislation Amendment Bill 2014 on how to make a minor change) into the 'Making and Amending Local Planning Instruments' statutory guideline.

2.5.9 Issuing of non-development orders

With Clause 71, new section 164C proposed to replace the existing non-development order currently contained in section 170 (which is omitted by Clause 74). A non-development order prohibits an owner of a heritage place from carrying out development for a period of time. Rather than being an order issued by the Minister for Environment and Heritage Protection, it becomes an order available to the court in penalising an offence against the Heritage Act or sections 578 or 580 of the *Sustainable Planning Act 2009* (SPA or Sustainable Planning Act).¹²⁸

In its submission, the Brisbane City Council supported the further use of non-development orders; however it suggested that there are enhancements to the effectiveness of these provisions that would 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.

*Non-development orders should also be an order 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.*¹²⁹

The Brisbane City Council went on to recommend that Clause 71 (proposed section 164C) be amended so that:

- *The relevant local government also be given a copy of a 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.*¹³⁰

The Department responded:

The prospect of local government being able to note non-development orders in planning schemes and thereby in Planning and Development Certificates has not been raised previously. There is no impediment to these orders being noted in a planning scheme.

*The capacity of the court [Magistrates Court]¹³¹ to issue non-development orders is restricted to State Heritage Places and there is no intention to extend these powers to local heritage places.*¹³²

¹²⁸ QHOLA Explanatory Notes:38

¹²⁹ Brisbane City Council, submission 11:4-5

¹³⁰ Brisbane City Council, submission 11:4

¹³¹ Offences against the Heritage Act and the Sustainable Planning Act are generally heard in the Magistrates Court.

¹³² DEHP, written brief (advice on BCC issues), 30 September 2014:2-3

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that there is no impediment for local governments to note non-development orders in their planning schemes.

The Committee also notes the proposed change in the Queensland Heritage and Other Legislation Amendment Bill 2014 that the court (rather than the Minister for Environment and Heritage Protection) would be able to issue non-development orders and that the capacity of the court to issue these orders is restricted to State heritage places. However, if the Minister for Environment and Heritage Protection were to consider extending these powers to include local heritage places, the Committee is strongly of the view that further consultation with stakeholders would need to be undertaken.

2.5.10 Flexibility and fees - general exemption certificates for local heritage places

Clause 37 (Application for exemption certificate) proposes to amend section 72 to allow local governments to issue exemption certificates for minor work to local heritage places (see section 2.3.4 of this report for a discussion about exemption certificates for state heritage places).

The Local Government Association of Queensland (LGAQ) supported this amendment:

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 these resources are not forced to do so.¹³³

Cairns Regional Council sought clarification in relation to the level of discretion a local government would have regarding a general exemption certificate for local heritage places in its area.¹³⁴

The Department clarified:

A local government can choose whether to engage with the department in establishing a General Exemption Certificate for use in its area.¹³⁵

The Cairns Regional Council submitted that it would like the Bill to also provide for local governments to set an assessment fee to assess and decide on exemption certificates.¹³⁶

The Department responded:

The prospect of fees being associated with assessing and deciding local exemption certificates has not been previously canvassed. It is not an approach favoured for state exemption certificates as their purpose is to keep owners of places entered in the Queensland heritage register out of unnecessary involvement with the development assessment system on heritage grounds and not incur additional costs for them.

Further consultation on the subject of fees for local exemption certificates may be undertaken with Department of State Development, Infrastructure and Planning.¹³⁷

¹³³ LGAQ, submission 9:1

¹³⁴ Cairns Regional Council, submission 4:1

¹³⁵ DEPH written brief (appendix 1), 29 September 2014:19

¹³⁶ Cairns Regional Council, submission 4:1

¹³⁷ QHOLA Explanatory Notes:12

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that it will undertake further consultation with the Department of State Development, Infrastructure and Planning in relation to the charging of fees for local exemption certificates.

Recommendation 9

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department for Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning in relation to the potential for charging of fees for local exemption certificates.

