



Department of Indigenous Affairs
Department of the Premier and Cabinet

Cultural Heritage Due Diligence Guidelines

Version 2.0

18 November 2011

PART 1 – Information to assist in using these Guidelines

1.0 Preamble

The *Aboriginal Heritage Act 1972* (**Heritage Act**) is the Act which protects Aboriginal heritage on behalf of the community of Western Australia.

Purpose of the Heritage Act

- 1.2 The Heritage Act was enacted to ensure that all Aboriginal cultural heritage within Western Australia could be properly protected and preserved. The Heritage Act applies to various places and objects which are culturally, spiritually or ceremonially significant to Aboriginal people.
- 1.3 Under section 10 of the Heritage Act, the Minister's role is to ensure that, as far as reasonably practicable, all places in Western Australia which are of traditional and cultural significance to Aboriginal people are properly recorded and their importance evaluated. This is to assist in the protection and preservation of Aboriginal cultural heritage.

Purpose of the Cultural Heritage Due Diligence Guidelines (Guidelines)

- 1.4 Land users are obliged to comply with the provision of the Heritage Act and failure to do so may result in prosecution. These Guidelines provide guidance to assist in meeting this statutory obligation and they are intended to help identify activities which may impact adversely on Aboriginal heritage.
- 1.5 Compliance with these Guidelines will not of itself guarantee compliance with the Heritage Act, but it will provide a useful starting place for consultation and engagement on these issues.

Distinction between Aboriginal heritage and native title

- 1.6 The common law of Australia and Commonwealth legislation recognise a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional lands.
- 1.7 In Western Australia, the protection of Aboriginal sites of significance is derived from the operation of the Heritage Act. The Heritage Act is a statute that provides automatic protection for all places and objects in Western Australia that are important to Aboriginal people because of connection to their culture.

Definition of Aboriginal site

- 1.8 The Heritage Act provides a comprehensive list of the types of places to which the Act applies. As defined in section 5 of the Heritage Act, an Aboriginal site can be:
- (a) any place of importance and significance where persons of Aboriginal descent have left any object used for any purpose connected with the past or present traditional cultural life of the Aboriginal people;
 - (b) any sacred, ritual or ceremonial site, which is of importance and special significance to Aboriginal people;
 - (c) any place the Aboriginal Cultural Material Committee (**Committee**) thinks is or was associated with Aboriginal people and is of such historical, anthropological, archaeological or ethnographic value that it should be preserved; and
 - (d) any place where objects are traditionally stored or places from which objects to which the Heritage Act applies have been removed.

Consultation with Aboriginal People

- 1.9 The Heritage Act states that anyone has an obligation to report anything that they believe could be an Aboriginal site. However, the Heritage Act also provides that Aboriginal people cannot be compelled to disclose information if to do so would be contrary to customary law.
- 1.10 Information about the Aboriginal heritage of a particular area is best obtained in consultation with the relevant Aboriginal people for that area. Whilst there is no definitive list of Aboriginal people who should be consulted for an area, the ACMC suggests that the following people at least should be consulted:
- (a) those who are determined native title holders;
 - (b) those who are registered native title claimants;
 - (c) persons named as informants on Aboriginal site recording forms held in the Register at Department of Indigenous Affairs (**DIA**); and
 - (d) any other Aboriginal persons who can demonstrate relevant cultural knowledge in a particular area.
- 1.11 Consultation in this context means engaging meaningfully with the relevant Aboriginal people. The purpose of such consultation could be:
- (a) to identify sites in the area;
 - (b) to identify any damage that the proposed land use might cause to sites of significance; and
 - (c) to identify possible means of heritage management for the immediate land use and any longer term disturbance that might occur as part of the land use activity (e.g. construction of power poles and later

periodic maintenance).

- 1.12 Consultation includes providing clear, simple, jargon free information about the proposed land use and its impact and seeking responses from the relevant Aboriginal group. Consultation might not lead to consensus, but provides a basis upon which decisions can be made.
- 1.13 Under the Heritage Act the DIA maintains a Register of Aboriginal sites and works with Aboriginal people to protect and manage places of significance. DIA facilitates engagement with Aboriginal people by providing advice to the public and private sectors and the community about Aboriginal sites and heritage management.
- 1.14 Under the Heritage Act the ACMC advises the Minister for Indigenous Affairs on the management of sites of significance.

