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## Email

2828 March 2022

CHA Review  
Department of Aboriginal and Torres  
Strait Islander Partnerships  
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CITY EAST QLD 4002  
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Dear Sir / Madam,

**RE: Response to Options Paper “Reshaping Queensland’s cultural heritage laws”**

## 1 Introduction

Stockland welcomes the opportunity extended by the Department of Aboriginal and Torres Strait Islander Partnership (DATSIP) to provide submissions in relation to the ongoing review of the *Aboriginal and Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act*.

**Stockland acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of the State of Queensland and we pay our respect to those Elders past, present and emerging.**

Stockland has developed this submission to respond to the key themes and proposals for reforms to the Cultural Heritage Acts identified in the Options Paper published by DATSIP (the **Options Paper**).

*Throughout this submission, Stockland has primarily referenced the Aboriginal Cultural Heritage Act 2003 as that is the legislation with the greatest applicability to Stockland’s business. Reference to Aboriginal cultural heritage in this submission should be read to include Torres Strait Islander cultural heritage.*

*This submission responds to the proposals across the three key areas identified by DATSIP. Please find Stockland’s response to each proposed option outlined below under the respective key areas.*

## 2 About Stockland

**Stockland is one of the largest diversified property groups in Australia – owning, developing and managing a large portfolio of retail town centres, workplace and logistics assets, residential communities, retirement living and land lease villages.**

**Specifically, across Australia, as at February 2022, Stockland owned 143 properties within its portfolio both in planning and operational phases**

- (1) 57 commercial properties retail town centres and logistics;
- (2) 54 residential communities; and
- (3) 33 Land Lease communities

A significant number of Stockland's properties are situated in Queensland, including:

- (1) shopping centres in Rockhampton, Baringa, Townsville, Birtinya, Burleigh Heads, Hervey Bay, and Gladstone;
- (2) the Aura residential community in Bells Creek;
- (3) the Birtinya at Oceanside residential community in Birtinya;
- (4) the Bokarina Beach residential community in Bokarina;
- (5) the Providence community at Ripley Valley
- (6) the Botanica community at Deebing Heights
- (7) the Delta Hope Island residential community in Hope Island;
- (8) the Foreshore residential community in Coomera;
- (9) the Kalina Springfield residential community in Springfield;
- (10) the Newport residential community in Newport;
- (11) the North Shore residential community in Burdell; and

**Stockland is committed to creating and maintaining liveable, vibrant Queensland communities and prides itself on being a responsible corporate citizen of Queensland.**

Stockland also seeks to foster a culture of friendship and partnership between itself and Aboriginal and Torres Sturait Islander peoples, organisations and communities. Stockland is currently working on its 3<sup>rd</sup> Reconciliation Action Plan and in the past 12 months has spent over \$10M in procurement from majority-owned Indigenous businesses and suppliers.

**3 Response to Key Area 1: Providing opportunities to improve cultural heritage protection**

**3.1 Proposal 1: Replace the current Duty of Care Guidelines with a new framework that requires greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage.**

**Questions on Proposal 1**

Question	Stockland's response
1. Do you support this proposal and option? Why or why not?	Stockland is cautiously supportive of this proposal but feels there is not enough

Question	Stockland's response
	<p>detail as yet to fully comprehend the impact of replacing the Duty of Care Guidelines with a new framework. Stockland does support the concept of greater engagement consultation and agreement making with Aboriginal and Torres Strait Islander parties to protect cultural heritage. The current Duty of Care Guidelines properly used do result in achieving these outcomes. If a new framework is developed by the state, Stockland would submit that the framework needs to ensure:</p> <ul style="list-style-type: none"> <li>• certainty by both parties;</li> <li>• processes to identify the correct Aboriginal party or parties with whom to engage;</li> <li>• clear and unequivocal guidelines in relation of consultation and engagement that is required by all project proponents;</li> <li>• designate timeframes to provide certainty of the process;</li> <li>• have clear and consistent reporting mechanisms</li> <li>• deadlock / dispute resolution procedures; and</li> <li>• an acknowledgement of the co-existence of projects and Aboriginal cultural heritage.</li> </ul>
<p>2. Are there any improvements that could be made?</p>	<p>As stated above, Stockland feels that there is limited information available in relation to a new framework to suggest any improvements, but the concepts that Stockland would see important are raised in item 1 above.</p> <p>More industry input and involvement is recommended in developing the new framework to perhaps include case studies on best practice approaches</p>
<p>3. Should consultation occur for all activities in high-risk areas so there is no excluded activity?</p>	<p>While Stockland has absolutely no issue in having clear and comprehensive guidelines that mandate consultation to occur for activities in yet to be defined high risk areas, it also cautions any reform would also need to provide for processes should consultation not take place, should Aboriginal parties choose not to participate in a consultation or engagement process, and processes to facilitate bringing parties together should there be differences in opinion.</p>

