

SC6.2 Planning Scheme Policy 2 – Cultural Heritage

1. Purpose

This Planning Scheme Policy seeks to integrate the protection and management of locally significant cultural heritage in Torres Shire with the regulation of development activity. The Planning Scheme Policy specifically seeks to ensure that the knowledge, culture and tradition of Aboriginal and Torres Strait Islander people is valued, protected and promoted through development in Torres Shire.

The processes detailed by this Planning Scheme Policy are to be used as a method of demonstrating compliance with the applicable assessment benchmarks of the planning scheme. These steps will also assist development to ensure that appropriate investigation and management of cultural heritage values is undertaken and that an adverse cultural heritage impact does not occur.

The Planning Scheme Policy is intended to be used as a guide, to assist Applicants in preparing documentation and completing actions to achieve compliance with the applicable assessment benchmarks for a development application. The Planning Scheme Policy does not prevent an alternative methodology being used to achieve compliance with these provisions, however an alternative approach will be subject to assessment.

This Planning Scheme Policy does not override any obligation under the *Queensland Heritage Act 1992* (QHA), the *Aboriginal Cultural Heritage Act 2003* (ACHA) or the *Torres Strait Islander Cultural Heritage Act 2003* (TSICHA). Conversely, the application of this Planning Scheme Policy, particularly in identifying matters of local cultural heritage significance, is not limited by the QHA, the ACHA or the TSICHA. The Planning Scheme Policy supports the implementation of a more detailed and locally specific planning framework, beyond that provided for by the aforementioned legislation.

Further to the above, where possible, the Planning Scheme Policy has sought to align requirements with those already established under existing legislation, to avoid duplication or unnecessary variation of established practices.

2. Application

This Planning Scheme Policy applies to the extent it is referenced by the Merit Outcomes for the Heritage theme or the Standard Outcomes for the Heritage Overlay. The methodologies prescribed in the Planning Scheme Policy are to be used to demonstrate compliance with the applicable assessment benchmarks.

The Planning Scheme Policy provides guidance on how to investigate and document management controls to protect cultural heritage and, where relevant, the approved methods to consult with relevant stakeholders. The application and timing of the processes prescribed in this Planning Scheme Policy is dependent on the relationship between development and the Heritage Overlay of the planning scheme. In order to determine the relevant processes under this Planning Scheme Policy, the applicable mapped areas of the Heritage Overlay should be referred to. The Heritage Overlay identifies the following mapped areas of local heritage significance on **Map OM-701 to Map OM-705b**:

- (a) *Local Indigenous heritage place*
- (b) *Local non-Indigenous heritage place*
- (c) *Indigenous heritage high risk area*
- (d) *Non-Indigenous heritage high risk area*

Note – This Planning Scheme Policy does not apply to *State heritage places* shown on **Map OM-701 to Map OM-705b**.

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2.1 Processes

The application of the processes to investigate and manage cultural heritage through a development application prescribed by this Planning Scheme Policy are outlined in **Table SC6.2**.

Table SC6.2 – Cultural Heritage Investigation and Management Processes for Development Applications

Phase	Local Indigenous heritage Place	Local Non-Indigenous Heritage Place	Indigenous Heritage High Risk Area	Non-Indigenous Heritage High Risk Area
Pre-Application	B2 + C	D	A + B1	A
Development Assessment	-	-	B2 + C	-
Approval	E1	E1	E1	D + E1
Post Approval	E2 + F	E2	E2 + F	E2

Note – Where development is located in more than one mapped heritage area or is found to have multiple heritage values, a management plan process is to be followed that ensures all heritage values are protected and duty of care is always followed. This may require the preparation of more than one agreement, management plan or assessment.

Note – Where an agreement or management plan is unable to be agreed, Council may accept an alternative method of achieving compliance with the relevant assessment benchmarks. The acceptance of any alternative method is subject to assessment against the relevant assessment benchmarks as part of the development assessment process.

