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LEGISLATIVE SCRUTINY COMMITTEE

Public Briefing Transcript

Inquiry into the Heritage Amendment Bill 2026

1.30 pm, Tuesday 24 March 2026

Litchfield Room, Level 3, Parliament House

Members: Mrs Oly Carlson MLA, Chair, Member for Wulagi
Mr Clinton Howe MLA, Deputy Chair, Member for Drysdale
Justine Davis MLA, Member for Johnston
Mr Chanston Paech MLA, Member for Gwoja
Mrs Laurie Zio MLA, Member for Fannie Bay

Witnesses: ***Department of Lands, Planning and Environment***
Joanne Townsend: Chief Executive Officer
Lauren Townsend: Acting Executive Director, Environment and Heritage
Dr David Steinberg: Director, Heritage Branch

INQUIRY INTO THE HERITAGE AMENDMENT BILL 2026
Department of Lands, Planning and Environment

Madam CHAIR: Good afternoon. On behalf of the committee, I welcome everyone to this public briefing into the Heritage Amendment Bill 2026.

I welcome to the table to give evidence to the committee from the Department of Lands, Planning and Environment Joanne Townsend, Chief Executive Officer; Lauren Townsend, Acting Executive Director, Environment and Heritage; and Dr David Steinberg, Director, Heritage Branch. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and we can take your evidence in private.

Could you please each state your name and the capacity in which you are appearing.

Ms J TOWNSEND: Jo Townsend, Chief Executive Officer of the Department of Lands, Planning and Environment.

Ms L TOWNSEND: Lauren Townsend, Acting Executive Director, Environment and Heritage.

Dr STEINBERG: David Steinberg, Director Heritage Branch.

Madam CHAIR: Thank you.

My name is Oly Carlson; I am the Member for Wanguri and the Chair. Online I have the Deputy Chair, Mr Clinton Howe, the Member for Drysdale. Also online is the Member for Gwoja, Chansey Paech. To my left is the Member for Fannie Bay, Laurie Zio. To my right is the Member for Johnston, Justine Davis.

Ms Townsend, would you like to make an opening statement?

Ms J TOWNSEND: Thank you for the opportunity to make some opening comments.

As you have just said, I have Dr David Steinberg who is the Director of the Heritage Branch and Ms Lauren Townsend with me today. We are happy to take any questions from the committee.

The Department of Lands, Planning and Environment administers the *Heritage Act 2011*. The Heritage Amendment Bill 2026 proposes reforms to the Act identified through its administration and which are intended to improve clarity, procedural fairness and confidence in the Territory's heritage system. The amendments do not change or affect the protections for genuinely significant places and objects.

As regulators we recognise the necessity of ensuring that the statutory definitions and processes under the Act are clear, appropriate, timely and support the objects of the Act, which is to conserve the Territory's cultural and natural heritage.

There are three main areas of amendment: clearer definitions, most notably the definitions of Aboriginal and Macassan archaeological places and objects; providing certainty to the different stages of a heritage assessment, including procedural fairness, notification and consultation requirements with stakeholders; and the processes governing the membership of the Heritage Council.

I turn to clearer definitions. The Bill modernises the Act's technical framework by introducing clearer temporal references, specifically defining pre-contact and early contact periods. These definitions recognise that the timing of early contact is different across the Territory and provides for a clearer statutory reference point for identifying Aboriginal and Macassan archaeological heritage.

Also in response to requests for more culturally appropriate language, the term 'human remains' has been replaced with 'ancestral remains'.

This Bill amends section 6 of the Act to clarify the statutory tests for identifying archaeological places and Aboriginal and Macassan archaeological places. An archaeological place is a place that relates to the past human occupation of the Territory and contains evidence of modification of the place by the activity of the occupants.

The Bill clarifies the scope of automatic protections, while isolated objects are outside of the scope. The Act does contain other processes that might apply. In relation to an Aboriginal and Macassan archaeological place, the Bill provides clarity in relation to modification through examples including rock art, shell middens, stone arrangements or quarries, culturally modified trees, axe-grinding grooves, stone fish traps and stone lines. This provides a much clearer understanding of what is scoped into the automatic protection of Aboriginal archaeological places, providing greater protection and clarity for all stakeholders and land users.

