

CEO & GOVERNANCE

CEO

1.2.15

TITLE: CONSULTATION - ABORIGINAL HERITAGE

ADOPTED: OMC 23 February 2017 – Pages 189 - 219

REVIEWED:

ASSOCIATED LEGISLATION: *Aboriginal Heritage Act 1972 (WA)*

ASSOCIATED DOCUMENTS: Policy 5.1.10 – Community Engagement

REVIEW RESPONSIBILITY: Chief Executive Officer
Director Development Services

DELEGATION:

Previous Policy Number: Nil

Background:

The Shire of Broome undertakes a number of functions which could potentially interact with Aboriginal heritage, this includes:

- Preparation of strategic land use plans or development strategies (Development Strategies);
- Undertaking of Public Works; and
- Undertaking development.

The Shire of Broome acknowledges the importance of Aboriginal heritage and therefore proposes to have a clear policy to guide the Shire while performing the above functions.

Objectives:

- Guide where the Shire will consult with the Aboriginal community to gauge whether a Development Strategy, Public Works or Shire Development proposal may impact upon Aboriginal heritage.
- Establish the process the Shire will follow when a Public Works or Shire Development proposal is to be referred for consultation and how comments received will be considered.

- Detail the requirements for consultation based on the level of interaction with Aboriginal heritage.

Definitions:

'Aboriginal Cultural Significance' means an area that displays aesthetic, historic, scientific, social or spiritual value for past, present or future generations of Aboriginal people.

'Aboriginal Heritage Due Diligence Guidelines' means the guidelines published by the Department of Premier and Cabinet of WA and amended from time to time.

'Aboriginal Heritage Site' means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act.

'Consultation' is the open exchange of information between the Shire and the person/s being consulted, to promote awareness of the Shire's activities and to enable the person/s to have meaningful input in the Shire's decision-making process.

'DAA' means the WA Department of Aboriginal Affairs administered by the Minister of Aboriginal Affairs.

'Development Strategy' means a land use strategy, development strategy or other land use planning document that identifies aspirations for future land use or development for an area/precinct. Examples of documents that would be considered Development Strategies for the purposes of this definition include:

- Local Planning Strategy;
- Old Broome Development Strategy;
- Chinatown Development Strategy;
- Tourism Strategy;
- Recreation Strategies.

'Government Standard Heritage Agreement' means the Government Standard Heritage Agreement published by the Department of Premier and Cabinet of WA.

'Low Discretion Works' are Public Works or Shire Development in which there is limited discretion available to the Shire as to how or where the works can be carried out (for example, the extension of a footpath, road or drain).

"Low Ground Disturbance Activity" means any activity that is undertaken on land which has previously been disturbed or an activity that does not involve major or significant ground disturbance, including the following:

- (a) field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation;

- (b) sampling, including removing soil, rock and flora samples using hand methods (including hand augering) from the natural surface;
- (c) remote sensing, biological, environmental or conservation surveys, including installing monitoring plots and marker posts;
- (d) establishing temporary lay-down areas, where the establishment of the lay-down area does not require the removal of trees or shrubs and does not require any earthworks in areas which have not previously been disturbed;
- (e) reconnaissance and patrol in light vehicles;
- (f) drilling using hand held rig or rig mounted on 4 wheel vehicle, using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots);
- (g) digging pitfall traps and temporary trenches for small animals
- (h) baiting and installation of temporary fences and nest boxes;
- (i) collecting and removing loose rocks, firewood, flora or fauna;
- (j) conducting tests for water, site contamination, or other scientific or conservation purposes;
- (k) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures;
- (l) maintaining existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks;
- (m) erecting signage and barriers using hand and mechanical augers;
- (n) revegetating of degraded areas, including fencing areas of vegetation;
- (o) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting;
- (p) carrying out species recovery programs;
- (q) erosion control activities around existing roads, infrastructure or facilities;
- (r) weed control using hand, mechanical and chemical methods of control;
- (s) any other use of hand-held tools, not referred to in the preceding paragraphs;
- (t) the laying of temporary water pipelines across the ground where no excavation is required; and
- (u) electrical works associated with existing infrastructure in previously disturbed areas.

