



ACT Heritage Council

Statement of Heritage Effect Advice

Under Section 61H of the *Heritage Act 2004*

Heritage Reference: Hall-S23-B1
Received by Council: 18 September 2017,
10 January 2018,
19 June 2018 and
25 July 2018

TO: Transport Canberra and City Services

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Block:	Section:	Division / District:	Heritage Places:
23	1	Hall	Aboriginal Sites Zone; Site 4; Site 5; Site 6

Status of Place: Registered and recorded Aboriginal places

Description of Works: Construction of mountain bike track

Report Details: *“Cultural Heritage Assessment and Statement of Heritage Effect. Halls Creek Track. Block 1 Section 23 Hall”* (Navin Officer Heritage Consultants, June 2018)

“Hall Creek Track. Additional Information to Meet Statutory Requirements” (Navin Officer Heritage Consultants, July 2018)

Council Advice provided by: Chair / Heritage Council

Pursuant to Section 61H of the *Heritage Act 2004*, the ACT Heritage Council advises that:

- The Statement of Heritage Effect is not approved**, as Council is not satisfied that:
- (a) the proposed activity is justifiable at, or near, the Aboriginal places; and
 - (b) there are no reasonably practicable alternative ways to carry out the proposed activity at the heritage sites; and
 - (c) that reasonable steps have been identified to reduce the risk of damaging the heritage sites.

Background:

On 17 September 2017, Transport Canberra and City Services (TCCS) submitted a Statement of Heritage Effect (SHE) application to the ACT Heritage Council (the Council); for works associated with the proposed construction of a bike track within Block 1 Section 23 Hall.

The application seeks approval under Section 61(G) of the *Heritage Act 2004* (the Act) to impact the ‘Aboriginal Sites Zone’ defined in the ACT Heritage Register entry for the

Hall Village Heritage Precinct (the Precinct); and to salvage any Aboriginal objects that may be encountered during construction of the bike path.

To support the application, the “*Cultural Heritage Assessment and Statement of Heritage Effect. Halls Creek Track. Block 1 Section 23 Hall*” (Navin Officer Heritage Consultants, August 2017) (the SHE report) was submitted to the Council; and amended versions of this report were submitted on 10 January 2018 and 19 June 2018 following further information requests by the Council.

The “*Hall Creek Track. Additional Information to Meet Statutory Requirements*” (Navin Officer Heritage Consultants, July 2018) (the SHE addendum) was also submitted to the Council on 25 July 2018.

In these report, the SHE application sets out the following:

- The proposed activity is the construction of a mountain bike track within Block 1 Section 23 Hall; adjacent to and crossing Halls Creek. The proposed track would be approximately one kilometre in length, 1.2 metres in width and five centimetres deep; and would be constructed with a mini excavator and some hand excavation. A low level crossing over Halls Creek is also proposed, which would be a steel platform fixed on either side of the creek with 120 centimetre deep friction drive piles. Construction would take four to six weeks to complete;
- The proposed activity is unlikely to diminish the historic and natural heritage significance of the Precinct; however, the proposal would directly impact the ‘Aboriginal Sites Zone’ defined in the Precinct’s ACT Heritage Register entry. This area is considered to be of moderate archaeological potential, and there is also moderate potential for heritage sites below the disturbed upper soils (up to 10 centimetres deep) to be *in situ*. As the proposal does not require substantial ground surface disturbance, heritage impacts from the proposal are considered to be minimal;
- Recent heritage surveys of Halls Creek have also identified three Aboriginal places in the vicinity of proposed works, being three individual stone artefacts recorded as ‘Site 4’, ‘Site 5’ and ‘Site 6’. These sites would not be impacted by the proposed works, being seven metres (Sites 4 and 6) and 15 metres (Site 5) from the track alignment;
- Alternative locations for the proposed bike path were considered by the local Hall community in 2017 consultations held on behalf of the Village of Hall and District Progress Association. This consultation considered five possible locations for the bike path, with the current location (Site E) preferred by 50% of the participating local community, but also strongly opposed by some community members on heritage and safety grounds. In this context, the application identifies Site E as the preferred location for its proximity to parking, facilities and houses; and states that the only reasonably practicable alternative is to not proceed with the project;
- Measures have been adopted and are proposed to reduce the heritage effects of the proposal, including: relocation of the track in the vicinity of Sites 4, 5 and 6 to increase the distance between artefacts and proposed works; use of a mini excavator and manual excavation during construction to minimise impacts; and the monitoring of the track before and following track construction, with the aim of identifying, collecting and relocating any Aboriginal objects that may be encountered; and

