

29 March 2022

Cultural Heritage Acts Review
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander
Partnerships
PO Box 15397
CITY EAST QLD 4002

Sent by email only to: CHA_Review@dstdsatsip.qld.gov.au

Dear Sir / Madam

I am writing to you to provide feedback on the document "Options paper – Finalising the review of Queensland's Cultural Heritage Acts" that was released for review in December 2021.

Background

The Forestry business unit within the Department of Agriculture and Fisheries (DAF) is responsible for the commercial sale of forest products and quarry material through sales permits issued under the *Forestry Act 1959* (Forestry Act). Activities undertaken by a permit holder have the potential to impact on cultural heritage. DAF Forestry undertakes preliminary cultural heritage checks prior to authorising quarrying or forest harvesting operations on a particular area. Areas with known cultural heritage are excluded from operations. All sales permits are conditioned so that the permit holder must comply with the *Aboriginal Cultural Heritage Act 2003* (the ACHA) and the *Torres Strait Islander Cultural Heritage Act 2003* (TSICHA).

Forest harvesting authorised by DAF under the Forestry Act occurs on state-owned land such as state forest, leasehold land, and reserves. Forest harvesting may also be authorised on freehold land where the State has retained ownership through a forest consent agreement or a forest entitlement area. Forest harvesting activities occur over the landscape, are not linear in nature, and may include thousands of hectares in a single operation over several years. Areas where planning is underway to authorise forest harvesting may have been harvested several times in the past, particularly on state forests and some leasehold land. Forest harvesting infrastructure such as tracks and landings used for a previous harvest operation may be used again to reduce the impact of forest harvesting.

Construction, maintenance and repair of access tracks; cutting down trees; sawing trees into logs; snigging logs to a landing; and hauling the logs to the sawmill form part of the activities

authorised under the sales permit. Any cultural heritage known to be on a sale area is excluded from the forest harvesting area and buffered to protect it. The sales permit requires the permit holder to stop operations if any cultural heritage is identified on the forest harvesting area.

Quarrying authorised by DAF under the Forestry Act occurs on state-owned land such as state forest, leasehold land, and reserves; and on freehold land where the State owns the quarry material. The scale of quarrying varies from removal of a stockpile associated with a mining lease; a couple of hectares where gravel is removed by mechanical means and used by the local Council to repair roads; to a large-scale hard rock quarry where blasting is used to extract and remove the quarry material.

DAF is also responsible for issuing permits under the Forestry Act to authorise placement of beehives on state forest, and for the sale of minor products such as foliage, seed and flowers.

Options Paper – Proposal 1

Question 1 – Do you support this proposal and option?

DAF Forestry supports the proposal that a new framework should require greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage. The detail associated with the various proposed mechanisms will impact the workability of the outcomes from DAF Forestry's perspective. The outcome of any new framework needs to be able to recognise and be applied to native selective forest harvesting activities which are relatively low impact and conducted over a broad area.

It is not clear whether the Aboriginal or Torres Strait Islander party would have a right of veto under the proposed amendments. If the land user is required to reach agreement with the Aboriginal or Torres Strait Islander party, will the activity be able to proceed without this agreement? In a situation where an Aboriginal or Torres Strait Islander party refuses to undertake a cultural heritage search or the cost of the search is prohibitive, and this impacts on the ability to maintain and repair community infrastructure there needs to be some form of dispute resolution process to achieve reasonable outcomes.

For example, a local government authority needs to repair local roads after flooding to ensure the roads are navigable and safe, and the Aboriginal party refuses to undertake cultural heritage searches until an Indigenous Land Use Agreement is negotiated. The Aboriginal party has previously complained to the local government authority because the roads hadn't been maintained and this impacted on their access to a sacred site. More importantly, withholding reasonable consent to undertake a cultural heritage search by the Aboriginal party may put the safety of all road users at risk.

The cost of cultural heritage clearances associated with extracting quarry material to repair roads should be reasonable and ideally linked to a state-wide schedule to avoid unnecessary difficulties in negotiating costs which may delay the completion of cultural

heritage searches. DAF Forestry is not suggesting that cultural heritage should be ignored in these circumstances, but that there needs to be some mechanism to ensure that some protections are in place for reasonable behaviour by all parties to allow infrastructure to be maintained in a timely fashion.

Question 2 – Are there any improvements that could be made?

The options paper appears to assume that all activities are small-scale and easy to define and survey such as a subdivision of land; or building a fence or a road. Activities such as selective forest harvesting that cover an area of several thousand hectares and where harvesting has already occurred several times don't appear to easily fit within the proposed guidelines.

