

# Appendix 6

## Aboriginal Community Consultation Overview

---

- **Please note: At the time of submission of this permit application, this document was incomplete. TALSC had informed DIER that a response encompassing results from their statewide community consultation would be available after June 20<sup>th</sup>. It is intended that the TALSC response will form an important part of this record and will be submitted as an addendum to Appendix 6.**
- **The engagement and consultation record and associated documents relating specifically to this permit application is presented in the front of this document.**
- **The engagement and consultation record from the inception of the project through to the permit related discussions follows.**

## Introduction

The journey that has led to this permit application has been a complex and protracted one. Consultation has been the subject of much discussion during the northern Brighton bypass project and a new process for current and future projects is slowly evolving but has yet to be formalised into broader policy relating to the granting of permits to investigate and impact on Aboriginal heritage sites.

At all times the Department of Infrastructure, Energy and Resources (DIER) has endeavoured to undertake thorough consultation that was considered by DIER to be over and above what was typical at the time. However, the potential for highly significant values to exist at the Jordan River levee placed more importance on the need for effective consultation. At the same time, the Aboriginal community voiced their disapproval over the lack of consultation between them and the Government on projects past and present throughout the State.

Permits to investigate and impact on Aboriginal heritage sites must now provide the opportunity for far greater input by the Aboriginal community and its representatives in the decision making process. It is now a requirement that Aboriginal community organisations be well informed on the progress and outcomes of archaeological investigations and that they be requested to provide written comments on development proposals and advice on the issue of permits.

The following document provides some background to the past consultation process and a chronological record of the consultation that has occurred between Aboriginal community organisations, the Aboriginal Heritage Officers (AHOs), Aboriginal Heritage Tasmania (AHT), the consultant archaeologists and DIER. The record commences with an overview of consultation related specifically to the current permit application and is followed by a chronology of engagement from project inception in 2008 through to March 2010 and prior to the production of a Draft Permit Application.

## Background

Over the past eighteen months, the process that provided the opportunity for the Tasmanian Aboriginal Community to participate in decisions related to the investigation and management of Aboriginal heritage values has undergone significant change. Traditionally, the Tasmanian Aboriginal Land and Sea Council (TALSC) among other roles, acted as an advisory body that made recommendations in relation to the management of heritage sites and issue of permits. TALSC withdrew from this process in September 2008 due to a range of factors. Since this time proponents have largely relied on Aboriginal Heritage Officers (AHOs) to liaise with and seek feedback from Aboriginal community members in order to provide a 'Community view' of permit applications. This feedback was then considered as part of the assessment process by the Director of National Parks and Wildlife and AHT when making recommendations to the Minister in relation to permits.

From the time of inception of the Brighton Bypass project, the DIER project team worked hard to include the AHOs in all aspects of the assessment of Aboriginal heritage values for the purpose of consulting with the Aboriginal community. AHOs were always encouraged both directly and through the archaeologists, to seek a wide range of views from the Community. The project team compensated for the absence of an accepted advisory body by employing more AHO resources than was required by AHT to ensure adequate consultation took place. Aboriginal community members

were welcome to visit the investigation team so that they could gain a better understanding of what was occurring on site.

DIER acknowledged that the consultation process had limitations, to the extent that the current more scientific and often complex archaeological investigations can be difficult to convey to community groups and members, which can result in a poor understanding of the process.

It became apparent during the investigations on the northern bypass heritage investigation that the reliance on AHOs to act as the conduit between the proponent and the Aboriginal community was not providing the level of consultation that the Community felt was warranted. Consequently the Aboriginal community led by Aaron Everett and Tasmanian Aboriginal Centre representative Michael Mansell, withdrew their support for the archaeological investigation. The impasse on the northern bypass archaeological investigation continued for over 5 months.

During this time DIER and DPIPWE negotiated with Tasmanian Aboriginal Centre (TAC) Legal Director Michael Mansell, to enable the recommencement of the archaeological works on the northern bypass. DIER believed it was critical that the values on the Jordan River levee be investigated appropriately.

During the impasse on the northern Brighton bypass investigation the Aboriginal community also negotiated more inclusive permitting and investigation processes with DPIPWE related to all projects within the state. The Aboriginal community believed that they should have greater input into heritage investigations and management and that the previous advisory role of TALSC in the permitting process had not been replaced with a similar process that allowed the community to formally advise on such matters.