For the purposes of **Table SC6.2**, the processes prescribed in **Table SC6.3** are applicable.

Table SC6.3 – Cultural Heritage Processes

ID	Process Name	Section of PSP
A	Risk Assessment	Section 4
B1	Consultation – Process 1	Section 3, other than Section 3.3
B2	Consultation – Process 2	Section 3, other than Section 3.2
C	Cultural Heritage Agreement or Cultural Heritage Management Plan	Section 5
D	Heritage Impact Statement or Conservation Management Plan	Section 6
E1	Conditions	Section 7.1
E2	Compliance	Section 7.2
F	Supervision	Section 8

The following sections of the Planning Scheme Policy document explain the processes listed in **Table SC6.3**.

2.2 Understanding Heritage Overlay High Risk Areas

The Heritage Overlay identifies high risk areas for both Indigenous and non-Indigenous heritage. These mapped areas identify land where cultural heritage significance may be present on land. This land generally has not already been subject to significant ground disturbance.

Examples of areas of high cultural heritage risk may include:

- Waterways
- Coastal land
- Areas that have significant stands of vegetation
- Geological features such as escarpments, hills, rock formations, peninsulas
- Caves
- Dunes
- Story places

The mapping of *Local Indigenous heritage places* and *Indigenous heritage high risk areas* within the Heritage Overlay has been prepared based on best available information and within the constraints of available Indigenous cultural heritage information. It is noted that data confidentiality and information access/use limitations are key issues and constraints to a complete inclusion of Indigenous cultural heritage values into the land use planning and assessment framework. There can exist varying levels of Indigenous cultural heritage data sensitivity and confidentiality, such as:

- information acceptable for public use;
- information permitted for limited or controlled access/use;
- information not to be mapped;
- information that cannot (usually) be divulged to non-Indigenous people; and
- withheld cultural information.

For this reason, the duty of care provisions remain applicable to development occurring in Torres Shire.

3. Consultation

3.1 Consultation Principles

It is essential that any person or organisation proposing to develop in Torres Shire communicate with the custodians of the land and the local community.

Consultation with the prescribed bodies corporate that represent the traditional custodians and owners of land and sea in the Torres Strait through Registered Native Title Body Corporate (RNTBC) or other respective trustee is a requirement for development within the areas of known or potential Indigenous cultural heritage identified by the Heritage Overlay.

Consultation early in the development planning process is fundamental to achieving compliance with the assessment benchmarks of the planning scheme and ensuring development values, protects and promotes the knowledge, culture and tradition of Aboriginal and Torres Strait Islander people. Consultation under this Planning Scheme Policy is to occur:

- as part of the preparation of a Risk Assessment relating to an *Indigenous heritage high risk area* (see Section 3.2); and/or
- as part of the preparation of a Cultural Heritage Agreement for either a *Local Indigenous heritage place* or an *Indigenous heritage high risk area* (if required) (see Section 3.3); or
- as part of the preparation of a Cultural Heritage Management Plan for either a *Local Indigenous heritage place* or an *Indigenous heritage high risk area* (if required) (see Section 3.3).

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3.2 Risk Assessment Consultation

Consultation is to be undertaken as part of the preparation of a Risk Assessment pursuant to the process prescribed in Section 4 of this Planning Scheme Policy. Consultation undertaken at this stage should be focussed on understanding:

- any known locations of cultural heritage significance (that are not documented by the Heritage Overlay);
- the association of Indigenous people with the site;
- the activities undertaken on the site by Indigenous people;
- the likelihood of previous usage to have generated something of cultural heritage significance; and
- the compatibility of any values with future development activity.

3.3 CHA / CHMP Consultation

Consultation is to be undertaken as part of the preparation of a Cultural Heritage Agreement or Cultural Heritage Management Plan pursuant to the processes prescribed in Section 5 of this Planning Scheme Policy. Consultation undertaken at this stage should be focussed on understanding:

- the significance of identified *Local Indigenous heritage places*, beyond that articulated in any statement of significance under the planning scheme;
- any known locations of cultural heritage significance (that are not documented by the Heritage Overlay);
- the association of Indigenous people with the site;
- the activities undertaken on the site by Indigenous people;
- the compatibility of any values with future development activity; and
- methods to manage impacts on known and potential matters of cultural heritage significance.