Question	Stockland's response
<p>4. What are your thoughts on proactively mapping cultural heritage areas?</p>	<p>Stockland agrees with this concept. Proactively mapping cultural heritage areas would bring not only greater certainty to Aboriginal parties but also to project proponents in understanding what areas and items of cultural heritage value exist within areas, whom to engage and consult with, and the history of mitigation steps undertaken by an Aboriginal party for the same area.</p> <p>Interactive online mapping tools (such as that used by the Victorian government) that identify registered Aboriginal parties and native title determinations could be useful.</p>
<p>5. What types of activities and areas should be included in the definitions for:</p> <ul style="list-style-type: none"> <li>○ prescribed activity?</li> <li>○ high-risk area?</li> <li>○ excluded activity?</li> <li>○ significant Aboriginal or Torres Strait Islander area or object?</li> </ul>	<p>Again, the details are not sufficient to fully respond to this question, but if a framework with a sliding scale of responses is to be developed, Stockland agrees that it should not only identify high risk areas where consultation must occur, it should also identify areas of no to low risk where activities may proceed without the need for consultation, similar to some of the outcomes in the Duty of Care Guidelines. The issue of excluded areas could potentially be problematic if there is no ultimate decision maker or arbitrator considering whether an area should be listed as an area where activities may not occur. Greater resourcing of the Department and potentially the use of the First Nations Advisory Council would certainly assist this concept.</p>
<p>6. Should consultation protocols be developed for each Aboriginal party and Torres Strait Islander party?</p>	<p>Consultation protocols would be of great use to project proponents such as Stockland and bring a consistency of engagement and consultation with Aboriginal parties.</p>
<p>7. How should Aboriginal and Torres Strait Islander parties be supported to manage increased consultation about cultural heritage protection?</p>	<p>This question appears to be directed at whether further Government resourcing should be made available to Aboriginal and Torres Strait Islander parties. Stockland would support this initiative.</p>
<p>8. Should the development of a new assessment framework be led by a First Nations advisory group (with other experts as required)?</p>	<p>Stockland is supportive of ensuring that there is an Indigenous voice in the management and implementation of cultural heritage legislation. Our comments on the First Nations Advisory Group are made below.</p>

**3.2 Proposal 2: Integrate cultural heritage protection and mapping into land planning to enable identification of cultural heritage at an early stage and consideration of its protection.**

**Questions on Proposal 2**

Question	Stockland's response
1. Do you support this proposal and option? Why or why not?	Stockland is extremely concerned about this proposal, although again there is very limited information provided as to how the proposal may be implemented. As one of Australia's largest residential and commercial property developers, Stockland engages with local authorities on a day-to-day basis. In Queensland, Stockland is fully aware of its obligations under the state legislation – the Aboriginal Cultural Heritage Act and how it applies across all of its activities. Stockland is supportive of a consistent state-based approach and not introducing another level of decision making or condition imposing authorities such as a local council. Stockland believes that this would produce different outcomes depending on which local government is making decisions and would cause confusion amongst project proponents. One of the strengths in the current Queensland regime is ensuring consistency by regulation through DATSIP and having one state-based piece of legislation.
2. Are there any improvements that could be made?	Stockland would be very supportive of DATSIP running greater educational programs to local government authorities as to the manner in which planning law and heritage law intercept.