2.5.11 Consequential amendment of the Sustainable Planning Act 2009 and the Sustainable Planning Regulation

In its submission, the Cairns Regional Council noted that the intent of the exemption certificates is to exempt minor works from IDAS. However, the Cairns Regional Council is of the view that there are no consequential amendments to the Sustainable Planning Act or *Sustainable Planning Regulation 2009* to facilitate this for local heritage places. The Cairns Regional Council suggests that the Sustainable Planning Act be amended to:

*... make it clear that that building work for administering IDAS in relation to a local heritage place does not include development for which an exemption certificate has been issued under the Queensland Heritage Act 2009.*¹³⁸

And, consequentially:

*Amend the Sustainable Planning Regulation 2009 Table 5, section 3 to insert (a) development for which an exemption certificate under the Queensland Heritage Act 1992 has been issued.*¹³⁹

The Department responded:

*The definition of building work contained in section 10 of the Sustainable Planning Act 2009 is currently far broader for a place entered in the Queensland heritage register than normally applies. This is given the impact building work can have on fabric of heritage significance and provides a mechanism for regulating it where necessary. Section 10 then states that development covered by an exemption certificate issued under the Queensland Heritage Act 1992 for the purposes of IDAS is not taken to be building work. An interpretational issue has been identified with this definition and it was agreed with the Department of State Development, Infrastructure and Planning that the solution would be to remove the reference to exemption certificates in the building work definition and improve the wording of the trigger in the Sustainable Planning Regulation 2009. This is being carried through and appears in the draft Planning and Development Bill 2014 currently released for consultation. To avoid this interpretational issue also applying to local exemption certificates, no update of the Sustainable Planning Act 2009 building work definition is proposed.*¹⁴⁰

¹³⁸ Cairns Regional Council, submission 4:1

¹³⁹ Cairns Regional Council, submission 4:1

¹⁴⁰ QHOLA Explanatory Notes:11-12

And:

Update of the trigger in the Sustainable Planning Regulation 2009 (or its replacement) is to be pursued through a subordinate legislation amendment process to also remake the Queensland Heritage Regulation 2003, which is due to expire on 30 August 2015.

The next stage of remaking the Queensland Heritage Regulation 2003 and updating the Sustainable Planning Regulation 2009 (or its replacement) will be undertaken.¹⁴¹

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that an interpretational issue has been identified with the definition of building work contained in section 10 of the Sustainable Planning Act 2009 and that it was agreed with the Department of State Development, Infrastructure and Planning that the solution would be to remove the reference to exemption certificates in the building work definition and improve the wording of the trigger in the Sustainable Planning Regulation 2009 and that this is occurring through the current drafting and consultation process for the Planning and Development Bill 2014.

2.5.12 Publishing a notice about an exemption certificate

Clause 40, subclause (4) of the Bill proposes to provide for local governments to publish a notice in a newspaper distributed in its area stating that the general exemption exists, where it can be viewed, and some brief detail about it.

In relation to where the notice can be published, the Brisbane City Council was concerned that:

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 such web based notification can be more effective and expeditious in communicating such matters.¹⁴²

The Department responded:

The policy intent behind the construction of Clause 40 and its amendment of the section 75 was to set out how a local government making a general exemption certificate must advertise its existence in a locally circulating newspaper. It then allows for the local government to choose whether it keeps its general exemption certificate in written or electronic form and available for inspection at its public office.¹⁴³

Committee comment

The Committee accepts the advice provided by the Department of Environment and Heritage Protection that the policy intent behind the construction of Clause 40 and its proposed amendment of section 75 was to set out how a local government making a general exemption certificate must advertise its existence in a locally circulating newspaper and that it then allows for the local government to choose whether it keeps its general exemption certificate in written or electronic form and available for inspection at its public office.

