

Queensland



QUEENSLAND HERITAGE ACT 1992

Act No. 9 of 1992

Queensland



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Queensland



Queensland Heritage Act 1992

Act No. 9 of 1992

**An Act to provide for the conservation of Queensland's cultural
heritage**

[Assented to 27 March 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Queensland Heritage Act 1992*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Objects of this Act

3.(1) The object of this Act is to make provision for the conservation of Queensland's cultural heritage and, for that purpose—

- (a) to provide for the establishment of the Queensland Heritage Council; and
- (b) to provide for the maintenance of a register of places of significance to Queensland's cultural heritage; and
- (c) to regulate development of registered places; and
- (d) to provide for heritage agreements to encourage the conservation of registered places; and
- (e) to provide for the protection and conservation of submerged relics and other objects of significance to Queensland's cultural heritage; and
- (f) to regulate the excavation of sites that contain, or may contain, objects of significance to Queensland's cultural heritage; and
- (g) to provide appropriate powers of protection and enforcement.

(2) In exercising powers conferred by this Act, the Minister, the Council and other bodies and persons concerned in its administration must seek to achieve—

- (a) the retention of the cultural heritage significance of the places and objects to which it applies; and

(b) the greatest sustainable benefit to the community from those places and objects consistent with the preservation of their cultural heritage significance.

Definitions

4. In this Act—

“**Aboriginal land**” has the meaning given by the *Aboriginal Land Act 1991*;

“**building**” means a building or structure, or part of a building or structure, together with associated furniture, fittings and other objects that may contribute to its cultural heritage significance;

“**conservation**” includes protection, stabilisation, maintenance, preservation, restoration, reconstruction and adaptation;

“**Council**” means the Queensland Heritage Council;

“**Crown**” includes an instrumentality or agency of the Crown;

“**cultural heritage significance**” of a place or an object means its aesthetic, historic, scientific or social significance, or other special value, to the present community and future generations;

“**development**”, in relation to a place, means—

- (a) subdivision; or
- (b) change of the use; or
- (c) demolition of a building; or
- (d) erection, construction or relocation of a building; or
- (e) work (including painting or plastering) that substantially alters the appearance of a building; or
- (f) renovation, alteration or addition to a building; or
- (g) excavation, disturbance or change to landscape or natural features of land that substantially alters the appearance of a place;

but does not include work of a class excluded from the ambit of this definition by a regulation;

“**Heritage Register**” means the register maintained under Part 3;

“mining interest” means a lease, claim or other interest in, or a permit, licence, authority or other right in relation to, land that is granted under—

- (a) the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; or
- (b) another Act related to mining for minerals, petroleum or natural gas;

“object” means an object or group of objects, and includes an object or group of objects that has become attached to, or has merged with, land;

“owner”—

- (a) in relation to land, means—
 - (i) if the land is alienated from the Crown by grant of an estate in fee simple—the proprietor of the estate in fee simple; or
 - (ii) if the land is held from the Crown under a statutory lease, licence or permit conferring a right to possession of the land—the lessee or licensee;

and includes a mortgagee in possession of the land, a person who has a mining interest in the land and, if the land is a State Forest or Timber Reserve under the *Forestry Act 1959*, the Conservator of Forests; or

- (b) in relation to an object that has not become attached to, and has not merged with, land—means a person legally entitled to possession of the object;

“party” to a heritage agreement includes any person who is bound by the agreement;

“place” means a defined or readily identifiable area of land (which may be comprised in separate titles and in different ownership), and includes—

- (a) a building and such of its immediate surrounds as may be required for its conservation;
- (b) a natural feature of historical significance and such of its immediate surrounds as may be required for its conservation;

“public notice” means notice published in—

- (a) the Gazette; and

(b) a newspaper circulating throughout Queensland; and

(c) if the notice relates to a place situated in an area for which a local newspaper is published—the local newspaper;

“protected area” means an area declared to be a protected area under Part 7;

“protected relic” means an object declared, or provisionally declared, under Part 7 to be a protected relic;

“registered place” means a place entered or provisionally entered in the Heritage Register;

“Registrar of Titles” means the Registrar of Titles or other person responsible for keeping a register of interests in land;

“restricted zone” means an area of the territorial waters of the State, or an area of land, declared to be a restricted zone under Part 7;

“territorial waters of the State” means—

(a) waters within Queensland (including inland waterways); or

(b) waters adjacent to Queensland to which the *Historic Shipwrecks Act 1976* of the Commonwealth does not apply;

“Torres Strait Islander land” has the meaning given by the *Torres Strait Islander Land Act 1991*;

“waters” includes underlying land and reefs.

Crown bound

5.(1) This Act binds the Crown not only in right of Queensland but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in any of its capacities liable to be prosecuted for an offence.