Broad definitions such as those provided in the review document don't provide any more certainty to DAF Forestry than the current duty of care guidelines. There needs to be clear definitions of terms such as “*disturbance that will cause a lasting impact on land*”, “*prescribed activity*” and “*excluded activity*”. The definitions need to consider the context of the activity including the extent of the area and whether the impact is permanent or temporary, which again will need to be defined. What does *lasting* mean, does this mean the impact is still visible after ten years, twenty years, one hundred years? There is a difference between constructing a building that will remain in a defined location for a long period of time, and selective forest harvesting. Examples of each definition would assist in understanding the requirements.

Forest harvesting will remain a difficult activity under the proposed rules where most operations will include a degree of 'ground disturbance' that should be temporary in nature. It's unclear whether activities such as selective forest harvesting would be considered to cause “*lasting impact*” or be a *prescribed* or *excluded* activity. Forest harvesting may occur every twenty to fifty years depending on the productivity of the land. The footprint of selective forest harvesting activity may no longer be evident a few years after the completion of harvesting. The visual impact of the forest harvesting operation would generally not be visible after ten years, unlike a mine or quarry or a building that will continue to be visible.

Question 3 – Consultation in high-risk areas

The land user is responsible for assessing whether an activity in a high-risk area is *prescribed* or *excluded*. There is a temptation without clear definitions to assume an activity will be an *excluded activity* as this will not require consultation. Assuming that all activities in high-risk areas require consultation will reduce the chance of this occurring. However, it will also increase the cost and timelines for most activities.

Some Aboriginal or Torres Strait Islander parties may not have the capacity to consult and negotiate with multiple parties at the same time. This may cause delays to some activities proceeding if cultural heritage cannot be dealt with in a timely fashion. It also may result in companies that can afford to pay the most being given priority access.

Question 4 – Proactive mapping of cultural heritage

Better mapping of cultural heritage in high-risk areas would assist DAF Forestry in determining the risk of harm to and avoiding harm to cultural heritage that may be associated with a planned activity. Again, the detail will be important to how this works in practice. It's unclear whether the scale of the mapping is intended to be fairly broad across large areas or restricted to areas of particular significance.

Often existing searches available on the cultural heritage database return known sites that appear to be associated with searches along some form of linear structure such as a powerline or road. It's usually unclear from a paper map whether the presence of known sites is because the survey didn't go beyond the footprint of the linear infrastructure so other cultural heritage sites may exist; or whether cultural heritage sites are associated with a particular feature such as a walking trail on the ground and may not extend beyond the sites identified on the survey.

It is unclear how proactive mapping would work for particular species such as sandalwood (*Santalum lanceolatum*), Cooktown ironwood (*Erythrophleum chlorostachys*), Gumbo Gumbo (*Pittosporum angustifolium*) or cypress pine (*Callitris glaucophylla*) that are considered of cultural significance to a particular Aboriginal or Torres Strait Islander people. This could be based on vegetation layers, but inaccuracies in broadscale mapping of vegetation types already causes significant delays to projects. Would the State be able to authorise harvesting of a particular species of cultural heritage value if some of the trees were harvested and others would be retained?

Question 6 – Development of Consultation Protocols

A standard comprehensive consultation protocol should be adopted that is documented, transparent, objective and reasonable and apply across the State. This would lead to certainty for all parties. Each Aboriginal or Torres Strait Islander party should document and have available the party that is authorised to deal with cultural heritage matters. This would avoid the current situation where party A performs a cultural heritage search and then party B says party A wasn't authorised to do that on behalf of their people and requests that the survey be done again.

Agreed timeframes from commencing the initial engagement to the final agreement or management plan would be also useful, as would a dispute resolution process when parties cannot reach agreement. This may be difficult for some Aboriginal parties as it would require sufficient resourcing on their part.

Question 8 - Development of a new assessment framework

The advisory group and other experts must have a clear mandate and framework to work with. The framework needs to be 'usable' or it could result in rejection and non-compliance by affected parties. Consideration should be given to representation of other stakeholders to develop an outcome. This is the usual tension in the cultural heritage space – protecting

cultural heritage while allowing reasonable activities to occur without unnecessary delay or cost.

Proposal 2 – Integration into land planning

This will not assist in protection of cultural heritage from activities that are not required to interact with planning schemes.

Proposal 4 – Mechanism to resolve and deal with issues

DAF Forestry supports the need for a mechanism to resolve and deal with issues arising under the two cultural heritage acts. There should be mechanisms in place that do not automatically require judicial involvement, and any mediator should be independent. If the dispute can still not be resolved it should then be subject to judicial involvement. The Land Court's alternative dispute resolution function could be extended to include cultural heritage matters.

Conclusion

DAF Forestry believes that the details associated with the various proposed mechanisms will impact the success and workability of the outcomes. The outcome needs to be able to properly account for all activities such as native forest harvesting which is relatively low impact and conducted over a broad area.

If you require any further information, please contact David Sayer on telephone 0436 649 056 or email David.Sayer@daf.qld.gov.au.

Yours sincerely



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