During the protracted negotiations with the Government related to heritage management and the stalled northern bypass investigation, a work ban was imposed by TALSC on Aboriginal heritage officers throughout the State. This meant that all development projects in Tasmania that were involved in Aboriginal assessment processes were delayed. The ban extended from 24<sup>th</sup> December 2009 until the 3<sup>rd</sup> of February 2010 when the State Government agreed to a revision of the processes related to the issue of permits and community consultation.

The investigation at the Jordan River levee recommenced on the 5<sup>th</sup> February under an agreement that included significant Aboriginal heritage officer involvement, and progressive and timely sharing of information. The investigation was a successful collaboration between the Aboriginal community, the archaeological team and DIER. The very significant results of the investigation have provided a number of challenges for DIER but have led to a modified bridge design that allows the levee deposit to remain intact and to be protected in the future, whilst at the same time enabling the construction of the Brighton Bypass.

## Summary of Consultation

### Consultation relating to the alternative design and Permit Application March 2010 to June 2010

#### March 2010

- Early in March archaeologist Rob Paton received early dating information from the Jordan River levee sediments that were suggestive of an age around 40,000 BP.
- Rob Paton informed DIER, TAC and TALSC and AHOs of the early dating information at the same time, which was consistent with the consultation requirements under the revised permit.
- Archaeologist Rob Paton prepared a draft interim report, which indicated that the levee deposit was very old. As dates of up to 40,000 years old were still tentative, Rob Paton urged caution. If dates were correct, the site would be one of the oldest known sites of human occupation in Australia and the southern hemisphere.
- The media was informed and the discovery was made public on 10<sup>th</sup> March 2010.
- Given the potential for the presence of such a significant site, DIER commenced a revision of the bypass design in this area. DIER subsequently proposed a long span bridge proposal that would enable the levee deposit to be bridged without any permanent impact.
- On 11<sup>th</sup> March the proposal to construct the bridge was rejected by the Aboriginal community via the media.
- On 11<sup>th</sup> March, TAC Legal Director Michael Mansell proposed a rerouting of the bypass along an adjacent rail corridor.
- A review of the proposal was undertaken by DIER to test the feasibility of such a design. A report relating to the review was prepared.
- On 18<sup>th</sup> of March a meeting with TAC and TALSC representatives was held to provide an explanation of the review of the TAC bypass alternative proposal. Attendees included Heather Sculthorpe, Sharnie Everett, Aaron Everett, Fiona Newson, Jessie Digney, Dianne and Ronnie Summers, Leigh Maynard, Phil Cantillon, Andrew Fowler & Selena Dixon.
- Views expressed at this meeting related to concerns about works proceeding on the remainder of the alignment and the perceived lack of flexibility DIER was prepared to show in relation to changing the alignment.
- A report providing an overview of the alternatives explained at the meeting was sent to TAC and TALSC on Friday 19<sup>th</sup> March. This review is included as an attachment in **Appendix 3**, Practical and Feasible Alternatives

#### April 2010

- Much of April was spent awaiting the results of the Optically Stimulated Luminescence (OSL) dating. Meantime, revisions of the design were underway to address the concerns voiced by the Aboriginal community.
- On April 26<sup>th</sup> archaeologist Rob Paton issued the results of the dating and an interim report.
- DIER allowed everyone over a week to absorb the contents of the report prior to scheduling meetings. The intention of the meetings would be to provide information on DIER's current bridge proposal to cross the Jordan River and associated levee.

