

Department of Mines, Industry Regulation and Safety Northampton Shafts Project

Work Area Clearance Report

Client: Department of Mines, Industry Regulation and Safety

Heritage Advisor and Author: Daniel Puletama

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SPATIAL DATA

Spatial data captured for any Aboriginal cultural heritage in this report has been obtained by using a handheld GPS and using the GDA94 coordinate system.

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Ben Darby of DMIRS

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ABBREVIATIONS

Abbreviation	Definition
ACH	Aboriginal cultural heritage
ACHA	Western Australian <i>Aboriginal Cultural Heritage Act 2023</i>
ACHIS	Aboriginal Cultural Heritage Information System
ATSHIPA	Commonwealth <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>
DDA	Due Diligence Assessment
DPLH	Western Australian Department of Planning, Lands and Heritage
DMIRS	Department of Mines, industry Regulation and Safety
NTA	Commonwealth <i>Naïve Title Act 1993</i>
SandS CRM	Sticks and Stones Cultural Resources Management
YSRC	Yamatji Southern Regional Corporation

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INTRODUCTION

PROJECT BACKGROUND

The Abandoned Mines Program was initiated following the enactment of the *Mining Rehabilitation Fund Act 2012* (MRF Act), which provides a source of funding to address abandoned mine features in WA. The Abandoned Mines Inventory records multiple features surrounding Northampton, these include 47 abandoned mine features across Wheal Ellen, 57 across Commonage and three at Wanerenooka. These features include shafts, open stopes, tailings, open cut pits, costeans, buildings, machinery and shallow workings.

The Department of Mines, Industry Regulation and Safety (DMIRS) is working with the Department of Planning, Lands and Heritage (DPLH) to identify and reduce the public safety risk of abandoned mine features at the Wheal Ellen, Commonage and Wanerenooka sites near Northampton, Western Australia. DPLH is evaluating environmental and human health risks at the Wheal Ellen, Commonage and Wanerenooka former mine sites relating to residual tailings and waste rock.

A previous activity notice (first notice) was submitted detailing the non-intrusive visual assessments. A second notice was submitted detailing intensive site investigations (Disturbance investigations). This third activity notice covers all activities for the DMIRS Northampton Shaft Program and DPLH Northampton Lead Tailings Project (NLTP).

ACTIVITY AREA

The 'activity area', or 'project area', was proposed as three irregular 'blocks' encompassing the Northampton Commonage, Wheal Ellen, and Wanerenooka sites (figure 1).

LOCAL ABORIGINAL CULTURAL HERITAGE SERVICES

The Aboriginal Cultural Heritage Act 2021 provides for the establishment of Local Aboriginal Cultural Heritage Services (LACHS) to include Aboriginal people in the decision-making process regarding activities that may impact their cultural heritage.

The Department of Planning, Lands and Heritage (DPLH) *Aboriginal Cultural heritage Act 2021* (ACHA) Consultation Guidelines provide a consultation contact hierarchy, being:

- (a) each LACHS for the area or a part of the area;
- (b) if there is no LACHS for the area or a part of the area — each native title party and each knowledge holder for the area or the part of the area;
- (c) if there is not a LACHS, native title party or knowledge holder — each native title representative body (NTRB) for the area or the part of the area.

At the time of engagement, no LACHS had been designated for the Activity Area.

The Yamatji Southern Regional Corporation (YSRC) represents the interests of the Yamatji Nation under the Yamatji Nation Indigenous Land Use Agreement for the Activity Area. The YSRC is contacted through:

The Yamatji Southern Regional Corporation

Level 2, 7 Wiebbe Hayes Lane

Geraldton, WA

(08) 9934 6890

heritage@ysrc.com.au

No Knowledge Holders were registered for the Activity Area on the DPLH Aboriginal Cultural Heritage Information System (ACHIS).

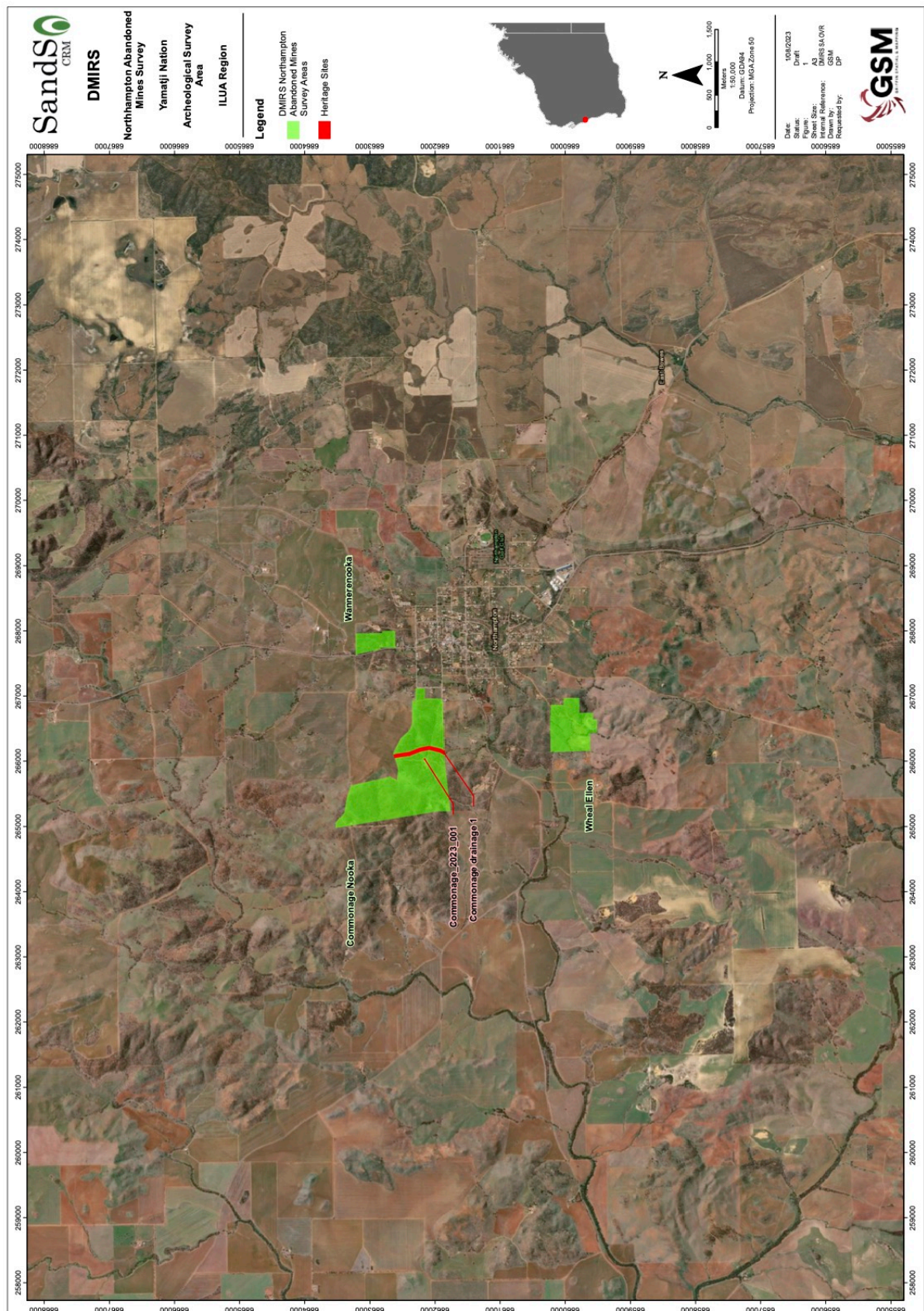


Figure 1: Map of activity area

RELEVANT HERITAGE LEGISLATION

Western Australian Aboriginal Cultural Heritage Act 2021

Western Australia's *Aboriginal Cultural Heritage Act 2021* (ACHA) is the foremost legislative mechanism for Aboriginal cultural heritage (ACH) in Western Australia. The Department of Planning, Lands and Heritage (DPLH) currently administer the ACHA.

DPLH has provided an outline of the objectives and features of the ACHA through and provided a set of guidelines for working under the ACHA.

The ACHA objectives as described by DPLH are:

- a. To recognise the importance of Aboriginal cultural heritage and Aboriginal custodianship
- b. To recognise, protect and preserve Aboriginal cultural heritage
- c. To manage activities that may harm Aboriginal cultural heritage
- d. To promote an appreciation of Aboriginal cultural heritage

The ACHA features as described by DPLH are:

- 1 Updated Aboriginal cultural heritage definition, replacing a 'focus on sites and artefacts' with a recognition of Aboriginal 'living culture' and 'cultural landscapes'.
- 2 Recognised Aboriginal custodianship and control of cultural heritage, including encouraging the return of secret and sacred objects
- 3 A new directory of Aboriginal cultural heritage, led by the Aboriginal Cultural Heritage Council (ACH Council).
- 4 Establishment of the ACH Council, and the local Aboriginal Cultural Heritage Services (LACHS) to manage Aboriginal cultural heritage.
- 5 Protecting Areas of outstanding significance by declaration of Protected Areas.
- 6 Managing activities that may harm Aboriginal cultural heritage through Aboriginal Cultural Heritage management Plans agreed by Aboriginal parties and proponents.
- 7 Stronger compliance and enforcement, with heavier penalties, and the Minister able to issue stop activity and remediation orders.
- 8 Both Aboriginal Parties and proponents afforded rights of review

The objectives and features of the ACHA establish a continuous engagement between proponents, Aboriginal parties, and cultural heritage. The process of engagement is determined level or 'Tier' of activity, where tiers are defined as:

Tier 1 activity means an activity involving no, or minimal level of, ground disturbance

Tier 2 activity means an activity involving a low level of ground disturbance that is prescribed

Tier 3 activity means an activity involving a moderate to high level of ground disturbance

The ACHA introduces significant penalties up to a maximum of \$10million. There is also a suite of enforcement measures including:

- Powers for the Minister to issue “stop activity orders”, “prohibition orders” and “remediation orders”; and
- Offences for carrying out harm including material or serious harm, and criminal offences and liability for employers in certain circumstances where employees have contravened provisions of the ACHA.

Commonwealth Aboriginal and Torres Strait Islander Protection Act 1984

The Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIPA) provides a mechanism for the Commonwealth Minister for Environment to make declarations regarding the protection of an Aboriginal area when the Minister is satisfied that, under State or Territory law, there is ineffective protection of the area from a threat of injury or desecration. Declarations made under this Act may involve restricting activities and/or access to an Aboriginal site.

Under section 22 of the ATSIPA, it is an offence to conduct behaviour or partake in an action that contravenes a declaration made by the Minister. Where an Aboriginal place is concerned, the penalties under this section are \$10,000 or imprisonment for five years, or both, for an individual, or \$50,000 for a corporate body. In the case of an Aboriginal object, the penalties are \$5,000 or imprisonment for two years, or both, for an individual, or \$25,000 for a corporate body.

If the requirements of the ACHA are adhered to, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 will likely have no relevance for any ACH in the activity area.

Commonwealth Native Title Act 1993

The Commonwealth *Native Title Act 1993* (NTA) is part of the Commonwealth’s response to the High Court’s decision in *Mabo v Queensland (No.2)* and adopts the common law definition of native title, defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal people in land and waters, and that are recognised by the common law. These rights may exist over Crown Land but do not exist over land held as freehold title.

The NTA recognises the existence of an Indigenous land ownership tradition where connections to country have been maintained and where acts of government have not extinguished this connection.

The NTA and the Commonwealth *Native Title (Prescribed Bodies Corporate) Regulations 1999* state that once a native title determination has been made, corporations must register under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (amended 2003)

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (amended 2003) (EPBC Act) fulfils Australia's obligations as a signatory to the World Heritage Convention 1972 by protecting World Heritage properties in Australia. The EPBC Act also protects places of national cultural and environmental significance from damage and interference by establishing a National Heritage List (for places outside of Commonwealth land) and a Commonwealth Heritage List (for places within Commonwealth land).

Under the EPBC Act any action that has, will have or is likely to have a significant impact on a place of national cultural and/or environmental significance must be referred to the Minister for Sustainability, Environment, Water, Population and Communities for approval. The EPBC Act sets out a procedure for obtaining approval, which may include the need to prepare an environmental impact statement for the proposed action (an action is defined in section 523 of the Act to include a project, a development, an undertaking, or an activity or series of activities).