Where consultation is undertaken in relation to an activity that has already been subject to a Risk Assessment (see Section 3.2 and Section 4), consultation in relation to a CHA or CHMP need only relate to those matters not already covered by the Risk Assessment.

3.4 Who to Consult

Cultural heritage bodies under the ACHA and the TSICHA are responsible for identifying Aboriginal and Torres Strait Islander parties for an area. These parties may be a native title party for an area, or if there is not a native title party for an area, an Aboriginal or Torres Strait Islander person with particular knowledge about traditions, observances, customs or beliefs associated with an area.

In Torres Shire there are several PBCs and other persons to consult with and depending on a site's location, there may be multiple people or PBCs to consult with.

Working in partnership with government agencies that work with, or represent, Aboriginal and Torres Strait Islander peoples is recommended. This can help to ensure their needs and interests are appropriately identified and captured as part of the consultation process.

For more information on cultural heritage bodies, contact the Department of Aboriginal and Torres Strait Islander Partnerships, Cultural Heritage Unit on telephone 1300 378 401 or email cultural.heritage@datsip.qld.gov.au.

3.5 How to Consult

Council strongly encourages anyone undertaking consultation for cultural heritage matters to utilise and familiarise themselves with resource material available from the Department of Aboriginal and Torres Strait Islander Partnerships website www.datsip.qld.gov.au

The Council factsheet *Aboriginal and Torres Strait Islander Cultural Heritage Management – Agreement Making* outlines the steps required to be undertaken when consulting on an agreement or management plan.

The ACHA and TSICHA requires a statutory one-month notification period of an intention to develop a CHMP, followed by a three-month period of negotiation and consultation with the Aboriginal or Torres Strait Islander party regarding the terms of the CHMP. Notification requires both an advertised public notice and a written notice issued to the registered Aboriginal or Torres Strait Islander Cultural Heritage Body (or Bodies) for the area.

4. Risk Assessment

In Queensland, Aboriginal and Torres Strait Islander cultural heritage includes anything that is:

- a significant Aboriginal or Torres Strait Islander area in Queensland; or
- a significant Aboriginal or Torres Strait Islander object in Queensland; or
- evidence of archaeological or historic significance, of Aboriginal or Torres Strait Islander occupation of an area of Queensland.

This is a broad definition and captures both archaeology and places of social or spiritual significance.

Aboriginal and Torres Strait Islander archaeology can take many forms, including stone artefacts (sometimes resting on the ground surface but also below ground), evidence of habitation (e.g. cooking hearths) and human or animal burials, and landform or vegetation markings such as scarring on trees.

Aboriginal and Torres Strait Islander cultural heritage includes places that may not have any archaeology or obvious physical markers at all. These places may be significant for broader cultural reasons. For example:

- places associated with creation stories (sometimes called ‘Dreaming sites’);
- places associated with particular totemic species or where Aboriginal or Torres Strait Islander people may have particular obligations to care for country;
- places that are spiritually significant for other reasons e.g. as a place of birth, death or ceremony;
- places where other cultures came into contact with Aboriginal and Torres Strait Islander people; or
- places that are significant for more contemporary reasons (e.g. cemeteries, meeting places, community halls, churches).

A Risk Assessment should consider:

- existing records in relation to the site such as (but not limited to) the Heritage Overlay, any relevant statements of significance and the Queensland cultural heritage database;
- existing records in relation to the surrounding area such as (but not limited to) the Heritage Overlay, any relevant statements of significance and the Queensland cultural heritage database;
- the duty of care provisions, as detailed in **Figure SC6.1**;
- the advice of Indigenous parties obtained as part of consultation (see Section 3);
- the extent and nature of ground disturbance previously having occurred on the site;
- the setting and surrounding development pattern of the site; and
- the extent, location and nature of the development, particularly the extent of ground disturbance.

