19 July 2019

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CHA Review – Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST QLD 4002

RE: Review of the Cultural Heritage Acts

1. Introduction

Stockland Development Pty Ltd (Stockland) thanks the Department of Aboriginal and Torres Strait Islander Partnership (DATSIP) for the opportunity to make a submission in connection with the ongoing review of the Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act. Stockland acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of the State of Queensland and acknowledges Elders past, present and emerging.

Stockland has developed this submission to respond to the key themes identified in the consultation paper published by DATSIP (the Consultation Paper). While this submission elaborates on Stockland’s views on the themes raised in the Consultation Paper, Stockland considers that:

1. the existing framework appropriately prioritises Aboriginal cultural heritage as an important part of Queensland’s communities and history.

2. the existing framework for managing Aboriginal and Torres Strait Islander Heritage in Queensland is fit for purpose; and

3. any changes to the existing framework must not undermine certainty for project proponents as to how they should be satisfying their obligations under the legislation.

In this submission, Stockland has primarily referenced the Aboriginal Cultural Heritage Act 2003 as that is the legislation with the greatest applicability to the Stockland’s business. Reference to Aboriginal cultural heritage in this submission should be read to include Torres Strait Islander cultural heritage.

2. About Stockland

Stockland is one of the largest diversified property groups in Australia – owning, developing and managing a large portfolio of retail town centres, workplace and logistics assets, residential communities and retirement living villages. Specifically, within Queensland Australia, as at December 2018, Stockland owns:
(1) 13 retail centres;
(2) 4 logistics related properties;
(3) 25 residential communities; and
(4) 9 established retirement living villages.

Stockland is committed to creating and maintain liveable, vibrant Queensland communities and prides itself on a responsible corporate citizen of Queensland.

Stockland also seeks to foster a culture of friendship and partnership between itself and Aboriginal and Torres Strait Islander peoples, organisations and communities. Stockland has launched its second Reconciliation Action Plan, and has spent more than $3.2m in procurement from Indigenous suppliers since 2014.

3. Response to Consultation Paper

3.1. Ownership and defining heritage

Stockland acknowledges the importance of defining Aboriginal cultural heritage, both from the perspective of preserving and maintaining the history and culture of Queensland’s Indigenous and Torres Strait Islander communities, and from the perspective of industry who seek certainty around their legal obligations to adhere to the Aboriginal cultural heritage duty of care in accordance with the relevant legislation. Stockland is committed to meeting all of its obligations under the relevant cultural heritage legislation, and seeks to adhere to best practice when seeking to satisfy its Aboriginal cultural heritage duty of care.

Stockland is supportive of providing as much detail and clarity in the definition of ‘Aboriginal cultural heritage’ in the legislation, with a view that specificity creates the certainty required for industry to fully understand its legal obligations and ensure that it meets the legal and community expectations held of industry in preserving cultural heritage.

As a developer which usually undertakes major ground disturbance in the course of developing new communities and building new homes for Queenslanders, Stockland is a strong supporter of clear and definitive legislative and guideline around the application of Aboriginal cultural heritage obligations in Queensland.

Stockland considers that the existing definition of cultural heritage is adequate, particularly given it expressly includes references to non-tangible items of heritage through the defined term ‘significant Aboriginal area’.

The Consultation Paper raises the question of whether further definitions should be considered. While Stockland respects the concept of intangible cultural value, should definitions be expanded to include, then it would need to be on the basis of ensuring certainty of the development process remains. This includes certainty in satisfying Aboriginal cultural heritage duty of care obligations so that costs and time to satisfy requirements do not increase., More specifically references to intangible cultural heritage in the legislative definition of cultural heritage, Stockland submits that:
(1) any such expanded definition should clearly indicate what additional types of heritage are intended to be captured by the expanded definition;

(2) the Aboriginal cultural heritage guidelines (as gazetted) should be updated to clearly explain the additional expectations of communities and industry that arise from any expanded definition of Aboriginal cultural heritage;

(3) certainty in the application of the Aboriginal cultural heritage duty of care is paramount to incentivise investment and development in Queensland; and

(4) guidance should be offered as to how existing cultural heritage management practices would need to be amended to accommodate the inclusions of intangible cultural heritage (as it is defined in international treaties) in any revised definition of cultural heritage.