Breaches of the EPBC Act attract penalties of up to 5,000 penalty units for an individual, or 50,000 penalty units for a body corporate. The monetary value of a penalty unit is defined by under section 4AA (1A) of the Commonwealth *Crimes Act 1914*.

The EPBC Act protects places of national cultural and environmental significance from damage and interference by establishing a National Heritage List (for places outside of Commonwealth land) and a Commonwealth Heritage List (for places within Commonwealth land). Under the EPBC Act any action that has, will have or is likely to have a significant impact on a place of national cultural and/or environmental significance, such as a development project that could have a significant impact on any matter of National Environmental Significance (NES), including National Heritage values, must be referred to the Minister for the Department of Sustainability, Environment, Water, Population and Communities for approval. The EPBC Act sets out a procedure for obtaining approval, which may include the need to prepare an environmental impact statement for the proposed action (an action is defined in s.523 to include a project, development, an undertaking or an activity or series of activities). If the Minister decides that significant impacts are likely, then the action requires approval under the EPBC Act. The action is known as a 'controlled action'.

The EPBC Act is only relevant in relation to an Aboriginal site if the site is (1) within the boundaries of a World Heritage-listed property, or (2) entered onto the National or Commonwealth Heritage Lists. There is currently no requirement for referral to the Commonwealth Department for Sustainability, Environment, Water, Population and Communities under the EPBC Act if the site is not entered onto one of these lists.

Legislation Discussion

In most instances compliance and adherence to the ACHA and applicable land access agreements would meet heritage legislative requirements.

DUE DILIGENCE ASSESSMENT

ACH MANAGEMENT CODE

The DPLH has provided a 'ACH Management Code' to direct activity assessment requirements under the ACHA. The 'ACH Management Code' declares:

The Aboriginal Cultural Heritage Act 2023 (Act) recognises, protects, conserves, and preserves Aboriginal Cultural Heritage (ACH), and recognises the fundamental importance of ACH to Aboriginal people and its role in Aboriginal communities past, present and future. The Act recognises the value of ACH to Aboriginal People as well as to the wider Western Australian community.

One of the key principles of the Act relating to the management and of activities that may harm ACH is that, as far as practicable, utilise land for the optimum benefit of the people of Western Australia, the values held by Aboriginal people in relation to ACH should be prioritised when managing activities that may harm ACH.

Where an activity that may harm ACH is proposed to be carried out, a due diligence assessment (DDA) is required to be undertaken (other than for exempt activities) to assess the risk of harm to ACH to enable a proponent to determine how to proceed in relation to the proposed activity.

Any 'Due Diligence Assessment' (DDA) must be undertaken in accordance with the ACH Management Code.

UNDERTAKING THE DDA

The initial action of a DDA is to assess if the project is within a 'protected area'. A 'protected area' is recognition of the outstanding significance and requires a declaration as a 'protected area'. The DPLH ACHA *Protected Area Order Guidelines* outline the requirements considered when determining whether ACH is of outstanding significance for the purposes of the ACHA. The requirements for declaring a protected area order include considering the following factors when an application is made by a knowledge holder:

Community Health	Sacred
Educational potential	Contemporary usage
Enhancing knowledge	Uniqueness or rarity of ACH

All protected areas, and their relevant conditions and regulations, are listed on the DPLH Aboriginal Cultural Heritage Information System (ARCHIS) directory.

The DPLH ACHA Management Code provides the following action table:

	Steps for assessing whether the Activity area is located within any part of a protected area	Supporting information/required action
Step 1	Search the Directory (ACHIS)	All protected areas, including relevant conditions and regulations, are listed on the Directory (ACHIS)
Step 2	If the Activity are is not located within a protected area continue with the DDA.	Continue to activity Tier Assessment
Step 3	If the Activity area is located within a protected area, any activity that may harm ACH can only be carried out subject to any conditions or regulations relating to that protected area.	Contact DPLH to enquire whether any conditions or regulations exist that would allow the activity.

Table 1: Assessment of Activity interaction with Protected Areas Action Table

The activity is confirmed to be outside of a protected area.

ASSESSING THE TIER OF AN ACTIVITY

The ACHA recognises the differing potential of different activities to harm ACH. The implementation of a tiered system of activity assessment reflects the differing potential to harm ACH. The activity tiers are:

Exempt Activity

Tier 1

Tier 2

Tier 3

The Western Australian *Aboriginal Cultural Heritage Regulations (No. 2) 2023* Schedule 1 details 'Activity Type' and their corresponding 'Activity Tier' (Appendix 3).

Exempt Activity

An 'Exempt Activity' does not require any direct engagement and the activity can proceed. An 'Exempt Activity' is defined in Section 100 of the ACHA as:

exempt activity means any of the following activities –

- (a) *Construction, renovation or demolition of a building occupied, or intended for occupation, as a place of residence, or a building ancillary to such a building, on a lot as defined in the Planning and Development Act 2005 section 4(1) that is less than 1 100 m²;*
- (b) *development of a prescribed type carried out in accordance with the Planning and Development Act 2005;*
- (c) *travel on an existing road or track;*
- (d) *the taking of photographs for a recreational purpose;*
- (e) *recreational activities carried out on or in public waters or in a public place;*

- (f) *burning carried –*
 - i. *for fire prevention or control purposes or other fire management works on Crown land; and*
 - ii. *by a public authority;*
- (g) *clearing of a kind set out in the Environmental Protection Act 1986 Schedule 6 item 10, 10A, 11 or 12;*
- (h) *other activities, if any, prescribed for the purposes of this paragraph*

Further detail on 'Exempt Activities' are provided in the DPLH ACHA Management Code (Appendix 2)

Tier 1 Activity

A 'Tier 1 Activity' is generally defined as a low amount of activity (minimal ground disturbance), although other activities may be 'Tier 1 Activities' as provided in the DPLH ACHA Management Code (Appendix 2).

A 'Tier 1 Activity' that may harm ACH does not require approval. However reasonable steps to minimise or avoid harm to ACH must be taken.

Tier 2 Activity

A 'Tier 2 Activity' is generally defined as a medium amount of activity (low-level ground disturbance), although other activities may be 'Tier 2 Activities' as provided in the DPLH ACHA Management Code (Appendix 2).

A 'Tier 2 Activity' that may harm ACH requires an ACH permit granted pursuant to Part 6 Division 5 of the ACHA.

Tier 3 Activity

A 'Tier 3 Activity' is generally defined as a high amount of activity (moderate to high ground disturbance), although other activities may be 'Tier 3 Activities' as provided in the DPLH ACHA Management Code (Appendix 2).

A 'Tier 2 Activity' that may harm ACH requires an ACH management plan approved or authorised pursuant to Part 6 Division 6 of the ACHA.

DDA FOR THE NORTHAMPTON ABANDONED MINES PROGRAM

The following findings have been determined from the due diligence assessment:

DESKTOP DUE DILIGENCE ASSESSMENT FINDINGS

Interaction with a protected area: It is confirmed through a search (on 10 June 2023) of the ACHIS that the project is outside of protected areas.

Activity Tier: The activity, as 'Rehabilitation Activities', is best described as a Tier 3 Activity, as Division 8 Subdivision 4 Section 121 *a remediation activity not otherwise described in this Division* and Division 8 Subdivision 4 Section 122 *a rehabilitation activity not otherwise described in this Division* most specifically describes the proposed activity.

Potential to Harm ACH: The potential to harm ACH is unknown due to the absence of a reliable ACH investigation.

Action: Further investigation as directed by the ACH investigation guidelines is required.

ABORIGINAL CULTURAL HERITAGE INVESTIGATIONS

Aboriginal cultural heritage investigations are required when the presence of ACH in an activity area is unknown. The DPLH ACHA *Aboriginal Cultural Heritage Investigation Guidelines* establish three ACH investigation types to determine whether ACH is located within an area, with the three investigation types being:

- An ACH investigation meeting
- An ACH work area clearance survey
- An ACH avoidance survey

ACH INVESTIGATION ENGAGEMENT

An ACH investigation engagement between a proponent and an Aboriginal party can be relied upon for the purposes of a DDA if the following matters are addressed and agreed by the Aboriginal party in writing:

- (a) The area addressed by the engagement and its relationship to the activity area including
 - (i) the area that is clear of any ACH and/or the location and boundary of the ACH; and
 - (ii) any cultural sensitivities or restrictions
- Additional
 - (iii) the importance and/or characteristics of the ACH;
 - (iv) potential impacts of the proposed activity on the ACH; and
 - (v) and recommendations as to the management of the ACH.
- (b) Whether it is tangible and/or intangible elements of ACH
- (c) A description of limitations that may have prevented all ACH present being identified.

Where limitations exist that may have prevented the accurate or reliable identification of ACH, should it be present, the written confirmation will only be valid for those parts of the survey area where the limitations did not exist.

Where an ACH investigation engagement is not able to address the above matters for the whole of the activity area, an ACH work clearance survey or ACH avoidance survey will be required.

There must be clear evidence in writing of the agreement of the Aboriginal party in relation to the accuracy of the matters above.

ACH WORK AREA CLEARANCE SURVEY

An ACH work area clearance investigation is used to identify an area that is clear of any ACH. It does not provide any information on ACH, including the location and characteristics of ACH.

An ACH report that satisfies the DPLH ACHA *Survey Report Guidelines* is required at the conclusion of the ACH work area clearance survey.

ACH AVOIDANCE SURVEY

An ACH avoidance survey is used to identify any ACH that may be present in the survey area. An ACH avoidance survey defines the boundary of the location of ACH but does not provide any information on the characteristics of the identified ACH nor record information on the ACH.

An ACH report that satisfies the DPLH ACHA *Survey Report Guidelines* is required at the conclusion of the ACH avoidance survey.

ACH INVESTIGATION OUTCOMES

The YSRC prescribed a 'Work Area Clearance' would be undertaken.

THE DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE

The DPLH ACH *Aboriginal Cultural Heritage Survey Guidelines* has provided detail on the reporting requirements for ACH reports (Appendix 4). The following satisfies these reporting guidelines.

FIELDWORK DATES

The fieldwork was undertaken over a single one day trip on:

Friday 14th July 2023 – Sunday 16th July 2023

PARTICIPANTS

The ACH investigation fieldwork team was conducted by representatives from the Yamatji Nation, and Sticks and Stones Cultural Resources Management (SandS CRM). The team make up was:

Yamatji Nation: Karen Whitby, Adam Mallard, Paul ‘Yeti’ Eley, Clive Nutter, Brodine Nutter, Trent Mallard

SandS CRM: Daniel Puletama, John Forrest



Figure 2: Fieldwork location – Wheal Ellen

PROJECT DESCRIPTION AS PROVIDED TO YSRC

The project provided the following statement:

All investigation activities will occur within previously disturbed areas. Activities will include the mobilisation of excavators or backhoes, drill rigs and light vehicles.

Subject to the findings and recommendations of the investigations, rehabilitation earthworks or construction works may be required on, between and surrounding the abandoned mine shafts. This would likely require some additional clearing/ ground disturbance and the mobilisation of heavy machinery.