¹⁴¹ QHOLA Explanatory Notes:12

¹⁴² Brisbane City Council, submission 11:3

¹⁴³ DEHP, written brief (advice on BCC issues), 30 September 2014:1

2.5.13 Recording of local heritage agreements and guidance

While the Cairns Regional Council has no objection to Clause 42 which proposes to empower local governments to use heritage agreements with owners of local heritage places, the Cairns Regional Council sought clarification on where records of local heritage agreements should be kept. The Cairns Regional Council noted that:

... under the Queensland Heritage Act 1992, section 174 sets out the requirements for recording heritage agreements for State Heritage Places, however there have been no amendments in relation to local heritage agreements.¹⁴⁴

And suggested that:

Given some elements of the local heritage agreement may seek to regulate development or set standards for development, recording information about the local heritage agreements in the planning scheme would be appropriate.¹⁴⁵

The Department responded:

Section 174 relates to recording details about heritage agreements that attach to land for Queensland heritage places on the certificate of title of the affected land. This provision was not extended to local governments for use with local heritage agreements as it was considered too potentially onerous. Recording of details of local heritage agreements in a planning scheme is a prospect not previously raised but could be pursued after commencement. The department maintains copies of heritage agreements entered into for places entered in the Queensland heritage register.¹⁴⁶

The Department also advised that new guidance material will be produced to inform those local governments wishing to use local heritage agreements in time for commencement (should the Bill be passed).¹⁴⁷

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that Section 174 of the Heritage Act relates to recording details about heritage agreements that attach to land for Queensland heritage places on the certificate of title of the affected land and that this provision was not extended to local governments for use with local heritage agreements as it was considered to be too potentially onerous.

The Committee also notes the Department of Environment and Heritage Protection's advice that new guidance material will be produced to inform those local governments wishing to use local heritage agreements in time for commencement of the Bill (should the Bill be passed).

2.5.14 Guidelines made by the chief executive in relation to local government

Clause 76 proposes to amend section 173 to provide for the chief executive to make guidelines, after consultation with the Queensland Heritage Council and local government providing guidance to local governments about identifying or managing local heritage places. This will support local government to use its powers under the Heritage Act.¹⁴⁸

¹⁴⁴ Cairns Regional Council, submission 4:1-2

¹⁴⁵ Cairns Regional Council, submission 4:1-2

¹⁴⁶ DEPH written brief (appendix 1), 29 September 2014:19

¹⁴⁷ DEPH written brief (appendix 1), 29 September 2014:19

¹⁴⁸ QHOLA Explanatory Notes:40

A number of submitters sought further clarification regarding guidelines made by the chief executive:

- Cairns Regional Council on whether the guidelines will provide guidance on how to demonstrate compliance and what is deemed appropriate¹⁴⁹
- Brisbane City Council on whether the guidelines would have statutory effect¹⁵⁰

Cassowary Coast Regional Council supported the proposed power as long as the guidelines are non-statutory.¹⁵¹

The Department responded:

The guidelines anticipated under the amendments to section 173 in relation to local government are statutory, in that they would be made under the Queensland Heritage Act 1992. As set out unambiguously in Clause 76, for local government their purpose would be to provide guidance not to be prescriptive. They are a more flexible way for the chief executive to give direction on certain matters as opposed to regulating an approach through a statutory instrument.

The policy intent is to provide for the chief executive to give assistance to local government, in consultation with it and the Queensland Heritage Council, in answer to a number of submissions on the discussion paper about some local governments needing assistance and guidance. The consultation process would ensure that any guidelines produced assist rather than hinder identification and protection of local heritage.

The guidelines proposed to be issued by the chief executive 'to local governments about identifying or managing local heritage places' will not be guidelines made under the Sustainable Planning Act 2009 (nor its replacement). They are for guidance purposes and correspond with the overarching policy intent of the Bill to provide flexibility to local government in how it manages local heritage places.¹⁵²

Committee comment

The Committee notes the advice provided by the Department of Environment and Heritage Protection that while the guidelines proposed under the amendments to section 173 in relation to local government are statutory, in that they would be made under the *Queensland Heritage Act 1992* Clause 76 provides that for local government, the guidelines are intended to provide guidance not to be prescriptive. The Committee accepts that this provides a more flexible way for the chief executive to give direction on certain matters as opposed to regulating an approach through a statutory instrument.

