

Our Ref: JJ:JJ, ACT02

Shire of Broome  
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30 May 2019

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**Via email** [AHAreview@dplh.wa.gov.au](mailto:AHAreview@dplh.wa.gov.au)

Dear Sir / Madam

#### **SHIRE OF BROOME SUBMISSION – REVIEW OF THE ABORIGINAL HERITAGE ACT 1972**

Thank you for the opportunity to provide a submission on the *Aboriginal Heritage Act 1972* (AHA) and the opportunity to attend the stakeholder workshops held in Broome on 3 April 2019 and 14 May 2019.

The Broome Shire is supportive of conserving and protecting the State's Aboriginal cultural heritage and maintaining positive relationships with Aboriginal people. The Shire acknowledges the importance of Country to Aboriginal people and their cultural responsibility to care for it.

This submission was to be considered by Council at the Ordinary Meeting of Council (OMC) scheduled for 30 May 2019. Unfortunately, the OMC had to be rescheduled to 4 June 2019 to allow for a quorum. This submission is made on the assumption that Council will endorse the submission with no changes. The Shire would like to reserve the right to re-submit this submission should Council make any amendments following the OMC of 2 June 2019.

The Shire's comments are structured to address each of the nine (9) Proposals set out in the March 2019 Consultation Paper, answering the question, "Will the proposal deliver the desired outcome? If no, why not and what changes would you suggest and why?"

#### **Proposal 1**

##### **Repeal the *Aboriginal Heritage Act 1972* and deliver new Aboriginal heritage legislation.**

The Shire supports repeal of the *Aboriginal Heritage Act 1972* (AHA) and replacing it with new Aboriginal heritage legislation that reflects developments in best practice in heritage management and the rights of Aboriginal people under national and international law. The proposal will deliver the desired outcome.

#### **Proposal 2**

##### **Update definitions and scope of new Aboriginal heritage legislation**

The Shire supports the proposal to adopt a new definition of 'place' that is aligned with the *Australia ICOMOS Burra Charter* definition of 'place' and carrying forward protection for all Aboriginal cultural heritage places and objects.

### **Proposal 3(A)**

#### **Local Aboriginal Heritage Services (LAHS)**

The Shire supports the AHA aligning with the *Native Title Act 1933 (Cth)* (NTA) to provide mechanisms to ensure the 'right people to speak for Country' and ensuring Aboriginal people are involved in decision-making relating to Aboriginal cultural heritage. The Shire supports the concept of the proposed LAHS.

The Shire is of the opinion that further detail is required in relation to consultation and agreement making with the LAHS, such as template Aboriginal Heritage Agreement with regulated fees and charges, ensuring consistency throughout the State and greater transparency and certainty for all parties.

Further information is required regarding resourcing and funding for the proposed LAHS, including regulated timeframes for fee for service.

### **Proposal 3(B)**

#### **Aboriginal Heritage Council (AHC)**

The Shire agrees that replacing the current Aboriginal Cultural Materials Committee (ACMC) with the proposed Aboriginal Heritage Committee will deliver the desired outcomes.

### **Proposal 3(C)**

#### **Minister's Role**

The Shire agrees that the desired outcomes will be delivered by the proposal that the Minister retains overall accountability and decision-making powers for the Aboriginal cultural heritage in Western Australia, with power to delegate certain decisions and functions to the AHC.

### **Proposal 3(D)**

#### **The role of the Department of Planning, Lands and Heritage (DPLH)**

The Shire agrees the desired outcomes will be achieved by the proposal for the DPLH remaining responsible for the day to day operation of the AHA.

### **Proposal 3(E)**

#### **Heritage professionals – aiding selection of those with appropriate qualifications and experience and improving standards**

The Shire believes this is an excellent initiative and the proposal will achieve the desired outcome.

### **Proposal 4**

#### **Retain the current form and function of the Aboriginal places and objects but rename it the Aboriginal Heritage Register**

The Shire supports the renaming of the Register of Aboriginal Places and Objects to better reflect the proposed new definitions.

The Shire is of the opinion that all Aboriginal cultural heritage sites should be recorded in the register including details of the site type and knowledge holders. Buffer zones should be reduced to assist land use proponents with planning development and avoidance of sites. Sensitive heritage information may be restricted by providing tiered access to the Register.

There should be the requirement to formally notify land holders / users that are affected by newly registered Aboriginal cultural heritage.

### **Proposal 5**

#### **Introduce a referral mechanism to facilitate tiered assessments of proposed land uses**

The Shire supports a risk-based tiered assessment process for land use proposals that is dependant upon the known or predicted impact on Aboriginal cultural heritage and prior land use. A defined criterion of levels of impact will assist all parties when determining the potential impact, a proposed land use may have, on Aboriginal cultural heritage i.e. assessment matrix / guidelines.

The 'call in' power should be restricted to proposals that are assessed as greater than 'low impact' in accordance with the 'assessment matrix'.

### **Proposal 6**

#### **Encourage and recognise agreement making**

It is proposed to introduce Heritage Agreements between the LAHS and the land use proponent, that if relied upon to expedite approvals and will require ratifying by the AHC.

The Shire supports in principal, recognising AHA to expedite land use assessments, however, strongly supports a standard AHA template with regulated fees, charges and timeframes to provide services. Further, there needs to be clear, transparent process where an AHA cannot be reached. This could be mediated with the AHC or DPLH.

### **Proposal 7**

#### **Transparency and Appeals**

Modern standards of procedural fairness and transparency of decision making is supported by the Shire. The Shire agrees that the proposal will deliver the desired outcomes.

### **Proposal 8**

#### **A modernised enforcement regime**

The Shire agrees that the proposal will deliver the desired outcomes.

### **Proposal 9**

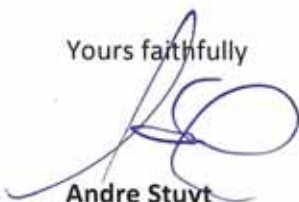
#### **Protected Areas**

The Shire agrees that the proposal will deliver the desired outcomes.

The Shire congratulates the State Government and the Minister for Aboriginal Affairs for their commitment to modernise Aboriginal cultural heritage legislation to make it more culturally appropriate and equitable for Aboriginal people.

The Shire looks forward to being involved in further consultation. Should you have any further queries please do not hesitate to contact Jacquie Jankowski, Land Tenure Officer, on 9191 3402 or via email to [Jacqueline.Jankowski@broome.wa.gov.au](mailto:Jacqueline.Jankowski@broome.wa.gov.au).

Yours faithfully



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**DIRECTOR DEVELOPMENT AND COMMUNITY**