Disturbance geotechnical activities are likely to include;

- Some clearing of vegetation within the shafts, between the shafts and surrounding the immediate area of the shafts.*
- Light vehicles and machinery will be driven onsite but will keep to the existing access tracks as far as is practical. Some clearing or “tramming over” maybe required where access tracks have self-revegetated.*
- ‘Ramming’ the base of the shafts to test for ‘false bottoms’, the use of drill rigs to drill holes to intersect anticipated voids (mine workings) and some excavation of the features and areas between features to test for collapses, lateral workings and competent rock foundations.*
- Rehabilitation earthworks or construction works on, between and surrounding the abandoned mine shafts. Including clearing/ ground disturbance and mobilisation of heavy machinery.*

Disturbance environmental activities are likely to include;

- Soil investigations may include excavation by backhoe, however the majority of soil samples will be collected from the soil surface; then sieved and placed into glass jars for laboratory analysis.*
- Sediment samples may be collected from onsite creeks by trowel and placed into sample jars.*
- Surface water samples will be collected from onsite creeks by placing collection jars directly into the water body.*
- Groundwater monitoring wells will be installed by rotary blast drill rig to intercept the underlying groundwater table. Groundwater samples will then be collected from the wells for laboratory analysis.*
- Rehabilitation earthworks to be confirmed with DMIRS.*

Details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice:

Task	Date
Geotechnical Engineers – non intrusive investigation (first notice)	May 2023

Geotechnical Engineers – Disturbance investigations. (second notice); and Environmental Investigations	October 2023
*Hold Point – Present findings and options. Reach consensus on a rehabilitation works program.	2024
Issue works Request for Tender and award contract	Late 2024
Rehabilitation Works Program. Heavy machinery onsite.	2025
Monitoring Phase	2025 to 2027

**Following the geotechnical and environmental assessments the engineers/ consultants will draft geotechnical, environmental assessment reports and reports recommending rehabilitation or “make safer” options. Those options will be discussed with YSRC and project stakeholders. Once a consensus has been reached a rehabilitation works program can be drafted.*

The techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity:

- *Backhoe or small excavator*
- *Drill rig*
- *Light vehicles*
- *Survey drone (used only within the Yellow, Blue and Green outlines on the attached maps)*
- *Down shaft cameras, scanners and LiDAR lenses*
- *Heavy machinery (earth moving trucks, larger excavators, dozers, drill rigs, concrete trucks, water carts etc.)*
- *Temporary onsite ablutions/ office/ crib room*

Any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity:

- *Soil samples may be collected from the site for laboratory analysis.*
- *Sediment samples may be collected from onsite creeks by trowel and placed into sample jars.*

- *Surface water samples will be collected by direct grab sampling methods.*
- *Groundwater samples will then be collected from the wells for laboratory analysis*
- *Previously mined rock and soil may be considered as a backfill or construction material.*
- *Water will be required for Rehabilitation earthworks or construction purposes.*

The activity, as 'Rehabilitation Activities', is best described as a Tier 3 Activity, as Division 8 Subdivision 4 Section 121 *a remediation activity not otherwise described in this Division* and Division 8 Subdivision 4 Section 122 *a rehabilitation activity not otherwise described in this Division* most specifically describes the proposed activity.

DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE CULTURAL HERITAGE BACKGROUND

ACH is described in spheres of ‘tangible’ and ‘intangible’ heritage without defining ‘tangible’ and ‘intangible’ heritage. In the simplest of terms, ‘tangible’ ACH are the physical objects, artefacts and monuments of Aboriginal culture, society and history. ‘Intangible’ heritage is more complex to conceptualise. UNESCO provides the following introduction and definition of ‘intangible’ heritage:

The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity

In practice, ‘tangible’ ACH is recorded through archaeological field methods and ‘intangible’ ACH is recorded through ethnographic field methods.

TANGIBLE BACKGROUND

The distribution of known tangible ACH in relation to environment and topography are routinely examined in order to define identifiable tangible ACH location patterns, in addition to any regional and local trends in the tangible ACH record of an area where tangible ACH investigation is planned. This form of existing data analysis often provides evidence about past economic and social systems and may also assist in predicting likely site types, site locations and the nature of the tangible ACH resource in the area.

Limited tangible ACH (previously archaeological) investigations have been undertaken within the region. ACH investigations in WA have historically been tied to approvals for large resource developments (mining and energy related projects). The developments within the region have been completed outside of a contemporary approvals process given the age of the developments.

INTANGIBLE BACKGROUND

The Dreaming, or Dreamtime, is central to Aboriginal culture and people, as it is to all Aboriginal people across Australia. (Stanner, 1979) describes the Dreaming as the ‘everywhen’, referring to a complex set of beliefs and behaviours, not only embracing the creative past, but having great relevance to the present and future. As Stanner (1979:24) notes, though the notion of the Dreaming conjures up a past “sacred heroic time”, “One cannot ‘fix’ The Dreaming in time: it was, and is, everywhen”. This caveat reflects a common misconception that the Dreamtime was a creative period unrelated to the present and future; but the key to understanding the need to maintain culture and spiritual health is the idea that it is dangerous to neglect the Law, and potentially deadly, to not look after the sacred Country and sites. They need maintenance and protection.

ArchaeAus 2023

PREVIOUS INVESTIGATIONS

No previous investigations listed in the ACHIS have been undertaken over the survey area.

INVESTIGATION REPORT SUMMARIES

One previous investigation listed in the ACHIS have been undertaken over the Wheal Ellen survey area.

KNOWN ACH

No previous ACH listed on the ACHIS have been recorded within the survey area.

DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE METHOD

The background research for the tangible survey component consisted of searches of the DPLH Site Register, Records of the WA Museum and the corporate archives of SandS CRM.

Prior to the fieldwork component of the works, spatial data for the project area was uploaded into handheld Garmin GPSmap 62s Global Positioning System (GPS) units for orientation in the field. Field maps were printed to brief all survey participants. The SandS CRM archaeologist and Yamatji Nation representatives then undertook a pedestrian survey over the prescribed disturbance survey area. The pedestrian survey involved walking straight transects to cover the survey area. Transects lines were between 25 metres and 30 metres between participants and covered a narrow spectrum of land surfaces – mainly low dunes. Tangible ground surface visibility at the time of survey was poor and ranged from 40% to 80%. This survey strategy resulted in 100% coverage of the completed survey area. Information pertaining to archaeological conditions, including flora and fauna; raw material availability; and surface geology were recorded in field notebooks and accompanied by high-resolution digital photography.

Any tangible ACH identified in the survey area was flagged with pink and black at ACH boundary nodes. Photographs and detailed field notes were recorded. The site grid components were buffered by 5 metres post-survey to account for GPS error/accuracy and converted into an ESRI shapefile as a polygon once fieldwork was completed.

The information recorded in the field notebooks included, but was not limited to:

- ACH ID
- ACH Type
- General intrasite feature types
- Specific metrics of intrasite feature components
- Persons whom the place is of importance and significance
- Place importance and significance
- Existing use or significance attributed under relevant Aboriginal Custom
- Site Condition

The background research for the intangible survey component consisted of searches of the DPLH Site Register, Records of the WA Museum and the corporate archives of SandS CRM.

Consistent with the methodology and philosophy of intangible ACH (ethnographic) surveys, the focus was on total landscapes, and cultural sites within these landscapes that may have significance to Traditional Owners. The survey involved discussing the activities proposed by DMIRS for the works area, consultation with the Yamatji Nation representatives regarding the Aboriginal heritage values of the area, and general discussion regarding cultural histories, stories, song lines and the totemic landscape of the surrounding countryside for context. With these considerations in mind, an 'Aboriginal site' based on ethnography is defined as the following.

A location with known cultural, historical, ceremonial and/or mythological "importance and significance" to the cultural interests of the relevant Aboriginal Traditional Owners.

DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE RESULTS

Tangible ACH Results

Two (2) tangible ACH results were returned. The 2 tangible ACH results are:

Site Name	Easting	Northing	Site Type
Commonage drainage	266034	6862159	Cultural Modified Tree / Watercourse
Commonage_2023_001	266146	6862244	Grinding

Table 1: Newly Recorded Tangible Aboriginal Cultural Heritage

Intangible ACH Results

No (0) intangible ACH results were returned.

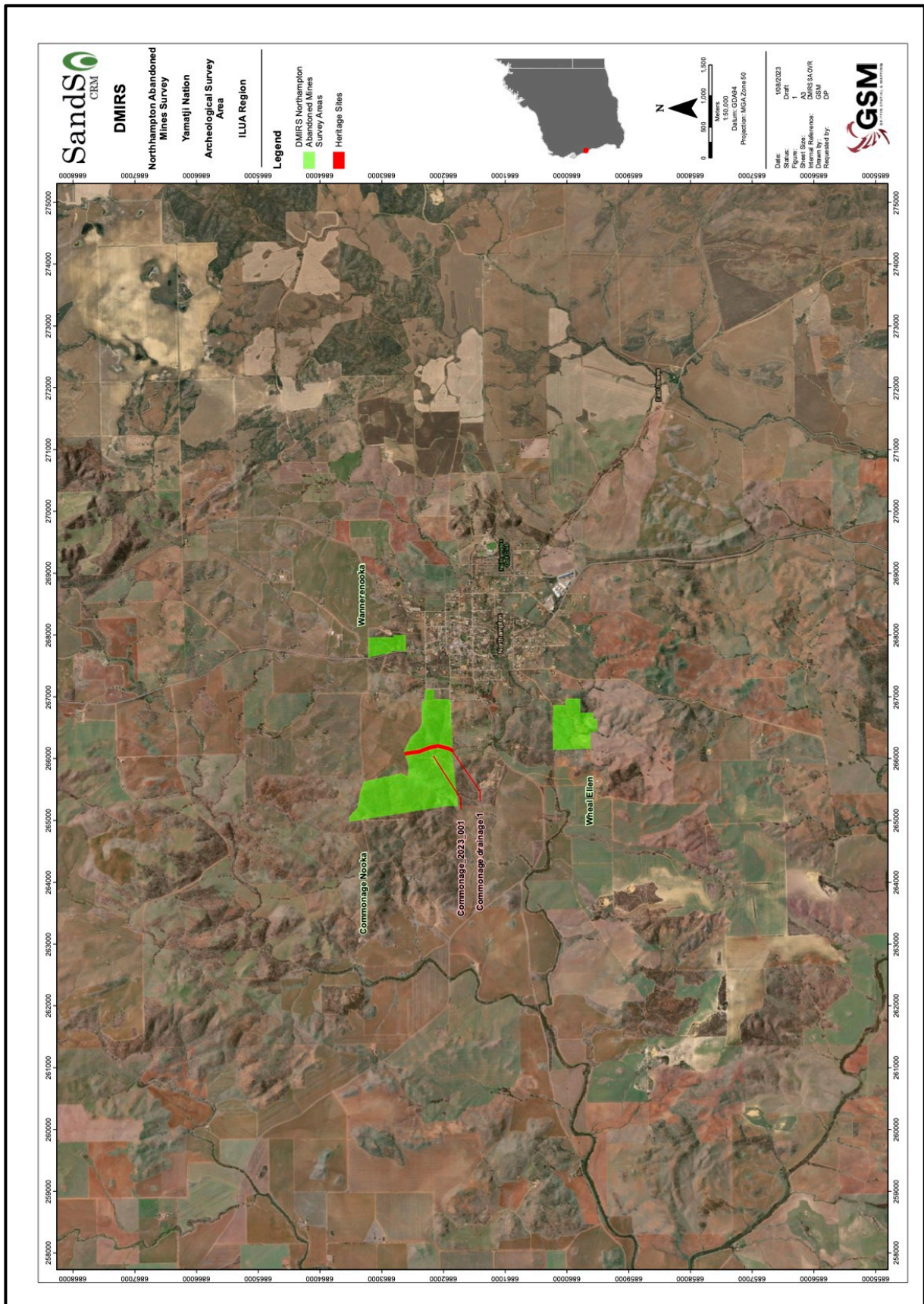


Figure 3: ACH Investigation Results



Figure 4: ACH Investigation briefing



Figure 5: ACH investigation fieldwork

Commonage Drainage

ACH ID	Commonage Drainage
ACH Type	Culturally Modified Tree / Watercourse
Easting (GDA94 – Zone 50)	266034
Northing (GDA94 – Zone 50)	6862159
Recorded Culturally Modified Trees	1
ACH Recording Level	Work Area Clearance

Table 2: Newly Recorded Aboriginal Cultural Heritage – Gnulli_2023_002

Surrounding Environment

‘Commonage Drainage’ is a relic of a unnamed drainage channel for Nokanena Brook, where then head of the drainage channel has been obscured by the pastoral activity on the area. A dense, *Eucalyptus*. woodland with seasonal ground covering describes the riparian representation.

ACH Description

‘Commonage Drainage’ is a composite ACH type with cultural modified tree and watercourse components. The cultural modified tree component is consistent with ‘Yandi’ or carrying dish manufacture. The watercourse element of has been obscured at the headwaters outside of the investigation area, however the element within the investigation area retains the general shape noting some activity has occurred within the watercourse.