PART 2—ADMINISTRATION

Division 1—The Minister

Ministerial responsibility

6. The Minister is responsible for the administration of this Act.

Delegation by Minister

7. The Minister may delegate powers under this Act to—
- (a) the Chairperson of the Council; or
 - (b) a local authority; or
 - (c) another person.

Division 2—The Queensland Heritage Council

Establishment of Council

8. The Queensland Heritage Council is established.

Functions of the Council

9. The functions of the Council are—
- (a) to advise the Minister on matters relating to Queensland's cultural heritage and in particular on the measures necessary to conserve Queensland's cultural heritage for the benefit of the present community and future generations; and
 - (b) to administer the Heritage Register in accordance with this Act; and
 - (c) to encourage public interest in, and understanding of, issues relevant to the conservation of Queensland's cultural heritage; and

- (d) to encourage and assist the proper management of places of cultural heritage significance; and
- (e) to keep proper records, and encourage others to keep proper records, of places and objects of cultural significance; and
- (f) to cooperate and collaborate with federal, State and local authorities in the conservation of places and objects of cultural heritage significance; and
- (g) to undertake any other functions assigned to the Council by this Act or the Minister.

Composition of the Council

- 10.(1)** The Council is to consist of 12 members.
- (2)** The members are to be appointed by the Governor in Council.
- (3)** One member of the Council is to be appointed by the Governor in Council as the Chairperson of the Council.
- (4)** The members of the Council are to consist of—
 - (a) 1 person nominated by the Minister from a panel of at least 3 names submitted by the National Trust of Queensland; and
 - (b) 1 person nominated by the Minister from a panel of at least 3 names submitted by the Local Government Association of Queensland (Incorporated); and
 - (c) 1 person nominated by the Minister from a panel of at least 3 names submitted by the Trades and Labor Council of Queensland; and
 - (d) 1 person nominated by the Minister from a panel of at least 3 names submitted by an organisation representing the interests of property owners and managers in Queensland; and
 - (e) 1 person nominated by the Minister from a panel of at least 3 names submitted by an organisation representing the interests of rural industries in Queensland; and
 - (f) 7 persons nominated by the Minister after inviting representations from organisations with appropriate knowledge, expertise and interest in heritage conservation and considering any recommendations as to the composition of the council made in response to that invitation.

(5) The Governor in Council may appoint a person to act as a member of the Council—

- (a) while the office of a member of the Council is vacant; or
- (b) during any period, or all periods, when the member is absent from duty or is, for any other reason, unable to perform the functions of office.

Terms and conditions of membership

11.(1) A member of the Council is to be appointed for a term, not longer than 3 years, stated in the instrument of appointment.

(2) The office of a member of the Council becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is absent, without leave of the Council and without reasonable excuse, from 3 consecutive meetings of the Council; or
- (e) becomes bankrupt; or
- (f) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (g) is removed from office by the Governor in Council.

(3) A member of the Council is eligible for reappointment on completing a term of appointment unless the member has completed 2 consecutive terms, in which case the former member is not eligible for reappointment until 1 year has elapsed from the end of the second consecutive term.

Times and places of meetings

12.(1) Subject to this section, meetings of the Council are to be held at such times and places as the Council determines.

(2) The Council must meet at least once in each calendar month.

(3) The chairperson—

- (a) may at any time convene a meeting; and

- (b) must convene a meeting when requested in writing to do so by 3 members of the Council.

Proceedings at meetings

13.(1) The chairperson or, in the absence of the chairperson, a member chosen to preside by the members present, is to preside at a meeting of the Council.

(2) At a meeting of the Council—

- (a) 6 members constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the members present and voting; and
- (c) each member present has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a casting vote.

(3) The Council may regulate its proceedings as it considers appropriate.

(4) The Council may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) any other means of communication.

(5) A member who participates in a meeting of the Council under subsection (4) is taken to be present at the meeting.

(6) The Council may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

(7) The Council must keep minutes of its proceedings.

Disclosure of interest

14.(1) If—

- (a) a member of the Council has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council; and

- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter;

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the Council.

(2) A disclosure under subsection (1) must be recorded in the Council's minutes and, unless the Council otherwise determines, the member must not—

- (a) be present during any deliberations of the Council in relation to the matter; or
- (b) take part in any decision of the Council in relation to the matter.

(3) A member who has a direct or indirect pecuniary interest in the matter to which a disclosure under subsection (1) relates must not—

- (a) be present at any deliberation by the Council for the purpose of making a determination under subsection (2); or
- (b) take part in the making by the Council of such a determination.

Delegation

15.(1) The Council may delegate powers under this Act to—

- (a) the Chairperson or another member of the Council; or
- (b) to a committee established by the Council.

(2) The Council may not delegate its power to enter a place in, or remove a place from, the Heritage Register.