**3.3 Proposal 3: Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage.**

**Questions on Proposal 3**

Question	Stockland's response
1. Do you support this proposal and option? Why or why not?	Stockland is supportive of ensuring that Queensland's cultural heritage legislation recognises the intangible elements of cultural heritage. It must though provide certainty to proponents as to how intangible value is to be determined removing potential uncertainty and subjectivity that can result in project delays and that

Question	Stockland's response
	stringent record keeping is in place to capture these intangible elements
2. Are there any improvements that could be made to the option or definitions?	Similar to other initiatives set out in the discussion paper, greater detail would be required as to how a project proponent would engage with an Aboriginal party in relation to surveying or assessing intangible aspects and what mitigation steps could be taken to ensure that harm is minimised if there is not an ability to have co-existence of the intangible aspect of heritage and a project proceeding with development. The state may consider legislating a concept such as cultural heritage offsets or other initiatives that may be utilised in such circumstances.
3. Is there an alternative framework or option that might better recognise intangible cultural heritage, instead of amending the definitions in the Cultural Heritage Acts?	Stockland firmly believes that it is best to ensure that all issues in relation to Aboriginal and Torres Strait Islander cultural heritage remain within the realms of the two pieces of legislation.

**3.4 Proposal 4: Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts.**

**Questions on Proposal 4**

Question	Stockland's response
1. Do you support this proposal? Why or why not?	Yes. Well drafted and implementable legislation should provide for dispute resolution or guidance mechanisms.
2. Do you support these options? Why or why not?	Stockland is fully supportive of extending the Land Court's jurisdiction for alternative dispute resolution and having a panel of suitable mediators available to support and deal with issues.
3. Are there any improvements that could be made?	Stockland would like to see improved processes around dispute resolution including mediation. It is recommended that changes to legislation provide certainty to proponents ensuring if there is a dispute within a particular area, that unrelated areas within the same jurisdiction of the relevant Aboriginal party are able to progress.

Question	Stockland's response
	Stockland would welcome providing further comments when more details are released as to how this dispute resolution process would be rolled out.

**3.5 Proposal 5: Require mandatory reporting of compliance to capture data and support auditing of the system.**

**Questions on Proposal 5**

Question	Stockland's response
1. Do you support this proposal and option? Why or why not?	<p>Greater certainty can arise from mapping and other data that can be relied upon by project proponents, but Stockland is equally concerned that information that is of a secret or sacred nature may not be appropriate to list in publicly available databases.</p> <p>This is an instance where an Indigenous voice such as the First Nations Advisory Council should play a great role.</p> <p>Capturing good quality data on areas and items of significance as well as implementation of cultural heritage agreements does also present an opportunity to limit future disputes. This concept could be coupled with a process to escalate disputes on known impacts through appropriate mediation channels, which may also limit the need for Land Court based litigation.</p> <p>Mandatory reporting of compliance is also a supported concept. Again, for certainty it would be suggested that any reform also provide guidance on the detail required to meet this requirement and the timing/frequency.</p>
2. Are there any improvements that could be made?	Not applicable.

### 3.6 **Proposal 6: Provide for greater capacity to monitor and enforce compliance.**

#### Questions on Proposal 6

Question	Stockland's response
1. Do you support this proposal? Why or why not?	Yes. Stockland does believe that DATSIP as regulator of the legislation should have a greater capacity to monitor and potentially enforce compliance provided that agreement-making and best practice data engagement is at the core of these processes.
2. Do you support these options? Why or why not?	Stockland would need further information about how issues such as penalty infringement notices or penalty regimes would apply before providing a greater level of detail. On the whole, Stockland would support legislation that does provide for a greater enforcement and oversight regime in order to properly and adequately protect Queensland's important cultural heritage.
3. Are there any improvements that could be made?	As above.

## 4 **Response to Key Area 2: Reframing the definitions of 'Aboriginal party' and 'Torres Strait Islander party'**

### 4.1 **Proposal: Reframe the definitions of 'Aboriginal party' and 'Torres Strait Islander party' so that people who have a connection to an area under Aboriginal tradition or Ailan Kastom have an opportunity to be involved in cultural heritage management and protection.**

#### Questions on the Proposal

Question	Stockland's response
Do you support Option 1? Why or why not? Do you support Option 2? Why or why not? If you do not support either option, please explain why?	Option 1 provides for a new process that removes the open-ended section 35(7) process and provides for an independent review and approval of people who have connection to an area where there has been no registered native title claim. Option 2 retains the section 35(7) process which often requires public notification to identify people who have the authority to speak for an area.