Yamatji Nation Participant Statement

The Yamatji Nation participants placed great importance on the culturally modified tree and watercourse components of the place. The Yamatji Nation participants stated the association between the watercourse and ACH were deeply related in that the presence of reliable water drew people to the place and influenced the activities.



Figure 6: Commonage Drainage Map



Figure 7: 'Commonage Drainage' overview



Figure 8: 'Commonage Drainage' detail



Figure 9: 'Commonage Drainage' detail

Commonage_2023_001

ACH ID	Commonage_2023_001
ACH Type	Grinding
Easting (GDA94 – Zone 50)	266146
Northing (GDA94 – Zone 50)	6862244
Recorded Grinding Patches	1
ACH Recording Level	Work Area Clearance

Table 3: Newly Recorded Aboriginal Cultural Heritage – Commonage_2023_002

Surrounding Environment

Commonage_2023_001 is located on a localised rise within the undulating plain of the Northampton Township. Historical mining has cleared the vegetation and other features.

ACH Description

Commonage_2023_001 is a single ACH type with a grinding component. The grinding stone has been repurposed as a building stone in a ruin.

Yamatji Nation Participant Statement

The Yamatji Nation participants placed great importance on the grinding components of the place. The reuse of the material had not previously been seen by the participants and speculated that the grinding stone may have been sourced from one of the local water sources.



Figure 10: Commonage_2023_001 Map



Figure 11: Commonage_2023_001 overview



Figure 12: Commonage_2023_001 detail



Figure 13: Commonage_2023_001 detail

DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE LIMITATIONS

The ACH investigations were limited to surface expressions of ACH and known intangible ACH.

Subsurface ACH was not investigated through probing and a potential remains for subsurface ACH to persist.

DMIRS NORTHAMPTON ABANDONED MINES YAMATJI PARTICIPANT POSITION

The Yamatji Nation participants have different positions for each of the project areas, as well as the above-mentioned heritage.

Northampton Commonage

The Yamatji Nation participants provided oral histories of enjoying the area recreationally and traditional harvesting of resources. The resources are abundant through the area and the presented works will not impact this activity.

The participants commented that the elevated position of the survey area provide a strategic vista of the coast and rivers and could have been used as a navigational marker in the past.

Wheal Ellen

The Yamatji Nation participants recalled an earlier survey. During the earlier survey, the participants recorded flaked artefacts and had a strong position that water entering into the Bowes River needed to be uncontaminated. During the present investigations the participants noted water running directly from tailings into a tributary of the Bowes River. No previous artefacts were recorded.

Wanerenooka

The Yamatji Nation participants recognised the previous disturbance in the area and the limited Yamatji heritage potential of this site.



Figure 14: Commonage resource inspection



Figure 15: Commonage resource detail



Figure 16: Wheal Ellen water flow channel



Figure 17: Wheal Ellen water flow channel

DMIRS NORTHAMPTON ABANDONED MINES ACH WORK AREA CLEARANCE DUE DILIGENCE ASSESSMENT FINDINGS

Interaction with a protected area: It is confirmed through a search (on 12 April 2023) of the ACHIS that the project is outside of protected areas.

Activity Tier: The activity, as 'Rehabilitation Activities', is best described as a Tier 3 Activity, as Division 8 Subdivision 4 Section 121 *a remediation activity not otherwise described in this Division* and Division 8 Subdivision 4 Section 122 *a rehabilitation activity not otherwise described in this Division* most specifically describes the proposed activity.

Potential to Harm ACA: The potential to harm ACH is known due to the ACH investigations.

Action: The project can proceed if:

- The recorded ACH is avoided,
- An ACH discovery procedure, and
- Cultural heritage monitors are engaged if previously undisturbed area be impacted

References

BOOKS

UNESCO 2022 *Basic texts of the 2003 Conventions for the Safeguarding of the Intangible Cultural Heritage: 2022 Edition* UNESCO

LEGISLATION

Commonwealth *Aboriginal and Torres Strait Islander Protection Act 1984*

Commonwealth *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

Commonwealth *Crimes Act 1914*.

Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999 (amended 2003)*

Commonwealth *Native Title Act 1993*

Commonwealth *Native Title (Prescribed Bodies Corporate) Regulations 1999*

Western Australian *Aboriginal Cultural Heritage Act 2021*

Western Australian *Aboriginal Cultural Heritage Regulations (No. 2) 2023*

Western Australian *Environmental Protection Act 1986*

Western Australian *Planning and Development Act 2005*

NATIVE TITLE PAPERS

PAMPHLETS

Aboriginal Cultural Heritage Investigation Guidelines (2023) Department of Planning, Lands and Heritage Guidelines for the *Aboriginal Cultural Heritage Act 2021*

Aboriginal Cultural Heritage Survey Guidelines (2023) Department of Planning, Lands and Heritage Guidelines for the *Aboriginal Cultural Heritage Act 2021*

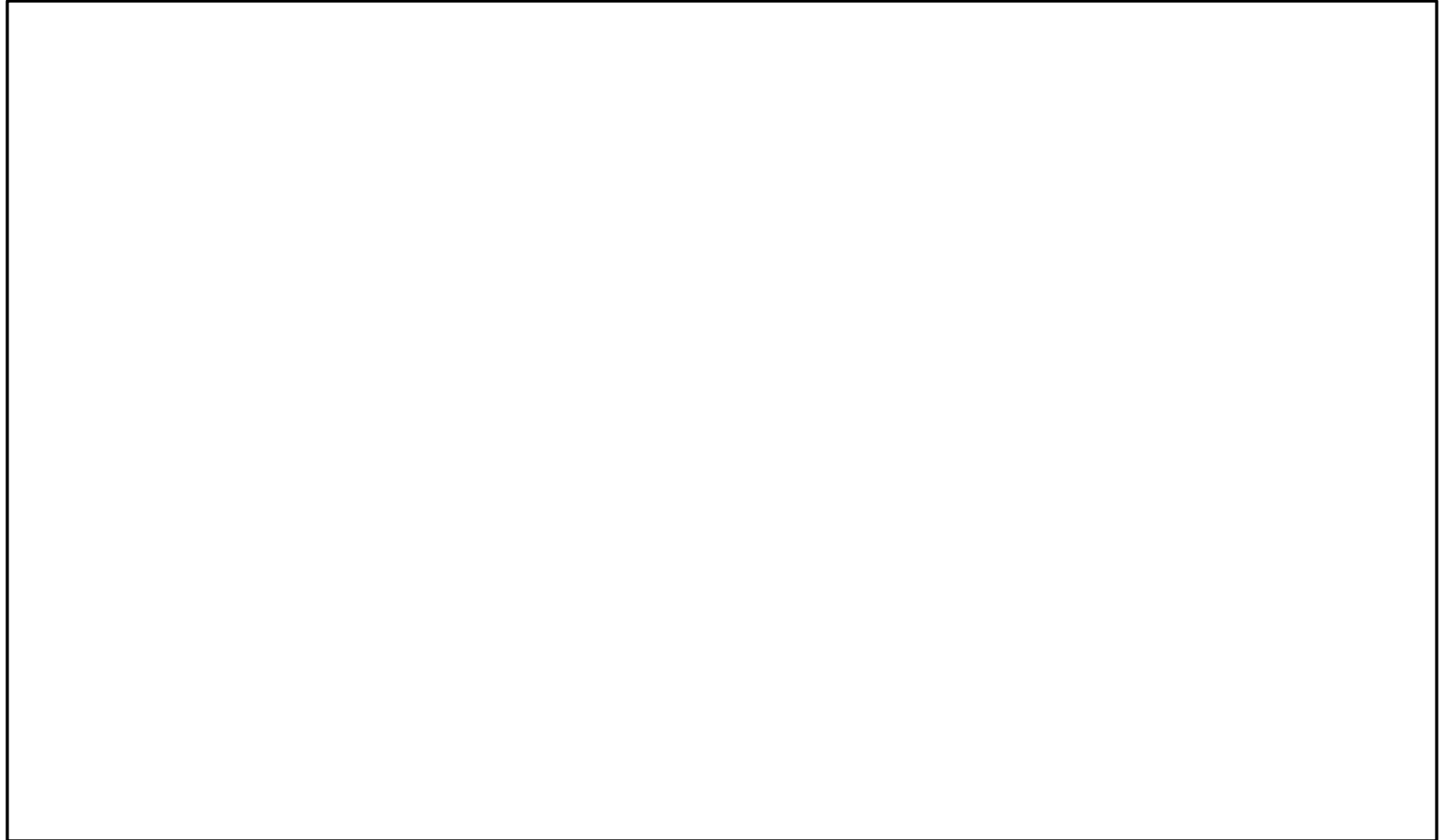
ACH Management Code (2023) Department of Planning, Lands and Heritage Guidelines for the *Aboriginal Cultural Heritage Act 2021*

Protected Area Guidelines (2023) Department of Planning, Lands and Heritage Guidelines for the *Aboriginal Cultural Heritage Act 2021*

Survey Report Guidelines (2023) Department of Planning, Lands and Heritage Guidelines for the *Aboriginal Cultural Heritage Act 2021*

Appendices

Appendix 1: ACHIS Protected Area Search



Appendix 2: DPLH Management Code Activity Tier Extract



Appendix 1 – Activity tiers

Fall-back for overlap between activities in activity categories Schedule

40. Most specific description of activity applies

- (1) This regulation applies if an activity is described by more than 1 item in Schedule 1.
- (2) The activity is taken to be described by the most specific item, and not by any other item, in Schedule 1.
- (3) The most specific item is —
 - (a) unless paragraph (b) applies — the item in Schedule 1 that most specifically describes the activity; or
 - (b) if 1 or more of the items set out in Schedule 1 that describe the activity are under a Subdivision heading referring to exempt activities — the item in Schedule 1 under a Subdivision heading referring to exempt activities that most specifically describes the activity.

Division 1 — General activities			
Subdivision 1 — Exempt general activities	Subdivision 2 — General tier 1 activities	Subdivision 3 — General tier 2 activities	Subdivision 4 — General tier 3 activities
1. The following types of development — <ol style="list-style-type: none"> (a) development set out in the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Schedule 2 clause 61(1) the Table item 1, 2, 3, 4, 7, 8 or 13 column 1, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory; (b) the demolition of a multiple dwelling or grouped dwelling, other than in relation to a multiple dwelling or grouped dwelling that is Aboriginal cultural heritage about which information is contained on the ACH Directory; (c) internal building work, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory; (d) the erection or installation of, or alterations or additions to, any of the following on the same planning and development lot or strata or community titles lot as a multiple dwelling — <ol style="list-style-type: none"> (i) an ancillary dwelling; (ii) an outbuilding; (iii) an external fixture; (iv) a boundary wall or fence; (v) a patio; (vi) a pergola; (vii) a verandah; (viii) a deck; (ix) a garage; (x) a carport; (xi) a swimming pool; 		38. Internal building work in relation to a building that is Aboriginal cultural heritage listed on the ACH Directory.	48. The demolition of a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.





