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Submission
Consultation Paper – Review of the Cultural Heritage Acts

Cairns Regional Council has prepared the following submission on matters raised in this Review of the Cultural Heritage Act Consultation Paper.

Discussion Point: Ownership and defining cultural heritage

Question

Is there a need to revisit the definitions of cultural heritage - if yes, what definitions should be considered? What additional assessment and management processes should be considered?

Cairns Regional Council agrees with the current definition of cultural heritage – objects, areas, areas without markings.

The Consultation paper references the inclusion of “*Intangible Heritage*” to the definition. *This includes oral tradition, performing arts, rituals, festivals and traditional crafts* therefore focussing on “living” cultural tradition. This is a different approach to the current heritage focus.

Currently Victoria have a defined process to include Intangible Heritage:

- Register Aboriginal intangible heritage on the Victorian Aboriginal Heritage Register
- Anyone who wants to use that intangible heritage for commercial purposes has a legal responsibility to seek the permission of the representative group of the Traditional Owners
- May enter into an Aboriginal intangible heritage agreement allowing Traditional owners to identify and/or negotiate the terms under which the Aboriginal intangible heritage may be used by others.

There is limited information on how “Intangible Heritage” would be incorporated into the Queensland Cultural Heritage Act.

From Cairns Regional Council perspective if such was to be implemented the following requires addressing at the forefront:

- How would it be represented on the DATSIP register/database:

Currently searches are of lots/plan or latitude/longitude with buffers for the activity. Details of any “registered” cultural heritage is displayed.

The current Duty of Care Guidelines states “*an activity ...that will excavate, relocate, remove or harm Aboriginal Cultural Heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database should not proceed without the agreement of the Aboriginal Party....*”.

If intangible heritage appears in the search result, will there be an obligation to establish an agreement (is the project harming intangible heritage?) or will it only be if Council wishes to use the “intangible heritage” for publication, commercial etc.

- Agreement

Templates should be included in the process to assist with establishing agreements relating to intangible heritage.

- Compensation

If compensation is a component of the terms of the “Aboriginal Intangible Heritage Agreements”, the Act needs to include a schedule of fees to guide remuneration. In the Cairns Regional Council Local Government Area, with numerous Aboriginal parties, some determinations still pending and therefore up to three parties appearing on search results for a particular location, each party has different expectations on what is fair and reasonable.

The only means for equitability when engaging commercially with Aboriginal parties is if the fees are defined and consistently applied. As other entities (State and Private) engage with Aboriginal parties within the Local Government Area, to ensure consistency across all, the schedule of fees is required.

Discussion Point: Identifying Aboriginal and Torres Strait Islander parties

Questions

Is there a need to revisit the ‘last claim standing’ provision – if yes, what alternatives should be considered?

Is there a need to revisit the identification of Aboriginal and Torres Strait Islander parties – if yes, who should be involved and what roles, responsibilities and powers should they have?

Should there be a process for Aboriginal and Torres Strait Islander parties to apply to be a ‘Registered Cultural Heritage Body’ to replace the current native title reliant model?

Where high impact activities trigger Consultation with Aboriginal Parties, Council will contact those parties listed on the DATSIP search result, which are typically the Native Title party. Where no parties are listed, and Consultation is required the Council contacts DATSIP for advice. Council has had limited exposure to a Cultural

Heritage Body and in the cases they have shown on a search result, it is the same contact as the party listed.

In some areas in Cairns there are up to three parties listed on the search result as the Native Title Claims are still awaiting determination. Council will contact each party to seek their input, where required for Cultural Heritage, which can result in a number of issues with site inspection and/or monitoring exercises; seeking cultural heritage input from all parties; and maintaining confidentiality of cultural heritage identified by each party from other parties. It would be ideal to have one “body” versus a number of parties.

While dealing with one body would be ideal, the reference to replacing the current native title reliant model, does not remove obligations under the Native Title Act. Where Native Title is not extinguished, Council has obligations to notify under the Native Title Act for future acts i.e. 24 KA (facilities for service to the public) and 24JA (Reservation, leases etc.) therefore in the above example, Council would be seeking input from all three parties who have a native title application for the project area relating to Native Title.