## May 2010

- On May 6<sup>th</sup> a meeting was scheduled for Wednesday 12<sup>th</sup> May to discuss the results of the investigation and the amended proposal to cross the Jordan River however neither TALSC nor TAC representatives were able to attend at this time.
- On May 10<sup>th</sup> a draft permit application was delivered to TAC and TALSC for their consideration. The application included a number of past reports, Rob Paton's interim report and draft documents providing details of the proposal, an overview of the practical and feasible alternatives that have been assessed and a number of relevant maps. DIER believed that it was important to provide as much information as possible to enable a constructive debate about the proposal to take place.
- May 17<sup>th</sup> – Another invitation was issued to TALSC and TAC to attend a meeting that would include a visit from Minister Giddings. TALSC Manager Fiona Newson agreed to attend this meeting. However, TAC Legal Director Michael Mansell did not want to attend until he had a meeting with DIER and had a number of questions resolved.
- May 18<sup>th</sup> - TALSC Manager Fiona Newson, Colin Hughes and Alicia Arnol attended a meeting at DIER to discuss the Jordan River crossing proposal and related concerns. Minister for Infrastructure Lara Giddings attended for the first part of the meeting to listen to the concerns that have been raised by the Aboriginal community. The project was explained to the participants and questions answered. Concerns related to construction of the bridge over the levee were noted. A recently prepared visualisation was shown to the group which enabled everyone to better understand the proposal at completion of construction. Fiona noted that she intended to conduct consultation throughout the State. DIER gave her copies of large maps and the visualisation for purposes of communicating the proposal more easily to community members.
- May 19<sup>th</sup> - TALSC Manager Fiona Newson asked if DIER would consider funding the cost of accommodation so that TALSC could undertake consultation in the north of the State. DIER agreed to fund this trip on a one off basis to enable TALSC to consult as broadly as possible.
- May 20<sup>th</sup> – a copy of the visualisation was sent to Michael Mansell as a tool to better understand the bridge design. TALSC members had found it particularly useful in better understanding the design. A written commentary to accompany the CD was also emailed to Michael.
- May 21<sup>st</sup> - A response to Michael Mansell's 8 questions (submitted to DIER on 17<sup>th</sup> May) was compiled by Senior Project Manager Andrew Fowler and subsequently emailed.
- May 24<sup>th</sup> – An invitation was extended once again to TAC Legal Director Michael Mansell to attend a meeting with the Minister for Infrastructure, Lara Giddings and DIER officers to discuss the Jordan River crossing proposal and the address any outstanding questions, particularly relating to engineering details. Michael required further technical information prior to committing to a face to face meeting and posed additional questions via email.
- May 25<sup>th</sup> – A response to TAC was provided by Brighton Bypass Northern section Senior Project Manager, Andrew Fowler that addressed 12 questions relating to further technical detail.
- May 27<sup>th</sup> – Addendum to interim Jordan River Levee report provided to TALSC and TAC.
- May 27<sup>th</sup> – TALSC contacted DIER to resolve a couple of outstanding questions related to the Northern Bypass proposal. The comment was made that the visualisation was very useful for the broader community consultation and that a formal response to Minister O'Byrne and DIER was pending.
- May 27<sup>th</sup> – TAC required additional information on alternative alignment suggestions.

## **June 2010**

- June 1<sup>st</sup> – Senior Project Manager provided an email response to Michael Mansell's questions relating to additional alternative alignments. A meeting was still being sought for the following week between TAC representatives, DIER officers and potentially the Minister for Infrastructure.
- June 1<sup>st</sup> - Additional technical information was sought by Michael Mansell relating to traffic volumes and noise. Andrew Fowler provided a response.
- June 2<sup>nd</sup> – A map showing greater detail of the location of the archaeological works in relation to the proposed highway was sent to Michael Mansell.
- At the time of submission DIER had not received a consultation submission from TALSC, however a submission is expected after the TALSC board meeting which is scheduled for 19<sup>th</sup> – 20<sup>th</sup> June. The submission will be provided as an addendum to this document.
- At the time of submitting the permit application for consideration by the Director of National Parks and Wildlife and the Minister, a face to face meeting had not been held between TAC and DIER officers specifically to discuss the Jordan River levee permit application. It is clear however, that engagement was ongoing as DIER responded to a significant number of questions relating to the Jordan River crossing proposal and draft permit application.

## **History of consultation from project inception in 2008 until March 2009**

### **2008**

- The Brighton Bypass Project Managers met with Hank Horton and Colin Hughes In July 2008 to discuss the bypass project. They had few concerns at that time and appeared understanding of need for the project, the limited alignment options available and the possible impact on heritage sites. Permit and consultation processes (as existed at the time) were discussed.
- An Aboriginal heritage officer undertook the first survey in June 2008, which included consultation with TALSC (see Everett Report 2008 **Appendix 12**).
- Three Aboriginal Heritage Officers (AHOs) were engaged to represent the Aboriginal community and work with the archaeologist on a subsequent survey over a period of two weeks. Consultation took place during this time. TASLC and AHT were updated with relevant information (see Stone & Everett Report 2009:2 & 35-36 **Appendix 11**).
- Two Whole of Government meetings were held in the early phase of the project where heritage and environmental issues were discussed. The Manager of AHT was present at these meetings.
- At the completion of the survey work a number of meetings were held to discuss survey results and proposed investigation methodology. The meetings included AHT and DIER officers, AHOs and archaeologists.
- Between the publication of the Stone and Everett report and the commencement of the stage 2 investigation, a number of meetings were held either on site, at DIER or at GHD offices. AHOs, archaeologists, AHT officers and the project team were represented at these meetings. The following key meetings were held to discuss the appropriate investigation methodology:
  - 28 October 2008 – Survey results and additional requirements from AHT. Meeting at AHT between DIER, AHT (Steve Gall), archaeologists (Tim Stone, Rob Paton and Stuart Huys) and AHOs (Aaron Everett, Steve Stanton and Leigh Maynard). Meeting degraded to a challenge from AHOs to AHT about current protocols rather than issues related to the bypass.