Committees

16.(1) The Council may appoint committees for the purpose of—

- (a) advising the Council on particular matters; or
- (b) undertaking as delegates of the Council any of the Council's functions.

(2) A committee may consist of members of the Council, persons who are not members of the Council, or a combination of members and non-members.

(3) The Council may regulate the proceedings of a committee.

Fees and allowances

17. The members of the Council or of a committee are entitled to such fees and allowances as may be determined by the Minister.

Division 3—Miscellaneous

Donations towards the objects of this Act

18.(1) The Minister may accept donations of money in furtherance of the objects of this Act.

(2) The Minister must ensure that proper accounts are kept of any such donations and that they are applied only for purposes related to the conservation of Queensland's cultural heritage.

Annual report

19.(1) The Council must, not later than 31 October in each year, give the Minister a written report on the administration of this Act during the year that ended on 30 June in the year.

(2) The report must include a statement of any donations received under this Division and of their application.

(3) As soon as practicable, but not later than 14 sitting days, after receiving the report, the Minister must table it in the Legislative Assembly.

PART 3—THE HERITAGE REGISTER

The Heritage Register

20.(1) There is to be a Register known as the Heritage Register.

(2) The Heritage Register is to be a record of—

(a) registered places and heritage agreements relating to registered

places; and

(b) protected areas; and

(c) orders or permits made or granted under this Act.

(3) The Heritage Register is to be maintained by the Council in accordance with this Act.

(4) An entry in the Heritage Register in relation to a registered place must—

(a) adequately identify the place—

(i) by reference to a certificate of title or an official plan of survey; or

(ii) by survey information that enables its boundaries to be clearly and accurately ascertained; and

(b) contain a description of the place; and

(c) contain a statement of the history of the place; and

(d) contain a statement of the heritage significance of the place related to the criteria in this Act by which its heritage significance is determined.

Heritage Register to be available for public inspection

21.(1) The Heritage Register, or a copy of the Heritage Register, must be kept available for public inspection at a place determined by the Council during ordinary business hours.

(2) The prescribed fee may be charged for inspection of the Heritage Register.

Extracts from Heritage Register

22.(1) The Council must, on application by a member of the public and payment of the prescribed fee—

(a) provide a certified copy of any entry in the Heritage Register; or

(b) provide a certificate as to whether a property is affected by an entry in the Heritage Register or is otherwise affected by the provisions of this Act.

(2) A certified copy of an entry in the Heritage Register is admissible as evidence in legal proceedings and, in the absence of proof to the contrary, is to be taken as proof of the entry and of its contents.

PART 4—REGISTRATION OF PLACES

Criteria for entry in the Register

23.(1) A place may be entered in the Heritage Register if it is of cultural heritage significance and satisfies 1 or more of the following criteria—

- (a) the place is important in demonstrating the evolution or pattern of Queensland's history;
- (b) the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage;
- (c) the place has potential to yield information that will contribute to an understanding of Queensland's history;
- (d) the place is important in demonstrating the principal characteristics of a particular class of cultural places;
- (e) the place is important in exhibiting particular aesthetic characteristics valued by the community or a particular cultural group;
- (f) the place is important in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.

(2) A place is not to be excluded from the Heritage Register on the ground that places with similar characteristics have already been entered in the Register.

(3) A place does not satisfy the criteria for entry in the Heritage Register if there is no prospect of the cultural heritage significance of the place being conserved.

Proposal to make entry in Register

24.(1) The Council may, on its own initiative or on application by any person, consider whether a particular place should be entered in the Heritage Register.

(2) The Council may require an applicant who seeks the entry of a particular place in the Heritage Register to give such information as the Council requires to enable it to deal properly with the application.

(3) The Council may invite written submissions in relation to a place that it has under consideration for possible entry in the Heritage Register—

- (a) from any person or body with a special knowledge of, or interest in, the place; or
- (b) from any person or body with a special interest in Queensland's cultural heritage.

(4) If the Council is of the opinion that a place is of cultural heritage significance and satisfies 1 or more of the criteria for entry in the Heritage Register, the Council may provisionally enter the place in the Heritage Register and the Council must then immediately—

- (a) give the owner of the place, and the local authority for the area in which the place is situated, a written notice—
 - (i) stating that the Council proposes to enter the place in the Heritage Register on a permanent basis; and
 - (ii) stating the reasons on which the proposal is based (including a statement of the relevant criteria); and
 - (iii) explaining the right to object to the proposal; and
- (b) give public notice that the Council proposes to enter the place in the Heritage Register on a permanent basis.

Proposal to recommend removal of place from Register

25.(1) The Council may, on its own initiative or on application by any person, consider whether the entry of a particular place in the Heritage Register should be removed.

