

28th March 2022

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
Level 9, 1 William Street,
Brisbane QLD 4000

Via email: CHA_Review@dssatsip.qld.gov.au

Consultation Paper - Finalising the review of Queensland's Cultural Heritage Acts

Thank you for the opportunity to participate in the phased Review of Queensland's Cultural Heritage Acts. As you know the Property Council of Australia is the leading advocate for Australia's biggest industry – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians.

As the leading representative of the property industry, we understand the importance of connection to Country for Queensland's Aboriginal and Torres Strait Islander peoples. The Property Council of Australia has finalised our organisational Reconciliation Action Plan (RAP) and as an organisation we are committed to listening, learning and building cultural competency so we can work towards reconciliation in partnership with First Nations peoples.

The Queensland Division of the Property Council represents over 380 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors. As we have outlined in previous submissions, many of these organisations are also in the process of embedding Reconciliation Action Plans, and remain further committed to ongoing education and awareness, through building stronger and more meaningful relationships with Aboriginal and Torres Strait Islander peoples, communities, and organisations.

The Property Council has provided several submissions on the *Review of Queensland's Cultural Heritage Acts* since its inception in 2019. Whilst reviewing the final options paper, we again wish to stress the need to strike the delicate balance between protection of First Nations peoples' cultural heritage and other social, cultural, economic and environmental outcomes. Further, we caution against the imposition of new regulatory burden on the property industry and instead focus on the delivery of education and awareness programs that will assist all parties involved in the protection of cultural heritage.

Whilst acknowledging this is the final stage of the review, as, with previous submissions, the proposals pose more questions than solutions for industry, who seek certainty and clarity for business continuity and delivery.

Proposal 1 – Replace the current Duty of Care Guidelines with a new framework that requires greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage

The Property Council is supportive of early respectful engagement, and is further supportive, in principle, of mapping high-risk cultural areas. We want to ensure however, that the implementation of any subsequent cultural heritage database, which requires consumers and authorities to search does not duplicate existing regulatory requirements, such as under Queensland’s land use planning framework.

Our members are familiar with and comfortable in utilising the existing Guidelines. In the event a new framework was to be introduced, it would need to complement the existing system, with an emphasis on clear guidance as to expectations for each stakeholder and provide a process for resolving any disputes.

Clarity and certainty for industry are required around the delivery and timing of mapping, and further detail is required in order for industry to support the process. Practical implications need to be considered, such as:

- What is the process for land that has been mapped in a high-risk area?
- How will the existing landowner be notified and how will the new process surrounding prescribed activity be communicated to landowners?
- How would the landowner be consulted regarding risk mitigation strategies?
- Has there been consideration to transitional periods – for example, if a project is underway and before commencement of the framework it was not deemed a high-risk area, and post implementation it is deemed as high-risk – what avenues are made available to landowners to seek clarity?

The proposal outlines that Government will be responsible for the mapping of high-risk cultural areas, and it is implied that a relevant department would be then responsible for the ongoing management of this database. If this is the case, what searching mechanisms will be made available to consumers and landowners? How will consumers and landowners be made aware of this database? Or that their land may be impacted by mapping? How regularly will the database be updated?

It is imperative that the mapping and identification of cultural heritage sites is accompanied by better access and sharing of information across the broader community. This would assist not only the property industry but councils and the State in determining appropriate areas to zone, as well as assist in identifying land that may be high-risk and require further consultation with Aboriginal and Torres Strait Islander parties.

As articulated throughout the review process, the Property Council is supportive of clear and definitive legislation and definitions to avoid ambiguity and uncertainty. Any

expanded definitions, such as *prescribed activity*, *high-risk area*, *excluded activity* and *significant Aboriginal or Torres Strait Islander area* need to be clearly defined and explained to ensure that industry and the broader community are educated as to the broadening of definitions.

A clearly defined consultation process that gives certainty to both landowners and Aboriginal and Torres Strait Islander parties is welcomed, and within this framework, an emphasis on a clear set of rules and timeframes should accompany the procedural framework.

To support the increased consultation that this process will entail, it would be prudent that a body or government department with an appropriate governance framework is created, that has representation across Aboriginal and Torres Strait Islander peoples, along with independent industry professionals.

Proposal 2 – Integrating cultural heritage protection and mapping into land planning to enable identification of cultural heritage at an early state and consideration of its protection

The Property Council supports a framework that creates efficiency and certainty whilst not adding significantly to the regulatory burden on industry. The integration of cultural heritage protection into the land use planning framework must not duplicate existing planning requirements, or undermine the robustness of the current system.

Currently, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DATSIP) plays a critical role in the protection of cultural heritage, and it would seem prudent to amplify the role played by DATSIP rather than overhaul it in entirety. The industry would welcome any expansion that focuses on the delivery of education and awareness programs. Expanding DATSIP's role to ensure education and awareness is delivered to all functions (industry, local government etc) will assist in the delivery of a consistent message.

