

**From:** [REDACTED]  
**Sent:** Thursday, 31 March 2022 5:16 PM  
**To:** CHA\_Review  
**Subject:** City of Gold Coast ('City') Feedback in response to the Queensland Government Options Paper – Finalising the Review of Queensland's Cultural Heritage Acts – December 2021 ('the Options Paper').

Thankyou for providing an opportunity to provide comment on the Cultural Heritage Acts Review Options Paper.

The City's feedback on each proposal addressing the key areas is outlined below.

## **1. PROVIDING OPPORTUNITIES TO IMPROVE CULTURAL HERITAGE PROTECTION:**

### **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.**

This proposal involves the:

- a. Identification of the following categories of activity:
  - i. 'Prescribed Activity', being an activity that causes disturbance that would result in a lasting impact to ground that has not previously been disturbed, or to the ground below the level of disturbance that currently exists.
  - ii. 'Excluded Activity', means clearing along a fence line or to maintain existing cleared areas around infrastructure, or a subdivision of less than three lots.
- b. The mapping of 'high risk' areas, being a mapped area requiring a greater level of consideration to ensure protection from desecration, damage or destruction due to the area having known cultural significance to Aboriginal or Torres Strait Islander peoples.

#### City Feedback:

Where mapping 'high risk' cultural heritage areas is proposed across Queensland:

- a. This mapping should not be the responsibility of the local government authority. Local government authorities have insufficient resources and expertise to undertake mapping of this scale and nature.
- b. The reforms should clarify the process, following engagement with the Aboriginal and Torres Strait Islander party, for determining that an area is 'high risk'. The reforms should include a right to seek review of a decision to map an area as a 'high risk' cultural heritage area.

The definition of an 'Excluded Activity' should include a local government activity that is necessary because of an emergency, including for example a bushfire, flood or other natural disaster.

### **Proposal 2**

**Integrate cultural heritage protection and mapping into land planning to enable identification of cultural heritage at an early stage and consideration of its protection.**

#### City Feedback:

Where cultural heritage protection and mapping is integrated into planning processes:

- a. Cultural heritage should be integrated at State level rather than at the local government level (at least during a transitional period).
- b. Development assessment timeframes would need to be revised to accommodate the cultural heritage identification and protection process.

### Proposal 3

Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage.

No feedback provided.

### Proposal 4

Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts.

City Feedback:

Where cultural heritage protection and mapping is integrated into the planning process:

- a. Development assessment timeframes would need to be revised to accommodate cultural heritage dispute resolution.
- b. Any extended Land Court ADR function to deal with disputes under the Cultural Heritage Acts would be in addition to the jurisdiction of the Planning and Environment Court and the development tribunal under the *Planning Act 2016*.

### Proposal 5

Require mandatory reporting of compliance to capture data and support auditing of the system.

No feedback provided.

### Proposal 6

Provide for greater capacity to monitor and enforce compliance.

City Feedback:

Authorised officers under the Cultural Heritage Acts should continue to be employed by the State government (as opposed to local government) or be employed by a First Nations body. Local government authorities have insufficient financial and human resources to undertake a cultural heritage monitoring and enforcement compliance function.

## 2. REFRAMING THE DEFINITIONS OF 'ABORIGINAL PARTY' AND 'TORRES STRAIT ISLANDER PARTY'.

### Proposal

Reframe the definitions of 'Aboriginal party' and 'Torres Strait Islander party' so that people who have a connection to an area under Aboriginal tradition or Ailan Kastom have an opportunity to be involved in cultural heritage management and protection.

City Feedback:

The options paper doesn't address the registration of a corporation as an Aboriginal cultural heritage body under section 36 *Aboriginal Cultural Heritage Act 2003*. Should the status of a registered Aboriginal cultural heritage body be reviewed where a previously registered native title claim that is subject to a negative determination is no longer recognised as an Aboriginal Party?

Option 1:

The reforms should clarify the status of the Aboriginal Party where:

- a previously registered native title claim was subject to a negative determination; and
- a new registered native title claim covers, and extends beyond, the area of the previous registered native title claim but excludes (by necessity) the parts of the claim area covered by the negatively determined previously registered native title claim.

Where a previously registered native title claim subject to a negative determination is not recognised as an Aboriginal Party, the current registered native title claimant should be recognised as the Aboriginal Party for the whole area within the outer boundary of the current registered claim area.

The options paper provides that approved Cultural Heritage Management Plans existing before the amendments come into force continue to be recognised. This recognition should extend to cultural heritage agreements other than registered CHMPs.

Option 2:

This option states that where an existing Aboriginal Party is no longer recognised, a land user wishing to undertake an activity that requires a CHMP would need to conduct a public notification process and invite Aboriginal parties who want to join to do so. The option refers only to a CHMP and the process for agreements other than a CHMP is unclear; based on the context other agreements may also require public notification. There are limited circumstances in which a CHMP is required but there are numerous circumstances in which local government authorities would need to engage an Aboriginal party. It would be unworkable to require a public notification process for all activities.

### 3. PROMOTING LEADERSHIP BY FIRST NATIONS PEOPLES.

No feedback provided.

Regards

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