

# Department of Planning, Lands and Heritage (DPLH) Discussion on Aboriginal Cultural Heritage Bill 2020 with Heritage Practitioners and Associations

*9.00-11.00am, Friday 11<sup>th</sup> September 2020  
Gordon Stephenson House, 140 William Street, Perth (Room 3.17)*

## **PRESENT**

*AACA:* Jo Thomson, JJ McDermott and Caroline Bird

*AAA:* Joe Dortch and Ken Hayward

*ASWA:* Eddie McDonald and Tania Philips

*AHA Reform Collective:* Robin Stevens, Noel Morich, Dianne Wynne and Brendan Moore

*DPLH:* Cesar Rodriguez (Manager Heritage Projects) and Diana Ting (Project Manager Strategic Planning Projects)

## **NOTES**

### **Overview**

- DPLH advised that this was a Questions and Answers session. The groups advised that they had so far formulated 154 questions and/or comments on the Bill and are continuing to try and make sense of this massive and overly complicated document.
- There was not enough time in the 2 hours to go through everything. In fact, there is not enough time in the designated consultation period to go through everything.
- DPLH have met with CME, AMEC as well as Aboriginal groups in the Kimberley and Pilbara in recent weeks.
- DPLH are currently seeking feedback from all parties. There will be two weeks for workshops across the State. Consultation period ends on 2 October.
- The groups requested for the consultation period to be extended. DPLH stated that there is no view to extending it at this stage. They are acting on Minister's instructions.
- DPLH stated that they believe the new Bill makes the protection and management of Aboriginal cultural heritage more transparent. The groups disagreed and said that it makes it more ambiguous than it was before.

### **Local Aboriginal Cultural Heritage Services (LACHS)**

- DPLH stated that Local Aboriginal Cultural Heritage services (LACHS) will assess and determine what Aboriginal cultural heritage is. There will be an opportunity for parties to have an agreement on ACH management. There will be impartiality in the process.
- The amount of work involved with setting up LACHS and making them function in accordance with the Act was discussed in detail. DPLH acknowledged that it will be difficult, but opined that

it will allow for the better management of ACH. The plan is for them to get initial start-up funding and then gain funds on a 'fee for services' basis.

- The groups indicated that this was not going to work and LACHS were designed to fail unless there is more of a mandate on funding.
- It is foreseen that LACHS will be relied upon by DPLH to monitor all of the processes defined in the Bill. However, it was pointed out how unfair this is as they will obviously be under-funded.
- DPLH stated that LACHS are fundamental to the process. But the groups pointed out they will not have the final say on decisions – that still rests with the Minister and the ACH Council.
- DPLH pointed out that the difference now is the ability of going to SAT to appeal decisions.
- The groups pointed out that the Bill is not clear on the requirements for becoming a LACHS – DPLH replied that this will come in regulations.
- DPLH are not working on a strategy for LACHS creation yet – it is not a priority. The groups advised that it should be.

### **ACH Management Code and Minimum Standards**

- DPLH advised that the ACH Management Code will guide the Act but they don't know what structure it will take yet. Like regulations, the creation of the code is not a priority currently.
- DPLH advised that the management code is statutorily mandated in the Act, meaning it should not change. But the groups opined that there is still a chance it could be re-interpreted over time and potentially watered down. They don't even know what it is yet.
- The groups stated that minimum standards need to be written into the Act. DPLH advised that regulations may deal with this, but they may also be dealt with in the ACH Management Code.
- The groups stated that heritage assessments need to be a requirement in the new Act. In response, DPLH advised that it will be compulsory for proponents to consult (apart from exempt or minimal activities).
- The groups pointed out that there is no trigger for a heritage survey early in the process, which is really problematic. Requirement for consultation appears to come later.
- The groups also pointed out that the proposed approvals process will create an unnecessary loop. This was demonstrated by a series of complex charts produced by Jo Thomson that offer an interpretation of the Bill's processes. It appeared that DPLH were not aware of how potentially complex the processes could be.

### **Juukan Gorge and Agreements**

- Many expressed the likelihood that Juukan Gorge could happen again under this new Act.
- The Bill does nothing to prevent an agreement from stipulating that heritage could be destroyed, and a permit from the Minister could also allow for it.
- DPLH opined that new provisions in the Bill would 'address the issue' of another potential Juukan Gorge. But it was pointed out that the Minister would still make his decisions based on significance of that heritage to the State. To this, DPLH again answered that the ability of Aboriginal groups to go to the SAT to appeal would address this. The groups stated that the SAT can still rule in favour of the Minister and the proponent. DPLH acknowledged this.
- DPLH stated that older agreements will still remain in place, but new agreements will be encouraged. However, there is nothing that can be done to undo older agreements that are still problematic for some groups.

- DPLH opined that agreements already in place have clauses that refer to a Section 18 consent but these clauses would no longer be applicable because a Section 18 is not mentioned in the new Act.
- However, although Section 18 processes will be abolished under the new Bill, current Section 18 consents cannot be dissolved.
- The groups pointed out that agreements will likely have other clauses that do not refer to Section 18 consent but may refer to an agreed impact on heritage.
- The groups stated that old and new agreements can, and will still, allow developments to go ahead regardless.
- The groups also pointed out that proponents do not have to engage in an approvals process (or consult with LACHS) for exempt activities. These include clearing of native vegetation and division of a private lot into up to 10 sub-divisions. The group gave their concerns over this. DPLH said they would clarify these inclusions.

### **Intangible Heritage and Protected Areas**

- DPLH explained that intangible heritage is accounted for in the definition of Aboriginal Cultural Heritage. But, as the groups pointed out, definitions and protections are unclear.
- DPLH stated that cultural landscapes are recognised but not protected under the Bill. However, cultural landscapes is defined as being a component of Aboriginal Cultural Heritage.
- DPLH believe that all heritage is afforded blanket protection in the Bill, but this is not stated explicitly, and they advised that cultural landscapes are not protected. Only components (places and objects) of a landscape appear to be protected...unless it is a Protected Area.
- DPLH advised that LACHS can define Protected Areas. The Minister prescribes it. Along with the ACH Council, the Minister can deny an application.
- DPLH envision that the Bill will help preserve much more heritage because Protected Areas will be areas that cannot be impacted and will include cultural landscapes. In reality, they would only incorporate cultural landscape components, rather than whole cultural landscapes.
- The groups stated that it is a long and arduous road to applying for and prescribing a Protected Area. This is likely to dissuade groups from putting the time and resources into doing it. They will not have the funding to do this anyway.

### **Engagement with Heritage Professionals**

- Ken Hayward asked why Ben Wyatt and his team were not in the room meeting with heritage professionals to discuss his Bill.
- It was stated by the groups that it was not good enough that he continues to disrespect those who work closely with, and at the request of, Traditional Owners across the State on their cultural heritage.
- DPLH believed that they have actively involved heritage professionals and Traditional Owners throughout the process, and this is a sign of their respect.
- It was asked whether there were any people with cultural authority directly involved with drafting the Bill. DPLH said that there have been advisors throughout the process, but no one on the team.