The second key change is around certainty to different stages of an assessment, and these changes have been informed by our administration of the Act and some of the matters that have been raised through review processes. The Bill clarifies the distinction between preliminary administrative steps and substantive decisions.

New section 41A specifies that early actions such as initiating assessment, extending an assessment period or making a finding of significance under section 25 are preliminary steps that do not of themselves trigger a separate hearing requirement. This makes sure that procedural fairness is applied when it matters, during the public consultation stage, when the council has completed its more fulsome assessment.

At the same time, the Bill increases transparency by requiring earlier notices to owners and nominators and providing them with longer consultation windows where warranted.

The Bill removes the automatic trigger for provisional declarations; instead, this Bill consolidates these powers into a single discretionary and risk-based power under section 36. This allows for urgent protection powers as a deliberate ministerial act when it is needed. The powers of heritage officers to issue stop-work orders to conserve places and objects that are declared remains in place.

The Bill establishes engagement with Aboriginal stakeholders in the case of Aboriginal archaeological places and objects while retaining the rights of private landowners in work approval applications. For heritage places, the owner's consent remains the primary requirement. For works affecting Aboriginal archaeological objects on private land, the Bill now requires that applicants provide evidence of reasonable attempts to consult regarding the protection and conservation of those objects, including with Aboriginal stakeholders where relevant.

The minister's powers to impose conditions on a work approval will be informed by these consultations, including providing for the removal of the object and what happens to it. This creates a navigable pathway that recognises the interests of both landowners and cultural stakeholders.

Last but not least, the governance of the Heritage Council. The Bill improves the reliability of decision-making by modernising the Heritage Council's governance.

The council will move to a membership of between seven and nine members with a quorum fixed to a majority. This ensures it operates as an expert-based council, providing the expertise and advice to heritage issues. It is currently configured around stakeholder nominations, which is a fairly onerous process to run. This is an expert-based board. Importantly, the requirement, as far as practicable, to ensure at least two Aboriginal members, remains unchanged with these changes being proposed.

We have had a look at your terms of reference and think there may be some questions you are particularly interested in based on those terms of reference, and I am happy to provide some comments on those.

On procedural fairness, identifying certain decisions as preliminary decisions resolves a concern raised in the City of Darwin case in the Supreme Court. The Bill clarifies procedural fairness by making it clear the assessment process has multiple stages and that interested persons will have the opportunity to be heard at the consultation stage when the council has produced a fuller assessment.

The Bill also includes earlier and clearer notices to landowners and other interested persons so they know what is occurring and when to engage. Regarding notice and consultation, the Bill now requires notices early in the assessment process so that owners and relevant interest holders are properly informed. The consent of private landowners as owners of the land in which the works would occur is affirmed. The intent is a fair, navigable pathway that recognises the interests of both landowners and relevant stakeholders.

On provisional declarations, this mechanism is retained based on potential risk. The way the Act currently works is once a place has been determined as having heritage value by the Heritage Council, an automatic provisional declaration applies. The Bill proposes to remove the automatic declaration and move to a risk-based one. This responds directly to the City of Darwin decision which recognised the significant immediate effects of automatic provisional declarations on owners. Discretionary risk-based powers with transparent publication and revocation rules achieves a clearer, more balanced process.

In summary, we believe the Bill before the committee is a practical reform package. It delivers a system that is clearer, creates certainty and is more reliable, which should give Territorians confidence in how heritage decisions are being made.

We are happy to assist the committee with any questions.

Madam CHAIR: Thank you, Ms Townsend. I will open the floor for questions.

Mrs ZIO: Thank you for your opening statement. I understand the context of what you said. I am just wondering, can you provide any more context as to why this Bill is required?

Ms J TOWNSEND: I will do the short version and then allow my colleagues to expand on that.

It comes about through operationalising the legislation, but we have also had a couple of decisions, one through NTCAT and one through the Supreme Court, which has highlighted how clunky the provisional declaration process is and how the definition of Aboriginal and Macassan artefacts does not work. It responds to those two legal challenges that we have had.

