



Australian
Institute of
Architects

Australian Institute of Architects

Consultation Draft of the
*Planning (Consequential)
and Other Legislation
Amendment Bill 2015*

Submission to

The Planning Act Review Team
Department of Local
Government and Planning
41 George Street,
BRISBANE QLD 4000

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SUBMISSION BY

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PURPOSE

- This submission is made by the Qld Chapter of the Australian Institute of Architects (the Institute) to the Planning Act Review Team in response to the Consultation Draft of the *Planning (Consequential) and Other Legislation Amendment Bill 2015*.
- This submission has been prepared by the Queensland Chapter of the Australian Institute of Architects.
- At the time of this submission Mr Richard Kirk FRAIA is the Queensland Chapter President.

INFORMATION

Who is making this submission?

- The Australian Institute of Architects (the Institute) is an independent voluntary subscription-based member organization with approximately 12,305 members, of which 6,840 are architect members. Members are bound by a Code of Conduct and Disciplinary Procedures.
- The Institute, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.

Where does the Institute rank as a professional association?

- At approximately 12,305 members, the Institute represents the largest group of non-engineer design professionals in Australia.

Formal submission regarding the Consultation Draft of the *Planning (Consequential) and Other Legislation Amendment Bill 2015*

Preamble:

Over the past twenty five years, planning and heritage legislation for the State of Queensland has undergone a series of changes; some of which have been revolutionary (such as the establishment of the *Queensland Heritage Act 1992(QHA)*) while other have been more evolutionary in nature. It is noted that the cycles of legislative change in this area appear to have gathered pace somewhat during the past decade or so, which has seen various components of the State's planning and heritage legislative framework move forward at differing rates and generated some resultant tension between different statutes that operate in common jurisdictional areas. Consequently the Government's initiative in seeking to overhaul the existing planning legislation for Queensland is welcomed as well as the corresponding efforts to integrate that new legislation with the plethora of other legislative bills that the planning legislation and associated regulations interact with.

As the standard bearer for the architectural profession in this State, the Australian Institute of Architects, Queensland Chapter has a clear interest in the planning system of our State and its crossover with such related issues as the facilitation of quality design in the built environment and effective heritage conservation and regulation. This paper has been prepared in response to the invitation from the Department of Infrastructure, Local Government and Planning to provide a formal submission in relation to the Consultation Draft of the *Planning (Consequential) and Other Legislation Amendment Bill 2015* and will express specific concerns that the Institute holds in relation to proposed alterations to the legislative framework and resultant assessment processes applicable to the management of heritage places entered on the *Queensland Heritage Register*.

The existing situation:

It is noted that the processes around the nomination of places to the *Queensland Heritage Register* were amended by the Government as recently as 1 September of this year however these changes effectively represent the first major changes within that legislative space since the inception of the *QHA* in 1992. Conversely the legislation regarding management and regulation of *Queensland Heritage Places (QHPs)*, once they have been added to the *Register*, appears to have been in a constant state of flux for most of the past five years with a range of changes to referral and approval processes on State heritage matters. Key changes in this regard include the discontinuance of the assessment of redevelopment proposals for *QHPs* by the *Queensland Heritage Council*, removal of referral obligations for proposed development adjoining a *QHP*, the recent change to the impact thresholds for Exemption Certificates and, most importantly, the regulatory interface between the State's heritage agency, the Department of Environment and Heritage Protection (EHP) and the State Assessment and Referral Agency (SARA) that was established by the former State Government with changes to the *Sustainable Planning Act 2009 (SPA)* enacted in 2012.

An overview of the critical heritage changes proposed:

It is noted that the Draft *Bill* proposes to remove Sections 68-70 from Part 6; Division 1 of the *QHA 1992*, which are the sections of the *Act* that:

- specify the assessment process for development applications related to State heritage places other than archaeological sites (Section 68);
- specify the assessment process for development applications related to archaeological State heritage places (Section 69); and
- permit referral of redevelopment proposals regarding *QHPs* to be referred to the *Queensland Heritage Council* in specific circumstances (i.e. development of a *QHP* by the State) (Section 70).