<p>(xii) shade sails;</p> <p>(e) the installation of a water tank that complies with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Schedule 2 clause 61(1) the Table item 12 column 2 conditions (b) and (c);</p> <p>(f) the erection or installation of a flagpole that complies with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Schedule 2 clause 61(1) the Table item 14, column 2 conditions (a) to (d);</p> <p>(g) development carried out on a subdivided parcel of land if —</p> <ul style="list-style-type: none"> (i) a residential building is located on the land, or will be constructed on the land; and (ii) the subdivision was the subject of an approved or authorised ACH management plan; and (iii) the development is consistent with that subdivision. <p><i>Note for this item:</i> See regulation 36(1) and paragraph (b) of the definition of exempt activity in section 100 of the Act.</p>			
<p>2. Construction, renovation or demolition of a residential building on a strata or community titles lot that is less than 1 100 m².</p>		<p>29. Construction or renovation of —</p> <ul style="list-style-type: none"> (a) a residential building on a planning and development lot, or strata or community titles lot in a strata or community titles scheme, that is 1 100 m² or larger; or (b) a building ancillary to such a building on — <ul style="list-style-type: none"> (i) the planning and development lot; or (ii) the strata or community titles lot or common property in the strata or community titles scheme. 	
<p>3. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —</p> <ul style="list-style-type: none"> (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if — <ul style="list-style-type: none"> (i) a residential building is located on the lot, or will be constructed on the lot; and (ii) the lot is less than 1 100 m²; 	<p>22. Erecting or installing a fence in a way that does not involve clearing.</p>	<p>30. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —</p> <ul style="list-style-type: none"> (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if — <ul style="list-style-type: none"> (i) a residential building is located on the lot, or will be constructed on the lot; and (ii) the lot is 1 100 m² or larger; and 	



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<p>and</p> <p>(b) 1 of the following —</p> <p>(i) the residential building;</p> <p>(ii) a building ancillary to the residential building;</p> <p>(iii) where the residential building or an ancillary building will be constructed.</p>		<p>(b) 1 of the following —</p> <p>(i) the residential building;</p> <p>(ii) a building ancillary to the residential building;</p> <p>(iii) where the residential building or an ancillary building will be constructed.</p>	
<p>4. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —</p> <p>(a) a residential building is located on the lot, or will be constructed on the lot; and</p> <p>(b) the lot is less than 1 100 m².</p>		<p>31. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the scheme, other than as described in item 4.</p>	
<p>5. Subdivision of land that results in the creation of no more than 5 planning and development lots or strata or community titles lots, each of which is less than 1 100 m².</p>			<p>44. Subdivision of land.</p>
<p>6. Maintaining existing infrastructure in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the infrastructure.</p>	<p>120. Maintaining existing infrastructure in a way that does not, over the course of 1 calendar year, involve any of the following —</p> <p>(a) removing more than 4 kg of material;</p> <p>(b) disturbing more than 10 m² of ground in total;</p> <p>(c) disturbing more than 1 m² of contiguous ground;</p> <p>(d) excavating to a depth of more than 0.5 m.</p>	<p>33. Maintaining existing infrastructure, other than as described in item 20, in a way that does not involve any of the following —</p> <p>(a) removing more than 20 kg of material;</p> <p>(b) disturbing more than 200 m² of ground in total;</p> <p>(c) disturbing more than 10 m² of contiguous ground;</p> <p>(d) excavating to a depth of more than 1 m.</p>	<p>45. Maintaining existing infrastructure, other than as described in item 20 or 33.</p>
<p>7. The demolition of a structure, other than a building, in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the structure.</p>	<p>21. The demolition of a structure, other than a building, in a way that does not, over the course of 1 calendar year, involve any of the following —</p> <p>(a) removing more than 4 kg of material;</p> <p>(b) disturbing more than 10 m² of ground in total;</p> <p>(c) disturbing more than 1 m² of contiguous ground;</p> <p>(d) excavating to a depth of more than 0.5 m.</p>	<p>34. The demolition of a structure, other than a building and other than as described in item 21, in a way that does not involve any of the following —</p> <p>(a) removing more than 20 kg of material;</p> <p>(b) disturbing more than 200 m² of ground in total;</p> <p>(c) disturbing more than 10 m² of contiguous ground;</p> <p>(d) excavating to a depth of more than 1 m.</p>	<p>46. The demolition of a structure, other than a building and other than as described in item 21 or 34.</p>
<p>8. Undertaking an activity in an area that results in land use or development that —</p> <p>(a) is no greater in surface area or height than existing land use or development in the area; and</p> <p>(b) is either —</p> <p>(i) no greater in depth than existing land use or development in the area; or</p> <p>(ii) only greater in depth than existing land use or development in the area in a part</p>			



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of the area in which the depth of the existing land use or development extends 10 m or lower below natural ground level.			
9. Temporarily placing equipment on an existing area of ground disturbance.	18. Temporarily placing a structure on an existing area of ground disturbance.	32. Erecting or installing a structure on undisturbed ground in a way that does not involve building foundations for the structure.	
		35. Undertaking an activity in an area that results in land use or development that is no greater in surface area than existing land use or development in the area.	
10. Visually inspecting an area as part of undertaking a due diligence assessment.			
11. Lifestyle and general maintenance activities associated with a residential building, including gardening, repairs and carrying out minor development (for example installing a chicken coop or play equipment).	19. Removing plant and equipment.		
12. Driving a vehicle on an existing area of ground disturbance.	23. Driving a vehicle in a way that does not result in a new track being formed.	36. An activity that will, through repetition by the proponent, result in a new track being formed.	
13. Setting up and using a temporary camp — (a) in a way that does not involve clearing the camp site; and (b) that involves only 1 or more of the following forms of accommodation — (i) swags; (ii) tents; (iii) camper trailers; (iv) caravans.			
14. Aerial transportation that does not involve clearing at the landing site.		39. Burning, other than as part of another activity described in Divisions 1 to 8.	
15. A burial authorised under the <i>Cemeteries Act 1986</i> section 12 of an Aboriginal person.		40. A burial authorised under the <i>Cemeteries Act 1986</i> section 12 of a non-Aboriginal person.	
16. A burial under the <i>Cemeteries Act 1986</i> section 11, other than a burial authorised under section 12 of that Act.			
17. Caring for, controlling or managing a cemetery declared under the <i>Cemeteries Act 1986</i> section 4(1).			51. Establishing or expanding a cemetery declared under the <i>Cemeteries Act 1986</i> section 4(1).
	24. Clearing for tracks in a way that does not, over the course of 1 calendar year, involve any of the following — (a) removing more than 4 kg of material; (b) disturbing more than 10 m ² of ground in total;	37. Clearing for tracks, other than as described in item 24, in a way that does not involve any of the following — (a) removing more than 20 kg of material; (b) disturbing more than 200 m ² of ground in total;	47. Clearing for tracks, other than as described in item 24 or 37.



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	(c) disturbing more than 1 m ² of contiguous ground; (d) excavating to a depth of more than 0.5 m.	(c) disturbing more than 10 m ² of contiguous ground; (d) excavating to a depth of more than 1 m.	
	25. Drilling, carried out as part of bore construction, in a way that does not involve any of the following — (a) disturbing more than 10 m ² of ground in total (b) disturbing more than 1 m ² of contiguous ground.	42. Drilling, carried out as part of bore construction, other than as described in item 25, in a way that does not involve any of the following — (a) disturbing more than 200 m ² of ground in total. (b) disturbing more than 10 m ² of contiguous ground.	50. Drilling, other than as part of another activity described by another item in Divisions 1 to 8. Examples for this item: 1. Rotary mud drilling. 2. Diamond drilling. 3. Percussion drilling. 4. Drilling carried out as part of bore construction that involves disturbing more than 200 m ² of ground in total or more than 10 m ² of contiguous ground.
		41. Air core drilling.	49. Blasting.
	26. Stockpiling on an established stockpile.	43. Establishing a stockpile with a surface area of 200 m ² or less.	52. Establishing a stockpile, other than as described in item 43.
	27. Stockpile sampling.		
	28. Removing a stockpile.		
Division 2 — Emergency activities			
Subdivision 1 — Exempt emergency activities	Subdivision 2 — Tier 1 emergency activities		
53. An emergency management activity intended to prevent imminent loss of life, prejudice to the safety, or harm to the health, of people or animals.	55. Fire hazard reduction.		
54. An activity undertaken in an emergency situation for the purpose of preventing or minimising irreversible damage to a significant part of the environment.	56. Inspecting, protecting, providing or restoring essential services.		
	57. Complying with a notice given under the <i>Bush Fires Act 1954</i> section 33(1) or a direction given under section 33(4)(a) of that Act.		
Division 3 — Aboriginal cultural heritage investigation activities			
Subdivision 1 — Exempt Aboriginal cultural heritage investigation activities		Subdivision 2 — Tier 2 Aboriginal cultural heritage investigation activities	Subdivision 3 — Tier 3 Aboriginal cultural heritage investigation activities
58. Investigation of Aboriginal cultural heritage, carried out on foot, that does not involve excavation or removal of Aboriginal cultural heritage. Examples for this item: 1. Site recording and assessment. 2. Monitoring and auditing.		61. Investigation of Aboriginal cultural heritage that does not involve any of the following — (a) the use of non-handheld equipment; (b) test pitting, excavation or other ground disturbance over a surface area that is greater than 1 m ² ; (c) removing any more Aboriginal cultural heritage than necessary for	62. Investigation of Aboriginal cultural heritage other than as part of another activity described in this Division.



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3. Digital capture of Aboriginal cultural heritage. 4. Non-digital photography. 5. Probing.		<p>investigation purposes; (d) rock chipping or making moulds of petroglyphs or rock art.</p> <p>Examples for this item:</p> <ol style="list-style-type: none"> 1. Radiocarbon dating. 2. Luminescence dating. 3. Dosimetry. 4. Extraction of scarred element parts from scarred trees. 5. Mechanical sieving. 	
59. Removal or relocation of an Aboriginal object located in an area by, or with the written approval of, a local ACH service for the area.			
60. Investigation of Aboriginal cultural heritage located in an area by, or with the written approval of — (a) a local ACH service for the area; or (b) if there is not a local ACH service for the area — (i) a native title party for the area; or (ii) if there is not a native title party for the area — a native title representative body for the area.			
Division 4 — Activities impacting waterways or coastal waters			
Subdivision 1 — Exempt activities involving waterways or coastal waters	Subdivision 2 — Tier 1 activities impacting waterways or coastal waters	Subdivision 3 — Tier 2 activities impacting waterways or coastal waters	Subdivision 4 — Tier 3 activities impacting waterways or coastal waters
63. Anchoring a boat in a waterway or coastal waters.		77. Installing a mooring into, or anchoring a mooring to, the bed or banks of a waterway or coastal waters.	
64. Maintenance of a waterway or coastal waters, including the bed or banks of a waterway or coastal waters, to rectify accretion and erosion of natural material.			81. Capital dredging.
	65. Taking water from a waterway or coastal waters without causing ground disturbance.		80. Reclaiming land from a waterway or coastal waters or reshaping a beach.
	66. Discharging water into a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters.	72. Discharging water into a waterway or coastal waters, other than as described in item 66.	
	67. Monitoring and sampling in relation to a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following — (a) removing more than 4 kg of material; (b) disturbing more than 10 m ² of the bed or banks of the waterways or coastal waters	73. Monitoring and sampling in relation to a waterway or coastal waters, other than as described in item 67.	



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	<p>in total;</p> <p>(c) disturbing more than 1 m² of contiguous bed or banks of the waterways or coastal waters;</p> <p>(d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.</p>		
	68. Removing litter from a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters beyond that which was caused by leaving the litter.		
	<p>69. Removing flora from a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —</p> <p>(a) removing more than 4 kg of material (not counting the flora);</p> <p>(b) disturbing more than 10 m² of the bed or banks of the waterway or coastal waters in total;</p> <p>(c) disturbing more than 1 m² of contiguous bed or banks of the waterway or coastal waters;</p> <p>(d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.</p>	<p>75. Removing flora from a waterway or coastal waters, other than as described in item 69, in a way that does not involve any of the following —</p> <p>(a) removing more than 20 kg of material (not counting the flora);</p> <p>(b) disturbing more than 200 m² of the bed or banks of the waterway or coastal waters in total;</p> <p>(c) disturbing more than 10 m² of contiguous bed or banks of the waterway or coastal waters;</p> <p>(d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 1 m.</p>	<p>82. Removing flora from a waterway or coastal waters, other than as described in item 69 or 75.</p>
	70. Placing pipe or cable on the bed or banks of a waterway or coastal waters without anchoring the pipe or cable to the bed or banks.		83. Establishing new, or expanding existing, trench irrigation.
	<p>71. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —</p> <p>(a) removing more than 4 kg of material;</p> <p>(b) disturbing more than 10 m² of the bed or banks in total;</p> <p>(c) disturbing more than 1 m² of contiguous bed or banks;</p> <p>(d) excavating the bed or banks to a depth of more than 0.5 m.</p>	<p>78. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71, in a way that does not involve any of the following —</p> <p>(a) removing more than 20 kg of material;</p> <p>(b) disturbing more than 200 m² of the bed or banks in total;</p> <p>(c) disturbing more than 10 m² of contiguous bed or banks;</p> <p>(d) excavating the bed or banks to a depth of more than 1 m.</p>	86. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71 or 78
		<p>74. Stabilising the bed or banks of a waterway or coastal waters using handheld equipment only, including —</p> <p>(a) matting installation; or</p> <p>(b) brushing; or</p> <p>(c) surface preparation for application of materials.</p>	79. Stabilising the bed or banks of a waterway or coastal waters using non-handheld equipment.
		76. Installing a structure to enable the movement of	84. Establishing an aquaculture or mariculture pen