2.5.15 Assistance to regional areas and to local governments

While not specifically relating to a clause in the Bill, several submitters point to the need for additional assistance for some regional areas and to local governments to help them build their heritage capacity. The National Trust of Australia (Queensland) explains:

- *Local governments, particularly in regional areas, should be provided with additional technical support to build their heritage capacity and help them successfully implement the provisions of this Bill, thereby improving local heritage management and increasing the potential of local heritage tourism; and*

¹⁴⁹ Cairns Regional Council, submission 4:2

¹⁵⁰ Brisbane City Council, submission 11:5

¹⁵¹ Cassowary Coast Regional Council, submission 1:2

¹⁵² DEPH written brief (appendix 1), 29 September 2014:19

- *Additional experienced and skilled technical resources are also needed in regional areas to promote adaptive reuse generally, assess exemption certificates and develop new heritage agreements.*¹⁵³

The concern is shared by the Regional Strategy and Planning Department of the Sunshine Coast Council which cautions that *“providing local government with additional powers and responsibility with respect to local heritage should only be implemented when it is certain that those local governments possess the resources and expertise to meet those additional responsibilities”*.¹⁵⁴

The Department responded:

These submissions call for more support for local governments and owners of heritage places. The reforms in this Bill address this concern in tightening the assessment process whereby places are considered for entry in, or removal from, the Queensland heritage register; expanding the scope of exemption certificates and providing them to local government to use with local heritage places; and clarifying how local government can fulfil its obligation in relation to local heritage places.

*Aside from guidance material for local governments to be prepared in conjunction with commencement of the Bill, the department is undertaking the Living Heritage data reform project, which will provide a database where willing local governments can store their local heritage data and through which they can make parts of it available online. For two rounds, the owners and custodians of state and local heritage places have been eligible to apply in the Heritage stream of the Everyone’s Environment grants program. Also, an updated Queensland Heritage Strategy is soon to be released and will set the direction the Queensland Government and the Queensland Heritage Council will take over the next five years to further the cause of the state’s cultural heritage.*¹⁵⁵

Committee comment

The Committee acknowledges the concern expressed by a number of submitters about the capacity and resources for some regional areas and local governments to meet their heritage responsibilities and notes the potential impact that the lack of staff with heritage expertise or training could have on some regional areas and local governments.

The Committee notes the response by the Department of Environment and Heritage Protection that this concern is to be addressed by:

- reducing regulatory burden through reforms proposed in the Queensland Heritage and Other Legislation Amendment Bill 2014 (i.e. tightening the heritage register assessment process, provision to create local exemption certificates for use by local government with local heritage places and clarifying the role of local governments in relation to local heritage places)
- guidance material to assist local governments on identifying or managing local heritage places
- other administrative and technological means.

The Committee is mindful that one key policy intention of the Queensland Heritage and Other Legislation Amendment Bill 2014 is to provide flexibility to local governments on how they manage local heritage places.

The Committee is satisfied that the Department of Environment and Heritage Protection will provide that assistance, guidance and support to local governments.

¹⁵³ National Trust of Australia (Qld), submission 7:2

¹⁵⁴ Regional Strategy and Planning Department of the Sunshine Coast Regional Council, submission 8:2

¹⁵⁵ DEPH written brief (appendix 1), 29 September 2014:21

2.6 Minor amendments to the Heritage Act

2.6.1 Initial notice of application

Clause 19 of the Bill proposes to make minor amendments to section 38(1)(c) of the Heritage Act about how the notices distributed to owners when a heritage application is received explain the owner's capacity to make submissions. The Explanatory Notes explain:

These adjustments provide clearer ground for electronic submissions, as well as physical ones. Clause 19 also amends section 38(1)(c) to add the requirement that the notice sent to the place owner alerts them to their capacity to make a heritage response on the recommendation and the associated timeframes for this, as established with new subdivision 2A in division 5 of part 4 (refer new sections 50A and 50B created by Clause 25).¹⁵⁶

The Regional Strategy and Planning Department of the Sunshine Coast Council raised concerns about these amendments stating:

Section 38(1)(c)(iv) and (v) refers to relevant parties providing submissions. Section 38(c)(vi) and (vii) refer to relevant parties providing written responses. For communication and registering purposes, are they considered identical? These two communication methods need clarification.¹⁵⁷

The Department advised that:

... Heritage responses are different from submissions, which can be made earlier in the assessment process by all interested parties or individuals and are based on the heritage application.¹⁵⁸

Committee comment

The Committee notes the difference between written submissions and written responses and believes that this difference is made adequately clear in the Bill.

2.6.2 Incorrect sectional reference in Clause 80

Clause 80 proposes to insert a new division 4 in part 15 to provide for transitional provisions related to passage of the *Queensland Heritage and Other Legislation Act 2014*.

Cairns Regional Council submitted to the Committee that the sectional reference in Clause 80 is incorrect, specifically, the reference to 112(1)(a) is incorrect and should be 112(2)(a).¹⁵⁹

The Department clarified:

The sectional reference for the transitional provision relating to the 12 prescribed local governments which have appropriate local heritage protection mechanisms existing in their planning schemes and are not required to keep local heritage register has been checked and is correct [refer to Clause 56 and section 112(1)(a)]. The comment from Cairns Regional Council refers to section 112(2)(a) currently in the Queensland Heritage Act 1992, which is not the section being referred to here.¹⁶⁰

¹⁵⁶ QHOLA Explanatory Notes:21

¹⁵⁷ Regional Strategy and Planning Department of the Sunshine Coast Council, submission 8:1

¹⁵⁸ DEHP, written brief (appendix 1), 29 September 2014:8

¹⁵⁹ Cairns Regional Council, submission 4:3

¹⁶⁰ EHP, written brief (appendix 1), 29 September 2014:19

Committee comment

The Committee accepts the clarification provided by the Department of Environment and Heritage Protection that the sectional reference for the transition provision relating to the 12 prescribed local governments is correct.

2.6.3 Typographical error – new section 199(1)(b)

In its submission, the Brisbane City Council advised that there was a typographical error in new section 199(1)(b). The reference made in new section 199(1)(b) should refer to section 112(1)(a).¹⁶¹

The Department advised the Committee that it intends to correct this error in the Bill.¹⁶²

Committee comment

The Committee notes that the Department of Environment and Heritage Protection intends to correct the typographical error in proposed new section 199(1)(b) of the Bill so that section 199(1)(b) refers to section 112(1)(a).

Recommendation 10

The Committee recommends that the Minister for Environment and Heritage Protection amends proposed new section 199(1)(b) in the Queensland Heritage and Other Legislation Amendment Bill 2014 so that it refers to section 112(1)(a).

2.6.4 Consequential amendments to other Acts

Clause 82 in the Bill proposes to make consequential amendments of other Acts listed in Part 3.

2.6.4.1 Definition of local heritage (Sustainable Planning Act 2009 schedule 3)

The definition of *local heritage place* in Schedule 3 is replaced to refer only to a local heritage place entered in a local heritage register. The Explanatory Notes states that this is necessary given that the Heritage Act definition has been expanded to include local heritage places identified in a planning scheme.¹⁶³

The Cairns Regional Council disagrees and submits that the definition under the Sustainable Planning Act should not be amended as it covered both places on the register and a local government planning scheme.¹⁶⁴

The Brisbane City Council also pointed out that by retaining the meaning of local heritage place in the Sustainable Planning Act, certain penalty provisions under the Sustainable Planning Act would not apply:

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 the SPA and the emergency building work provisions in section 583 of SPA will not apply. This is

¹⁶¹ BCC, submission 11:5

¹⁶² DEHP, written brief (advice on BCC issues), 30 September 2014:3

¹⁶³ QHOLA Explanatory Notes:43

¹⁶⁴ Cairns Regional Council, submission 4:3

*unacceptable to Council and the limitation of the definition to a place on a local heritage register is unnecessary.*¹⁶⁵

The Department responded:

*The consequential amendment proposed by the Bill for the definition of local heritage place in the Sustainable Planning Act 2009 intentionally seeks to keep the current situation unchanged. Further consultation on the issue raised is to be undertaken with the Department of State Development, Infrastructure and Planning in relation to the Planning and Development Bill 2014.*¹⁶⁶

Committee comment

The Committee acknowledges the concerns raised by submitters in relation to the Clause 82 (consequential amendments to other Acts) in the Bill which proposes to replace the definition of local heritage place to refer only to a local heritage place entered in a local heritage register.

The Committee also notes the concerns of the Brisbane City Council that this proposed change means that the penalty and the emergency building work provisions in the *Sustainable Planning Act 2009* (sections 578(3) and 583) would not apply for those local governments who do not maintain a local heritage register (instead local heritage places are identified in their planning schemes).

The Committee accepts the advice in the Explanatory Notes that the change is necessary given that the *Queensland Heritage Act 1992* definition has been expanded to include local heritage places identified in a planning scheme and notes that the Department of Environment and Heritage Protection intends to undertake further consultation on the issue with the Department of State Development, Infrastructure and Planning as part of the current review of the Planning and Development Bill 2014.

Recommendation 11

The Committee recommends that the Minister for Environment and Heritage Protection ensure that the Department for Environment and Heritage Protection consult with the Department of State Development, Infrastructure and Planning regarding the definition of a local heritage place in the *Sustainable Planning Act 2009*.

¹⁶⁵ Brisbane City Council, submission 11:6

¹⁶⁶ QHOLA Explanatory Notes:19-20

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

The Committee has examined the application of the FLPs to the Bill.

The examination raised a number of potential FLP issues in various provisions. The Committee is satisfied the majority of the potential breaches are either minor in nature or have been sufficiently addressed in the Explanatory Notes. Accordingly, the Committee has not detailed them in this report.

The Committee considered that Clauses 46 and 16 of the Bill raised potential FLP issues, which are brought to the attention of the House.

3.1 Rights and liberties of individuals

3.1.1 Clause 46 – essential repair and maintenance notices

This Clause proposes to insert a new part 8 into the Heritage Act which provides for essential repair and maintenance notices to be issued in certain circumstances.

The Explanatory Notes acknowledge that the expanded scope of the essential repair and maintenance notice provisions may constitute an FLP breach to the rights and liberties of individuals pursuant to section 4(2)(a) of the *Legislative Standards Act 1992*. The Explanatory Notes advise:

The expansion does not represent a breach of these principles. Some submitters were concerned the strengthened power could be used against an owner who decides to mothball a building covered by state or local heritage listing. This is not the case, as the power is clearly set out to prevent deterioration caused by neglect. Mothballing a building involves making it weather, insect and vandal proof so its use can be revived in the future. These are not the instances in which an essential repair and maintenance notice would be issued, as is clearly demonstrated in the reserved way the power has been used since it was introduced in 2008. Only those local governments prescribed by regulation and able to demonstrate there are procedures in place to use the power appropriately, will be approved to use it, meaning the last resort nature of the power will be maintained in a local heritage context.

This also raises the issue of whether consequences imposed by legislation are proportionate and relevant to the actions to which they are applied. The strengthening of this power is intended to better encompass the circumstances in which it is intended to intervene, and is not considered a breach of this fundamental legislative principle. The last resort nature of the strengthened power, evidenced by the reserved way it has been used, and the consultation required before a notice is issued, ensures sufficient regard is had for the rights and liberties of individuals.¹⁶⁷

The Committee sought further information as to what a local government must provide in terms of its procedures in order for them to satisfy the department that the procedures will be included in a regulation.

