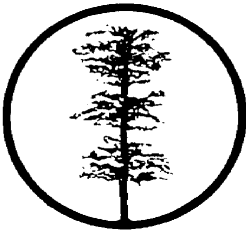
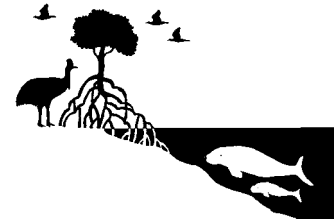


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18th May 2005

Review of the Queensland Heritage Act 1992
c/Assistant Director-General
Environmental Protection Agency
P.O.Box 155
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Via email: heritage.reform@epa.qld.gov.au

Submission on reforms to the Queensland Heritage Act 1992

The Environmental Defender's Office-Queensland (EDO-Qld) and Environmental Defender's office of Northern Queensland Inc (EDO (NQ)) ("EDOs") are Community Legal Centres based in Brisbane and Cairns respectively, that specialise in public interest environmental law in Queensland. The EDOs welcome this opportunity to comment on the *Queensland Heritage Act 1992*.

We have adopted the formatting used in the Discussion paper as set out below. The EDOs have commented in particular on areas that involve reforms to the *Queensland Heritage Act 1992*.

A1:

The EDO (Qld) and EDO-NQ provides advice to members of the public about environmental issues including heritage issues. Some of our clients have expressed concerns that the Queensland Heritage Act does not provide adequate protections to persons who may seek to protect heritage areas, particularly when they are threatened by new developments. Clients have also expressed concerns about the transparency of the process, and how decisions are made by the Queensland Heritage Council.

A2:

There are a number of areas for reform to the listing processes.

Firstly, there is an issue about the transparency of the planning process. There are no public assessment reports or other documents which are provided to members of the public for their comments. Submissions made under the Act are also not publicly available. Objections should be available for other parties to review, and assessor's reports should likewise be publicly available. Minutes of meetings of the Heritage Council should also be publicly available. This ensures that the process is more transparent, and that parties are able to understand the basis for decisions.

One issue is that there is no emergency listing processes provided for in the *Queensland Heritage Act*. If a place is under threat from development, there is no process to have it assessed quickly to prevent its heritages values being damaged.

Recent amendments to the *Environment Protection and Biodiversity Conservation Act 1999* have allowed for the Minister to place a matter on an emergency list (set out details of the EPBC process...) until it can be fully assessed.

There are also no time limits for the assessment of a heritage application by the Queensland Heritage Council. There should be time limits for assessment by the Council.

A3:

The complexity of different heritage lists and levels of protection are confusing to members of the public. A system with one heritage list would certainly assist in providing more accessible information to members of the public about heritage listing. To ensure it is accessible, providing online access to any such heritage list would ensure people are able to readily access information about heritage places in their region. At present, members of the public have to search a number of different databases to find information.

A4:

Local Planning Schemes vary in the protections they offer to places of heritage significance. However some of the protections do not necessarily prevent substantial developments occurring adjacent to areas of heritage importance, and this needs to be addressed through both Planning Schemes and the *Integrated Planning Act 1997*.

A6:

The Queensland Heritage Council are appointed representatives by the Government. They should not solely be responsible for the assessment of heritage issues. Not all members have heritage experience (in fact five out of 12 do not), and for this reason having some other organization who is responsible for assessing areas heritage values and has experience and relevant qualifications, would be useful. The Environmental Protection Agency may provide an independent assessment of the heritage values to assist the Heritage Council. Even those on the Committee with heritage experience may not always have expertise to provide detailed assessments on the range of heritage criteria available.

B1 & B2:

Currently, the Queensland Heritage Council is responsible for making decisions about development applications. The criteria to assessing this is if the affect of approving the development would destroy or substantially reduce the cultural heritage significance of a registered place, the council must, if it is satisfied there is a prudent or alternative refuse the application. This test could be difficult to satisfy, and perhaps the wording should be “significant” instead of ‘substantial’ to provide greater discretion to refuse developments that affect heritage values.

The difficulty is that these kinds of assessments will also not provide the Heritage Council with power to comment on developments that do not directly affect a heritage place, or make binding conditions to say control neighbouring developments. For example, False Cape, where Reef Cove Resort is proposing a large subdivision adjacent to an area that is listed on the State heritage register, the World War II gun sites. Having such a significant subdivision up to this area will obviously detract from its heritage values and the scale of the site, however there are currently few options available to the Heritage Council to comment on issues that fall outside the heritage area.

B3:

There are currently not consistent arrangements within the local government area for assessing the heritage significance of local areas. If these areas are not currently identified and reflected in the relevant Planning Scheme, there is little protection available to such places through the development assessment process. Currently in Cairns, many residents are concerned about the demolition of older style Queensland homes for medium density development, but there is nothing to prevent such destruction occurring if the medium density developments proposed are in “character” with the area.

B5:

There should be some overall criteria to ensure that Local Governments appropriately assess local heritage significance. It is probably not practical to make the EPA responsible for all such developments, but perhaps they should have powers to ensure they are able to intervene should the Local Government not be adequately assessing the heritage significance of particular areas.

B6:

Local Planning Schemes should assess the heritage significance of different areas and ensure that the development that occurs in areas where there is heritage significance are protected from continued development. The Heritage Council should have a responsibility to ensure that Local Planning Schemes have suitable provisions to deal with heritage issues.

B7:

Heritage lists should have clear descriptions and the responsible legislation and authorities relevant to control decisions for each level of heritage listing. This will enable people to obtain further information and direction as to where to find additional information about the heritage listing.

D2:

There should be a better process of identifying heritage precincts. Perhaps a detailed study should occur of particular areas to assist in this process, and provide better protections and planning for such areas.

D3:

Yes, there should be a State Planning policy for cultural heritage. It should reflect both indigenous and non-indigenous cultural heritage.

D6:

Third party rights should be included in the Queensland Heritage Act to allow persons to apply for stop work orders. There should also be provisions that enable third parties to apply for orders and review of decisions under the Act. In particular, those provisions should enable groups who have a particular interest in heritage issues to be able to apply for such orders or for review of decisions under this Act.

At present only objectors can apply to the Planning and Environment Court to review a decision to heritage list a property. Those rights should be extended also to the person who has nominated the property for listing so that there is a merits review process available to them also. This would increase the accountability of the Heritage Council for decisions made under this Act.

Yours faithfully
Environmental Defenders Office (Qld) Inc. and
Environmental Defender's Office of Northern Queensland (Inc.)

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To provide feedback on EDO services, write to us at the above address.