Dr STEINBERG: I should first state an interest; I am a family member of the Member for Johnston.

J DAVIS: For the record, I will not be asking any questions today.

Dr STEINBERG: Thank you.

The impetus for this Bill is to bring certainty and clarity to some aspects of the Act that were difficult from a procedural point of view and that made it difficult to understand the rights of certain stakeholders and interest groups, and provide clarity around what is protected and what is not protected. This Bill is focused on providing certainty and clarity for those who have an interest in heritage protection and those people who are stakeholders in land use. It is a strengthening of a lot of important aspects, and I think that is a good move forward.

Ms L TOWNSEND: The timing of the Bill is also to allow an opportunity for the Act to operate as intended and to clarify any ambiguity which may have arisen as a result of the recent legal decisions as well.

Mrs ZIO: Thank you; I appreciate your answers.

Can you provide information on what consultation was undertaken in the preparation of this Bill and, if you have the list, who you consulted?

Dr STEINBERG: We attempted to consult the major land councils. In December we met with the Anindilyakwa Land Council and Tiwi Land Council. Earlier this year we met with the Northern Land Council. We made a number of invitations to the Central Land Council, and I think things got busy for them and they were unable to consult with us.

I also should say that through the normal internal government process the Aboriginal Areas Protection Authority was provided an opportunity to make a submission, and they were supportive without comments.

Mrs ZIO: So, by and by, in your consultations they were supportive of the changes in the Bill.

Dr STEINBERG: I think so. I think I will put a caveat on that the land councils were given information regarding the Aboriginal archaeological places and Aboriginal objects but not the other areas of the Act. AAPA through the normal internal process was provided a full copy of the changes.

Mrs ZIO: In the transitional provisions, clause 31, Part 8.2, they apply new rules mid-process. How will the department handle any nominations or assessments that are caught midstream? If somebody has an application in at the moment, how would that be handled if the legislation was implemented tomorrow?

Dr STEINBERG: From my understanding, anything that has started the process will continue under the current process [for work applications]. It will be grandfathered in; there will be nothing changed to what has already started [for work applications].

Mrs ZIO: Does this Bill interact or strengthen protections under the Aboriginal Sacred Sites Act?

Dr STEINBERG: It certainly does not change any of the standing provisions in the *Heritage Act*. Under the *Heritage Act*—and these will follow through in the new Bill—you have, for example, a facility in the Act and the Bill for heritage agreements. A heritage agreement between, say, a landowner and a minister cannot supersede a sacred site or conflict with that. Also, in a heritage work application, the decision-maker—the council or the minister—in deciding whether the work application should be approved has to consider whether there is a sacred site and, if so, needs to engage with AAPA. From the beginning there has been a strong relationship and adherence to the powers of the Sacred Sites Act, and that continues through with this Bill.

Madam CHAIR: Clauses 12 and 21, on the public consultation—the explanatory statement notes that amendments to sections 26 and 45 provide for a longer consultation period beyond 28 days, as specified in the notice. However, given the wording in the amendment is 28 'days, unless specified otherwise', what is to stop the consultation period being reduced to less than 28 days?

Dr STEINBERG: The intention is to extend the period if required. The intention is certainly not to reduce the period in any way. The intention is a recognition that the 28-day period may not be enough to consult interest groups and landowners about the prospects of a heritage place being declared. The intention of this provision is to extend it if required.

Ms L TOWNSEND: The amended consultation period contemplates beyond 28 days, so the expectation is that it will remain at a fixed 28-day period unless extended. There is not the alternative opportunity to reduce the days.

Madam CHAIR: Clause 19—the new section 41(3) provides that where a reassessment under subsection (2) is made within five years after the decision, public consultation is not required. Can you clarify whether the council can still undertake public consultation should they consider it desirable depending on the circumstances?

Dr STEINBERG: The council can choose to do that; it is not required to do that.