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		fauna within a waterway or coastal waters.	and supporting infrastructure.
			85. Erecting or installing a dam, weir or waterway diversion.
			87. Erecting, installing or expanding a structure in a waterway or coastal waters, other than as part of another activity described in this Division.
Division 5 — Agriculture and natural resource management activities			
	Subdivision 1 — Tier 1 agriculture and natural resource management activities	Subdivision 2 — Tier 2 agriculture and natural resource management activities	Subdivision 3 — Tier 3 agriculture and natural resource management activities
	88. Controlling feral or pest fauna without digging or excavating.	90. Controlling feral or pest fauna, other than as described in item 88.	
	89. Managing weeds or flora in a way that does not, over the course of 1 calendar year, involve any of the following — (a) removing more than 4 kg of material (not counting the weeds or flora); (b) disturbing more than 10 m ² of ground in total; (c) disturbing more than 1 m ² of contiguous ground; (d) excavating to a depth of more than 0.5 m.	91. Managing weeds or flora, other than as described in item 89, in a way that does not involve any of the following — (a) removing more than 20 kg of material (not counting the weeds or flora); (b) disturbing more than 200 m ² of ground in total; (c) disturbing more than 10 m ² of contiguous ground; (d) excavating to a depth of more than 1 m.	93. Managing weeds or flora, other than as described in item 89 or 91.
		92. Erecting or installing new agricultural infrastructure on existing agricultural land. Examples for this item: 1. Erecting or installing a stock watering point. 2. Erecting or installing a new yard.	94. Conducting agricultural activities in an area not previously subject to agricultural activities.
			95. Establishing a new farm or pastoral station.
			96. Establishing a new tree plantation.
			97. Harvesting trees in an area not previously subject to tree harvesting.
Division 6 — Field investigation activities			
	Subdivision 1 — Tier 1 field investigation activities	Subdivision 2 — Tier 2 field investigation activities	Subdivision 3 — Tier 3 field investigation activities
	98. An aerial survey.		
	99. A field investigation (including exploration) that does not, over the course of 1 calendar year, involve any of the following — (a) removing more than 4 kg of material; (b) disturbing more than 10 m ² of ground in total;	100. A field investigation (including exploration), other than as described in item 99, that does not involve any of the following — (a) removing more than 20 kg of material; (b) disturbing more than 200 m ² of ground in total;	102. A field investigation (including exploration), other than as described in item 99 or 100.



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	(c) disturbing more than 1 m ² of contiguous ground; (d) excavating to a depth of more than 0.5 m.	(c) disturbing more than 10 m ² of contiguous ground; (d) excavating to a depth of more than 1m.	
		101. A seismic survey that does not involve using a seismic vibrator truck.	103. A seismic survey, other than as described in item 101.
			104. Costeaining.
Division 7 — Mining activities			
	Subdivision 1 — Tier 1 mining activities	Subdivision 2 — Tier 2 mining activities	Subdivision 3 — Tier 3 mining activities
	105. Marking out under the <i>Mining Act 1978</i> .		
	106. Metal detecting.	109. Bulk leach extractable gold (BLEG).	
	107. Scrape and detect activities using handheld equipment only.		111. Scrape and detect activities using non-handheld equipment.
	108. Extracting basic raw materials — (a) from within existing pits; and (b) in a way that does not involve an increase to the area of ground disturbance.	110. Reopening underground mine workings.	112. Activities involved with establishing a new, or expanding an existing, mine or mine site.
Division 8 — Rehabilitation and remediation activities			
Subdivision 1 — Exempt rehabilitation and remediation activities	Subdivision 2 — Tier 1 rehabilitation and remediation activities	Subdivision 3 — Tier 2 rehabilitation and remediation activities	Subdivision 4 — Tier 3 rehabilitation and remediation activities
	114. Preliminary contaminated site investigation. Examples for this item: 1. Identifying potential sources of contamination, contaminants of concern, receptors that may be exposed to contamination and exposure pathways. 2. Carrying out a site inspection.	118. Detailed contaminated site investigation. Examples for this item: 1. Collecting and evaluating site-specific data. 2. Carrying out a detailed site investigation to establish ground conditions. 3. Collecting soil and groundwater samples.	
113. Removing surface waste, litter or contaminated or waste material from — (a) a planning and development lot on which a residential building is located, or will be constructed; or (b) a strata or community titles lot on which a residential building is located, or will be constructed, or common property in the relevant strata or community titles scheme.	115. Removing surface waste, litter or contaminated or waste material in a way that does not, over the course of 1 calendar year, involve any of the following — (a) removing more than 4 kg of material (not counting the surface waste, litter or contaminated or waste material); (b) disturbing more than 10 m ² of ground in total; (c) disturbing more than 1 m ² of contiguous ground; (d) excavating to a depth of more than 0.5 m.	119. Removing surface waste, litter or contaminated or waste material, other than as described in item 115, in a way that does not involve any of the following — (a) removing more than 20 kg of material (not counting the surface waste, litter or contaminated or waste material); (b) disturbing more than 200 m ² of ground in total; (c) disturbing more than 10 m ² of contiguous ground; (d) excavating to a depth of more than 1m.	123. Removing surface waste, litter or contaminated or waste material, other than as part of an activity described by another item in this Division.
	116. Revegetation using handheld equipment only.	120. Revegetation using non-handheld equipment.	124. Landform re-contouring or reshaping.
		121. A remediation activity not otherwise described in this Subdivision or Subdivision 2, that does	125. A remediation activity not described by another item in this Division.



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		not involve any of the following — (a) removing more than 20 kg of material; (b) disturbing more than 200 m ² of ground in total; (c) disturbing more than 10 m ² of contiguous ground; (d) excavating to a depth of more than 1 m.	
	117. Rehabilitation of drill holes including casing removal, sealing and capping.	122. A rehabilitation activity not otherwise described in this Subdivision or Subdivision 2 that is carried out in an area that has been subject to ground disturbance.	126. A rehabilitation activity not described by another item in this Division.
Division 9 — Other activities			
	Subdivision 1 — Other tier 1 activities	Subdivision 2 — Other tier 2 activities	Subdivision 3 — Other tier 3 activities
	127. An activity that — (a) is not described by an item in any other Division of this Schedule; and (b) is not an exempt activity; and (c) does not, over the course of 1 calendar year, involve any of the following — (i) removing more than 4 kg of material; (ii) disturbing more than 10 m ² of ground in total; (iii) disturbing more than 1 m ² of contiguous ground; (iv) excavating to a depth of more than 0.5 m.	128. An activity that — (a) is not described by an item in any other Division of this Schedule; and (b) is not an exempt activity or tier 1 activity; and (c) does not involve any of the following — (i) removing more than 20 kg of material; (ii) disturbing more than 200 m ² of ground in total; (iii) disturbing more than 10 m ² of contiguous ground; (iv) excavating to a depth of more than 1 m.	129. An activity that — (a) is not described by another item in this Schedule; and; (b) is not an exempt activity.

Definitions for activity categories

- **Aboriginal party** has the meaning given in section 100 of the Act;
- **ACH management system** means a system for the management of applications, information and processes under the Act, accessed through the ACH Council's website;
- **ancillary dwelling** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;
- **application area** has the meaning given in section 69 of the Act;
- **boat** means a vessel, craft or floating platform of any description that is capable of use in or on water, whether floating or submersible;
- **coastal waters** means the coastal waters of the State as defined in the Off-shore (Application of Laws) Act 1982 section 2;
- **common property** means —
 - in relation to a strata titles scheme as defined in the Strata Titles Act 1985 section 3(1) — common property as defined in that section; or
 - in relation to a tier 1 scheme, tier 2 scheme or tier 3 scheme as defined in the Community Titles Act 2018 section 3(1) — common property as defined in that section;
- **emergency management** has the meaning given in the *Emergency Management Act 2005* section 3;
- **grouped dwelling** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;
- **litter** has the meaning given in the *Litter Act 1979* section 5(1);
- **multiple dwelling** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;
- **planning and development lot** means a lot as defined in the *Planning and Development Act 2005* section 4(1);



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- **residential building** means a building occupied, or intended for occupation, as a place of residence;
- **strata or community titles lot** means —
 - a lot in a strata scheme or lot in a survey-strata scheme as defined in the *Strata Titles Act 1985* section 3(1); or
 - a lot as defined in the *Community Titles Act 2018* section 3(1);
- **strata or community titles scheme** means —
 - a strata titles scheme as defined in the in the *Strata Titles Act 1985* section 3(1); or
 - a tier 1 scheme, tier 2 scheme or tier 3 scheme as defined in the *Community Titles Act 2018* section 3(1);
- **tracks** includes walking tracks, horse tracks and access tracks;
- **waterway** includes the following —
 - (a) a river, creek, brook or other naturally flowing stream of water, whether or not it flows permanently;
 - (b) a lake, salt lake, claypan, lagoon, marsh or swamp;
 - (c) a floodplain, estuary or inlet;
 - (d) an artificial waterway as defined in the *Planning and Development Act 2005* section 4(1).



Appendix 3 – Schedule 1 of the Western Australian Aboriginal Cultural Heritage Regulations (No.2) 2023

Schedule 1 — Exempt activities and tier 1, 2 and 3 activities

[r. 36, 37, 38, 39 and 40]

Division 1 — General activities

Subdivision 1 — Exempt general activities

1. The following types of development —
 - (a) development set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 1, 2, 3, 4, 7, 8 or 13 column 1, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
 - (b) the demolition of a multiple dwelling or grouped dwelling, other than in relation to a multiple dwelling or grouped dwelling that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
 - (c) internal building work, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
 - (d) the erection or installation of, or alterations or additions to, any of the following on the same planning and development lot or strata or community titles lot as a multiple dwelling —
 - (i) an ancillary dwelling;
 - (ii) an outbuilding;
 - (iii) an external fixture;
 - (iv) a boundary wall or fence;
 - (v) a patio;
 - (vi) a pergola;
 - (vii) a verandah;
 - (viii) a deck;
 - (ix) a garage;
 - (x) a carport;
 - (xi) a swimming pool;
 - (xii) shade sails;

- (e) the installation of a water tank that complies with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 12 column 2 conditions (b) and (c);
- (f) the erection or installation of a flagpole that complies with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 14 column 2 conditions (a) to (d);
- (g) development carried out on a subdivided parcel of land if —
 - (i) a residential building is located on the land, or will be constructed on the land; and
 - (ii) the subdivision was the subject of an approved or authorised ACH management plan; and
 - (iii) the development is consistent with the subdivision.

Note for this item:

See regulation 36(1) and paragraph (b) of the definition of **exempt activity** in section 100 of the Act.

2. Construction, renovation or demolition of a residential building on a strata or community titles lot that is less than 1 100 m².
3. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —
 - (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
 - (i) a residential building is located on the lot, or will be constructed on the lot; and
 - (ii) the lot is less than 1 100 m²;
 and
 - (b) 1 of the following —
 - (i) the residential building;
 - (ii) a building ancillary to the residential building;
 - (iii) where the residential building or an ancillary building will be constructed.
4. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
 - (a) a residential building is located on the lot, or will be constructed on the lot; and
 - (b) the lot is less than 1 100 m².