'Public Work' has the meaning given in the *Public Works Act 1902*.

'Section 18 Notice' means a notice lodged in accordance with section 18 of the *Aboriginal Heritage Act 1972 (WA)* for consent to use land which may impact an Aboriginal heritage site.

'Shire Development' means a development, other than public works, that is undertaken by the Shire which involves the carrying out on the land of any excavations or other ground disturbing works.

Policy:

1.0 Preparation of Development Strategies

While Development Strategies themselves do not propose to undertake works, they do identify future development opportunities or concepts to improve an area.

The most important element of undertaking consultation at this stage is to inform the preparation of the Development Strategy and to ensure that an Aboriginal Heritage Site or areas of Aboriginal Cultural Significance are identified and considered.

1.1 The Shire of Broome (or consultants engaged by the Shire) prior to preparing a Development Strategy will forward details of the land area proposed to be covered by the Development Strategy and a copy of the key objectives to the following organisations:

- a) Determined Native Title Holders for the area; or
- b) Registered Native Title claimants for the area.

The Shire will also review any heritage reports previously prepared and that are publicly available for the Development Strategy area.

1.2 The Shire will arrange a workshop with representatives of the above organisations, to discuss the project and any Aboriginal Heritage Sites or areas of Aboriginal Cultural Significance that may exist within the area of the Development Strategy.

1.3 In undertaking this consultation, the Shire will request information on:

- a) any Aboriginal Heritage Sites;
- b) particular areas within the proposed Development Strategy area boundaries that are known to have Aboriginal Cultural Significance; and
- c) a description of the significance (if culturally appropriate).

The Shire will provide a minimum 30 day period in which the above information can be provided and the workshop is to be held. Following this period, the Shire will progress with the preparation of the Development Strategy.

1.4 The outcomes from the consultation (both written and verbal) will be incorporated into the Development Strategy as far as practicable and will identify ways to avoid impacts upon Aboriginal Heritage Sites or areas of Aboriginal Cultural Significance.

1.5 As these planning instruments do not involve ground disturbing works or activities, the Shire will not undertake an Aboriginal heritage survey. However, the Shire will review and incorporate any relevant considerations for an identified Aboriginal Heritage Site that may exist in the Development Strategy area.

- 1.6 Following a draft of the Development Strategy being adopted, organisations consulted with in accordance with clause 1.1 of this policy will be forwarded a copy of the draft and invited to provide comments.
- 1.7 A further opportunity will be provided for a workshop to be held between the Shire and representatives of the organisations mentioned in clause 1.1.
- 1.8 Any comments or submissions received will be tabled as a part of a report seeking the final adoption of the Development Strategy.

2.0 Shire of Broome Public Works or Shire Development

For the Shire of Broome to be able to deliver services to the community the Shire is required to undertake a number of different Public Works or Shire Development. This could include (but is not limited to) items such as:

- Road construction and maintenance;
- Installation of drainage;
- Footpaths and development of public recreation facilities;
- Bridges;
- Cemeteries;
- Redevelopment of Shire owned/managed land or buildings;
- Quarries or works for procuring stone, earth or any other material required for the construction of a public work.

The Crown, the Governor, or the State government may also undertake Public Works including works such as railways, public housing, court houses, provision of water, public schools, etc.

Public Works and Shire Development can have the potential to impact upon Aboriginal Heritage Sites. The provisions below will establish the Shire's procedure for determining whether a Public Work or Shire development may impact upon Aboriginal Heritage Sites.

- 2.1 The Shire of Broome will not undertake consultation on behalf of other government authorities or agencies undertaking Public Works. This is the responsibility of the government authority or agency undertaking the works.
- 2.2 The provisions below apply to the Shire of Broome's activities only.
- 2.3 The Shire will not undertake any consultation or notification for activities or works which meet the definition of Low Ground Disturbance Activity.