The Institute's view of the proposed heritage changes:

The Institute would like to express its grave concern at the proposed changes to Part 6; Division 1 of the *QHA 1992* (particularly the removal of Sections 68 & 70) as it considers that these sections afford the necessary rigour in the assessment of development applications for State heritage places and ensure that, should circumstances require, that the judgement and experience of the *Queensland Heritage Council* can be called upon to provide input into the determination of these applications.

With these Sections of the *QHA* removed, the current consideration threshold of “no prudent and feasible alternative to carrying out the development” – specified in Section 68 (2) - is effectively removed from the assessment process and the consideration effectively falls down to the far less stringent requirements of the *IDAS Heritage Code* found in Schedule 2 of the *Queensland Heritage Regulation 2003*. Similarly the removal of Section 70 would extinguish the possibility of the Chief Executive (Director-General of EHP) from referring particular development application over State heritage places to the *Heritage Council* for comment and guidance. It is considered that there may be a range of circumstances under which this referral facility under the *Act* would be appropriate or prudent to engage including (but not limited to):

- redevelopment of a State heritage place by the State where an “arm’s length” opinion regarding the potential heritage impacts of the proposal would be beneficial to public perceptions of due process in the assessment; or
- redevelopment of a State heritage place with a particularly high public profile (or media focus) where the pursuit of an external heritage opinion would also be beneficial to public perceptions of a thorough and objective assessment process.

It is the view of the Institute that the proposed removal of these provisions of the *QHA 1992* should be reconsidered by the Government and, preferably, deleted from the Draft *Bill*. We respectfully request that consideration be given to this submission with a view to maintaining the present level of heritage protection to the 1,700 or so State significant heritage places contained within the *Queensland Heritage Register* rather than “lowering the bar” in the development assessment process to compliance with a rudimentary Code in an associated Regulation.

Other draft legislative amendments regarding heritage places:

It is noted that Part 4; Division 1 of the Draft *Planning Bill 2015* incorporates referral agency processes that reinforce and refine the authority and obligations of the State Assessment and Referral Agency (SARA) that were established under earlier amendments to *SPA 2009* by the previous Government.

In relation to the authority and operational powers of SARA and the manner in which they relate to the assessment of development of State heritage places, the Institute has a concern about the lack of transparency around referral advice provided by EHP to SARA. It is considered that circumstances could potentially arise where heritage advice provided by the State heritage agency (or even the *Queensland Heritage Council*) in relation to a development application over a State heritage place may be diluted or even reversed by SARA if there is a view that the optimal heritage outcome may somehow conflict with other identified State interests.

For example, with the upcoming substantial redevelopment of the Queen's Wharf precinct including up to nine of the State's oldest and/or most significant heritage buildings, it is imperative that the heritage significance of this suite of constituent State heritage places is appropriately protected throughout the duration of the leasehold of the successful bidder, Echo Entertainment. The Institute believes that a potential risk exists for these buildings in the event that the adaptive reuse works proposed by Echo generates possible adverse impacts on cultural significance. While it is acknowledged that the State will shortly finalise appropriate heritage management requirements into the QWB lease agreement, there remains a concern that an inappropriate development proposal reviewed by EHP and deemed unacceptable might be reconsidered by SARA under a broader range of State interest matters and could potentially gain development approval irrespective of the adverse EHP recommendation.

In order to address this situation, the Institute believes that minor amendments could be made to this Part of the Draft *Planning Bill 2015* to require SARA to be compelled to release the content of any heritage referral response in relation to any State heritage place irrespective of its own referral advice ultimately provided to the local authority. It is the Institute's view that this procedure (or some similar referral mechanism) would ensure that an appropriate level of transparency is achieved and maintained whenever new development is proposed for any of Queensland's relatively limited portfolio of State significant heritage places. As before, the Institute respectfully requests that consideration be given to this submission with a view to achieving an open and transparent referral system that maintains the present level of protection for heritage places on the *Queensland Heritage Register*.

Thank you for your consideration of these matters. Should you require further clarification of any of the matters raised, please contact
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