5. Subdivision of land that results in the creation of no more than 5 planning and development lots or strata or community titles lots, each of which is less than 1 100 m².
6. Maintaining existing infrastructure in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the infrastructure.
7. The demolition of a structure, other than a building, in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the structure.
8. Undertaking an activity in an area that results in land use or development that —
 - (a) is no greater in surface area or height than existing land use or development in the area; and
 - (b) is either —
 - (i) no greater in depth than existing land use or development in the area; or
 - (ii) only greater in depth than existing land use or development in the area in a part of the area in which the depth of the existing land use or development extends 10 m or lower below natural ground level.
9. Temporarily placing equipment on an existing area of ground disturbance.
10. Visually inspecting an area as part of undertaking a due diligence assessment.
11. Lifestyle and general maintenance activities associated with a residential building, including gardening, repairs and carrying out minor development (for example installing a chicken coop or play equipment).
12. Driving a vehicle on an existing area of ground disturbance.
13. Setting up and using a temporary camp —
 - (a) in a way that does not involve clearing the camp site; and
 - (b) that involves only 1 or more of the following forms of accommodation —
 - (i) swags;
 - (ii) tents;
 - (iii) camper trailers;
 - (iv) caravans.
14. Aerial transportation that does not involve clearing at the landing site.
15. A burial authorised under the *Cemeteries Act 1986* section 12 of an Aboriginal person.
16. A burial under the *Cemeteries Act 1986* section 11, other than a burial authorised under section 12 of that Act.

17. Caring for, controlling or managing a cemetery declared under the *Cemeteries Act 1986* section 4(1).

Subdivision 2 — General tier 1 activities

18. Temporarily placing a structure on an existing area of ground disturbance.
19. Removing plant and equipment.
20. Maintaining existing infrastructure in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.
21. The demolition of a structure, other than a building, in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.
22. Erecting or installing a fence in a way that does not involve clearing.
23. Driving a vehicle in a way that does not result in a new track being formed.
24. Clearing for tracks in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.
25. Drilling, carried out as part of bore construction, in a way that does not involve any of the following —
- (a) disturbing more than 10 m² of ground in total;
 - (b) disturbing more than 1 m² of contiguous ground.
26. Stockpiling on an established stockpile.
27. Stockpile sampling.
28. Removing a stockpile.

Subdivision 3 — General tier 2 activities

29. Construction or renovation of —
- (a) a residential building on a planning and development lot, or strata or community titles lot in a strata or community titles scheme, that is 1 100 m² or larger; or

- (b) a building ancillary to such a building on —
 - (i) the planning and development lot; or
 - (ii) the strata or community titles lot or common property in the strata or community titles scheme.
- 30. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —
 - (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
 - (i) a residential building is located on the lot, or will be constructed on the lot; and
 - (ii) the lot is 1 100 m² or larger;
 - and
 - (b) 1 of the following —
 - (i) the residential building;
 - (ii) a building ancillary to the residential building;
 - (iii) where the residential building or an ancillary building will be constructed.
- 31. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme.
- 32. Erecting or installing a structure on undisturbed ground in a way that does not involve building foundations for the structure.
- 33. Maintaining existing infrastructure, other than as described in item 20, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
- 34. The demolition of a structure, other than a building and other than as described in item 21, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
- 35. Undertaking an activity in an area that results in land use or development that is no greater in surface area than existing land use or development in the area.

36. An activity that will, through repetition by the proponent, result in a new track being formed.
37. Clearing for tracks, other than as described in item 24, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
38. Internal building work in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.
39. Burning, other than as part of an activity described by another item in Divisions 1 to 8.
40. A burial authorised under the *Cemeteries Act 1986* section 12 of a non-Aboriginal person.
41. Air core drilling.
42. Drilling, carried out as part of bore construction, other than as described in item 25, in a way that does not involve any of the following —
 - (a) disturbing more than 200 m² of ground in total;
 - (b) disturbing more than 10 m² of contiguous ground.
43. Establishing a stockpile with a surface area of 200 m² or less.

Subdivision 4 — General tier 3 activities

44. Subdivision of land.
45. Maintaining existing infrastructure, other than as described in item 20 or 33.
46. The demolition of a structure, other than a building and other than as described in item 21 or 34.
47. Clearing for tracks, other than as described in item 24 or 37.
48. The demolition of a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.
49. Blasting.
50. Drilling, other than as part of an activity described by another item in Divisions 1 to 8.

Examples for this item:

1. Rotary mud drilling.
2. Diamond drilling.
3. Percussion drilling.
4. Drilling carried out as part of bore construction that involves disturbing more than 200 m² of ground in total or more than 10 m² of contiguous ground.

- 51. Establishing or expanding a cemetery declared under the *Cemeteries Act 1986* section 4(1).
- 52. Establishing a stockpile, other than as described in item 43.

Division 2 — Emergency activities

Subdivision 1 — Exempt emergency activities

- 53. An emergency management activity intended to prevent imminent loss of life, prejudice to the safety, or harm to the health, of people or animals.
- 54. An activity undertaken in an emergency situation for the purpose of preventing or minimising irreversible damage to a significant part of the environment.

Subdivision 2 — Tier 1 emergency activities

- 55. Fire hazard reduction.
- 56. Inspecting, protecting, providing or restoring essential services.
- 57. Complying with a notice given under the *Bush Fires Act 1954* section 33(1) or a direction given under section 33(4)(a) of that Act.

Division 3 — Aboriginal cultural heritage investigation activities

Subdivision 1 — Exempt Aboriginal cultural heritage investigation activities

- 58. Investigation of Aboriginal cultural heritage, carried out on foot, that does not involve excavation or removal of Aboriginal cultural heritage.
Examples for this item:
 - 1. Site recording and assessment.
 - 2. Monitoring and auditing.
 - 3. Digital capture of Aboriginal cultural heritage.
 - 4. Non-digital photography.
 - 5. Probing.
- 59. Removal or relocation of an Aboriginal object located in an area by, or with the written approval of, a local ACH service for the area.
- 60. Investigation of Aboriginal cultural heritage located in an area by, or with the written approval of —
 - (a) a local ACH service for the area; or
 - (b) if there is not a local ACH service for the area —
 - (i) a native title party for the area; or
 - (ii) if there is not a native title party for the area — a native title representative body for the area.

Subdivision 2 — Tier 2 Aboriginal cultural heritage investigation activities

61. Investigation of Aboriginal cultural heritage that does not involve any of the following —
- (a) the use of non-handheld equipment;
 - (b) test pitting, excavation or other ground disturbance over a surface area that is greater than 1 m²;
 - (c) removing any more Aboriginal cultural heritage than necessary for investigation purposes;
 - (d) rock chipping or making moulds of petroglyphs or rock art.

Examples for this item:

- 1. Radiocarbon dating.
- 2. Luminescence dating.
- 3. Dosimetry.
- 4. Extraction of scarred element parts from scarred trees.
- 5. Mechanical sieving.

Subdivision 3 — Tier 3 Aboriginal cultural heritage investigation activities

62. Investigation of Aboriginal cultural heritage other than as part of an activity described by another item in this Division.

Division 4 — Activities impacting waterways or coastal waters

Subdivision 1 — Exempt activities impacting waterways or coastal waters

63. Anchoring a boat in a waterway or coastal waters.
64. Maintenance of a waterway or coastal waters, including the bed or banks of a waterway or coastal waters, to rectify accretion and erosion of natural material.

Subdivision 2 — Tier 1 activities impacting waterways or coastal waters

65. Taking water from a waterway or coastal waters without causing ground disturbance.
66. Discharging water into a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters.
67. Monitoring and sampling in relation to a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of the bed or banks of the waterway or coastal waters in total;

- (c) disturbing more than 1 m² of contiguous bed or banks of the waterway or coastal waters;
 - (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.
- 68. Removing litter from a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters beyond that which was caused by leaving the litter.
- 69. Removing flora from a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
 - (a) removing more than 4 kg of material (not counting the flora);
 - (b) disturbing more than 10 m² of the bed or banks of the waterway or coastal waters in total;
 - (c) disturbing more than 1 m² of contiguous bed or banks of the waterway or coastal waters;
 - (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.
- 70. Placing pipe or cable on the bed or banks of a waterway or coastal waters without anchoring the pipe or cable to the bed or banks.
- 71. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
 - (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of the bed or banks in total;
 - (c) disturbing more than 1 m² of contiguous bed or banks;
 - (d) excavating the bed or banks to a depth of more than 0.5 m.

Subdivision 3 — Tier 2 activities impacting waterways or coastal waters

- 72. Discharging water into a waterway or coastal waters, other than as described in item 66.
- 73. Monitoring and sampling in relation to a waterway or coastal waters, other than as described in item 67.
- 74. Stabilising the bed or banks of a waterway or coastal waters using handheld equipment only, including —
 - (a) matting installation; or
 - (b) brushing; or
 - (c) surface preparation for application of materials.

75. Removing flora from a waterway or coastal waters, other than as described in item 69, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material (not counting the flora);
 - (b) disturbing more than 200 m² of the bed or banks of the waterway or coastal waters in total;
 - (c) disturbing more than 10 m² of contiguous bed or banks of the waterway or coastal waters;
 - (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 1 m.
76. Installing a structure to enable the movement of fauna within a waterway or coastal waters.
77. Installing a mooring into, or anchoring a mooring to, the bed or banks of a waterway or coastal waters.
78. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of the bed or banks in total;
 - (c) disturbing more than 10 m² of contiguous bed or banks;
 - (d) excavating the bed or banks to a depth of more than 1 m.

Subdivision 4 — Tier 3 activities impacting waterways or coastal waters

79. Stabilising the bed or banks of a waterway or coastal waters using non-handheld equipment.
80. Reclaiming land from a waterway or coastal waters or reshaping a beach.
81. Capital dredging.
82. Removing flora from a waterway or coastal waters, other than as described in item 69 or 75.
83. Establishing new, or expanding existing, trench irrigation.
84. Establishing an aquaculture or mariculture pen and supporting infrastructure.
85. Erecting or installing a dam, weir or waterway diversion.
86. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71 or 78.
87. Erecting, installing or expanding a structure in a waterway or coastal waters, other than as part of an activity described by another item in this Division.

Division 5 — Agriculture and natural resource management activities

Subdivision 1 — Tier 1 agriculture and natural resource management activities

- 88. Controlling feral or pest fauna without digging or excavating.
- 89. Managing weeds or flora in a way that does not, over the course of 1 calendar year, involve any of the following —
 - (a) removing more than 4 kg of material (not counting the weeds or flora);
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.

Subdivision 2 — Tier 2 agriculture and natural resource management activities

- 90. Controlling feral or pest fauna, other than as described in item 88.
- 91. Managing weeds or flora, other than as described in item 89, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material (not counting the weeds or flora);
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
- 92. Erecting or installing new agricultural infrastructure on existing agricultural land.

Examples for this item:

 - 1. Erecting or installing a stock watering point.
 - 2. Erecting or installing a new yard.

Subdivision 3 — Tier 3 agriculture and natural resource management activities

- 93. Managing weeds or flora, other than as described in item 89 or 91.
- 94. Conducting agricultural activities in an area not previously subject to agricultural activities.
- 95. Establishing a new farm or pastoral station.
- 96. Establishing a new tree plantation.
- 97. Harvesting trees in an area not previously subject to tree harvesting.

Division 6 — Field investigation activities

Subdivision 1 — Tier 1 field investigation activities

- 98. An aerial survey.
- 99. A field investigation (including exploration) that does not, over the course of 1 calendar year, involve any of the following —
 - (a) removing more than 4 kg of material;
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.

Subdivision 2 — Tier 2 field investigation activities

- 100. A field investigation (including exploration), other than as described in item 99, that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
- 101. A seismic survey that does not involve using a seismic vibrator truck.

Subdivision 3 — Tier 3 field investigation activities

- 102. A field investigation (including exploration), other than as described in item 99 or 100.
- 103. A seismic survey, other than as described in item 101.
- 104. Costeaning.

Division 7 — Mining activities

Subdivision 1 — Tier 1 mining activities

- 105. Marking out under the *Mining Act 1978*.
- 106. Metal detecting.
- 107. Scrape and detect activities using handheld equipment only.
- 108. Extracting basic raw materials —
 - (a) from within existing pits; and
 - (b) in a way that does not involve an increase to the area of ground disturbance.

Subdivision 2 — Tier 2 mining activities

- 109. Bulk leach extractable gold (BLEG).
- 110. Reopening underground mine workings.

Subdivision 3 — Tier 3 mining activities

- 111. Scrape and detect activities using non-handheld equipment.
- 112. Activities involved with establishing a new, or expanding an existing, mine or mine site.

