

Dealing with State land that is nominated as a place on the Queensland Heritage Register PUX/952/114

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Version History

Version	Date	Description/Comments
1	30/04/2010	Endorsed
2	19/06/2013	Machinery of Government changes
3	09/07/2013	Changes to provide clarification done in consultation with Heritage Branch, EHP
3.01	17/06/2016	Minor amendment to review and insert text on new template

Approval

Position	Name	Date
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Purpose

To provide guidelines for dealing with State land that is nominated as a place on the Queensland Heritage Register.

Background

The Queensland Heritage Register is a list of places including, trees, natural formations and buildings determined to be of cultural heritage significance to the people of Queensland. Established under the *Queensland Heritage Act 1992*, the register acknowledges the value and importance of Queensland's cultural heritage and gives community recognition to places associated with it.

A place need not be old to be entered. For a place to be entered in the Queensland Heritage Register it must simply be shown to satisfy one or more of the criteria outlined in Section 35 of the *Queensland Heritage Act 1992*.

The register is maintained by the Department of Environment and Heritage Protection (EHP) which is established under the provisions of the *Queensland Heritage Act 1992* and performed by the Heritage Branch, which employs architects, historians, archaeologists and other heritage professionals to give advice on the conservation of registered places.


The process by which places are entered in the Queensland Heritage Register involves 3 key phases set out in the Heritage Act: application, recommendation by the chief executive of EHP and decision by the Queensland Heritage Council. There are statutory timeframes connected to all phases of application assessment.

When an acceptable application is received a range of people or entities are notified by EHP, including the applicant, the owners of the place, the relevant local government, mining interests, and other interest groups like the National Trust of Queensland. The application is also advertised in a locally-available newspaper and on EHP's website, inviting public submissions.

An owner is defined in the *Queensland Heritage Act 1992* as:

owner—

1. An *owner* in relation to land, means—
 - (a) for freehold land—the registered owner; or
 - (b) for land the subject of a mining interest—the person who holds the interest; or
 - (c) for land the subject of a GHG authority under the *Greenhouse Gas Storage Act 2009*—the person who holds the authority.
 - (d) for a road or other land under a local government's control—the local government; or
 - (e) for land in the area of a geothermal tenure under the *Geothermal Energy Act 2010* – the person who holds the tenure; or
 - (f) for other land held from the State under another Act under an interest less than fee simple and conferring a right of possession of the land – the person who holds the interest; or

- 
- (g) for land (**licence area**) the subject of a plantation licence or plantation sublicence under the *Forestry Act 1959* – the State, the plantation licensee and any plantation sublicensee for the licence area;
- (h) for unallocated State land under the *Land Act 1994*, land in a State Forest, other than a licence area, or timber reserve under the *Forestry Act 1959*, or other land under the control of the State - the State.

2. Also, a mortgagee of land is the *owner* of land if the mortgagee is in possession of the land.
3. The *owner* of an artefact that is not permanently attached to, or under, land means a person legally entitled to possession of the artefact.

Under Section 41 of the *Queensland Heritage Act 1992* any person or entity may make a written submission for an application within 20 business days of public notice. An extension of a further 20 business days may be given. Copies of all submissions are forwarded to the Queensland Heritage Council (QHC) for consideration.

Procedure

The following procedure will be applied when an application is made to have a place, on State land, considered for entry in the Queensland Heritage Register.

When a site is nominated to the Queensland Heritage Register and the related land is USL, reserve or any other Land Act tenure (e.g. term lease) the Heritage Branch, EHP will notify the relevant regional SLAM office of the listing.

In addition, the person who holds the interest in the Land Act tenure will also be informed of the nomination -

- **Land Act tenure** - then the lessee is notified

- **Reserve** - then the trustee is notified

Mortgagees are not notified, unless the mortgagee is in possession.

SLAM will have 20 business days from the date of notification to make a submission either supporting the application or objecting to it. This period can be extended to a maximum of 40 business days with agreement from the Heritage Branch.

The submission is to be lodged with the Heritage Branch, EHP. There is no template format for the submission. No fees apply.



Submissions

If SLAM objects to a place being listed, then the submission should address why the place does not meet the criteria for listing. (see s.35 of *Queensland Heritage Act 1992*).