- February 2009 – onsite meeting to discuss results and survey methods - Visit included DIER, Tim Stone, Stuart Huys (CHMA), Aaron Everett, Don Ranson, Steve Gall to Pontville ‘quarry sites’, Briggs Road, Unnamed Creek, Transport Hub, Crooked Billet Inn and rail. High level of interest at this stage in supposed ‘quarry sites’.
- Subsequent re-visit with Don Ranson, Steve Gall and Andrew Fowler to ‘quarry sites’.
- March 2009 – onsite meeting - Visit to site with AHT (Don Ranson) and visiting archaeologists to inspect supposed ‘quarry sites’.
- Meetings between DIER and AHT (some of which were in conjunction with archaeologist) occurred approximately twice per month between January and May 2009. These were an opportunity to discuss findings and negotiate investigation methodology. Consultation with AHT after that time was generally more frequent.
- This level of Community consultation was considered more than adequate by AHT who were engaged right through the process of determining how the site should be further investigated. Aaron Everett attended key site meetings, which allowed for transfer of relevant information back to TALSC as per the recommendations proposed in the Stone & Everett report.
- AHT did not approve the initial methodology proposed by Stone & Everett 2009 due to their lack of confidence in the way the ‘quarries’ were to be investigated. AHT provided a suggested research proposal and subsequently, CHMA archaeologist and Aboriginal quarry expert, Rob Paton was employed to revise the quarry investigation methodology in conjunction with the highly respected archaeologist Isabel McBryde.
- AHT approved the methodology and the Minister granted a permit in June 2009. This permit is included as **Appendix 9**. The method was not approved by TALSC as this was not a requirement of AHT at this time.
- Two AHOs were engaged to participate in the investigation where only one was required. This was to ensure that the Aboriginal community could be fully informed about all works occurring across the alignment.
- Part of their role was to seek the views of their community and to provide reports that presented the views from the Aboriginal community.
- AHOs were given a comprehensive package of information at the commencement of the investigation to help to improve their knowledge of the investigation and the values across the site and to ensure the process was open and transparent.
- DIER archaeologists committed a lot of time to educating AHOs on site, which was aimed at improving their knowledge of the investigation process and to ensure that accurate information to be conveyed more broadly to the Aboriginal community.
- Visits to the site by Aboriginal community members were welcomed and discussions with the archaeologist about the investigation including potential bus trips were also encouraged. Onsite visits in the early weeks of the investigation included:
  - A visit by Jimmy Everett.
  - A visit by Fiona Newson TALSC (29/07/09). It is important to note that neither Jimmy nor Fiona expressed concerns at this time.
  - Aaron Everett also invited AHOs Steve Stanton and Caleb Pedder to visit the site.
  - There may have been additional site visits that were not documented at the time.
- Aaron Everett and Bob Hughes produced reports with the following consistent themes:

- That further meetings and consultation should be held to discuss investigative works dealing with Aboriginal heritage sites on the northern bypass alignment;
- That the Community be consulted on matters dealing with methodologies approved by AHT;
- How would Aboriginal sites be protected and how Aboriginal cultural materials be dealt with on site;
- That Aboriginal sites should be protected; and that further meetings between the Aboriginal community should occur;
- That Aboriginal community support had not been given for the destruction of Aboriginal sites (meaning the archaeology);
- That there was not enough Aboriginal community input in Tasmania;
- That archaeologists should be taking direction from AHOs; and
- That the consultation was being undertaken to tick the box for Government to say they have done it.

- AHOs were invited to meetings with AHT, DIER and archaeologists to discuss early investigation results and methods and archaeologist issued results to both AHOs on a regular basis. AHT encouraged AHOs to express any concerns they had directly to the Manager of AHT if necessary.
- Artefacts remained on site and were locked up to ensure their safe keeping until such time as they were analysed. DIER was instructed that the future management of the artefacts would be determined by AHT.
- DIER archaeologists responded to concerns of AHOs at all times, resulting in a cessation of excavation work on the Jordan River levee bank when concerns were raised about the impact of the archaeology on the heritage site.