Based on the considerations detailed above, the Risk Assessment should determine the level of cultural heritage risk associated with the development and, if required, any further management controls to appropriately manage that risk.

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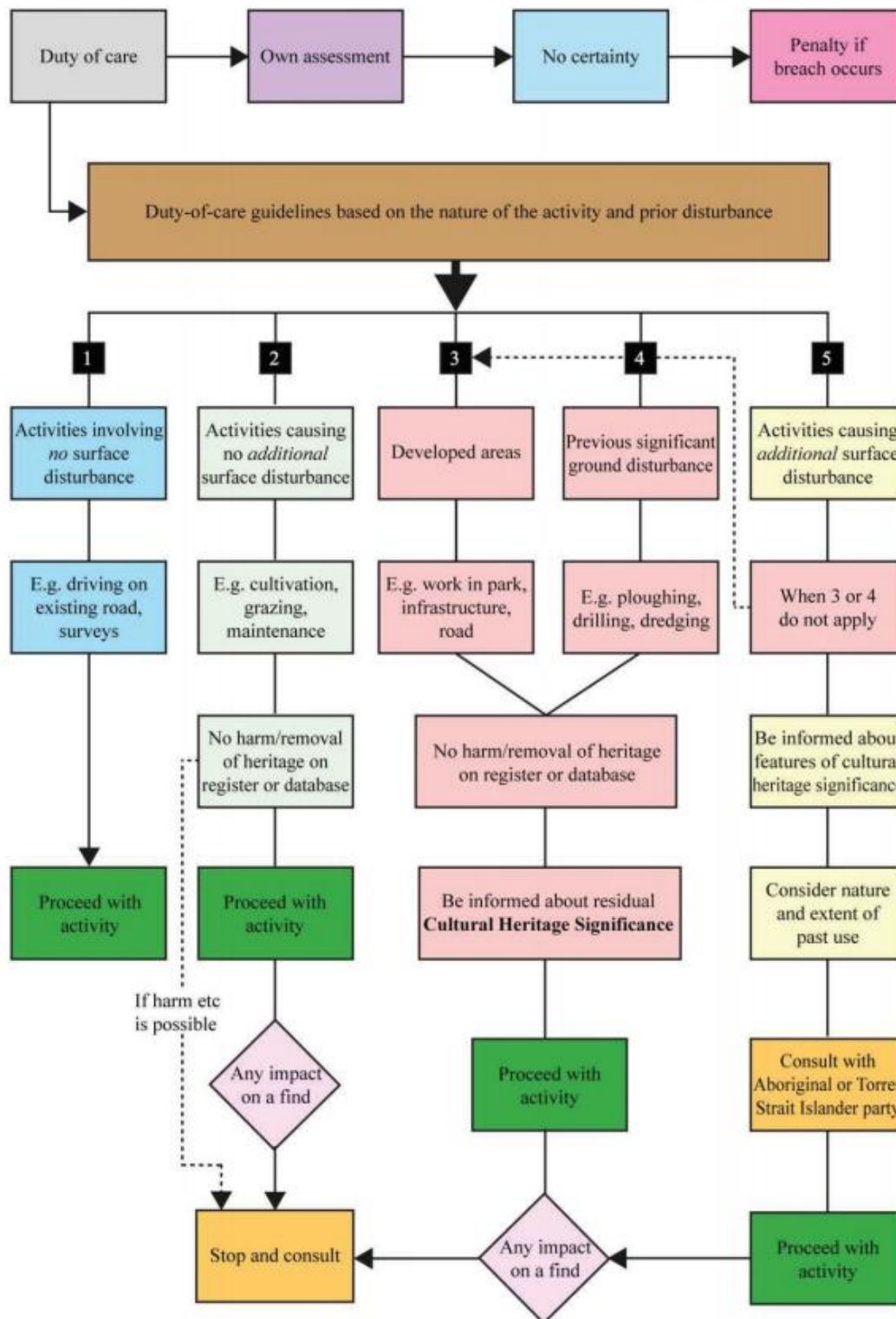


Figure SC6.1 – Duty of Care Risk Assessment Process Diagram

5. Indigenous Agreements and Management Plans

5.1 Basic Principles

In relation to Indigenous heritage, an Applicant may prepare a:

- Cultural Heritage Agreement (CHA); or
- Cultural Heritage Management Plan (CHMP).