¹⁶⁷ QHOLA Explanatory Notes:31-32

The Department advised:

The matters that a local government would need to prove in order to be prescribed to use the essential repair and maintenance power would include:

- *How an assessment is made about the places where essential repair and maintenance may be warranted.*
- *Policy and procedure setting out how the owner of a local heritage place is consulted before a notice is issued.*
- *Options for alternative solutions to be agreed forestalling the need to issue a notice.*
- *The types and extent of work that can be required of an owner by a notice.*
- *Processes about ensuring compliance with a notice.*¹⁶⁸

This system will produce consistency between different local jurisdictions.

*New section 83 provides that, before recommending to the Governor in Council that a local government be prescribed by the Queensland Heritage Regulation to use the essential repair and maintenance power, the Minister must be satisfied it 'has appropriate procedures in place for exercising' that power with local heritage places. The local governments prescribed through this process will be listed in the regulation, not what matters they have to satisfy the Minister about. Guidance material will be prepared to coincide with commencement explaining what has to be provided and how the prescription process is undertaken, including the kind of information discussed in the response to Clause 46.*¹⁶⁹

Committee comment

In light of the justification set out in the Explanatory Notes and the advice received from the Department of Environment and Heritage Protection the Committee considers that, on balance, the new part 8 is justified in the circumstances.

Policy issues related to this proposed new part 8, along with related committee comments and a recommendation are discussed in section 2.4.1 of this report.

3.2 Natural justice

3.2.1 Clause 16 – information accompanying heritage applications

Clause 16 proposes to insert new section 36(2)(c)&(d) into the Act in relation to the information that must accompany a heritage application, whether it is an application to enter or remove a place from the Queensland heritage register.

Clause 16 potentially breaches section 4(3)(b) of the *Legislative Standards Act 1992* which provides that legislation should be consistent with the principles of natural justice. It is arguable that the increased information required by the Clause may exclude some individuals from meeting the requirement under the new section.

The Explanatory notes acknowledge the potential FLP breach and advise as follows:

Concern was expressed by some submitters that adding these kinds of requirements into section 36 of the Queensland Heritage Act 1992 would exclude certain people from making applications; those without ready internet access or without skills in historical research. This

¹⁶⁸ DEHP, written brief (appendix 1), 29 September 2014:13

¹⁶⁹ DEHP (correspondence) 10 October 2014:1

raises the fundamental legislative principle of whether sufficient regard is had for the rights and liberties of individuals, in particular the specific principle of natural justice and whether something should be done to a person that will deprive that person of some right without them being given an adequate opportunity to present their view to the decision-maker. The amendments in section 36 do not represent a breach of this principle. The Department of Environment and Heritage Protection provides guidance and direct assistance to applicants about the material required with an application and will continue to do so. However, given the effort and expense of undertaking the registration process, and the consequences of the resulting decision for property owners, a heightening of initial application requirements is considered reasonable and appropriate.¹⁷⁰

The Committee sought further information from the Department as to how it currently provides direct assistance to applicants.

The Department responded:

A range of guidance material is provided on the government website, including two application guides (regarding entry in, and removal from, the Queensland heritage register) and the single application form. The guides give general information about the kinds of matters applicants should consider and how to prepare an application. The current guides and form can be viewed at the Queensland Government website at <http://www.qld.gov.au/environment/land/heritage/register/changes/> (best viewed with Mozilla Firefox). These will be updated to coincide with commencement, should the Bill be passed.

The Department regularly receives direct enquiries from individuals and groups wishing to make a heritage application either to have a place considered for entry in, or removal from, the Queensland heritage register. If they are unaware of the Department's guidance material, potential applicants are first directed to it (or are provided with copies). Some applicants then follow up with questions to the Department.