Other information of concern should be discussed with the Heritage Branch and included in the submission, if it is understood to have implications for the prospective listing of the place. The statutory role of EHP is to make a recommendation to the Queensland Heritage Council about whether the place satisfies the heritage criteria. The Heritage Council considers all submissions made to it before making its decisions.

What SLAM needs to consider when preparing a Submission -

Public access and ownership

Entry of a place in the Queensland Heritage Register does not change its accessibility to the public. A place entered in the register remains the sole property of the owner.

Illegal structure

The Heritage Council does not take into account whether a structure has been approved or not. Its only concern is whether it meets the criteria for listing.

In the event of an illegal structure on unallocated State land being listed on the Heritage Register, the department is not prevented from taking trespass action to have anyone occupying the structure removed. It is the structure that is listed, not the person occupying the structure. The person may have erected the structure, or it may have been erected by another person, but the trespass provisions of the Land Act would allow the department to take action to have a person occupying an illegal structure removed, even if the structure itself has to remain as it is protected by other legislation.

Managing the Notice from Heritage Branch, EHP

All correspondence must be part of a eLVAS Client Interaction on the relevant tenure file and decisions should be made by the relevant regional Senior Land Officer/Manager responsible for administering the *Land Act 1994*.

Further Dealing with USL that is Heritage Listed

Places, which include trees, natural formations and buildings of cultural heritage significance on USL -

If sites on USL are listed, then SLAM can still deal with the land. Heritage listing does not prevent the land from being sold or leased. Any new owner, lessee, licensee, trustee or permittee would be bound by the heritage listing, and must be made aware of the heritage listing at the time of allocation of the land and the implications for developing the place. They should be directed to the EHP website where there are fact sheets in the Heritage area describing the kinds of work classified as development under the *Sustainable Planning Act 2009* and the General Exemption and Exemption Certificates issued under the *Queensland Heritage Act 1992*.

If the heritage site has the potential to be attractive as a tourist destination, and the local government or a local heritage society is prepared to take over control of the land and the infrastructure on it, then consideration should be given to setting the land aside as a reserve for heritage and cultural/or historical purposes. This would give the trustees power to control access and to fence off the site to protect it from vandalism and also to protect the public from potential danger from ageing infrastructure.

Maintenance schedule or similar for maintaining our cultural heritage assets -

Under Section 87 of the *Queensland Heritage Act 1992*, the chief executive officer may give notice requiring essential maintenance be undertaken on a State heritage place. This is work urgently required to protect the place from serious or irreparable damage or deterioration caused by weather, fire, vandalism or insects. Prior to these notices being issued, reasonable steps must be taken by the chief executive to consult with place owners.

As a matter of good practice where the department is the owner, the department should implement appropriate strategies for the management of any heritage listed structures on USL so as to minimise any risk to public safety.

The Abandoned Mines Unit with DNRM is responsible for the management of abandoned mine sites on USL -

<http://www.qld.gov.au/environment/land/abandoned-mines/>

There may be instances where acts of vandalism render a structure unsafe, in which case the only option may be to demolish it completely. If that is the case, an application to have the place demolished must be made with EHP and a no prudent and feasible argument be proven. If demolition is approved and then carried out, removal of the place from the register can occur under Destroyed Place provisions in the Heritage Act (s.46A & 56A).

Refer to attachment 1 for flowchart of the process.

Queensland Heritage Register

The Queensland Heritage Register is available online at –

<https://www.qld.gov.au/environment/land/heritage/register/>

The search options allow for places or buildings to be searched by Local Government or Town/Suburb or via a map-based system.

For a complete list of State land entered in the Heritage Register, including lot on plan details, can be obtained from the Heritage Branch, EHP

Please refer to the EHP website for an explanation of the registration processes described above –

<https://www.qld.gov.au/environment/land/heritage/register/>



Responsibilities

State Land Asset Management Officers

Legislation

Queensland Heritage Act 1992

Land Act 1994

Forestry Act 1959

Greenhouse Gas Storage Act 2009

Attachment 1

Application to nominate a place on the Queensland Heritage register flowchart