#### **August 2009**

- Concern regarding the investigation process, and the potential loss of Aboriginal heritage values in the proposed Brighton Bypass, was expressed by Michael Mansell in a letter to Minister O'Byrne dated 18<sup>th</sup> August 2009. The letter not only voiced concern, but requested that the Minister withdraw the permit to interfere.
- There were clearly a number of milestones throughout the investigation that the archaeologists and DIER recognised as appropriate points to liaise more fully with Aboriginal community groups. A clear milestone and therefore reason to meet with the Aboriginal community would have been at the completion of the test pitting phase and prior to the negotiations for the next phase of investigations. However, concern over the investigation process and subsequent cessation of works in response to Aaron Everett and the broader Aboriginal community's concerns, pre-empted the completion of the initial test pitting on the Jordan River levee and the intended consultation did not take place. There was not enough information at this point to give any firm information to the Aboriginal community. Many questions remained unanswered. The cessation of works occurred in late August 2009, approximately 4 weeks after the commencement of the phase 2 investigations.
- Michael Mansell also made direct contact with archaeologist Rob Paton instructing him to cease excavations on the site based on information supplied to him by Aaron Everett.
- The archaeologists ceased work until such time as they gathered support from the Aboriginal community for the investigation to continue.
- The Aboriginal community formally withdrew their support for the investigation via the media on 23rd August 2009.
- On 26th August 2009, DIER representatives, archaeologists and AHOs met with TALSC Manager, Fiona Newson to discuss the impasse. Fiona expressed concern about the

investigation approval process and the investigation itself. She stated that TALSC felt at this stage of the investigation they had enough information from the site to know that it was significant and that work should cease. Given the perceived significance they would not support the destruction of the site.

- Fiona acknowledged that it was difficult for TALSC to have input into the permitting process since the breakdown between TALSC and AHT, unlike the past where concerns of the Aboriginal community could be voiced via a formal process.
- Throughout the early media interest in the Brighton Bypass investigation, DIER and the archaeologists continued to engage the AHOs so that the linkage between the project and the Aboriginal community was maintained.

### **September 2009**

- A meeting was held between DIER and DPIPWE on 3rd September 2009 to discuss the impasse. It was made clear that the Minister would need to have confidence in the investigative process if she was to consider any permit request. A need to build capacity within TALSC to enable them to be able to play a critical role in the process was also discussed.
- The issues associated with the Brighton Bypass were canvassed at an Aboriginal community meeting held at Risdon Cove on the 17th and 18th September 2009. This event attracted media attention through which the view that the investigation should cease was endorsed. Community representatives reiterated that they would blockade any works that proceeded on the bypass.
- Several newspaper articles and news stories followed on from the August story and a story on ABC's Stateline program (September 18th 2009) also followed, expressing similar concerns in relation to the loss of important Aboriginal heritage values.
- Consultant archaeologist, Rob Paton met with Michael Mansell on 22nd September 2009. Rob Paton was asked by community members to explain his actions. It is important to note that at this stage there was not a lot of support in the Aboriginal community for subsurface investigations at all. Many saw archaeology as a destructive process in itself. Subsequently very little archaeology had occurred across Tasmania for many years. Rob Paton went on to explain the archaeology to the meeting which comprised a number of Aboriginal community members including two AHOs.
- Michael Mansell expressed in principle support for the archaeology to continue as long it was understood that it was an investigation, not mitigation; however he believed that a far greater role in decision making by the Aboriginal community was warranted.
- Meetings between DIER, AHT, DPIPWE, the archaeologists, AHOs and Aboriginal organisations continued in an effort to break the impasse and to provide accurate information about the investigation and to agree on terms that would allow the investigation on the Jordan River levee to recommence.

### **October 2009**

- In early October, DIER sent a letter to Michael Mansell acknowledging the concerns of the Aboriginal community and the associated investigation on the northern bypass. In this letter DIER also committed to working with the Tasmanian Aboriginal community more broadly and to giving serious consideration to those views expressed by Community members.
- In response to this letter Michael Mansell indicated that it was not appropriate to undertake further investigation under the existing permit which in his opinion, reduced Aboriginal involvement to being notified after the event rather than being involved in the decision making process. Michael Mansell also suggested that it was agreed at the recent meeting with AHT representatives that the permit would be changed and when this had been satisfactorily completed, he would be happy for the investigation to recommence.

