

# Guideline

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## Dealing with state land nominated as a place on the Queensland Heritage Register

### Purpose

To provide a guideline for dealing with state land that is nominated as a place on the Queensland Heritage Register (the register).

### Rationale

The 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* (QHA). The register acknowledges the value and importance of Queensland's cultural heritage and gives community recognition to places associated with it. The register is maintained by the Department of Environment and Science (DES) and is established under the provisions of the QHA.

An owner is defined in the QHA 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 sub-licence under the *Forestry Act 1959* – the state, the plantation licensee and any plantation sub-licensee 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.

## Guideline

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

When a site is nominated to the register and the related land is unallocated state land (USL), reserve or any other *Land Act 1994* (Land Act) tenure (e.g. term lease), DES will notify the relevant regional Land Services 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** - the lessee is notified
- **Reserve** - the trustee is notified

Mortgagees are not notified unless the mortgagee is in possession.

Land Services 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 DES.

The submission is to be lodged with DES. There is no template format for the submission. No fees apply.

## Submissions

If Land Services objects to a place being listed, then the submission should address why the place does not meet the criteria for listing. Refer to section 35 of the QHA.

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

## What Land Services needs to consider when preparing a submission

### Public access and ownership

Entry of a place in the 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 QHC 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 USL being listed on the register, the Department of Resources (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, however the trespass provisions of the Land Act 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**

All correspondence must be part of an 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.

### **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 DES website where there are fact sheets in the Heritage area describing the kinds of work classified as development under the *Planning Act 2016* and the General Exemption and Exemption Certificates issued under the QHA.

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 QHA, 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 to minimise risks to public safety.

Technical Services within the department is responsible for the management of abandoned mine sites on USL (refer to <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 DES 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 QHA (sections 46A and 56A of the QHA).

## Queensland Heritage Register

The 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, town/suburb or via a map-based system.

A complete list of state land entered in the register, including lot on plan details, can be obtained from the Heritage Branch.

Please refer to the [DES website](#) for an explanation of the registration processes described above.

## Legislation

*Forestry Act 1959*

*Geothermal Energy Act 2010*

*Greenhouse Gas Storage Act 2009*

*Land Act 1994*

*Planning Act 2016*

*Queensland Heritage Act 1992*

## Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

## Approval

Position	Name	Effective Date
Acting Director, Land Services	Roslyn Hooper	18 Sep 2019

## Version history

Version	Date	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, DES
3.01	17/06/2016	Minor amendment to review and insert text on new template
3.02	18/09/2019	Updated for corporate branding only
3.03	14/06/2022	Updated template and department name to Department of Resources

## Further information

- Contact your nearest business centre ([https://www.resources.qld.gov.au/?contact=state\\_land](https://www.resources.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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