A CHA or a CHMP must document management controls associated with a specific development on a specific site. The management controls documented in a CHA or a CHMP are to be prescribed in order to appropriately manage actual and potential impacts on matters of cultural heritage significance. CHAs and CHMPs are a way of protecting and managing identified cultural heritage values while allowing development to proceed.

A suitably qualified person is required to prepare a CHA or a CHMP. As well as the costs of the qualified person, fees may also be payable to the organisation who approves the CHA or CHMP. All fees associated with the process of preparing a CHA or a CHMP are to be borne by the applicant.

5.2 Identifying and Managing Impacts

Before starting any development activities, it is important to understand if and how development could affect known and potential cultural heritage values. This requires the consideration of:

- existing records in relation to the site such as (but not limited to) the Heritage Overlay, any relevant statements of significance and the Queensland cultural heritage database;
- the advice of Indigenous parties obtained as part of consultation (see Section 3);
- any relevant Risk Assessment prepared for the site (see Section 4);
- the extent, location and nature of the development, particularly the extent of ground disturbance or alteration of existing improvements that are of cultural heritage value; and
- the nature of the significance aspects and how any proposed changes minimise detrimental impact.

5.3 Cultural Heritage Agreements

A Cultural Heritage Agreement may be entered into with an Indigenous party in relation to a *Local Indigenous heritage place* or an *Indigenous heritage high risk area*. The CHA should be prepared consistent with the duty of care guidelines. A CHA is to be in the format of a formal written report prepared by a suitably qualified person. The CHA should document management controls that are agreed to by the Indigenous party in relation to the development proposal.

5.4 Cultural Heritage Management Plans

A Cultural Heritage Management Plan is a written report prepared by a suitably qualified person under the ACHA and TSICHA. A CHMP is an agreement between a land user (sponsor) and Traditional Owners (endorsed party) developed under Part 7 of those Acts. It includes results of an assessment of the potential impact of a proposed activity on matters of cultural heritage significance. It outlines measures to be taken before, during and after an activity to manage and protect cultural heritage.

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Council requires all CHMPs to be prepared in accordance with the existing framework and processes under the ACHA and TSICHA and the guidelines available through the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) (see Section 9).

Under the ACHA and the TSICHA there is a statutory one-month notification of an intention to develop a plan followed by a three (3) month negotiation/consultation with the relevant party on the terms of the plan.

More information is also available on Council's *Cultural Heritage Management Plans* fact sheet.

6. Non-Indigenous Assessments and Management Plans

6.1 Basic Principles

In relation to non-Indigenous heritage, an Applicant may prepare a:

- Heritage Impact Statement (HIS); and/or
- Conservation Management Plan (CMP).

A suitably qualified person is required to prepare a HIS or CMP. All fees associated with the process of preparing a HIS or CMP are to be borne by the applicant.

6.2 Identifying and Managing Impacts

Before starting any development activities, it is important to understand if and how development could affect known and potential cultural heritage values. This requires the consideration of:

- existing records in relation to the site such as (but not limited to) the Heritage Overlay, any relevant statements of significance and the Queensland cultural heritage database;
- the extent, location and nature of the development, particularly the extent of ground disturbance or alteration of existing improvements that are of cultural heritage value; and
- the nature of the significance aspects and how any proposed changes minimise detrimental impact.

6.3 Heritage Impact Statement

Development applications are best supported by a Heritage Impact Statement (HIS) that addresses the specific type of development proposed.