- On 9th October 2009 Michael Mansell issued a press release stating that Aborigines have agreed for more research to be conducted on the bypass site. He went on to say that they think there is a new approach that requires Aboriginal approval before interfering with Aboriginal heritage and that the changes to the existing permit will provide for greater involvement in how discoveries of Aboriginal heritage are dealt with.
- A meeting was subsequently arranged between TALSC, AHT, archaeologists and DIER to discuss a range of issues including the current impasse on the northern bypass.
- Various meetings between heads of agencies and to brief relevant Ministers were held during the remainder of October 2009 to discuss the current impasse.
- Very simply, the dilemma facing DIER at the end of October and eleven weeks after the cessation of works on the Jordan River levee, was that until the TAC had the permit amended to its satisfaction, Aboriginal Heritage Officers would not agree to work on the investigation. Further, due to a long held ethical position, archaeologists would not work on an Aboriginal site without Aboriginal community involvement. This meant that further archaeological works could not occur on the bypass until the Aboriginal community were guaranteed that they could have greater say in the permitting process. Decision making in respect of these requirements sat with DPIPWE.

### **November 2009**

- Early in November various meetings were held between agencies to try to forge a way out of the impasse. The project had incurred significant delay costs of approximately \$0.5 million and without an apparent resolution to the impasse the costs would escalate significantly if the delay was to extend into December.
- Early in November a meeting was scheduled between the heads of DIER and DPIPWE, archaeologist Rob Paton and Michael Mansell for 18th November (Michael Mansell was away for some weeks early in November). Michael Mansell continued to state his requirement for the permit to investigate the Jordan River levee to be amended to ensure greater Aboriginal community involvement. He would be advised on a decision in relation to this demand within a week. Michael Mansell expressed concern that an effective Aboriginal community consultation group did not exist and without such a body the interests of the Aboriginal community relating to management of heritage issues were not appropriately considered.
- During this time DIER remained committed to recommencing the investigation on the Jordan River levee and under revised permit conditions that facilitated greater Aboriginal input into the investigation process.
- Whilst work was delayed on the Northern bypass alignment until an agreement was reached, work continued on the southern Brighton projects (separate contract) as permits were in place.
- During November Michael Mansell requested and was issued with all reports related to the approval processes associated with southern contracts.
- On 25th November 2009 the Aboriginal community commenced a protest against construction works in the vicinity of the southern projects. Michael Mansell told the press that he had been assured by the Government that work would not commence until he had discussions relating to avoiding impacts on Aboriginal sites. It is important to note that at this stage construction had not commenced on the northern section of the Bypass and that construction on the southern projects had been underway for some weeks.
- There was clearly some confusion about the way the Brighton bypass contracts were divided and managed. Further, all approvals for the transport hub had been in place for at least 6 months. The protest continued from 25th November 2009 for approximately one week.

- A large meeting with DPIPWE, DIER , archaeologists and Aboriginal community representatives Michel Mansell, Jimmy Everett and Fiona Newson and other community members clarified a number of issues and discussed the lack of agreed and documented process around consultation.

### **December 2009**

- In early December a factual account of the Aboriginal heritage investigations that were undertaken across all the Brighton projects was presented via the media. Michael Mansell commented to the press that these facts were a revelation to him. It was clear there had been a breakdown in communication and further discussions were warranted.
- Agency heads and officers met with key Aboriginal community representatives and agreed to ensure that all information relating to the bypass investigation was passed on via the archaeologist, that a revised permit to interfere would be prepared to allow the investigation to commence on the Jordan River levee and based on the findings at the Jordan River levee further meetings and discussions with the Aboriginal community in relation to construction options, before they were submitted to the Minister.
- Other matters discussed at the meeting related to consultation and process issues such as the Guidelines and Standards Package for consulting archaeologists were the subject of discussion and would be addressed by DPIPWE.
- The Aboriginal community continued to meet and liaise with both DIER and DPIPWE. It was agreed that a recommenced investigation under conditions that enabled greater Aboriginal community input was appropriate but a demand for new permits to be issued after exhaustive investigations on the southern Brighton projects could not be agreed.
- On the 24th December 2009, TALSC issued a letter to all Tasmanian Aboriginal Heritage Officers based on discussions held on the 10th of December meeting that “...due to the current issues regarding the protection of Aboriginal heritage in Tasmania, in particular, the Brighton Bypass, all Tasmanian Aboriginal heritage work are recommended to cease immediately throughout the state until further notice”. This work ban resulted in further delays in completing heritage investigations on the northern bypass alignment.
- No archaeological work occurred on any site in the State for six weeks.
- A permit was issued for construction to proceed in heritage area C of the northern section of the Brighton Bypass and other areas with a demonstrated low heritage sensitivity were “released” from the need for permits.