Given that planning approvals in Queensland are administered by local government and from time to time, the Queensland Government, it is imperative that there is an emphasis on providing education and awareness on cultural heritage to ensure consistency. Members report that development assessment decisions can be quite variable, depending on the individual interpretation of planning requirements by assessing officers.

Proposal 3 – Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage

The Property Council acknowledges and respects the concept of intangible elements, however we have previously, and continue to, express concern around the inclusion of intangible heritage within the *Cultural Heritage Act*. It is our view that this addition will

add complexity to the legislation and ultimately the assessment of development against any guidelines.

In the event it is included, the certainty of the development process must be maintained. It is critically important given the nature of intangible cultural heritage, that clarification is provided on how industry is to engage with Aboriginal and Torres Strait Islander parties in relation to the surveying and accessing of intangible aspects.

This clarification should be further bolstered by clear and quantifiable time frames for response, to ensure that developments are not impacted by subsequent delays as a result of agreement dispute.

Further ambiguity remains around;

- Clear indication of what types of heritage are captured under this definition
- Relevant guidelines and educational tools including, but not limited to; the Aboriginal Cultural Heritage gazetted **guidelines** are updated to reflect the inclusion of this definition; and an education and awareness campaign is resourced accordingly to ensure that both industry and the broader community are educated as to the expansion of the definition.
- The retrospective notification to landowners, for example, if this is now defined under the Act, what process occurs in the notification of existing landowner?

Including intangible cultural heritage within the Act needs further consideration and engagement with industry to ensure consistency across the state.

Proposal 4 – Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts

The Property Council is supportive of facilitated mediation from an independent third party, expert panel or advisory body that allows for a streamlined, consistent, and efficient dispute resolution process. As we have previously stated, it would be our preference that any panel or advisory body be made up of independent experts versed in the development process.

It is the Property Council's preference that in the first instance there is the establishment of a mediation framework with an independent expert panel or advisory body. In the event agreement cannot be reached, it would be appropriate to introduce a cost-effective dispute resolution process as an alternative to the Land Court. In our members' experience, the current process where the Land Court is utilised proves costly for both parties and is counterintuitive to the spirit of cooperation.

With this review in mind, it would seem most appropriate to invest funds into mediation, expert panel/ advisory board appointment, and a robust governance framework, along

with providing appropriate education and awareness to all parties involved on an ongoing basis.

Proposal 5 – Require mandatory reporting of compliance to capture data and support auditing of the system

It is the Property Council's preference that any introduction of mandatory reporting and subsequent auditing is implemented on the basis that it does not increase the regulatory burden on the industry, as this will in turn add additional costs and time to the development process.

The review, and the questions posed in same, do not clearly outline the reporting requirements, nor timing and frequency. Again, we reiterate that consideration of such matters is required before the introduction of any mandatory reporting.

A streamlined framework that is consistent, efficient, clearly outlines the requirements of parties engaging with it, and that is easy to access, is the minimal expected standard.

As previously stated throughout the review process, as opposed to placing further obligations on landowners, a stronger emphasis should be on the creation of a clearly defined framework, with a focus on transparency, ease of access and sharing of information.

Proposal 6 – Provide for greater capacity to monitor and enforce compliance

In the event an independent body is created to facilitate the delivery of the outcomes of the review, the Property Council understands it may play a role in enforcement on the occasions that there is wilful neglect of obligations or malicious intent.

Property Council again reiterates the need for clear education, guidelines, and awareness to ensure the industry at large are aware of the requirements.

Any strengthened enforcement powers should be commensurate to other similar roles or positions across departments.

Overview of current definitions

As outlined throughout this response, and previous submissions, of critical importance for industry is certainty. In relation to the overview of definitions, and with the view to deliver timely developments, it is paramount that there is clarity and certainty over who is the Aboriginal Party to consult with.

Proposal to reframe definitions

In reviewing both options posed within the review under clause 4.3, in principle Option 2 is the preferred solution. Again, we wish to reemphasise the need for certainty,

regarding which party is authorised to speak for which community / area, with confirmation delivered by an independent body, such as an independent expert panel or advisory body.

Industry urges the review to consider that an appropriate governance framework and industry experts are part of the formation of any new entity. Certainty and assurance that duplication of existing legislation and requirements is avoided, is a minimal expected standard.

Conclusion

We thank you for the opportunity to provide feedback across this phased review. As the Property Council has outlined across our submissions, it is imperative that industry has certainty as we navigate this journey together, and many questions remained unanswered.

As the review of the *Cultural Heritage Act* nears completion, we wish to convey that across the industry there is overwhelming consensus, that at the core of this journey is awareness and education, further supported by a deep commitment to ongoing meaningful engagement with Aboriginal and Torres Strait Islander peoples as Australia continues its reconciliation journey.

Once again, thank you for the opportunity to provide input into the review of the Cultural Heritage Act. If you have any questions, please do not hesitate to contact me on 0499 181 366 or jcaire@propertycouncil.com.au.

Yours sincerely,

A handwritten signature in cursive script that reads "Jess Caire".

Jess Caire
Queensland Deputy Executive Director