Mrs ZIO: Moving on to clause 24, Application for approval, it clarifies consent requirements for work applications in relation to heritage objects. The explanatory statement notes that:

> *… consent must be obtained by the applicant from the owner of the land where the object is located, and … should also provide evidence that they have consulted the owner of the heritage object.*

As drafted in the Bill, it provides that in addition to the consent of the owner of the land, the applicant is only required to provide evidence that they have made their best endeavours to identify and consult with the owner of the object. With regards to the latter, what do you constitute as best endeavours?

Dr STEINBERG: Can I start, before I answer that specifically some of the strengths of the amendments in this Bill are that for the first time we are acknowledging Aboriginal owners of objects in Aboriginal archaeological places. That is the first time in the history of the *Heritage Act* in the Northern Territory that is done. It is the first time also that within legislation owners of those Aboriginal objects need to be consulted. It is the first time we have had consultation built into the legislation for that issue. I think that is a huge step forward.

The idea of a reasonable approach is not to confine it so that by drafting it in a too detailed way we draft something out and we make a mistake in terms of weakening it or it being too narrow. The decision-maker will be able to look at the application and say, 'Has this been reasonable or has this not been reasonable?' We will have policy in this space to guide the decision-maker to make those decisions.

In the majority of cases, the agency that this request would be directed to would be the land councils, so there will be an expectation that the land councils will be engaged.

Mr PAECH: I wanted to ask a question following on from that. In sections 22, 23 and 41, I am seeking clarity over the term 'owner' in the amended Bill. I am looking to ascertain how that is intended to work in the application of the Act.

Ms L TOWNSEND: We are intending that owner of the object in those places is the custodian or persons who have traditional right to possess that object. That is the interpretation that we are attempting to convey with 'owner' in those terms—traditional custodianship.

Mr PAECH: Again, I guess I am just trying to secure that. Are you anticipating that would need to be done where it is on ALRA land through a land council? I am trying to determine how you are working out the kinship or cultural authority of an object.

Dr STEINBERG: It is not the remit of the Heritage Council to make determinations of who speaks for country, so they would be looking to the land councils and native title holders.

Mr PAECH: Referring to section 72(2)(b) of the Act—I am following on from the Member for Fannie Bay—why is there a requirement to consent from the owner of the land on which the heritage object is found, but it is only best endeavours to consult with the owner of the object? That is in section 72. I am assuming that we all know there are land councils under the Aboriginal Land Rights Act who would have that information, so why is that not mandated in there and is referred to only as 'endeavours' for requirement?

Ms L TOWNSEND: The requirement, as it is setting out, is that there is evidence provided that efforts both to identify—in cases where there may not be a land council that reasonable attempts have been provided and evidence to the Heritage Council of those attempts to identify in the case where it is not a land council, and where it is, to identify that and to consult. The evidence of what steps you have taken in all those stages and what information you provided to them in relation to the works, that is the coverage that provision is attempting to provide, not to categorise all owners. To give broad ability, as David suggested, that will allow for a breadth of [owners to be identified].

Mr PAECH: Okay. I am understanding that the Heritage Council is referring to reasonable attempts. What would constitute a reasonable attempt?

Dr STEINBERG: We can have a broader discussion, but I think that is the sort of detail that would not be in the Act but would be in policy and procedures. I think it would be to provide sufficient time for that consultation to be effective. For example, appreciating that consultation in the Wet Season in the Northern Territory is very difficult, consultation in remote areas is very difficult, so there would need to be built into procedures and policy around providing a fair attempt to make that consultation possible, also appreciating the operational limits of the land councils that are doing that on behalf of the decision-maker.

But I think the reasonable attempt there is also about silence, the decision-maker needs to know that there was silence or maybe a refusal to participate, the decision-maker needs to know that was the case, and then make an assessment based on that.

Mr PAECH: I just wanted to tease out a bit more section 72(2)(b). I apologise, but I will declare that I am a former Heritage minister, so if these questions are in-depth, it is just from previous experience. I wanted to understand why there is a requirement in terms of the—why is the contact period by reference to the whole of the Territory when we know that there are individual language or estate groups that have had contact with people from outside of Australia at different periods of time. As it currently reads, it is implying that there was a single period of contact between Aboriginal people in the Territory and people from outside. I am wanting to understand that a bit more.