A HIS is a report that identifies the nature and extent of potential impacts that a proposed development may have on the cultural heritage significance of a heritage place.

The HIS is to describe the detail of a particular development proposal, review the proposal against the identified aspects of heritage significance and demonstrate that the proposal would not make a detrimental impact on the cultural heritage significance.

A HIS does not reassess the statement of significance, however it must refer to the existing identified statement of significance (where provided) in order to demonstrate the proposed development does not make a detrimental impact.

The HIS is also to refer to any relevant CMP Policy, if available, to demonstrate the CMP policies have been followed.

A HIS is to be provided for any works that are beyond the works identified as minor maintenance. See Council's factsheet *Minor Maintenance Works* for further information and guidance.

See Council's factsheet *Heritage Impact Statements* further information and guidance on how to prepare a HIS.

6.4 Conservation Management Plan

A Conservation Management Plan (CMP) is a guiding document for the future conservation and management of State and *Local non-Indigenous heritage places*. CMP's are particularly useful for large or complex sites to provide appropriate conservation and inform future building management planning.

A CMP:

- identifies the historical background of the place;
- identifies the heritage values or significance of a place;
- provides a set of conservation policies to be applied to conserve that significance in the face of change; and
- may recommend a management strategy or master plan by which the policies could be put into action.

A CMP provides owners, property managers and approval authorities with a level of certainty about the heritage place in their care and control. A CMP is considered to be a 'best practice' management tool.

A CMP does not need to be prepared for a heritage place, however may be prepared by an Applicant or land owner.

If a CMP is to be prepared, it is to be provided in accordance with the Queensland Department of Environment and Science (DES) guidelines (see Section 9 of this Planning Scheme Policy).

The CMP may review and provide an updated or more detailed analysis of significance, beyond that already provided by a statement of significance in the planning scheme (if provided).

See Council's factsheet *Conservation Management Plans* for further information and guidance on how to prepare a CMP.

7. Approvals, Conditions and Compliance

7.1 Conditions

A copy of any approved CHA, CHMP, CMP or HIS will be recorded by Council on a Register of Heritage Management Plans. This register is a public document. Compliance with these documents, if relevant, will also be a condition of any development permit.

Further to Council's approval and record of any CHMP, a CHMP will also be a registered document with the Department of Aboriginal and Torres Strait Island Partnerships.

7.2 Compliance

Development to which a CHA, CHMP, CMP or HIS applies must be undertaken in accordance with the relevant management controls and any relevant conditions of the relevant development approval.

Council, under the planning framework, and DATSIP in conjunction with the Department of Environment and Heritage Protection (EHP) under the ACHA and TSICHA, are all responsible for investigating activities that have allegedly breached Aboriginal or Torres Strait Islander cultural heritage legislation.

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A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal or Torres Strait Islander cultural heritage. It is important to note that the duty of care guidelines continue to apply, despite any development approval.

8. Supervision Requirements

On the site of identified Indigenous cultural heritage, upon development site works commencing in accordance with any development approval, management controls are required to be in place that support the supervision of all works undertaken by a suitably qualified person.

During site works, should additional or new elements of cultural heritage be found, the duty of care provisions apply and processes and procedures for chance finds should be followed.

Refer Council's *Chance Finds Procedure* fact sheet for further information.

9. Supporting Resources

The following resources support the implementation of this Planning Scheme Policy:

- *Aboriginal Cultural Heritage Act 2003.*
Available from:
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079>
- *Torres Strait Islander Cultural Heritage Act 2003.*
Available from:
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-080>
- *Aboriginal Cultural Heritage Act 2003 Duty of Care Guidelines.*
Available from:
<https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/duty-of-care-guidelines.pdf>
- *Guideline – Conservation Management Plans*
Available from:
https://www.qld.gov.au/data/assets/pdf_file/0023/68018/gl-conservation-management-plans.pdf
- *Torres Shire Council Heritage Factsheets.*
Available from www.torres.qld.gov.au