



What is your local government doing about Aboriginal heritage sites?

Every local government in Western Australia can expect to receive a letter from the State Government this year inviting them to make a submission on a site being assessed for Aboriginal heritage listing.

While this activity is being driven by recent Supreme Court decisions and a State Government determined to clear a backlog of sites awaiting heritage assessment, it is a reminder that Aboriginal heritage has important implications for local governments.

What is your local government doing to meet its obligations under the *Aboriginal Heritage Act 1972*?

To learn more, *Statewide* spoke to Aaron Rayner, former Deputy Director General and Chief Heritage Officer at the Department of Aboriginal Affairs (DAA), who is now a partner with Aboriginal heritage consultancy service AHA Logic.

Aaron notes that Aboriginal heritage sites bring regulatory obligations for local governments. But they also offer opportunities.

THE Western Australian Government has an enormous backlog of unassessed Aboriginal sites—about 15,800 are yet to be assessed, says Aaron Rayner.

Recent legal and policy developments in Aboriginal heritage are causing regulatory uncertainty and confusion for land users, such as local governments, he asserts.

“The Supreme Court decision has effectively widened the definition of a sacred site and led to changes in the way sites are assessed,” Aaron reports. “In the *Robinson v Fielding* Supreme Court decision, the Hon. Justice John Chaney said an Aboriginal mythology associated with any piece of land or water makes it capable of being a sacred site under the State legislation. That means that the Department and the Minister’s advisory committee, the Aboriginal Cultural Material Committee (ACMC), have to consider Aboriginal mythologies and beliefs when assessing if a site should be registered. This broadened definition can cover whole river and lake systems, for example, or large swathes of land, such as existing residential and industrial areas. Using this expanded definition, in recent months, the ACMC has registered Port Hedland harbour, in the Murray and Hotham Rivers as Aboriginal sites, and are actively considering a site application that covers the entire township of Broome and 80km of coastline.

“It is clear that the original 1972 legislation wasn’t intended to be this broad. The government needs to change the legislation or more and more land users will be captured by the laws and will have to comply with it.”

Aaron warns that the *Aboriginal Heritage Act* still protects sites that have not yet been assessed.

“All sites are protected, whether registered or not. The DAA investigates about 100 complaints a year about disturbance of Aboriginal heritage sites. There are penalties for breaching the legislation. Landowners (including local governments) that seek to use land in proximity to Aboriginal heritage sites must obtain statutory consent from the Minister or risk being prosecuted.

“Over coming months, the APMC is scheduled to assess more than 600 sites, some covering residential towns and industrial areas.

“Every local government in Western Australia has an Aboriginal heritage site in its boundaries. Bruce Rock, for example, has five sites, representing less than 1% of its land mass. In contrast, the City of Swan has 334 sites, covering 40% of its land mass. For the City of Swan, Aboriginal heritage already represents significant regulatory requirements and they routinely apply for approval under the *Aboriginal Heritage Act*.

“Local governments have competing priorities: they have to manage assets, such as parks and river banks, and use land—these responsibilities sometimes can compete with protecting Aboriginal sites. This can create tension with Aboriginal communities.”

Seeking local government submissions

The Department has started a new practice of writing to local governments when they are preparing to assess a site within their boundaries.

“The Supreme Court in 2015 confirmed that if your rights are affected by a decision of the APMC then you have a right to be heard—so all land users affected by a decision now have a right to be heard before a decision about registration is made,” Aaron says.

“The Department advises local governments that they are assessing a site and invites them to make a submission. It’s important that local governments use the opportunity to make a submission to highlight some of the practical issues that may come with registration. Once the site is registered, local government has an on-going obligation to comply with the law, which is time consuming and can be costly.

“With over 15,000 sites in the backlog of site applications, every WA local government has at least one pending assessment—some have hundreds. The Shire of Wyndham-East Kimberley, for example, has 610 site applications pending assessment.”

- 14,800 Aboriginal heritage sites are registered in Western Australia
- 15,800 more sites are waiting to be assessed



Three things local governments can do

Aaron has observed wide variation in local governments’ capacity to deal with Aboriginal heritage and offers three essential steps to put in place.

“First, know and understand what’s in your backyard. Second, this enables you to address heritage early in the planning process—don’t leave it to the 11th hour. Third, build capacity in your organisation.

“I see Aboriginal heritage as a fixed asset on land, to be managed like any other asset. Viewed as an asset rather than a risk, it’s easier to see why we have to know about it and have capacity in the organisation to derive value from it. The rock art on the Burrup Peninsula, for example, draws thousands of tourists from around the world.

“A simple first step is to have an up-to-date inventory of your Aboriginal heritage assets and know where they are. That will inform your planning and community engagement. If you know there’s a rich cultural heritage at a location, for example, you might decide not to have residential development there.

“It’s surprising how few organisations know what sites are in their area. If you don’t know, how do you plan your activities and your other assets without falling foul of the law? Local governments have been prosecuted for inadvertently violating heritage sites.

“Building capacity in your organisation is as simple as having one or two people who know about the heritage sites and requirements under the Act. It doesn’t have to be a dedicated position, just someone who knows about it. I find that large local governments with a lot of sites will often have several different people all doing their own things in relation to heritage sites. If you have a coordinated approach, you can standardise procedures and maybe save resources. Some local governments that have built-in capacity in this area do well. A good example is the City of Stirling’s award-winning cultural tours.

“If you’re not engaging with Aboriginal heritage, or if you are treating it as a risk rather than an asset, then you will always be in a position of responding to problems. If you know what you have in the way of Aboriginal heritage assets, and have capacity to proactively manage it, then you will be in a position to plan and engage effectively.

“The State’s decision-making processes will proceed regardless of whether local government is equipped and ready to engage. It makes sense to take the simple, basic steps to prepare, be proactive and enjoy the benefits that follow—better use of resources, improved land management, less delay and frustration, and better relationships.

“Taking these steps will also improve your opportunities for reconciliation initiatives—cultural heritage is the most important thing for Aboriginal people. A good understanding of heritage sites offers a really good opportunity to have discussion around reconciliation and economic development initiatives.”



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“This is an issue that directly affects every local government.”
Aaron Rayner

About Aboriginal sites register

The Aboriginal Heritage Act 1972 made provision for the Aboriginal Cultural Material Committee (ACMC) to assess sites for inclusion on the register of Aboriginal Sites and other heritage places, Aaron Rayner says. “However, the committee hasn’t been able to keep pace with the number of site applications received, so a backlog was created. The State Government wanted a more efficient mechanism that empowered officers of the Department of Aboriginal Affairs to assess the sites but was unable to get enabling legislative amendments through parliament. Instead, the Minister has directed the Department to support the Committee, which will meet more frequently to deal with the backlog.

“The Act requires that a register of heritage sites is maintained.”

 Information on Aboriginal heritage sites can be obtained free of charge from the public register via the Department’s website: www.daa.wa.gov.au/heritage

“Every local government has a different story to tell. If you know about your local heritage, you can use it.”