Concept Phase

2.4 For Public Works or Shire Development which is not Low Discretion Works, at the concept design phase of the project the Shire will refer the proposal to:

- a) Determined Native Title Holders for the area; or
- b) Registered Native Title claimants for the area,

and provide a 30 day period in which comments are to be provided on any Aboriginal Heritage Sites or Aboriginal Heritage Significance that exists within the area.

For any works which are Low Discretion Works, the consultation will be undertaken in accordance with clause 2.6.

2.5 From the comments received the Shire will:

- a) If the concept plan has been identified as impacting upon an Aboriginal Heritage Site(s), as far as practicable the concept plan will be amended to avoid impacts upon the Aboriginal Heritage Site(s); and
- b) Subject to design and budgetary considerations, attempt to:
 - (i) alter the design of the proposed works or activity to avoid impacts on elements of Aboriginal Cultural Significance that exists within the area of the works or activity; and/or
 - (ii) incorporate interpretative or design elements to promote awareness of elements of Aboriginal Cultural Significance that exists within the area of works or activity.

Design Phase

2.6 If a proposed Public Work or Shire Development which is not a Low Ground Disturbance Activity falls within an Aboriginal Heritage Site, the Shire of Broome will forward a copy of the proposal to the DAA to enquire if:

- a) the Public Work or Shire Development proposed will disturb an Aboriginal Heritage Site;
- b) whether a Section 18 Notice is required; and
- c) who should be consulted prior to the lodgment of the section 18 Notice.

2.7 If the DAA advises that the proposed Public Works or Shire Development does fall within the area the subject of an Aboriginal Heritage Site, the Shire of Broome will consult with those persons or organisations advised by the DAA.

2.8 In undertaking this consultation, the Shire will:

- a) Forward to the persons or organisations advised by the DAA in accordance with clause 2.7:

- (i) written notification advising of the proposed Public Works or Shire Development;
 - (ii) details of estimated commencement and completion dates; and
 - (iii) copies of the designs of the proposed works (if available); and
 - b) Request that comments be provided within 30 days on whether the proposed works would impact upon any Aboriginal Heritage Sites and if the proposed works could be modified to avoid or minimise impacts upon Aboriginal Heritage Sites.
- 2.9 If the DAA advises that there is 'insufficient information' to determine if the *Aboriginal Heritage Act 1972* applies, the Shire of Broome will:
- a) forward the information outlined in clause 2.8 a) to any determined native title holders or any registered native title claimant groups; and
 - b) provide a 30 day period in which any comments are requested to be forwarded to the Shire.

*Please refer to **Attachment No 1 – Public Works or Shire Development Flow Chart** which provides a visual representation of the above processes.*

- 2.10 For all other land which does not fall within a registered Aboriginal Heritage Site, the Shire of Broome will follow the principles and process set out in the Aboriginal Heritage Due Diligence Guidelines.
- 2.11 If consultation is deemed to be required following a review of the Due Diligence Guidelines, then it will be carried out in accordance with clause 2.6.

*Please refer to **Attachment No 2 – The Aboriginal Heritage Risk Matrix** which provides a summary of the risk assessment process provided within the Due Diligence Guidelines.*

- 2.12 As part of the consultation carried out in accordance with clauses 2.8, 2.9 and 2.11, the Shire will only adjust how it intends to undertake the proposed Public Works or Shire Development if comments are received that the works would impact upon an Aboriginal Heritage Site. Any other comments received that do not relate directly to Aboriginal Heritage Site(s) will be considered as part of any wider community engagement process, if required in accordance with Policy 5.1.10 – Community Engagement.

Aboriginal Heritage Monitors

2.13 If the Shire receives comments following consultation under clauses 2.8, 2.9 or 2.11 requesting that a heritage monitor is engaged, the Shire will agree to engage a heritage monitor in the following circumstances:

- a) the works are being undertaken in an area which has previously not been subject to ground disturbing activities; and
- b) the comments received following consultation demonstrate reasonable grounds exist to conclude that the presence of a heritage monitor is required to mitigate the risk of harm to Aboriginal heritage;

2.14 If doubt exists as to whether the engagement of a heritage monitor is required or regarding the selection of an appropriate heritage monitor for a particular location, then the Shire will seek advice from the DAA.