Question	Stockland's response
	<p>Option 1 would be supported if it ensured that project proponents would have certainty as to the correct party to engage with. This is critical for timely development of projects. If this certainty is not embedded in the legislation, the inability to adequately identify a recognised group has the potential to undermine investment confidence, housing affordability and project viability.</p> <p>Stockland would not support an open-ended process where it would need to engage with any person who claimed a connection to an area absent some third-party vetting or guidance.</p> <p>Given Stockland's projects are in multiple States and Territories, it also would like to see a more consistent approach to heritage, potentially through greater overarching oversight on a federal level. Stockland recognises this is not a topic raised in this discussion paper.</p>
<p>Do you think the Cultural Heritage Acts should be changed so that all previously registered claimants are not native title parties for an area and not just those subject to a negative determination?</p>	<p>For areas where there is a negative determination, this should not negate the identification of the correct Aboriginal party with whom to consult as the burden placed by the Native Title Act on Aboriginal groups should not impact their rights to ensure that there is good management and appreciation of their cultural heritage.</p>

## 5 Response to Key Area 3: Promoting leadership by First Nations peoples

### 5.1 **Proposal 1: Establish a First Nations-led entity with responsibilities for managing and protecting cultural heritage in Queensland. The entity could work with existing and future local Aboriginal and Torres Strait Islander groups who manage cultural heritage matters within their respective areas.**

#### Questions on Proposal 1

Question	Stockland's response
<p>1. Do you support the proposal to establish a First Nations-led entity? Why or why not?</p>	<p>Yes. Leadership by First Nations people is a development in the evolution of heritage legislation in Queensland.</p>

Question	Stockland's response
2. An alternative to establishing an entirely new entity for this purpose could be to incorporate the proposed First Nations-led entity's responsibilities into another already existing entity or body. Do you support this alternative approach? If yes, what existing entity or body could this become a part of?	Stockland would support either the establishment of a new entity or the use of an existing entity to undertake this role.
3. Do you think there should be two separate entities — one for Aboriginal cultural heritage and another for Torres Strait Islander cultural heritage?	This is not an issue that Stockland has an opinion on.
4. What are your views on the proposed functions? What other functions could this entity have?	In terms of any proposed First Nations leadership body, the body needs to complement or improve the regulation of heritage legislation, the understanding of the importance of cultural heritage in Queensland and provide both project proponents and Aboriginal parties alike a good and certain leadership in these areas. Examples could be in relation to providing education, guidance as to identity of the correct Aboriginal groups to consult and engage with, review and approval of cultural heritage management plans, dispute resolution processes, and to be an advocate for First Nations and protection of Aboriginal cultural heritage.
5. Should this entity have decision-making responsibility for approving 'party status' for an area and approving Cultural Heritage Management Plans?	Further detail would be required to understand how this decision-making responsibility would work, but if the focus is on providing certainty to both project proponents and Aboriginal parties, then having an independent decision maker who is able to act with procedural fairness and natural justice and cultural competence to provide guidance and decisions about such matters is supported.
6. Is it culturally appropriate for this body to have a role in cultural heritage management and protection?	Yes.
7. Should the entity have a dispute resolution function?	Yes.
8. Should the entity be independent of the government?	Stockland does not have an opinion on this issue apart from the fact that any body needs to add to and not detract from good implementation of the cultural heritage legislation.

5.2 **Proposal 2: The First Nations independent decision-making entity, in partnership with Aboriginal and Torres Strait Islander peoples, explores the most culturally appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management.**

**Questions on Proposal 2**

Question	Stockland's response
1. Do you support this proposal on historical connection?	Yes.
2. Why or why not?	Such activities could only provide greater certainty for the intersection between projects, recognition of historical connection and Aboriginal cultural heritage.

**6 Next Steps**

Stockland would be pleased to continue to be engaged in this important review and welcomes any further opportunity to provide input into review of the legislation.

Should you have any queries regarding the contents of this letter, please do not hesitate to contact Mark Stephens at [mark.stephens@stockland.com.au](mailto:mark.stephens@stockland.com.au)

Yours sincerely



**David Laner**  
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