Dr STEINBERG: I am sorry, but are we just talking about early contact period and pre-contact period? I am finding it a bit difficult to follow.

Mr PAECH: Yes, that is correct.

Dr STEINBERG: Great; okay, thanks. With paperwork in front of me is hard to navigate, but I will try to help you understand the reasoning behind this.

First of all, for me, this is very exciting in the sense that for the first time the Bill acknowledges the presence of Aboriginal people before colonial occupation, so I think that is quite an exciting element—for the first time the *Heritage Act* acknowledges that.

The purpose of bringing this in is so that there is a very clear point in time where the Act stops functioning. I will give an example of an art project where people might have wanted to build canoes and kayaks in the 1970s for the purpose of reclaiming culture and exploring those traditions. They might have been scarring trees in the area to take that bark off and then build bark canoes, for example. The legislation that exists, the Act at the moment, does not rule out those elements. There is no identified time period that says this is no longer part of the archaeological record that the Act is trying to pick up, and this is now more museum business or art gallery business. The Act is currently silent on that.

The attempt here is, firstly, just to acknowledge for the first time in Northern Territory legislation, in the *Heritage Act*, that Aboriginal people were here before colonial occupation, but also to put an end date to what constitutes an Aboriginal archaeological place so that we are protecting scarred trees that are 2,000 to 5,000 years old—as we should be—but we are not also bringing in and creating a difficult administrative problem around scarred trees that were produced as part of an art project in the 1970s. That is the intent.

Mr PAECH: Following on from that, with the early contact and pre-contact, how is the line going to be drawn between a single relic and a group of relics for protection purposes?

Dr STEINBERG: Are we talking about the group of relics that fall into an Aboriginal archaeological place and the …

Mr PAECH: Yes.

Dr STEINBERG: Okay. First of all, I do not think there is a major change in this Bill to what already exists. The *Heritage Act 2011* defines relics and artefacts, and then it says Aboriginal archaeological objects are going to be automatically protected under the Act, but have to be within an Aboriginal archaeological place and that Aboriginal archaeological place has to have evidence of modification. Nowhere in the 2011 Act and as we have been administrating it for 30 years, have those isolated objects ever really been captured under the Act. The problem has been that the Act has been a little bit unclear about that.

What I think is very exciting about the Bill is actually that it starts to bring in some examples of what would be in an Aboriginal archaeological place—shell middens, rock art, those sorts of elements— and so we can start to say with certainty, ‘These things are captured and these things are protected’, and also bringing some clarity and certainty around that isolated object issue, which has been around for a very long time. We did not create this in the Bill; this has been a problem for a while.

Just bringing that certainty and clarity to it now is that there may be tens of millions of these [isolated artefacts] across the landscape. From an archaeological perspective they are very quickly made. They might be, for example, just a flake that has been struck off a core; someone might have used it for a short period of time and then just left it and walked on. If that isolated object is protected under the Act automatically, it is a very powerful provision. Then there is an archaeological place around it automatically, and then there has to be an application for what we are going to do with that if it is in the way, if it cannot be avoided. That application is quite comprehensive. Then it goes to the Heritage Council as the decision-maker. It may be elevated to the minister. It is a huge administrative burden for the protection of that flake, and takes the attention away from the sort of things we are trying to protect.

Finally, under this Bill we are going to start having some definitions which we did not have before, so with some certainty we can say, ‘That is protected now’, and ‘That isn’t protected’. That is the intent.

We are talking about automatic protection, which is an incredibly powerful mechanism, and that has to come with balance. Some of that balance comes from a narrow definition of what is automatically protected.

That said, there are other mechanisms in the Act that can bring protection to those isolated objects. It might be through a ministerial provisional protection—it could be nominated to the *Heritage Act*, and that could be part of a heritage nomination. That is a separate process and it would be protected. The minister has powers for provisional protection over the object, so there are other mechanisms to pick that up and there are also management mechanisms as well.

You are really only going to find an isolated flake, an isolated object, through an archaeological survey. That archaeological survey, through our policies and procedures, will still identify that object; it just may not be given immediate protection. It is still identified and it can be captured in a management regime and a management framework with the land user.