2.15 If:

- a) the Shire engages a heritage monitor in accordance with Clause 2.13; or
- b) consent to proceed with the works granted in accordance with Section 18 of the *Aboriginal Heritage Act 1972* is conditioned on a heritage monitor being required while the ground disturbing works are being undertaken,

the Shire of Broome adopts the principles contained within the Department of Premier and Cabinet's Guidelines for the Engagement of Aboriginal Heritage Monitors.

Aboriginal Heritage Surveys

2.16 Aboriginal heritage surveys will be undertaken for proposed Public Works or Shire Development in the following circumstances:

- a) A person or an organisation consulted under clauses 2.8, 2.9 or 2.11 can demonstrate that an Aboriginal heritage survey is required to identify an Aboriginal Heritage Site; or
- b) Advice is received from the DAA that a survey is required to support the Section 18 Notice application.

Notwithstanding the above, the Shire may decline to undertake an Aboriginal heritage survey if a survey has previously been prepared for the area or the works.

2.17 When undertaking an Aboriginal heritage survey, the Shire adopts the principles contained within the Government Standard Heritage Agreement and will request that the registered Native Title claimants or determined Native Title holders enter into such agreement with the Shire.

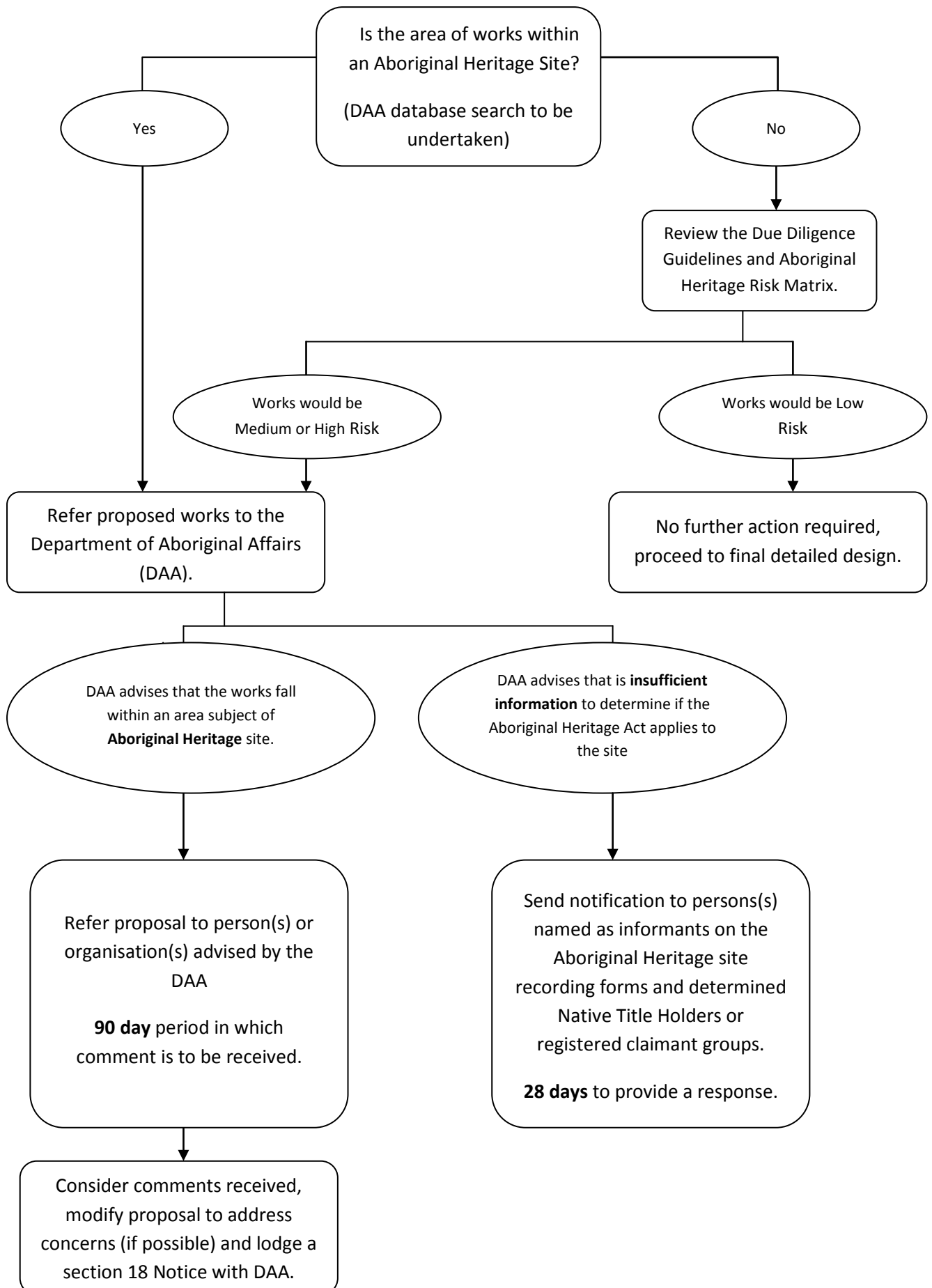
Links:

Aboriginal
Heritage
Inquiry
System: <http://www.daa.wa.gov.au/heritage/place-search/>

Aboriginal
Heritage
Due
Diligence
Guidelines: <http://www.daa.wa.gov.au/globalassets/pdf-files/ddg>

Government
Standard
Heritage
Agreement: <https://www.dpc.wa.gov.au/lantu/MediaPublications/Documents/Government%20Standard%20Heritage%20Agreement%20-%20Draft%207%20-%20Master%20Copy%20-%202017%20October%202014.pdf>

Attachment No 1 – Public Works and Shire Development Flow Chart



SCHEDULE 2 – THE ABORIGINAL HERITAGE RISK MATRIX

LAND ACTIVITIES – CATEGORIES 1-5						
Previous Land Use		1. Negligible disturbance	2. Minimal disturbance	3. Moderate disturbance	4. Significant disturbance	5. Major disturbance
	Built Environment - e.g. urban environment, towns, metropolitan region.	Low	Low	Low	Low	Medium
	Significantly Altered Environment - e.g. cultivated and cleared land.	Low	Low	Low	Medium	High
	Moderately Altered Environment - e.g. partially cleared lands, re-vegetated landscape.	Low	Low	Medium	Medium	High
	Minimally Altered Environment - e.g. urban bush land, regrowth areas	Low	Medium	Medium	High	High
	Unaltered Environment - e.g. protected areas or pristine environment.	Low	Medium	High	High	High
	Risk Assessment	Actions				
Low Risk (Review)	Review the landscape and proposed activity (see sections 2.4 - 2.8 - assessing the landscape and the activity). Refer to the AHIS.					
Medium Risk (Review /Exercise Caution)	Review the landscape and proposed activity (as above). The precautionary principle (see page 2) applies. Refer to the AHIS and contact the DAA. A range of actions may be recommended, including: no action, consultation with the relevant Aboriginal people, an Aboriginal heritage survey or modification of the proposed activity to avoid or minimise site impact.					
High Risk (Consult / Survey / Approvals)	Refer to the AHIS. Consult with the DAA and the relevant Aboriginal people. Dependent on consultation outcomes you may need to include: an Aboriginal heritage survey, modification of the proposed activity to avoid or minimise (see sections 2.24 - 2.28) impact to the site and/or other heritage management strategies. The land user may also need to apply for approval or consent (see section 2.26) to the activity.					
For major development projects refer to sections 2.10 - 2.12 for further advice.						

These Guidelines and the Aboriginal Heritage Risk Matrix are for general assistance only. Land users should always obtain independent advice on the application of the AHA to their particular circumstances and if doubt exists the land user should contact the DAA.