

12 September 2017

Mr Simon Crocker and Ms Jana Boulet
Heritage Policy and Planning Unit
Aboriginal Victoria
GPO 2392
Melbourne
VIC, 3001

Dear Mr Simon Crocker and Ms Jana Boulet,

Aboriginal Heritage Regulations 2007 Review

The Victorian division of the Urban Development Industry of Australia (UDIA) welcomes the opportunity from Aboriginal Victoria to respond to the *Review of the Aboriginal Heritage Regulations* discussion paper.

UDIA congratulates the Department on fostering an open and transparent discussion about the effectiveness and feasibility of the current regulations.

While the urban development industry is supportive of maintaining a culturally considerate approach to development, we are increasingly concerned about the high costs incurred by the current regulations, and the negative affect this has on housing affordability.

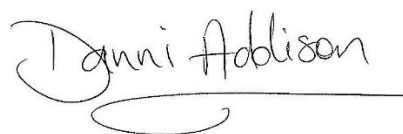
We are experiencing significantly increased costs across development projects, attributable to the introduction of multiple new fees from Aboriginal Victoria and the Registered Aboriginal Parties due to the 2016 amendments to the Act, coupled with an increase in more extensive salvage work as required by the Cultural Heritage Management Plan (CHMP).

The limited access to the Cultural Heritage Register, the difficulty of pursuing a review process and the current requirements for a CHMP are further areas of concern for the industry. Please see the attached submission for greater detail on these issues, and a series of proposed recommendations.

UDIA and the urban development industry look forward to working with Aboriginal Victoria to continue to assess the success and practicality of the regulations, with the objective of maintaining a culturally sensitive and respectful approach to development.

If you have any queries, please do not hesitate to contact Olivia O'Connor, Policy Advisor at olivia@udiavic.com.au or on 03 9832 9600 for further information.

Yours sincerely,



Danni Addison
Chief Executive Officer
Urban Development Institute of Australia (Victoria)

INDUSTRY SUBMISSION

Review of the Aboriginal Heritage Regulations 2007 Discussion Paper September 2017



SUMMARY

UDIA Position

The Victorian division of the Urban Development Institute of Australia (UDIA) appreciates the chance to respond to the review of the Aboriginal Heritage Regulations 2007 on behalf of the urban development industry. The industry endorses an extensive review of the regulations, seeing great potential in the framework if there is a willingness to adapt and amend them.

The key issues of industry with the current regulations stem mostly from the increasingly high costs incurred in the process of abiding by the current regulations. The introduction of multiple new fees from Aboriginal Victoria and the Registered Aboriginal Parties (RAPs) as a result of the 2016 amendments to the Act, coupled with an increase in more extensive salvage work as part of the Cultural Heritage Management Plan (CHMP), has increased costs significantly across projects.

The limited access to the Cultural Heritage Register, the difficulty of pursuing a review process and the current requirements for a CHMP are further areas of concern for the industry.

UDIA and the urban development industry look forward to working with Aboriginal Victoria to continue to assess the success and practicality of the regulations, with the objective of maintaining a culturally sensitive and respectful approach to development.

Recommendations

1. A regularly updated register of Aboriginal Places that have been salvaged and effectively removed under the conditions of a CHMP, to avoid a CHMP and the accompanying costs being triggered for a site already salvaged or destroyed
2. Heritage experts and consultants must be granted straightforward and feasible access to the Cultural Heritage Roster
3. A review, appeal or independent panel dispute process must be implemented firmly in the framework
4. A breakdown of the grounds on which the costs incurred with salvage recommendations have increased significantly must be provided to the industry
5. The land required to be surveyed and tested for a CHMP should only apply to the specific area of cultural sensitivity

About Us

Urban Development Institute of Australia (Victoria)

The Urban Development Institute of Australia (UDIA) is the peak industry body for the urban development sector. In Victoria, we provide over 320 member companies with the benefits of policy and advocacy, industry intelligence, networking and business building.

Our members include developers, consultants, financial institutions, suppliers, government authorities and utilities. Together we drive industry discussion and debate and inform all levels of government to achieve successful planning, infrastructure, affordability and environmental outcomes.

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Triggers of a Cultural Heritage Management Plan

There are issues with what is seen as unnecessary triggering of a CHMP. For example, Aboriginal Places that have been salvaged and effectively removed under the conditions of another CHMP may then trigger the requirement for a new CHMP for another high impact activity. There must be some mechanism introduced to allow for Aboriginal places that have been salvaged or destroyed to be identified on the mapping system and for their areas of Cultural Heritage Sensitivity to be removed so that CHMPs are not triggered unnecessarily.