Consent to disturb a site

- 1.15 Under section 17 of the Heritage Act, a person who excavates, destroys, damages, conceals or in any way alters any Aboriginal site commits an offence, unless he or she acts with the authorisation of the Registrar of Aboriginal Sites (**Registrar**) under section 16 or the consent of the Minister of Indigenous Affairs (**Minister**) under section 18.

Obtaining consent

- 1.16 Consent or authorisation is usually given in one of three ways:
 - (a) Section 18 of the Heritage Act consent, which may follow from a notice submitted by a proponent. The ACMC considers the notice and makes a recommendation to the Minister for Indigenous Affairs. The Minister considers the recommendation and makes the decision whether or not to consent to the disturbance or destruction of the site. If consent is granted, the Minister can also impose conditions.
 - (b) Section 16 of the Heritage Act authorisation, which is authority from the Registrar on the advice of the ACMC.
 - (c) Regulation 10 of the *Aboriginal Heritage Regulations 1974* (WA) authorisation, which is authority from the Registrar or Minister.

Aboriginal cultural heritage due diligence

- 1.17 The Heritage Act provides a defence to a person who can prove that he or she did not and could not reasonably be expected to have known, that the place or object which was damaged or destroyed was a site of Aboriginal heritage significance. Whilst each case will turn on its own facts, a person who complies with the Guidelines set out in Part 2 may be able to use the steps undertaken to assist in establishing that he or she did not, and could not reasonably have known, that the site was an Aboriginal heritage site.
- 1.18 Due diligence will vary according to the nature of the activity undertaken and the area in which it is being carried out. It can involve one or all of the following steps:
- (a) consultation with the relevant Aboriginal group;
 - (b) search of the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System;
 - (c) a heritage survey; and
 - (d) cultural heritage
- 1.19 Part 2 of these Guidelines provides further practical advice on heritage due diligence and management when undertaking different land uses.

The role of the Guidelines

- 1.20 There is no statutory obligation to comply with these Guidelines. However, they can provide practical guidance on heritage matters. There is also a defence under the Heritage Act in circumstances where a person can prove that he or she did not and could not reasonably be expected to have known, that the place or object which was damaged or destroyed was a site of Aboriginal heritage significance. Whilst each case will turn on its own facts, a person who complies with the Guidelines set out in Part 2 may be able to use the steps undertaken to assist in establishing that he or she did not, and could not reasonably have known, that the site was an Aboriginal heritage site

Other information

- 1.21 Should you require assistance in determining what your responsibilities under these guidelines or under the Heritage Act, you should contact the DIA on 9235 8000 or through their website: <http://www.dia.wa.gov.au/contact-us/>

PART 2 – Cultural Heritage Due Diligence Guidelines (Guidelines)

2.0 Introduction

- 2.1 These Guidelines have been published by the State to assist land users in complying with the Heritage Act, and in identifying reasonable and practicable measures for ensuring that activities are managed to avoid or minimise harm to Aboriginal sites
- 2.2 The purpose of these Guidelines is to assist land users to work out for themselves whether they can proceed with their project without the need for heritage avoidance strategies or, if such strategies are indicated, what those strategies should be. As is explained in Part 1 of these Guidelines, if there is no likelihood of damage or destruction to an Aboriginal heritage site, it is not compulsory for a land user to have any consent under the Heritage Act. However if there is such a possibility, then land users ought to assess the degree of likelihood and consider the need for consultation with Aboriginal groups, or heritage surveys, or even applying to the ACMC for the Minister's consent.
- 2.3 Where these Guidelines are followed it is less likely that Aboriginal sites, all of which are protected by the Heritage Act, will be harmed. In no circumstances do the Guidelines permit harm to Aboriginal sites protected by the Heritage Act.
- 2.4 The Guidelines are intended to provide clarity to land users and are not intended to be legal advice. All interested persons should always obtain their own legal advice on the application of the Heritage Act to their own particular circumstances.
- 2.5 Any questions regarding the Heritage Act can be put to the DIA who are contactable on 9235 8000 or through their website: <http://www.dia.wa.gov.au/contact-us/>.