(2) The Council may require an applicant who seeks removal of a particular place from the Heritage Register to give such information as the Council requires to enable it to deal properly with the application.

(3) The Council may invite written submissions in relation to a place that it has under consideration for possible removal from the Heritage Register—

- (a) from any person or body with special knowledge of, or interest in, the place; or
- (b) from any person or body with a special interest in Queensland's cultural heritage.

(4) If the Council is of the opinion that the cultural heritage significance of a particular place no longer justifies its retention in the Heritage Register, the Council must—

- (a) give the owner of the place, and the local authority for the area in which the place is situated, a written notice—
 - (i) stating that the Council proposes to remove the place from the Heritage Register; and
 - (ii) stating the reasons on which the proposal is based; and
 - (iii) explaining the right to object to the proposal; and
- (b) give public notice that the Council proposes to remove the place from the Heritage Register.

Objections

26.(1) If the Council gives notice under this Act that it proposes to enter a particular place in the Heritage Register on a permanent basis, or to remove a particular place from the Heritage Register, the owner of the place or any other person may object to the proposal by written notice to the Council stating in detail the grounds of the objection.

(2) An objection must be made to the Council within 30 days after notice

of the proposal was last given under this Act or such longer time as the Minister may allow.

(3) An objection to the proposed entry of a place in the Heritage Register on a permanent basis may be made only on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the Register.

(4) If no objection is made to the proposed entry of a place in the Heritage Register on a permanent basis, or the proposed removal of a place from the Heritage Register, the place may be entered in, or removed from, the Heritage Register accordingly.

Panel of assessors

27.(1) There is to be a panel of expert assessors.

(2) The function of an assessor is to inquire into, and report on, objections to the entry of places in, or the removal of places from, the Heritage Register.

(3) The panel is to consist of at least 10 assessors appointed by the Minister on terms and conditions determined by the Minister (but the terms and conditions must not be such as to allow the Minister to influence the assessor's decision).

(4) Appointments to the panel are to be made on the basis of expertise in fields relevant to heritage conservation after the Minister has, by public advertisement, called for expressions of interest.

(5) A member of the panel is to be paid such fees and allowances as may be determined by the Minister.

(6) If a person is a member of the Council or is engaged in remunerated work for the Council (except work as an assessor)—

- (a) the person is not eligible to be appointed to the panel of assessors; and
- (b) the person, if a member of the panel of assessors at the time of becoming a member of the Council or undertaking the remunerated work, ceases to be a member of the panel.

Reference of objection to assessor

28. If an objection is made to the Council's proposal to enter a place in the Heritage Register on a permanent basis or to remove a place from the Heritage Register, the Council must, within 14 days after receiving the objection or such longer time as the Minister may allow, select an assessor from the panel of assessors and refer the objection to the assessor.

Consideration of objection

29.(1) On reference of an objection to an assessor, the assessor must enquire into and report to the Council on the objection.

(2) The assessor must allow the objector a reasonable opportunity to make representations personally or in writing to the assessor and may receive representations from, or consult with, such other persons as the assessor thinks fit.

(3) The assessor must—

(a) proceed as expeditiously as possible to conduct the inquiry; and

(b) give the Council a report on the objection within 60 days after reference of the objection to the assessor or such longer time as may be allowed by the Minister.

(4) The Council must, within 30 days after receiving the assessor's report, decide whether to proceed with its proposal and, if so, whether the proposal should be varied in any way in the light of the assessor's report.

Entry in and removal from Register

30.(1) If the Council, after considering the assessor's report, decides to proceed with a proposal for entry of a place in the Heritage Register on a permanent basis or a variation of such a proposal, the place may be entered in the Heritage Register accordingly.

(2) If the Council decides not to proceed with a proposal for entry of a place in the Heritage Register on a permanent basis, the provisional entry of the place in the Heritage Register must be removed.

(3) If the Council decides to proceed with a proposal for removal of a place from the Heritage Register, the place may be removed accordingly.

(4) Notice of the entry of a place in, or removal of a place from, the

Heritage Register, or a decision by the Council not to proceed with a proposal, must be given immediately—

- (a) by written notice to the owner of the place and to the local authority for the area in which the place is situated; and
- (b) by public notice.

(5) If the owner of a place is dissatisfied with a decision of the Council to enter the place in the Heritage Register on a permanent basis, or to remove the place from the Heritage Register, or not to proceed with a proposal for entry or removal of the place from the Heritage Register, the owner may, within 30 days after notice of the decision is given to the owner under subsection (4), appeal to the Planning and Environment Court against the decision.

(6) If the appeal is against a decision to enter a place in the Heritage Register on a permanent basis, the appeal may only be made on the basis that the place is not of cultural heritage significance or does not satisfy the criteria for entry in the Register.