## **2010**

### **January 2010**

- Early in January construction works commenced in areas released for construction by DPIPWE and the Minister. However the area around the Jordan River levee was quarantined until such time as agreement could be reached to recommence the investigation.
- On 7<sup>th</sup> January, Michael Mansell was taken on a tour of the northern bypass route with DIER project personnel, archaeologist Rob Paton and AHO Aaron Everett. This tour involved visiting the Aboriginal sites at the Jordan River among other areas.
- On 7<sup>th</sup> January the Premier agreed to meet with Aboriginal community representatives to discuss the heritage issues involving work at the Brighton bypass. After some discussions via the media about the number of meeting attendees, Michael Mansell and two other Aboriginal community representatives met with the Premier as planned. The Premier asked that the Aboriginal community put forward their concerns in a letter to which he would duly respond.

- Michael Mansell's proposition to the Premier reflected many of the unresolved issues on the Brighton bypass. In relation to the Jordan River levee (Section B) Michael asked that such things as a methodology be agreed between Aborigines and the archaeologist to complete the investigation, a permit be redrawn that included a requirement for a historical, social and cultural report and possible x-ray technology to detect possible burials. The letter also requested that sites in other areas of the alignment be revisited; however this was not supported by the Premier as all legitimate approvals were in place.
- Although a cessation of the work ban was reported in the media on 21<sup>st</sup> January 2010, the ban continued throughout January as the Government negotiated to recommence heritage works in the state under a revised consultation process.
- In relation to the northern bypass, negotiations continued throughout January mainly via letters between the Premier, DIER, archaeologists, DPIPWE and the Aboriginal community representative Michael Mansell during this time to negotiate an appropriate methodology and permit for the recommencement of the Jordan River levee investigation.

### **February 2010**

- 1<sup>st</sup> February, Rob Paton provided Michael Mansell and Aaron Everett with a revised copy of the methodology for consideration.
- The work ban on AHOs was lifted on 3<sup>rd</sup> February 2010.
- In early February a revised methodology was produced by archaeologist Rob Paton that enabled the recommencement of the investigation on the levee (**see Appendix 7**). It was emailed to Michael Mansell and Aaron Everett on 1<sup>st</sup> February.
- A permit to interfere which would allow the investigation to proceed was also finalised and sent to Michael Mansell by Kim Evans (Secretary, DPIPWE) (**see Appendix 8**).
- On the 3<sup>rd</sup> February Michael Mansell indicated that the AHO work ban was lifted.
- Subsequently, DIER initiated a meeting with TALSC and AHT to seek approval for the methodology to recommence the heritage investigation on the Jordan River levee. TALSC gave their support for the investigation to commence.
- A meeting was also held on the Jordan site on 4th February 2010 with TAC representative Michael Mansell and AHO, Aaron Everett to seek approval for the methodology. Issues such as the method of excavation, the timeframes, AHOs to be employed during the investigation, the social, cultural and historical report and an interpretation sign among other things were discussed at the meeting. It was agreed that archaeologist Rob Paton and DIER would provide regular updates and discussions about design options over coming weeks.
- On the 5<sup>th</sup> February 2010 Michael Mansell notified DIER that the methodology was endorsed by the TAC. Michael stated that "*...Consultations between the proponent (in this case DIER) and Aboriginal representatives about the proposal and its potential for impact on Aboriginal heritage. There have been many meetings both on and off site, the most recent taking place on-site on 4th February. We are satisfied with this aspect of the consultations*".
- Michael also provided some guidance on how he thought the social, cultural and historic report should be progressed and that TAC would propose content for an interpretation sign at the levee.
- The investigation commenced on the 5th February and continued until 26th February, with the archaeological teams working seven days per week and two shifts per day.
- AHOs Robert Hughes and Leigh Maynard were engaged to ensure that the Aboriginal community were represented during the excavation works. Aaron Everett was engaged as the Aboriginal Representative who would be preparing the social and cultural material throughout the course of the investigation on site. The material gathered during this time

would be included with the historical component to form the final social, cultural and historical report.

