

SOUTHERN
MIDLANDS
COUNCIL



2nd October 2019

Aboriginal Heritage Act Review
GPO BOX 44
Hobart TAS 7001

Emailed to: aboriginalheritageact@dpiwwe.tas.gov.au

Dear Sir/Madam,

**SOUTHERN MIDLANDS COUNCIL
DRAFT SUBMISSION ON THE STATUTORY REVIEW OF THE ABORIGINAL HERITAGE ACT
1975 – COUNCIL SUBMISSION
SEPTEMBER 2019**

The Southern Midlands Council thank Aboriginal Heritage Tasmania for the opportunity to provide a submission on the Discussion Paper: Statutory Review of the *Aboriginal Heritage Act 1975*. I also thank the Director Steve Gall and Project Manager Simon Wilcox for meeting with me at the Technical Reference Group meeting on the 5th September 2019 to discuss the particulars of the review.

I apologise for not providing this document to you before the nominated date. I hope you understand that I was awaiting our discussions of the 5th September 2019 and the Council Meeting of the 25th September 2019 before I could finalise a submission (and be endorsed by Council).

At the September 2019 meeting of the Southern Midlands Council, Council endorsed the following as a submission to Aboriginal Heritage Tasmania:

1. Mapping of Aboriginal sites/areas/items of significance

1.1 Aboriginal heritage sites and areas should be mapped by the State Government/AHT and data made available to the Planning Authorities. Councils are often the first

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point of contact for developers in scoping out projects and in undertaking due diligence in land purchases;

1.2 To achieve the above - greater resources should be used to map Aboriginal Heritage sites and areas. This in time will reduce impost on developers needing to undertake detailed studies to determine the presence of Aboriginal Heritage or determine the significance of the site/area/item.

1.3 There is potential to create mapping that provides a high, medium or low level significance or likelihood of Aboriginal Heritage sites being present. This broad mapping would still provide some protection for specific sites from risks of vandalism/inappropriate access. This in turn puts the onus on the developer to undertake further due diligence or investigation as necessary and the developer can make an informed decision on how best to proceed with a project.

2 Resource Management and Planning System Tasmania (RMPS)

2.1 The scope of the statutory review could be expanded to either work with the Resource Management and Planning System (RMPS) or potentially be brought under or in conformity with the RMPS (as the previous reform attempted)

2.2 Aboriginal Heritage is arguably a fundamental component in any site selection in the planning and design phase of a project.

2.3 Developers seeking approvals from AHT for the removal, disturbance or otherwise interference with site/item post Development Approvals (Planning Permit, Building Permits, Dam Permit or otherwise) is often too late in the process – recognising that significant resources have already been expended in the site selection, planning, procurement and design phase of a project. Developers should be factoring in Aboriginal Heritage prior to seeking Development Approval from Council.

2.4 Bringing the consideration of Aboriginal Heritage into the RMPS would have a positive flow on effect:

2.4.1 Elevate the importance of respecting and considering Aboriginal Heritage in works and development – like other culturally significant sites, high natural values, or other sites where sustainability should be a factor in undertaking works – not adding ‘more red tape’ with a new, non-statutory step/process but simply broadening the established system of referral bodies like Heritage Tasmania or Taswater

2.4.2 Bolster resources to AHT to undertake mapping and data collection

2.4.3 Greater certainty for developers, Councils, Service providers and the like to confirm at what stage of a project Aboriginal Heritage *should* be considered

2.4.4 Overall shift in thinking and moving away from the early intentions of the 1975 Act to prevent interference and removal of aboriginal “relics” to sustainability and respectfulness

2.4.5 Better understanding of Tasmania’s history, people and culture

2.5 There needs to be sensible approach to any statutory mapping of overlays or codes in zones such as the Inner Residential Zone, General Residential Zone or other zones that are subject to regular works and development (that are otherwise highly disturbed and modified environments) – these zones should not then be subject to any impost on the typical works and development in these areas. Much of the works and development that takes places in these zones do not require statutory pre-

approvals and there should not be limited. Aside from previously identified heritage listed sites.

3 Education and Further Resources

- 3.1 There is merit to further resources being provided to engaging Aboriginal Heritage Practitioners to assist Council, developers, service providers and the like in identifying and managing heritage sites prior to works commencing at the design phase or earlier in a project. This could be undertaken through a resource sharing model between Councils.
- 3.2 Greater education by State Government, Advocacy groups, interest groups or even Council are a valuable tool.
- 3.3 Southern Midlands Council welcome further discussions with AHT

4 Time Frames and Resources for Site Investigation

- 4.1 Council would encourage greater resources be directed to AHT or organisations acting on their behalf to assist developers, Councils, Service Providers and the like in the assessment of sites of potential Aboriginal Heritage Significance where a "relic" or the like has been discovered in the ordinary course of works or development. The cost and resources required to procure a qualified person to undertake a site assessment and report to be provided to AHT can lead to significant costs and delays to progressing a project; and
- 4.2 The Act does not provide any details on the permit application process nor any timeframes in association with this process. Council would encourage incorporating a timeframe into the Act.
- 4.3 Council appreciate the issuing of the *Guidelines* under Section 21A of the Act and the corresponding *Standards and Procedures*. But there is still limited information on how persons undertaking works in the ordinary course of their duties that make an unanticipated discovery will be assisted by AHT in assessing the significance of the discovery or how to proceed in a timely manner; and
- 4.4 The *Guidelines* are limited in the sense that there is no recognition of "day-to-day" activities undertaken by Councils such as road widening, road works, works in parks and reserves (such as track maintenance, erosion and stormwater management practices or similar works) that could lead to an unanticipated discovery. These types of works do not readily fit into any of the categories provided in the *Guidelines*. It is not clear how a Council should treat any relics or sites which have previously been highly disturbed by past works and practices - such as maintenance of drains, roads or tracks that have intersected relics i.e. prior to the 1975 Act. It seems highly onerous for a Council to stop works, notify AHT and await instruction on how to proceed in such events.
- 4.5 Council will continue to undertake works as a model corporate citizen and continue to abide by the Act and the *Guidelines* and the advice otherwise of AHT.
- 4.6 Council do however recommend further advancement of the *Guidelines* and mapping or collection of data together with improved criteria for defining Aboriginal Heritage should lead towards better practices.

5 Comments on “relics” and defining “Aboriginal Heritage”

- 5.1 The Act defines Aboriginal Heritage as being “relics”. The definition does not give adequate weight to the surrounding area or context as to why a “relic” may be present in a specific area. It is the understanding of Council Officers that “relics” are often located in areas where there was Aboriginal ancestor activity such as campsites, food and resource gathering areas, spiritual places or walking routes. The term and definition of a “relic” in the Act does not provide a clear and tangible description of the other elements that comprise Aboriginal Heritage – as the term “relic” is interchangeable with the term “object”; and
- 5.2 There is no clear criteria as what defines the relic/place as being of significance and therefore worthy of a heritage listing – it seems to be any and all “relics”
- 5.3 There may then need to be clearer criteria that articulates “Aboriginal Heritage” much like the criteria provided under the *Historic Cultural Heritage Act* for places listed on the Tasmanian Heritage Register and that adopted by some Councils in preparing their Local Places of Heritage Significance. There should be some scope for such criteria to be developed based on the Burra Charter and work of the International Council on Monuments and Sites (ICOMOS).
- 5.4 The term “relic” is also synonymous deceased practices, persons or disappearance otherwise of a culture and does not appear aligned with modern thinking about Tasmania’s people and culture;

I am available to discuss the above or any related matters further.

Sincerely

David Cundall
Manager Development and Environmental Services
Southern Midlands Council