Division 8 — Rehabilitation and remediation activities

Subdivision 1 — Exempt rehabilitation and remediation activities

- 113. Removing surface waste, litter or contaminated or waste material from —
 - (a) a planning and development lot on which a residential building is located, or will be constructed; or
 - (b) a strata or community titles lot on which a residential building is located, or will be constructed, or common property in the relevant strata or community titles scheme.

Subdivision 2 — Tier 1 rehabilitation and remediation activities

- 114. Preliminary contaminated site investigation.

Examples for this item:

 - 1. Identifying potential sources of contamination, contaminants of concern, receptors that may be exposed to contamination and exposure pathways.
 - 2. Carrying out a site inspection.
- 115. Removing surface waste, litter or contaminated or waste material in a way that does not, over the course of 1 calendar year, involve any of the following —
 - (a) removing more than 4 kg of material (not counting the surface waste, litter or contaminated or waste material);
 - (b) disturbing more than 10 m² of ground in total;
 - (c) disturbing more than 1 m² of contiguous ground;
 - (d) excavating to a depth of more than 0.5 m.
- 116. Revegetation using handheld equipment only.
- 117. Rehabilitation of drill holes, including casing removal, sealing and capping.

Subdivision 3 — Tier 2 rehabilitation and remediation activities

- 118. Detailed contaminated site investigation.

Examples for this item:

 - 1. Collecting and evaluating site-specific data.
 - 2. Carrying out a detailed site investigation to establish ground conditions.
 - 3. Collecting soil and groundwater samples.

119. Removing surface waste, litter or contaminated or waste material, other than as described in item 115, in a way that does not involve any of the following —
 - (a) removing more than 20 kg of material (not counting the surface waste, litter or contaminated or waste material);
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
120. Revegetation using non-handheld equipment.
121. A remediation activity not described by another item in this Subdivision or Subdivision 2, that does not involve any of the following —
 - (a) removing more than 20 kg of material;
 - (b) disturbing more than 200 m² of ground in total;
 - (c) disturbing more than 10 m² of contiguous ground;
 - (d) excavating to a depth of more than 1 m.
122. A rehabilitation activity not described by another item in this Subdivision or Subdivision 2 that is carried out in an area that has been subject to ground disturbance.

Subdivision 4 — Tier 3 rehabilitation and remediation activities

123. Removing surface waste, litter or contaminated or waste material, other than as part of an activity described by another item in this Division.
124. Landform re-contouring or reshaping.
125. A remediation activity not described by another item in this Division.
126. A rehabilitation activity not described by another item in this Division.

Division 9 — Other activities

Subdivision 1 — Other tier 1 activities

127. An activity that —
 - (a) is not described by an item in any other Division of this Schedule; and
 - (b) is not an exempt activity; and
 - (c) does not, over the course of 1 calendar year, involve any of the following —
 - (i) removing more than 4 kg of material;
 - (ii) disturbing more than 10 m² of ground in total;
 - (iii) disturbing more than 1 m² of contiguous ground;
 - (iv) excavating to a depth of more than 0.5 m.

Subdivision 2 — Other tier 2 activities

128. An activity that —
- (a) is not described by an item in any other Division of this Schedule; and
 - (b) is not an exempt activity or tier 1 activity; and
 - (c) does not involve any of the following —
 - (i) removing more than 20 kg of material;
 - (ii) disturbing more than 200 m² of ground in total;
 - (iii) disturbing more than 10 m² of contiguous ground;
 - (iv) excavating to a depth of more than 1 m.

Subdivision 3 — Other tier 3 activities

129. An activity that —
- (a) is not described by another item in this Schedule; and
 - (b) is not an exempt activity.

Appendix 4 – Section 2 and Section 3 of the DPLH ACHA *ACH Survey Report Guidelines*



1 Purpose

The *Aboriginal Cultural Heritage Act 2021* (Act) requires that a proponent proposing to carry out an activity that is not an exempt activity is required to undertake a due diligence assessment (DDA) in accordance with the ACH Management Code (Code).

The purpose of these guidelines is to specify in what circumstances an ACH Survey Report (ACH Report) can be relied upon for the purposes of satisfying a DDA.

Section 2 applies to ACH Reports dated prior to 1 July 2024

Section 3 applies to ACH Reports dated on or after 1 July 2024. The requirements in Section 3 reflect best practice standards for ACH Reports. They are not required to be satisfied for ACH Reports dated prior to 1 July 2024 in order to allow all stakeholders including proponents and Aboriginal people and organisations time to transition to these standards.

As part of the DDA, if a proponent intends to rely on an ACH Report (in the ACH Directory or otherwise available to the proponent) for the purposes of the DDA in respect of a proposed activity area, the Code states that the ACH Report needs to be consistent with these guidelines.

2 Assessment Criteria – ACH Reports prior to 1 July 2024

Table 1 sets out the criteria against which an ACH Report must be assessed to determine if it can be relied on for the purposes of a DDA up to and including 30 June 2024. To be consistent with these guidelines, the criteria set out in this document must be satisfied for the ACH Report to be relied upon for the purposes of the Code.

A single ACH Report, or multiple ACH Reports, may be used to fulfil the requirements of an individual criterion.

The proponent must keep records of the assessment of an ACH Report that is relied upon against these guidelines including documenting how the ACH Report was determined to be consistent.

Table 1 Assessment criteria

Criteria	Requirement
1. The ACH Report has the involvement, agreement or endorsement of the Aboriginal party	<p>An ACH Report can be relied upon for the purposes of a DDA where:</p> <ol style="list-style-type: none"> 1. it can be demonstrated that the ACH Report has been agreed to or endorsed, whether within the ACH Report or separately, by the Aboriginal party on or after 1 July 2023 (no further criteria need to be satisfied); or 2. the ACH Report is dated 1 January 2013 or later and the persons who participated in informing the ACH Report were nominated by the Aboriginal party and/or were knowledge holders, subject to satisfying the remaining criteria 2-7; or 3. the ACH Report is dated 1 January 2013 or later and the persons who participated in informing the ACH Report were not nominated by the Aboriginal party or were not knowledge holders, but it can be demonstrated that the ACH Report has been subsequently endorsed or agreed to by the Aboriginal party prior to 1 July 2024, subject to satisfying the remaining criteria 2-7; or 4. the ACH Report is dated prior to 1 January 2013 and the persons who participated in informing the ACH Report were nominated by the Aboriginal party or were knowledge holders and it can be demonstrated that the ACH Report has been subsequently endorsed or agreed to by the Aboriginal party on or after 1 January 2013, subject to satisfying the remaining criteria 2-7; or 5. the ACH Report is dated prior to 1 January 2013 and has been informed, agreed to or endorsed, whether within the ACH Report or separately by the Aboriginal party, subject to the Aboriginal party being the Aboriginal party as at 1 July 2023, subject to satisfying the remaining criteria 2-7. <p>An ACH Report cannot be relied upon for the purposes of a DDA if it does not meet at least one of requirements 1 to 5 above.</p>

2. The ACH Report must relate to tangible (archaeological) and/or intangible (anthropological) elements of Aboriginal cultural heritage	<p>The ACH Report must relate to the tangible (archaeological) and/or intangible (anthropological) elements of ACH.</p> <p>This may have been reported through an archaeological and/or anthropological surveys. One ACH Report may address both of these elements or multiple reports may do so.</p> <p>Where only one element has been addressed, for the ACH Report to be relied on for the purposes of a DDA, it must be able to be demonstrated that the Aboriginal party has been party to, directed, or otherwise endorsed this decision or survey procedure. The endorsement must be sufficiently clear to demonstrate this.</p>
3. The ACH Report must include a clear statement as to the presence of ACH	<p>The ACH Report must contain a clear statement as to:</p> <ul style="list-style-type: none"> (a) whether or not ACH is located in the proposed activity area; or (b) whether areas have been cleared or approved for activities to be undertaken.
4. Area covered by the ACH Report(s) must completely cover the proposed activity area	<p>The ACH Report must clearly identify the specific geographical area the subject of the ACH Report. This may include:</p> <ul style="list-style-type: none"> (i) a map or maps at sufficient detail and scale to identify the area covered by the ACH Report, particularly the boundaries of the area; or (ii) where a map(s) that cover the entire area of the ACH Report is (are) not available, GPS coordinates and/or detailed description; or (iii) land parcel or tenement identification along with a description of the part of the land parcel or tenement that was surveyed in circumstances where the land parcel or tenement was not surveyed in its entirety. <p>The proposed activity area must be covered by an ACH Report(s).</p> <p>Multiple ACH Reports (collectively) can cover the activity area.</p>
5. Parts of the ACH Report may not be used if limitations exist	<p>Where limitations are described in the ACH Report that prevented the accurate or reliable identification of ACH (or the accurate or reliable clearance or approval of areas for activities to proceed, such that those activities will not impact or interfere with any ACH), the ACH Report is not able to be relied upon to confirm whether ACH may be present for those parts of the survey area for the purposes of a DDA.</p>

6. The scope of activities for which the ACH Report was completed must correspond to the proposed activity	<p>ACH Reports which specify a proposed activity to be undertaken or contain limitations regarding specific activities proposed, or which are undertaken for a specific activity, (collectively the 'specified activity') can only be relied upon where the activity being undertaken in reliance on the ACH Report results in land use or development that:</p> <ul style="list-style-type: none"> (a) is no greater in surface area or height than the specified activity; and (b) is either – <ul style="list-style-type: none"> (i) no greater in depth than the specified activity; or (ii) only greater in depth than the specified activity it extends 10 m or lower below natural ground level. <p>The above does not apply if the ACH Report contains a clear statement that ACH is not located in the proposed activity area.</p>
7. Recommendation for further surveys	Where there is a recommendation for a further survey(s) to identify whether or not ACH ¹ is located in the area of the proposed activity, an ACH Report can only be relied upon for the purposes of a DDA in conjunction with any subsequent ACH Report(s) that specifically addresses the recommendation.

¹ This may be ACH in addition to ACH that is already identified in the ACH Report.

3 Proposed survey requirements – ACH Reports on or after 1 July 2024

Where a survey is required for the purposes of satisfying a DDA and an ACH Report is dated on or after 1 July 2024, the ACH Report will need to address the following matters:

- (a) An endorsement of the ACH Report by the Aboriginal party.
- (b) A list of the survey participants including identification of any knowledge holders.
- (c) Details of the information provided to the Aboriginal party or survey participants relating to the purpose and context of the survey and which should include:
 - (i) details of the proposed activity, in particular any tier 2 or 3 activity;
 - (ii) the information sought to be obtained from the survey.
- (d) Detailed description of the survey methodology and information provided by the survey participants (where applicable) in relation to:
 - (i) the area of the survey and its relationship to the activity area;
 - (ii) the fitness for purpose of the survey methodology;
 - (iii) that the area is clear of any ACH (ACH work area clearance survey) or the location and boundary of the ACH (ACH avoidance survey); and
 - (iv) any cultural sensitivities or restrictions.

Additional information that may be provided by the survey participants, and which may be included in the ACH Report if endorsed by the Aboriginal party* may include:

- (v) the importance and/or characteristics of the ACH;
 - (vi) potential impacts of the proposed activity on the ACH; and
 - (vii) any recommendations as to the management of the ACH.
- (e) Whether the survey relates to tangible and/or intangible elements of ACH.
 - (f) A description of limitations that may have prevented all ACH present being identified throughout the ACH investigation.
 - (g) Where limitations exist that may have prevented the accurate or reliable identification of ACH, should it be present, the ACH Report will only be able to be relied on (for the purposes of the DDA in respect of a proposed activity area) for those parts of the survey area where the limitations do not apply.

*Additional information that may also be included in the ACH Report is:

- (i) representative photographs (and landforms where informative);
- (ii) record landform and general environmental information;
- (iii) record the land surface and vegetation conditions encountered during the survey, accounting as appropriate for things like vegetation, rock outcrops, coarse fragments, recent fires (etc.) and how these impacted on the visibility of objects;
- (iv) record any ACH (including ACH already listed in the ACH Directory) observed during the survey;
- (v) description of how the method used to collect information relating to the presence or absence of ACH was suitable for the scope of the survey;
- (vi) record survey coverage; and
- (vii) accurate mapping including digital geospatial data and coordinated (accurate zone, northing and easting).