3.2. Identifying Aboriginal and Torres Strait Islander parties

A critical part of ensuring that developers and other industry participants meet the Aboriginal cultural heritage duty of care is ensuring that is clear which Aboriginal party a project proponent should engage with. The legislation presently provides that appropriate party who should be consulted based should be identified based on a hierarchy that in part utilises concepts set out in the Native Title Act 1993 (Cth).

Stockland considers that the existing method for identifying Aboriginal and Torres Strait Islander parties is sufficient, and has provided significant certainty to proponents of projects in Queensland. In Stockland’s experience in Queensland, the existing system has ensure Stockland has always been able to readily identify the appropriate Aboriginal party when seeking to engage in relation to Aboriginal cultural heritage management for one of its projects.

3.3. Land user obligations

Stockland prides itself on its compliance with its cultural heritage obligations in Queensland, and does not have any particular concerns with DATSIP having greater oversight of self-assessment and voluntary processes (subject to that additional oversight not creating unnecessary ‘red tape’ for projects).

Stockland is supportive of the introduction of dispute resolution assistance for parties negotiating voluntary agreements. In Stockland’s experience, it seems that the absence of dispute resolution support for parties negotiating cultural heritage agreements leads to less optimal outcomes both for proponents of projects and Aboriginal parties. In particular, having the Land Court as the default forum for dispute resolution processes imposes legal costs and fees on Aboriginal groups, and can feel incredibly heavy handed as a mechanism to force a party to reach agreement. Further, court processes often have detrimental effects on the relationship between a proponent and the relevant Aboriginal group – which is obviously not in the best interests of either party given the management of Aboriginal cultural heritage is often an iterative process that requires ongoing cooperation and interface between parties.

Stockland considers that facilitated mediation or other assistance from an independent third party would be a useful expansion of the Queensland legislative regime.
3.4. Compliance mechanisms

Stockland has not experienced any compliance action in relation to Aboriginal cultural heritage, and is not best placed to make submissions as to whether existing compliance mechanisms are adequate.

Stockland would be supportive of the concept noted in the Consultation Paper that penalties paid for breaches should go to the communities whose cultural heritage was destroyed.

3.5. Recording Aboriginal cultural heritage

Stockland regularly uses the DATSIP Aboriginal cultural heritage data base as part of its due diligence in managing Aboriginal cultural heritage for projects. While Stockland is appreciative of the data base and the mapping tools available to proponents, it submits the following for consideration:

(1) while there is some significant secret and sensitive Aboriginal cultural heritage that may not be appropriate for recording in a public data base, the fact that the data base does not provide a complete picture of Aboriginal cultural heritage in an area limits its usefulness as a tool in meeting obligations under the relevant legislation;

(2) the results produced by the mapping tool are often somewhat vague and it would be helpful if there was a way – again, without forcing disclosure of culturally sensitive or secret information – of providing further and better particulars in relation to markers of Aboriginal cultural heritage that appear on the mapping results produced by the data base (for example, more detailed descriptions of artefacts); and

(3) where information is excluded from the data base for cultural reasons, it would be useful for proponents to have this flagged by the data base (without disclosing what has been withheld), so that it is clear that engagement with the relevant Aboriginal party should be prioritised to understand the Aboriginal cultural heritage landscape of a proposed project site.

4. Next steps

Stockland would be pleased to continue to be engaged in this important view and welcomes any further opportunity to provide input into review of the legislation.

Yours sincerely,

[Signature]

David Laner
General Manager QLD Communities