Apart from general assistance related to matters covered in the guides, the Department also recommends potential applicants review existing places entered in the Queensland heritage register that are similar to the place they are interested in. Summary information about these places is available on the government website and provides potential applicants with a model for how to apply the cultural heritage criteria and what historical material should support their application. This information can be relevant to both types of application. The Department also retains extensive knowledge of heritage studies, reports and surveys completed for various areas in Queensland or related to specific types of places. It directs potential applicants to these studies or reports, either for their applicability to the place they are interested in, or to help them put their place into context.

Otherwise, the Department explains the application process to potential applicants and also suggests potential applicants investigate if the relevant local government provides protection through a local register or its planning scheme.

Sometimes applications are made without an applicant first contacting the department. Those that are deficient in terms of the current requirements are not accepted and a letter is sent to the applicant explaining how the application would need to be improved to ensure it meets the requirements. The kinds of direction described above are provided to the applicant.¹⁷¹

¹⁷⁰ QHOLA Explanatory Notes:20

¹⁷¹ DEHP (correspondence) 10 October 2014:1

Committee comment

The Committee notes the advice from the Department of Environment and Heritage Protection and in light of the justification provided in the Explanatory Notes the Committee considers the section is appropriate in the circumstances. Policy issues related to Clause 16, along with related committee comments are discussed in section 2.2.1 of this report.

3.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

The Committee is of the view that the Explanatory Notes tabled with the Bill are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the Explanatory Notes identified the specific Clauses(s) being discussed, when identifying the fundamental legislative principles.

Appendix A – List of Submissions

Sub #	Submitter
1	Cassowary Coast Regional Council
2	David Nicholls
3	Anglican Church Southern Queensland
4	Cairns Regional Council
5	Queensland Tourism Industry Council
6	Queensland Environmental Law Association Inc
7	National Trust of Australia Queensland
8	Environment and Sustainability Policy Regional Strategy and Planning, Sunshine Coast Council
9	Local Government Association of Queensland
10	Property Council of Australia
11	Brisbane City Council

Appendix B – Witnesses at public departmental briefing and public hearing – Wednesday, 1 October 2014

<p>Department of Environment and Heritage Protection</p> <p>Ms Fiona Gardiner, Director Heritage</p> <p>Ms Catherine Chambers, Principal Heritage Officer</p>
<p>Mr Stewart Armstrong, Executive Officer, National Trust Australia (Queensland)</p> <p>Mr David Nicholls</p>

Statements of Reservation

DESLEY SCOTT MP

SHADOW MINISTER FOR COMMUNITY SERVICES AND CHILD SAFETY

SHADOW MINISTER FOR MENTAL HEALTH

SHADOW MINISTER FOR WOMEN AND SENIORS

SHADOW MINISTER FOR MULTICULTURAL AFFAIRS

MEMBER FOR WOODRIDGE

PO Box 15057, City East QLD 4002

reception@opposition.qld.gov.au (07) 3838 6767

21 October 2014

Mr Howard Hobbs
Chair
Transport, Housing and Local Government Committee
Parliament House
George St
Brisbane QLD 4000

Dear Chair

Statement of Reservation – Queensland Heritage and Other Legislation Amendment Bill 2014

I wish to notify the Transport, Housing and Local Government Committee that the Queensland Opposition has reservations about aspects the Transport, Housing and Local Government Committee's report into the *Queensland Heritage and Other Legislation Amendment Bill 2014*.

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in black ink that reads "Desley C. Scott".

Desley Scott MP
Member for Woodridge



Carl Judge MP
State Member for Yeerongpilly

21st October 2014

Howard Hobbs MP
Chair of the Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hobbs,

Statement of Reservation re Queensland Heritage and Other Legislation Amendment Bill 2014

Please be advised that I do not support the Committee's recommendation that the Queensland Heritage and Other Legislation Amendment Bill 2014 be passed.

I intend to detail my reservations upon resumption of the second reading debate.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Carl Judge".

Carl Judge MP
Member for Yeerongpilly

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