(7) On an appeal under this section, the Planning and Environment Court may confirm, vary or reverse the decision under appeal and make consequential orders and directions.

Entry in land register

31.(1) If—

- (a) a place is entered or provisionally entered in the Heritage Register; or
- (b) a place registered or provisionally registered in the Heritage Register ceases to be so registered;

the Minister must notify the Registrar of Titles.

(2) On receiving a notification under this section, the Registrar of Titles must enter the notification in a file maintained for that purpose.

Certificate of immunity

32.(1) The owner of a place may apply to the Council for a certificate of immunity from registration in respect of the place.

(2) Separate applications are required under this section in respect of a

place consisting of land comprised in separate titles unless the land forms a single parcel of contiguous land.

(3) The application must be accompanied by—

- (a) any information required by the regulations; and
- (b) the prescribed fee.

(4) The applicant must, at the request of the Council, give any further information that the Council reasonably requires to decide the application.

(5) On receipt of an application under this section, the Council must, subject to subsection (6), consider the application and, if it appears that the place to which the application relates or part of it does not satisfy the criteria for entry in the Heritage Register, must issue a certificate of immunity in respect of the place or the relevant part of the place.

(6) The Council need not consider an application under this section if the application appears to be frivolous or vexatious.

(7) If a certificate of immunity is issued in respect of a place, the place may not be entered in the Heritage Register within 5 years of the date of the certificate.

(8) If a certificate of immunity is not issued on an application under this section, the Council must provide the applicant with a written statement of the reasons for not issuing the certificate.

PART 5—DEVELOPMENT IN REGISTERED PLACES

Division 1—Development generally

Development not to be carried out without Council's approval

33.(1) A person must not carry out development in relation to a registered place unless the development is approved by the Council in accordance with this Act.

Maximum penalty—17 000 penalty units.

(2) Approval of development is not required under this Division in

relation to a church or the precincts of a church if—

- (a) written notice of the proposed development is lodged with the Council at least 30 days before the development starts; and
- (b) the notice is accompanied by a certificate by an official of the church, authorised by the church to give the certificate, that the development is genuinely required for liturgical purposes.

(3) Approval of development to be carried out by the Crown is not required under this Division.

Application for Council's approval

34.(1) An application for the Council's approval must be lodged with the local authority for the area in which the registered place is situated unless the proposed development relates to a place owned by the local authority, in which case the application must be lodged with the Council.

(2) In the case of an application lodged with a local authority, the local authority may itself decide the application if it has authority to do so under a delegation by the Council but otherwise must refer the application to the Council.

(3) If the development would have a substantial effect on the cultural heritage significance of the registered place, the local authority or the Council must—

- (a) give public notice of the application, notifying a place at which the application may be inspected, and inviting representations from interested members of the public within 21 days of the publication of the notice; and
- (b) consider any representations made in response to the notice.

(4) An application is taken to have been approved if not determined—

- (a) in the case of an application to be determined by the local authority—within the prescribed period from lodgment with the local authority; or
- (b) in the case of an application to be lodged with or referred to the Council—within the prescribed period from receipt by the Council.

(5) For the purposes of subsection (4), the prescribed period is 60 days or such longer period as the Minister may determine in a particular case.

Determination of applications

35.(1) An application under this Act to carry out development in relation to a registered place—

- (a) may be approved unconditionally; or
- (b) may be approved subject to conditions; or
- (c) may be refused.

(2) If the effect of carrying out a proposed development would be to destroy or substantially reduce the cultural heritage significance of the registered place, the application may only be granted if there is no prudent and feasible alternative to carrying out the development.

(3) If a local authority decides an application in pursuance of delegated powers, it must inform the Council of the decision within such period as may be required under the regulations.

Review of, and appeals from, decisions on development applications

36.(1) An applicant who is dissatisfied with the decision of a local authority or the Council on an application for approval of a proposed development may apply to the Council for a review of that decision.

(2) If an applicant applies for a review, the Council must appoint a time for a conference between the applicant and the Council or a review committee established by the Council.

(3) At the conference, the Council or review committee must allow the applicant a reasonable opportunity to make representations.

(4) The review should be conducted as expeditiously as possible.

(5) The Council or review committee may confirm, vary or reverse the decision under review.

(6) If the applicant is dissatisfied with the decision on review, the applicant may, within 30 days after the making of the decision or such longer period as the Planning and Environment Court allows, appeal against the decision to the Court.

(7) The Court may confirm, vary or reverse the decision under appeal, and make consequential orders and directions.

(8) If the effect of carrying out a proposed development would be to

destroy or substantially reduce the cultural heritage significance of a registered place, a decision to permit the development may only be made on review or appeal if there is no prudent and feasible alternative to carrying out the development.