- Representative Aboriginal Organisations (RAOs) have been consulted about the proposed activity and SHE application, with RAOs invited to attend the 30 June 2017 site visit and with draft SHE reports provided to all RAOs on 1 August 2017 and 24 May 2018. In response, Buru Ngunawal Aboriginal Corporation (BNAC) attended the site visit and provided written comment on 13 June 2018, setting out that a more detailed study was needed due to low visibility, and expressing concern that project impacts often occur beyond the defined footprint. Navin Officer Heritage Consultants sought clarification was sought from BNAC at the time, and state that the further investigation referred to was the monitoring of ground surface disturbance works. King Brown Tribal Group is also cited as providing verbal endorsement of the application on 13 June 2018.

Council Assessment:

The Aboriginal Sites Zone is an identified heritage feature of the Hall Village Heritage Precinct, for the presence of Aboriginal heritage sites within the relatively undisturbed woodland areas of Halls Creek, which reflect a pre-European natural and Aboriginal cultural landscape.

On this basis, the ‘Specific Requirements’ for the conservation of the Precinct include the conservation of identified natural and Aboriginal heritage values of the environs around Hall, including the Aboriginal Sites Zone.

Additionally, all individual Aboriginal places and objects within Hall are afforded protection under Section 75 of the Act; irrespective of their inclusion in the Precinct’s ACT Heritage Register entry.

The SHE application proposes to impact this area of Aboriginal heritage significance, and to alter the natural and Aboriginal cultural landscape of Halls Creek. This application has been assessed by the Council against the requirements of the Act, and specifically Section 61H(3), which sets out that the Council must approve a SHE application where it is satisfied on reasonable grounds that:

- (a) the proposed activity is justifiable at, or near, Aboriginal places and objects; and
- (b) there are no reasonably practicable alternative ways to carry out the proposed activity at the heritage site; and
- (c) the applicant has identified reasonable steps that will be taken to reduce the risk of damage to heritage sites.

Following assessment of the application, the Council considers that there are reasonably practicable alternative ways to carry out the proposed activity – specifically, the construction of the bike track in an alternate location in the Hall Village environs; and on this basis, the proposal to impact Aboriginal heritage values is not considered justifiable.

Further, while the application establishes a preference for the currently proposed site for its proximity to parking, facilities and houses; the application does not adequately demonstrate that Aboriginal heritage impacts are warranted in this instance, for the construction of recreational infrastructure that in Council’s view could be constructed in an alternate location.

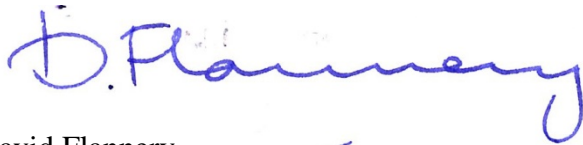
For example, the consideration of alternatives in the SHE includes ‘Site D’, which is described as being approximately 400 metres east of current application area, managed

by ACT Sports and Recreation, having good gradient for a bike track and being located beyond the Aboriginal Sites Zone. While the SHE does not consider this site to be a reasonable alternative due to its distance from parking, facilities and houses, the Council notes that this alternate location is only a short distance from this infrastructure and that this location does not contain any known Aboriginal or natural heritage constraints to development. On this basis, the Council encourages TCCS to assess the feasibility of this alternate site through further heritage assessment.

Decision:

For reasons set out above, the Council is not satisfied that the proposed activity is justifiable, that there are no reasonably practicable alternative ways to carry out the proposed activity at the place, and that reasonable steps have been identified to reduce damage to the identified Aboriginal places.

On this basis, the Council has decided to not approve the SHE application.



David Flannery
Chair (as delegate for),
ACT Heritage Council

17 October 2018