

## IPA & the *Queensland Heritage Act 1995*



This Implementation Note outlines the recent integration of the assessment of development in heritage registered places into the IPA and details -

- what a registered place is;
- the scope of amendments to the IPA to facilitate the integration;
- what exemption certificates are under the Queensland Heritage Act 1995 (herein referred to as the QHA);
- how the QHA deals with development by the State; and
- scheme drafting implications.

### The QHA

Amendments have been passed which allow development in a heritage registered place to be processed under IDAS. These amendments are contained in the *Queensland Heritage and Other Legislation Amendment Act 2003* which commenced on 28 November 2003.

### What is a registered place?

A registered place is a place that is entered, or provisionally entered, into the Qld. Heritage Register.

Places are entered, or provisionally entered, in the Register by the Qld. Heritage Council because they are of cultural heritage significance and satisfy one or more of the criteria listed in section 23 of the QHA.

This register is of places of State significance. It should not be confused with any register of places identified by a local government. Local governments may choose to prepare a register of places that are of local heritage significance. Any development controls for local government heritage places are contained in its planning scheme and do not trigger assessment under the QHA.

A version of the Register is on the EPA website at [www.epa.qld.gov.au/cultural](http://www.epa.qld.gov.au/cultural). For an accurate extract of the Register, contact either the relevant regional office of the EPA or contact the Site Registrar, Cultural Heritage, EPA, 160 Ann Street, Brisbane.

### Schedule 8 of the IPA

Schedule 8 of the *Integrated Planning Act 1997* (herein referred to as the IPA) now prescribes that all development in a registered place other than for development identified in items (a), (b) and (c) below is assessable and requires lodgement and determination of an IPA development application -

- (a) for which an exemption certificate under the QHA has been issued; or
- (b) that is emergency work or excluded work under QHA; or
- (c) carried out by the State.

Development includes -

- materially changing the use of premises on which the registered place is situated;
- reconfiguring the lot on which the registered place exists;
- building work;
- operational work; and
- plumbing and drainage work.

The definitions of each of these aspects of development are contained in section 1.3.5 of the IPA.

### Altered building work definition

'*Building work*' as defined in s 1.3.5 of the IPA has been amended to include more activities in the building work definition, but only for the purposes of administering IDAS under the QHA.

Building certifiers are not required to assess the additional matters in the extended definition against the Standard Building Regulation (SBR). If these matters are the only works proposed, then certifiers will not see them as the Qld. Heritage Council will be the alternative assessment manager

The '*building work*' definition remains as defined under the *Building Act 1975* where the work is situated on a site that is not a registered place under the QHA.

Where a place is registered under the QHA, then the building work definition is expanded to include -

- (a) painting or plastering that substantially alters the appearance of the place (*eg painting the external walls of the place in a colour different to that in existence*);
- (b) renovations, alterations or additions to the place (*eg. tenancy fit out*);
- (c) excavations, disturbances or changes to landscape or natural features of land that substantially alters the appearance of the place (*eg. altering the fence, installation of a retaining wall, tree removal or new plantings in the garden*); and
- (d) work on furniture, fittings and other objects associated with place or that contributes to the place's cultural heritage significance (*fittings and furniture may include machinery or operational structures such as rail lines and kerb and channel*).

However, this special definition does not include development for which an exemption certificate has been issued under the QHA.

### Exemption certificates

Part 5, division 2 of the QHA provides for exemption certificates to be given in certain circumstances.

An exemption certificate provides exemption from making a development application for certain work including -

- maintenance work;
- work for a genuine liturgical purpose;
- works permitted under a heritage agreement;
- minor repair work and other minor work;
- works that have no cultural heritage significance.

Applying for an exemption certificate is not part of the IDAS process. Additional information about exemption certificates is available on the EPA website at [www.epa.qld.gov.au/cultural](http://www.epa.qld.gov.au/cultural).