Again without clarity on how this would be incorporated into the Act, it is difficult to comment further.

Discussion Point: Land user obligations

Questions

Is there a need to bolster the oversight mechanisms for self-assessment and voluntary processes – if yes, what should this entail?

Is there a need for dispute resolution assistance for parties negotiating voluntary agreements – if yes, who should provide these services and what parameters should be put around the process?

Is there a need to reconsider the threshold for formal cultural heritage assessments– if yes, what assessment and management processes should be considered?

The self-assessment model based on the Duty of Care Guidelines is effective, there is no need to bolster it. It aligns with other Queensland legislation, where assessment is undertaken via mapping layers or areas of significance, which then triggers whether surveying or consultation is required.

The self-assessment process provides a means of identifying when an activity is a high impact activity and has the potential to impact Aboriginal Cultural Heritage. This then triggers the consultation process with the Aboriginal parties listed for that search area. This current process works.

Currently unless an Environmental Impact Statement is required, Cultural Heritage Management Plans are voluntary. Council supports this and there is no need to reconsider the threshold. *A cultural heritage management plan is a State-approved agreement between the sponsor of the plan and an Aboriginal party about how a project is to be managed to avoid harm to Aboriginal cultural heritage and to the extent that harm cannot reasonably be avoided, to minimise harm to Aboriginal cultural heritage.* Within the Cairns Regional Council local government area, overlapping

claims means that some areas have three parties listed on Cultural heritage search result. Therefore, the introduction of a mandatory cultural heritage management plan will need to consider how this will be managed for projects where there are a number of parties registered in the project area and what happens with the cultural heritage agreements should determination occur. In areas where determinations have been finalised and there is one registered Aboriginal Party, there is also the potential for Indigenous Land Use Agreements.

Cairns Regional Council identifies that the dispute with agreements comes about from negotiating the number of monitors and/or the remuneration. In some cases, the Aboriginal parties wish to extend the scope of inspection and/or monitoring outside the high impact activity area. If the Act incorporated a clearly defining process for site inspection and monitoring including a schedule of remuneration it would remove a dispute trigger. A common encounter when negotiating with Aboriginal parties, is the comparison to what other entities pay or allow for.

Discussion Point: Compliance Mechanism

Question

Is there a need to bolster the compliance mechanisms designed to protect cultural heritage – if yes, what needs to be improved and what additional measures should be put in place?

Cairns Regional Council has no comment relating to compliance mechanisms.

Discussion Point: Recording Cultural Heritage

Question

Is there a need to make improvements to the processes relating to the cultural heritage register and database – if yes, what needs to be improved and what changes should be considered?

To bolster the self-assessment process, improvements are needed to the cultural heritage register and database.

There is a need for inclusion of mandatory requirements to include cultural heritage on the register from both

- the Aboriginal parties and / or
- the proponents who engage with Aboriginal parties which through the course of site inspections and/or monitoring identify areas, objects and/or places of cultural heritage.

It is understandable sensitivity to information, however a mark on a map is a trigger to ensure that consultation is undertaken with the party.

Consideration needs to be given in areas where there are more than one Aboriginal Party Registered, if a mark is located, it needs to be clear which party needs to be consulted to ensure appropriate management of the cultural heritage recorded.

The reference to the exclusion of Aboriginal Parties from the process, where there are no recorded sites, the guidelines do include landscapes which may also have

cultural heritage significance i.e. rock outcrops, caves, foreshores and coastal dune, sand hills etc. It would be beneficial if the register (mapping) included these areas as a trigger for consultation (not just a point of a known object).

Discussion Point:

Question

Do you have any other input, ideas or suggestions on how the Cultural Heritage Acts could be improved to achieve their objectives of recognising, protecting and conserving cultural heritage?

Cairns Regional Council has no additional comments.