Division 2—Development by the Crown

Development by the Crown

37.(1) If the Crown proposes to carry out a development in relation to a registered place, a report on the proposed development, containing the details required by the regulations, must be given to the Council.

(2) The Council must then publish a public notice—

- (a) containing details of the proposed development; and
- (b) inviting interested members of the public who desire to object to the proposal to lodge written notices setting out the grounds of their objection with the Council within 21 days after the publication of the notice.

(3) The Council must consider any objections lodged in response to the public notice and recommend to the Minister responsible for the proposed development—

- (a) that the proposed development should be carried out; or
- (b) that the proposed development should be carried out subject to specified conditions or modifications; or
- (c) that the proposed development should not be carried out.

(4) If the effect of carrying out a proposed development would be to destroy or substantially reduce the cultural heritage significance of a registered place, the Council may only recommend that the development should be carried out if there is no prudent and feasible alternative to carrying out the development.

(5) The Minister responsible for the proposed work must consider the Council's recommendation and decide whether to accept or reject it.

(6) Public notice must be given of a decision under subsection (5) a

reasonable time before the development starts.

Division 3—General

Assessment of prudent and feasible alternative

38. In deciding whether there is a prudent and feasible alternative to development that would have the effect of destroying or substantially reducing the cultural heritage significance of a registered place, the Council, local authority or Court must have regard to—

- (a) safety, health and economic considerations; and
- (b) any other considerations that may be relevant.

PART 6—HERITAGE AGREEMENTS AND EXEMPTIONS

Heritage agreements

39.(1) The Minister may, after obtaining and considering the Council's advice, enter into a heritage agreement with the owner of a registered place.

(2) A heritage agreement attaches to the land and is binding on the owner from time to time of the registered place.

(3) The Minister may, after obtaining and considering the Council's advice, by agreement with the owner of a registered place, vary or terminate a heritage agreement.

(4) A heritage agreement is, so far as it affects the use of a registered place, binding on the occupier of a registered place.

Provisions of heritage agreement

- 40.(1)** A heritage agreement may contain any provision to promote—
- (a) the conservation of the registered place; or
 - (b) public appreciation of the importance of the place to Queensland's cultural heritage.
- (2)** A heritage agreement may, for example—
- (a) restrict the use of the registered place; or
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards in a registered place; or
 - (c) restrict the nature of work that may be carried out in a registered place; or
 - (d) provide that the registered place is to be available for public inspection at specified times and regulate charges that may be made for admission to the registered place; or
 - (e) provide for financial, technical, or other professional advice or assistance to the owner with respect to the maintenance or conservation of the registered place; or
 - (f) provide for a review of the valuation of the registered place; or
 - (g) exempt a specified development, or a development of a particular kind, in the registered place from the application of Part 5.
- (3)** A local authority may be a party to a heritage agreement.

Notification on land register

- 41.(1)** If the Minister enters into—
- (a) a heritage agreement with the owner of a registered place; or
 - (b) an agreement with the owner of a registered place varying or terminating a heritage agreement;

the Minister must notify the Registrar of Titles of the agreement.

- (2)** On receiving a notification under this section, the Registrar of Titles must enter the notification in a file maintained for that purpose.

Agreements to be entered in Heritage Register

42. A heritage agreement or an agreement varying or terminating a heritage agreement must be entered in the Heritage Register.

Enforcement of heritage agreement

43.(1) If—

- (a) a person fails to comply with a heritage agreement; or
- (b) there is reason to apprehend that a party to the agreement may fail to comply with the agreement;

any party to the agreement may apply to the Planning and Environment Court for an order under this section.

(2) The Court may make such orders as may be necessary to secure compliance with the agreement, remedy the default or deal with any related or incidental matters.

PART 7—PROTECTION OF CULTURAL RELICS*Division 1—Protected relics***Declaration of submerged relics**

44.(1) If the Governor in Council is of the opinion that remains of a ship, or some other object, situated in, or recovered from, territorial waters of the State is of cultural heritage significance, the Governor in Council may, by order in council, declare the remains or other object to be a protected relic.

(2) If the Governor in Council is of the opinion that an object situated in or recovered from territorial waters of the State may be the remains of a ship, or some other object, of cultural heritage significance, the Governor in Council may, by order in council, make a provisional declaration that the object is a protected relic.

(3) A provisional declaration under this section operates (subject to amendment or revocation) for 1 year from its making.

Declaration of land based relics

45. If the Governor in Council is of the opinion that an object situated on, or under, the surface of land is of cultural heritage significance, the Governor in Council may, by order in council, declare the object to be a protected relic.

Restricted zones

46.(1) The Governor in Council may, by order in council—

- (a) declare an area (not larger than 200 ha) of Queensland's territorial waters in which a protected relic is situated to be a restricted zone; or
- (b) declare an appropriate area of land on, or under, the surface of which a protected relic is situated to be a restricted zone; or
- (c) vary or revoke any such declaration.