- During the course of the investigation Aboriginal community members visited the site and included representatives from the TALSC and TAC as well as individual community members. Further, archaeologist Rob Paton provided updates directly to community representatives.
- On the 22<sup>nd</sup> February Manager of TALSC, Fiona Newson, (TAC's Michael Mansell was unable to attend) and AHO Aaron Everett were invited to a meeting with DIER, archaeologist and AHT to provide an update on findings and to begin discussions about design and construction options. The meeting was scheduled to be held on site however Aaron Everett requested that the meeting be held off site due to the inclusion of AHT in the meeting. An overview of findings to date was presented in addition to a proposal to construct the road across the levee. Construction methods that would minimise the impact were described.
- It was noted at this time that samples had been taken for dating and that these results may impact on the road design and construction approach.
- On 25<sup>th</sup> February, DIER project personnel met with TALSC Manager, Fiona Newson, AHO Aaron Everett (TAC representative, Michael Mansell was invited but was unable to attend) and archaeologist Rob Paton to discuss the construction approach to the Jordan River levee crossing. At this stage the dates of the deposit were not known. This proposal involved encroachment onto part of the levee.
- Archaeological work ceased on the site on 26<sup>th</sup> February, however artefact analysis, the dating process, ground penetrating radar reporting and archaeological reporting continued.

## Conclusion

In summary, the consultation process has changed significantly throughout the life of this project. At commencement of the design phase of the project in early 2008, the TALSC was the Aboriginal community organisation around which consultation was focused. They also dealt with recommendations associated with permit applications to impact on Aboriginal heritage sites. In late 2008 the TALSC withdrew their services to developers in relation to the provision of advice for permitting purposes leaving no real mechanism or agreed approach to consultation. At this stage the TAC was not involved in issues relating to heritage management and permits to impact on Aboriginal heritage.

At all times DIER worked hard to abide by the requirements of AHT by facilitating transfer of information to the Aboriginal community via the AHO. Unfortunately, this process failed to deliver a timely or collaborative process for the northern bypass project. While information about the investigation was filtering through to the Aboriginal community at the same time as evidence was emerging of a potentially significant site, it became apparent to TAC Legal Director Michael Mansell, that no Aboriginal organisation was currently adequately empowered to deal with heritage matters. He proceeded to address this situation by calling a halt to works until this matter was resolved. The delay in this very legitimate investigation had consequences for the project cost and timelines.

DIER's belief that this could have been a significant site can be demonstrated by the decision to progress 2 design options from late 2008 on. This and the eventual adoption of an alternative design to avoid impacting the Jordan River levee came at considerable expense. What it showed was that the Government, if necessary, was willing to alter designs and invest additional resources if the heritage values proved to be very significant.

With an agreed process eventually secured around Aboriginal community involvement in the investigation and a revised permit to reflect that, the investigation proceeded at a great pace and cost. This was a ground breaking investigation for Tasmania which included many firsts. Ground penetrating radar (GPR) and optically stimulated luminescence (OSL) dating which were integral parts of the methodology had not been utilised in such an investigation in Tasmania before this time. Consultation during the investigation was broad and considered appropriate.

At the completion of the investigation, archaeologist Rob Paton kept Aboriginal community representatives informed regarding results from the GPR and the OSL dating. As tentative dates were provided, an alternative design process and discussions continued. The outcome proposed by DIER is one that leaves the levee intact for future generations and possible further research and also allows for the completion of the Brighton Bypass with a bridge crossing the Jordan River and levee deposit.

Finally and ironically, the investigation associated with the Brighton Bypass has resulted in a very important discovery. The discovery however, has provided real challenges to the project. Over the past three years DIER has undertaken some extensive archaeological projects across the state, in fact more than half of the archaeology that has occurred in the state has been undertaken by DIER in the past three years. Therefore it is important to acknowledge that DIER is making a significant contribution to a rapid growth in knowledge about Tasmanian Aboriginal cultural heritage. DIER is proud of supporting and funding such investigations and discovery's.

Where it is possible to preserve Aboriginal heritage, DIER will respond and make every effort to do so. However there will be cases where dramatic changes to projects and compromising of project requirements is not possible and some values will be lost. In these cases, comprehensive information is gathered and shared with the Aboriginal community, unlike some of the practices that occurred in the past. DIER remains comfortable with the findings of the archaeological investigation that the heritage values of TASI 10757 are limited to the levee as defined and that its construction proposal will avoid impacts to those values but acknowledges that the Aboriginal groups with which it has consulted are of a different opinion.