3.0 Definitions

- 3.1 The definitions used in the Heritage Act apply in relation to these Guidelines.
- 3.2 In addition to the definitions used in the Heritage Act the following definitions are used within these guidelines:

“Consultation” means a process of enquiry and response between a land user and relevant Aboriginal persons and/or groups to provide information or assistance in identifying any requirements for site identification, heritage survey and/or land use activity proposal modification. Consultation should include details of proposed land use activity.

“Developed Area” means an area which is developed or maintained for a particular purpose such as a park, garden, farming land, railway, road or other access route, navigation channel, municipal facility, or infrastructure facility, such as powerlines, telecommunication lines or electricity infrastructure.

“Ground Disturbance Works” means any activity which will disturb the surface of land or waters.

“Aboriginal Heritage Survey” is conducted once initial consultation has occurred and the need for a survey has been determined. It means further consultation and, if necessary, fieldwork, with the relevant Aboriginal people for an area with a view to determining whether sites exist and, if they do, the nature of the site. Relevant Aboriginal people include:

- (a) those who are determined native title holders;
- (b) those who are registered native title claimants;
- (c) persons named as informants on Aboriginal site recording forms held in the Register at DIA; and
- (d) any other Aboriginal persons who can demonstrate relevant cultural knowledge in a particular area.

“Heritage Risk Assessment Matrix” means the document attached at Schedule Two (as amended from time to time).

“Land Use Activity” means any activity on the land or water initiated by a land user of either a low impact activity or ground disturbing nature.

“Land User” means the State of Western Australia operating on its own behalf or third parties operating by grant of interest, right or title by the State of Western Australia.

4.0 The nature of the proposed activity and the likelihood of it contravening section 17 of the Heritage Act

Introduction

4.1 The likelihood of a proposed land use activity damaging or destroying an Aboriginal site arises from two factors:

- a. the likelihood of the existence of an Aboriginal site ("likelihood of a site"); and
- b. the nature of the proposed land use activity ("nature of activity").

4.2 The likelihood of the existence of an Aboriginal site can range from positive knowledge that there is no Aboriginal site on the land in question, to positive knowledge that there is an Aboriginal site. In between these two extremes there is a range of likelihoods, from low to high. What follows is intended to assist land users in determining the likelihood of there being an Aboriginal site on their land.

- 4.3 The nature of the intended land use activity can range from an aerial survey, which will not cause any ground disturbance, to actual blasting and excavation, which will of course cause extensive ground disturbance.
- 4.4 Thus, for example, if the proposed land use is an aerial survey of an area where it is known that there is no Aboriginal site, there will be no disturbance of any site, and the land use can proceed without the need for any further heritage survey or consent under the Heritage Act.
- 4.5 On the other hand, if the proposed land use is the blasting and excavation of an area where an Aboriginal site is known to exist, then it is clear that the proposed land use will destroy the site. In such cases, it is imperative to have the consent of the Minister for Indigenous Affairs (Minister) pursuant to section 18 of the Heritage Act.
- 4.6 Between these two extremes, there can obviously be any number of permutations of the factors of likelihood of a site and nature of activity. These Guidelines are intended to assist land users in assessing for themselves the need to take action, and the type of action which may need to be taken, in order to comply with the Heritage Act.

5 Strategies available to assist compliance with section 17 of the Heritage Act

- 5.1 Once a land user has established the intended use of the land, the next step is to establish the degree of likelihood of the existence of an Aboriginal site, or sites, on the land. There are several tools available to assist land users in this task.

The Register of Aboriginal sites (Register)

- 5.2 The Register is established under section 38 of the Heritage Act and must include:
- a. all protected areas (section 19);
 - b. all Aboriginal cultural material; and
 - c. all Aboriginal sites and objects to which the Heritage Act applies.
- 5.3 The Register lists all Aboriginal sites reported to the Registrar pursuant to section 15 of the Heritage Act and all areas protected under section 19 of the Heritage Act. It obviously cannot record undiscovered sites – which are nonetheless protected under the Heritage Act – and therefore is not an exhaustive list of sites. However it is an essential reference tool which can assist land users in identifying those locations in which heritage is an issue.
- 5.4 Conducting a search of the Register is a fundamental part of a land user's Aboriginal heritage due diligence.