(2) The declaration may—

- (a) restrict access to a restricted zone; or
- (b) restrict or prohibit specified activities within a restricted zone.

(3) A person must not, without reasonable excuse, contravene a restriction or prohibition imposed under subsection (2) in relation to a restricted zone.

Maximum penalty—500 penalty units.

Offences

47. A person must not, without the Minister's written consent and without reasonable excuse—

- (a) knowingly damage or destroy a protected relic; or
- (b) knowingly interfere with a protected relic; or
- (c) dispose of a protected relic; or
- (d) remove a protected relic from waters in which, or land on which, it is situated.

Maximum penalty—1 000 penalty units.

Discovery of relics

48. A person who discovers in Queensland's territorial waters the remains of a ship, or some other object, that may be of cultural heritage significance must report the discovery to the Minister as soon as practicable after the discovery is made.

Maximum penalty—50 penalty units.

Arrangements between Queensland and the Commonwealth

49. The Governor in Council may make arrangements with the Governor-General of the Commonwealth for the performance of functions by a competent authority of the Commonwealth in relation to the protection, recovery, preservation and exhibition of protected relics.

*Division 2—Areas of archaeological interest***Areas of archaeological interest**

50. If the Governor in Council is of the opinion that a particular area may contain objects of cultural heritage significance, the Governor in Council may, by order in council, declare the area to be a protected area.

Offence to destroy protected area etc.

51. A person must not, without reasonable excuse, destroy, damage, excavate or disturb a protected area except in accordance with a permit.

Maximum penalty—1 000 penalty units.

Permits

52.(1) The Minister may grant a permit authorising operations that would otherwise be contrary to this Division.

(2) The prescribed fee is payable on application for a permit.

(3) A permit may be granted on such conditions as the Minister considers appropriate.

(4) The conditions may, for example—

- (a) require that the operations be supervised by a person with appropriate qualifications and experience stated in the condition;
- (b) require that the operations be carried out in accordance with specified professional standards;
- (c) make provision for the way in which objects of possible cultural heritage significance uncovered in the course of the operations are to be dealt with;
- (d) require the holder of the permit to pay specified fees, or fees calculated in accordance with a specified scale, for the evaluation, cataloguing and curation of objects uncovered in the course of the operations.

(5) A person must not contravene a condition of a permit.

Maximum penalty for this subsection—1 000 penalty units.

Appeals

53.(1) If the Minister decides to refuse an application for a permit under this Part, or to grant the application but subject to conditions, the applicant may, within 30 days after receiving notice of the Minister's decision, appeal to the Planning and Environment Court against the decision.

(2) The Court may—

- (a) confirm, vary or quash the Minister's declaration or decision; and
- (b) make consequential orders and directions.

PART 8—ENFORCEMENT

Division 1—Authorised persons

Appointment of authorised persons

54.(1) The Minister may appoint authorised persons.

(2) The Minister must issue to each authorised person an identity card

containing a photograph of the authorised person.

(3) A person who ceases to be an authorised person must, as soon as practicable, return the identity card to the Minister.

Maximum penalty for this subsection—10 penalty units.

Authorised person to produce identity card

55. An authorised person is not entitled to exercise powers under this Act in relation to another person unless the authorised person first produces the identity card for inspection by the other person.

Evaluation of places and objects

56.(1) If the Minister considers necessary, an authorised person may, on the written instructions of the Minister, enter and inspect a place, or objects in a place, for the purpose of determining or recording the heritage significance of the place or of objects in the place.

(2) The authorised person may make photographic or other records of the place or objects.

(3) An authorised person may exercise powers under this section—

- (a) with the consent of the occupier of the place; or
- (b) by warrant under this section.

(4) An authorised person may apply to a Magistrate for a warrant under this section.

(5) The Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for authorising the entry and examination of a place, or objects in the place, without the consent of the occupier of the place.

(6) The warrant must—

- (a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable, to enter and examine the place or objects in the place; and
- (b) state whether the entry is to be made at any time of the day or night or during specified hours of the day or night; and

- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Obstruction etc. of authorised persons

57. A person must not, without reasonable excuse, obstruct, hinder or resist an authorised person in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

Division 2—Stop Orders

Stop orders

58.(1) If the Minister is of the opinion that it is necessary to do so to protect a place of cultural heritage significance, the Minister may make an order (a “**stop order**”) requiring a person to stop any work or activity, or prohibiting a person from starting any work or activity, that may destroy or reduce the cultural heritage significance of the place.

(2) The stop order may be served personally or by affixing it in a prominent position in the place.

(3) The stop order—

- (a) operates from the time of service; and
- (b) continues in force, subject to earlier revocation, for 60 days from the time of service or a shorter period stated in the order.