There are a lot of mechanisms available; it is just bringing clarity and certainty, finally, to what has been a procedure that has been going on for decades.

Mr PAECH: You mentioned provisional protection. Have there been any change to the criteria that would guide the minister's discretion for decisions of provisional protection?

Dr STEINBERG: No.

Mr PAECH: For the interest of the committee, can you work through what the criteria for discretion for decisions of provisional protection are for the minister?

Dr STEINBERG: There are a couple of things happening in the Bill where we are removing the administrative provisional protection, but the minister's provisional protection remains. The reasons why the minister might engage that stay the same, that he or she believes the place may be of heritage significance and is at risk. What is important here is it provides an immediate response based on a belief that it is likely of significance. It does not have to go through the assessment process. It could be an immediate emergency [kind of] stop-work worder. That is in the current Act, and it stays in the Bill.

Mr PAECH: Great. The delegation of powers to the minister expands the administrative delegation flexibility to other persons. Who would another person be?

Ms J TOWNSEND: Usually another minister.

Mr PAECH: Okay, so not necessarily a person having heritage experience.

Ms J TOWNSEND: No. It is intended to allow for there to be an appointment of another decision-maker in instances where the minister could not do it.

Mr PAECH: Just to be clear, for instance, this provision you anticipate would be exercised if the minister feels there is a potential conflict of interest; they would delegate the power?

Ms J TOWNSEND: Yes.

Mr PAECH: Wanting to be clear, how will Aboriginal stakeholders be effectively consulted for objects on private land?

Dr STEINBERG: We did not want to be prescriptive in the legislation because that would be confining, so this will be a developing policy procedures space. It will be, again, the Aboriginal land councils and native title holders. If there are no native title holders and the land councils do not represent those particular interests, there will be a comprehensive attempt to make sure that the right people have been spoken to and the elders who speak for that country have been consulted.

Mr PAECH: Would that be the same process for objects of cultural significance on pastoral land?

Dr STEINBERG: Absolutely. There will be no different between the administrative interests and the land; that will remain.

Mr PAECH: You talked about the composition of the council. How will merit-based appointments maintain expertise while ensuring adequate Aboriginal representation?

Dr STEINBERG: I think recognising that Aboriginal people have cultural knowledge and the expertise that they bring as Aboriginal members to the council. It could also be that an Aboriginal person has specific skills in heritage or archaeology, but if that is not the case the cultural understanding needs to be brought to the council so that it can make effective decisions that will be brought by Aboriginal elders.

Mr PAECH: Just to confirm, there is no ability for the minister to delegate powers to persons outside of the council?

Ms L TOWNSEND: The minister can delegate to outside of the council. They cannot delegate to any members of the council.

Mr PAECH: Sorry; I could not quite hear you. Did you say that the minister can delegate outside the council?

Ms L TOWNSEND: Yes.

Mr PAECH: You would obviously have an example of who that would be, or what entity.

Ms L TOWNSEND: I think the intention of delegating decision-making powers would be in line with other delegations that are exercised in the same vein, someone with equivalent capacity to make a decision as conferred by the Act.

Mr PAECH: I guess I am trying to understand how independence is preserved if the minister can then delegate power outside of the council. The council would be made up of a cohort of people with experience or nominations to that board.

Ms J TOWNSEND: The Act as it is currently drafted does not have the power of delegations in it [aside from the delegation powers to only the CEO]. It is not intended to delegate his decision-making away from the council; it is to provide for a regime where if he is conflicted and cannot make a decision for whatever reason, he can delegate his powers to another decision-maker or, as with other legislation, he can delegate his decisions to decision-makers in the agency where the decision warrants that. At the moment there is just no power to delegate [other than to the CEO].

Mr PAECH: Are 60-day deadlines for reassessment realistic for complex heritage cases?

Dr STEINBERG: Sorry; we are just having a bit of a struggle with the paperwork. Could you clarify your question?

Mr PAECH: Sorry; the internet is dropping out. It is clause 19.