Recommendation

The sites that have undergone development to a point where a CHMP is no longer necessary must be placed on a regularly updated and maintained roster. There have been occurrences where a CHMP has been triggered and enforced, despite the site having no remaining culturally sensitive elements. This roster would need to be updated on at least a quarterly basis.

Access to the Cultural Heritage Register

Restricting Heritage Advisors access to the Register until they are commissioned on a project is not acceptable. Heritage Advisors are the first point of call to discuss the potential cultural issues of a project. Fee proposals are required from them, and often multiple fee proposals are sought. It is currently very difficult for the Heritage Advisors to give accurate fee proposal advice to proponents when access to the Register is restricted. The public map provided by Aboriginal Victoria does not provide sufficient insight into sites while detailed site locations are restricted. This has caused advisors to give incorrect advice in regard to whether actual Aboriginal places are present as opposed to areas of Cultural Heritage Sensitivity.

Recommendation

It is imperative that heritage experts and consultants have straightforward and feasible access to the Cultural Heritage Register. It is necessary to the processes outlined in the Act, and easier access affords a more efficient and cost-effective process for all involved. As Advisors have to apply to be on the Heritage Advisors list, the industry proposes unlimited access to the Register be part of that registration process, with an understanding that it not be misused.

No review or appeal process is implemented, despite being present in the Act

Part 8 of the *Aboriginal Heritage Act 2006* details the circumstances under which a dispute regarding Aboriginal cultural heritage can be conducted. However, one looking to appeal the triggering or circumstances can only appeal to a CHMP being disputed if it's with an RAP. A party hoping for

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review and amendment cannot appeal to the Council if their dispute is with Aboriginal Victoria; the dispute must be taken to VCAT.

Recommendation

The current process of appealing to VCAT is not a simple process, involving significant time delays and costs incurred. UDIA endorses the implementation of a third-party review panel or process – a body which oversees all appeals concerning culturally sensitive sites, and consists of a diverse, experienced and educated group of objective individuals.

High costs incurred with salvage re commendations

A comparison of CHMPs and their recommendations from five years ago to the more recent CHMPs indicate a significant increase in the extent of archaeological salvage required to impacted Aboriginal Places. Very large salvages costing well into six figures are becoming common place. These include a cost of approximately \$5m in regional Victoria, and another costing up to \$2m in Western Melbourne. Both RAPs and Aboriginal Victoria are requesting levels of salvage that are much more extensive than they used to be, resulting in significantly higher costs.

Initially, the Aboriginal Heritage Act was sold to industry on the basis that all the work would be carried out up front so there would be no 'surprises' later on, and that monitoring on-site during construction would be obsolete. However, the extensive forms of salvage being required as conditions of CHMPs are effectively a form of monitoring, with many of them costing more than the cost of the CHMP.

Recommendation

The industry requires transparency and explanation as to the increase in cost. To the knowledge of industry, the process has not changed significantly, nor has the administration required to accommodate salvage recommendations. It is imperative that the industry be privy to a clear breakdown and review of these increased costs. This is required before the revised Regulations are put into action in 2018.

Requirements for a Cultural Heritage Management Plan

This substantive issue relates to the requirement for a CHMP in our established areas. The problem arises because even though there is an exemption, if there is significant ground disturbance, the definition of significant ground disturbance from evidentiary point of view often makes it difficult to prove. The current definition of significant ground disturbance relates to the requirement that the disturbance must be by machinery in the course of grading, excavating, digging, dredging or deep ripping but not ploughing other than deep ripping. There is difficulty in producing evidence that the

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disturbance was incurred by machinery, particularly as the time from when sites were developed lengthens. **Recommendation**

The evidence required for a CHMP needs to be less exhaustive. Continued development in the established suburbs is playing a vital role in housing Victoria's expanding population; steps must be taken to ensure affordable housing in the established suburbs remains an option for Victorians.

Often, where only a small part of land is within an area of cultural heritage sensitivity, the requirement is for the whole of the land to be surveyed and tested. VCAT has sought to deal with that issue but there is a certain lack of clarity in those circumstances.

The answer lies in amending what are areas of cultural heritage sensitivity, so as to exclude existing lots within an established area. Furthermore, consideration might be given to a minimum size lot that would qualify for an exclusion and/or potentially a change to the definition of what constitutes significant ground disturbance.

UDIA propose the following definition: "*significant ground disturbance means disturbance of: a). The top soil or surface rock layer of the ground or b). A waterway – as a result of the construction of any building or the carrying out of any works on the land...*".

CONTACT

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