Contravention of stop order

59. A person must not contravene a stop order.

Maximum penalty—17 000 penalty units.

PART 9—MISCELLANEOUS

Assistance by local authorities

60. A local authority must, at the request of the Minister or the Council, provide any information or assistance that the Minister or the Council reasonably requires for the purposes of this Act.

Non-application to Aboriginal or Torres Strait Islander places etc.

61. This Act does not apply to—

- (a) a place that is of cultural heritage significance solely through its association with Aboriginal tradition or Island custom; or
- (b) a place situated on Aboriginal or Torres Strait Islander land unless the place is of cultural heritage significance because of its association with Aboriginal tradition or Island custom and with European or other culture, in which case this Act applies to the place if the trustees of the land consent.

Misleading statements

62. A person must not make a statement to a person concerned in the administration of this Act on a matter relating to the administration of this Act that the person knows to be false or misleading.

Maximum penalty—50 penalty units.

Evidence

63.(1) In proceedings for an offence against this Act, a certificate of the Minister stating that a place referred to in the certificate is—

- (a) in Queensland's territorial waters; or
- (b) in a specified restricted zone; or
- (c) in a specified protected area;

is proof, in the absence of proof to the contrary, of the matters stated in the certificate.

(2) A document that appears to be a certificate under this section is to be

accepted as such a certificate in the absence of proof to the contrary.

Proceedings

64. A proceeding for an offence against this Act may be brought only by a person authorised by the Minister (either generally or in the particular case) to bring the proceeding.

Restoration orders

65.(1) If a person is convicted of an offence against this Act, the Court may, in addition to imposing a penalty for the offence, order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence.

(2) A person must not fail to comply with an order under this section.

Maximum penalty—17 000 penalty units.

(3) If a person fails to comply with the order, the Minister may cause the necessary work to be carried out and recover the cost of doing so, as a debt, from the person in default.

Non-development order

66.(1) If the owner of a registered place is convicted of an offence against this Act involving the destruction of, or damage to, the registered place, the Minister may by order served on the owner prohibit development of the place for a period (not longer than 10 years) specified in the order.

(2) Before the Minister makes an order under subsection (1), the Minister must allow the owner a reasonable opportunity to show cause why the order should not be made.

(3) A copy of an order under this section must be given to the Registrar of Titles and entered on a file maintained for that purpose.

(4) An order under this section attaches to the land and is binding not only on the owner and occupier as at the date of the order, but also on any person who becomes an owner or occupier of the land while the order remains in force.

(5) A person must not contravene an order under this section.

Maximum penalty—17 000 penalty units.

Immunity

67.(1) No liability is incurred by the Minister, the Council, any member of the Council, or another person acting in the administration of this Act, for an honest act or omission in the exercise or purported exercise of functions under this Act.

(2) A liability that would, apart from this section, attach to a person attaches to the State.

Orders in council

68. Section 28A of the *Acts Interpretation Act 1954* (Regulations) applies to an order in council made under this Act as if it were a regulation.

Regulations

69. The Governor in Council may make regulations for the purposes of this Act.

PART 10—AMENDMENT OF VALUATION OF LAND ACT 1944

Amended Act

70. The *Valuation of Land Act 1944* is amended as set out in this Part.

Amendment of s.11

71.(1) After section 11(1)(v)(c)—

insert—

‘; or

(d) subject to a heritage agreement under Part 6 of the *Queensland*

Heritage Act 1992;

(2) Section 11(i)(v)—

omit ‘or permission to occupy’, *insert* ‘, permission to occupy or agreement’.

SCHEDULE

TRANSITIONAL PROVISIONS

Definition

1. In this Schedule—

“**the former Act**” means the *Heritage Buildings Protection Act 1990*.

Transitional Provisions

2.(1) All buildings listed in the Schedule of the former Act are, on the commencement of this Act, to be taken to be places provisionally entered in the Heritage Register.

(2) An owner of any such place may, within 60 days after the commencement of this Act, object to the entry of the place on the Heritage Register.

(3) If no such objection is made within that period, the place is to be entered on the Heritage Register on a permanent basis, but, if there is such an objection, the Minister must refer it to an assessor within 6 months after the end of the period allowed for objections and the objection must then be dealt with in accordance with this Act.

(4) The Minister may, in a particular case, extend or reduce the period of 6 months referred to in subclause (3).

(5) Subject to subclause (6), a certificate granted under section 8 or 9 of the former Act authorising the demolition, development or subdivision of a heritage building has effect, subject to any conditions on which it was granted, as an approval under section 35 of this Act.

(6) A certificate to which subclause (5) applies lapses on the date fixed in the certificate for its expiry or 2 years after the commencement of this Act (whichever is the earlier).