Dr STEINBERG: What these changes bring in [are we referring to] the five-year period? The place cannot be renominated for five years, that exists in the current Act and it is to bring certainty to the decision-making. The landowner, for example, might have been put through this process of their place being nominated. The council has assessed it. It has gone to public comment. It has been considered. This period is bringing certainty to a landowner, for example, through that process.

What we have found is sometimes the reasons why things get in a limbo state and we cannot land the decision is because the owner may not be consulting. The minister has a decision to make ‘I haven’t heard from the owner but I’m going to declare it’ or just keep trying to hear from the owner. The owner’s interest is so important, so there is this problem where we get trapped in this loop.

This amendment further supports the minister to make that final decision. It keeps the five-year clause—it does not change that—but it says that if the owner changes their mind or there are some key differences and the interest group changes their mind or even the owner changes and the new owner supports this idea, then rather than have to go back to the very beginning of the process, and the council has to assess it and decide whether it is significant and we have to run a public consultation process and do all those administrative things to get to where we already are, it just allows the process to start from that point.

It is really to reduce an administrative burden and add another two years to the process.

Mr PAECH: How do you see the *Heritage Act* and the Sacred Sites Act, because there is obviously some intersectionality there between what is a heritage site and what is a sacred site? Most often sacred sites are living entities that require active use, and a heritage site is more the management of something that is static in preservation. What is the overlap with the Act and the relationship between the Aboriginal Areas Protection Authority?

Dr STEINBERG: I will start with the legislation itself. I think I talked about this earlier, but just to recap, the Sacred Sites Act is mentioned twice in the *Heritage Act* and will continue with the amended Act. A heritage agreement—say, between the minister and the landowner about what work is permitted—cannot override a sacred sites ruling.

Secondly, the Sacred Sits Act must be respected and sacred sites must be respected in the work application process as well. If there is a sacred site in a work application, the decision-maker cannot ignore that there is a sacred site and then say, ‘We are going to approve this work under the *Heritage Act*’. There is recognition of a sacred site, and it has to go back to the Aboriginal Areas Protection Authority and find out how they feel about this.

This Act respects the authority of the Sacred Sites Act. It has been written to work in collaboration with it so that nothing that happens in this Act impacts on a sacred site or tries to override authority over a sacred site. That is the primary principle at play.

Everything else in terms of how AAPA as an agency and our department work through the complex issues around cultural heritage is probably best done through memorandums of understanding and agreements between those agencies of how to work through that process, knowing that both AAPA and decisions made by decision-makers under the *Heritage Act* need to provide levels of certainty to people once they have gone through the process, and both agencies respect that. I think there is a lot of interesting work to do around memorandums of understanding and working collaboratively.

Mr PAECH: There are sites in the Territory that are heritage listed that should be sacred sites listed as well or vice versa. I want to make sure there is a clear understanding that if a site of significant Aboriginal value is heritage listed and there is the need for cultural obligation or maintenance of that site that they are not going to be penalised. Obviously heritage is about recording something in a moment of time, whether it is historical or a contemporary movement. Is there scope for a heritage site to still be actively used by a First Nations group?

Dr STEINBERG: Absolutely. There are a couple of mechanisms that can work administratively in the Act which allow those things to go ahead. What we have found as a very efficient and clear way is when the place is first declared, the instrument signed by the minister authorises key people to continue to do work. For example, in the declaration of Fort Dundas (Punata) on the Tiwi Islands, it is written into the declaration instrument to allow the Tiwi rangers to continue maintenance work and cultural business on that site.

Yingapungapu in East Arnhem Land was declared in the last few years, and that is a very exciting heritage declaration because part of the significance of that site is that it is ongoingly maintained through cultural practice. By necessity, part of its significance is that there is this continuing cultural practice of building up this sand sculpture and recognising relationships between Yolngu and Macassans.

That is built into the instrument itself, in the declaration, so that the cultural authority for traditional owners is clear and their rights to do work in that place is very clear.

Madam CHAIR: Unfortunately, we have run out of time. Thank you, Joanne Townsend, Lauren Townsend and Dr David Steinberg, for attending this afternoon and answering our questions.

The committee suspended.