### Role of the Qld Heritage Council

The Qld. Heritage Council assesses all development proposed in a registered place other than those exceptions identified in IPA, schedule 8. The exceptions are: emergency work or excluded work, works with an exemption certificate or works carried out by the State.

The Qld. Heritage Council is a concurrence agency for an application involving development in a registered place when the application also involves assessment against a local government's planning scheme, involves development on strategic port land or includes other assessable development. (*Refer to schedule 2, IPA Regulation*).

The Qld. Heritage Council is alternative assessment manager for an application involving development in a registered place when the application involves no other assessable development under IDAS (Schedule 1A, IPA Regulation). Such applications will include, but are not limited to, those involving the activities in the extended definition of building work and plumbing and drainage work.

The type of assessment the Qld. Heritage Council undertakes is code assessment against the objects of the QHA. (*Refer to schedule 1 and 2 of the IPA Regulation*).

Where demolition or significant impacts are proposed upon the cultural heritage significance of a registered place, the Qld. Heritage Council may seek third party advice by notifying the proposed development prior to making its referral agency response or assessment manager decision. This process does not constitute public notification of the development application under chapter 3,

part 4 of the IPA.

### **Development by the State**

The heritage aspects of development by the State in heritage registered places are made exempt by the provisions of IPA, schedule 8. Section 34, Part 5 of QHA sets out the requirements for development by the State.

However, the QHA does require the State to undertake an alternative process with regard to proposed development.

The Chief Executive of the department or agency proposing development must give the Heritage Council a report on the proposed development, the contents of the report being prescribed under regulation.

If the Qld. Heritage Council considers that the development will have a substantial effect on the cultural heritage significance of the registered place, then the Council may seek public advice about the proposal. This will be done by publishing a public notice calling for submissions for a period not less than 15 business days.

The Qld. Heritage Council then considers all submissions and prepares a recommendation to the Minister proposing the development.

Please note that government owned corporations are not necessarily regarded as the State under the Qld. Heritage Act and may need to be dealt with as private entities through the IDAS process.

### **IDAS Forms**

The relevant IDAS form for development in a heritage registered place is Part C of Form 1. Guide 19 is the accompanying guide for the completion of this form. These will be available on the IPA website, [www.ipa.qld.gov.au](http://www.ipa.qld.gov.au)

### **Scheme Drafting Implications**

There is no need for a planning scheme to provide for the assessment of development involving State heritage registered places exclusively on heritage grounds. The State assessment provided for under the QHA and the IPA is sufficient to manage the potential effects of development upon the heritage aspects of a registered place. In other words, provisions in the planning scheme that also make registered places assessable for the purpose of protecting a place's cultural heritage values would unnecessarily duplicate assessment by the State. However, this does not prevent planning schemes from making development in a heritage registered place self-assessable or assessable for other non-heritage related purposes.

It is desirable for registered places, as for other places or areas triggering State assessment, to be identified on maps that support the planning scheme. However, it is not necessary for the places to be included in the statutory provisions of the planning scheme documents or maps.

Although duplication is to be avoided, a local government may choose to provide scheme provisions that complement the QHA assessment. Such complementary provisions may include -

- identification of a broader range of appropriate uses for a registered place than for a non-registered place to increase opportunities for economically viable use options that assist in conserving and maintaining the registered place;
- stated outcomes for development adjacent to a registered place aimed at achieving development that complements rather than detracts from the registered place's cultural heritage significance.

If a planning scheme uses registered places as a trigger for assessment, the planning scheme should refer to the State register and support the scheme with a list of the registered places and appropriate mapping. Such a list and mapping would not need to form part of the statutory provisions of the planning scheme. However, it is important to keep the list and mapping up to date as new places are periodically added to the register.

Local governments may also identify other places as having local cultural heritage values and include provisions in the planning scheme for those places. This is appropriate as the local places would not be subject to the provision of the QHA.