The Aboriginal Heritage Information System (AHIS)

- 5.5 The AHIS enables members of the public to search areas in Western Australia for Aboriginal sites and previously conducted surveys known to DIA. The AHIS can be accessed online through DIA's website - www.dia.wa.gov.au/AHIS/default.aspx.
- 5.6 Conducting a search of the AHIS is a fundamental part of a land user's Aboriginal heritage due diligence.
- 5.7 The current electronic search functions enable users to search both the Register and the AHIS in a single search.

Consultation

- 5.8 Aboriginal persons and groups with traditional connections to the area of the proposed land use should be consulted with a view to establishing the location and importance of any Aboriginal sites. Aboriginal persons and groups are not obliged to divulge this information, and in some cases Aboriginal custom may prohibit such disclosure.
- 5.9 As a general note, if a land use activity is likely to impact upon Aboriginal heritage, it is best that heritage management strategies are implemented early in the land use activity planning process. Early engagement and consultation can help to identify ways to minimise and avoid damage or disturbance of Aboriginal heritage sites. Leaving heritage management to the later stages of project planning might lead to delays whilst obtaining the relevant information and, where necessary, the relevant consents.
- 5.10 If at any time it is likely that the activity will in any way impact on a registered Aboriginal site or suspected Aboriginal site the activity should not commence, or if already commenced, should cease immediately, and Land users should contact the DIA on 9235 8000 or through their website: <http://www.dia.wa.gov.au/contact-us/>.
- 5.11 It is an offence under section 17 of the Heritage Act to damage, destroy, etc an Aboriginal site. However section 62 of the Heritage Act provides that if a person charged with such an offence can prove that he or she did not know, and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which the Heritage Act applies, then the person is not guilty of the offence.
- 5.12 All land users who wish to use land for a purpose which might contravene section 17 of the Heritage Act must exercise due diligence in trying to establish whether or not their proposed use of the land will damage, destroy etc an Aboriginal site. The steps outlined in paragraphs 5.4 and 5.6 to 5.9 above will assist in showing that a land user has exercised due diligence, and may therefore assist in making out the section 62 defence should an Aboriginal site be damaged or destroyed. This is not an exhaustive

list of possible precautions, and does not remove the need for land users to ensure for themselves that they will take all available steps to establish the location and identity of any Aboriginal sites on the relevant land or waters.

Risk Assessment Graph

5.13 Schedules 1 and 2, which follow, have been designed by the State to assist land users in assessing for themselves:

- a) the degree of likelihood of an Aboriginal site existing on the relevant land;
- b) the degree of likelihood of the proposed land use damaging or destroying any Aboriginal site which may exist, or is known to exist, on the land; and
- c) whether or not precautionary strategies will be sufficient to avoid Aboriginal sites, or avoid damaging Aboriginal sites, or whether it is necessary to apply to the ACMC for the Minister's consent under section 18 of the Heritage Act.

5.14 It is emphasised that Schedules 1 and 2 are provided for guidance only. Whilst conscientious application of Schedules 1 and 2 should provide land users with a reasonable degree of clarity on the above issues, the land user's conclusions cannot be guaranteed by the State and, in case of doubt, land users should contact DIA directly for further information and/or assistance.

Schedule 1

Explanatory

The following list of activities is intended to be used in conjunction with the matrix which appears at Schedule 2.

Users are invited to assess the likelihood of them damaging or destroying Aboriginal sites on their land by identifying their intended use of the land, and the likelihood of Aboriginal sites existing on that land (see types of sites and landscape features at page 15), and plotting the likely risk on the graph at Schedule 2. The Assessment & Action Required Guide provides a guide as to suitable actions to undertake in order to minimise the impact of activity on Aboriginal sites.

The following categories of activities are broad descriptions of usual, or typical, activities. Land users should use their own initiative to equate their intended activities with those described below. In cases where a land user's intended use does not correspond identically with those uses listed below, the land user will have to equate the intended use as closely as possible with one or more of the listed activities.

Category 1 - Activities involving no ground disturbance that are unlikely to disturb an Aboriginal site

Where an activity, such as those listed below, involves no surface disturbance of an area, it is generally unlikely that the activity will disturb any Aboriginal site which may be in the area, and the activity will comply with these Guidelines.

In these circumstances, it is reasonable for the activity to proceed without further cultural heritage assessment.

The following list of examples is not an exhaustive list, but it sets out activities that may proceed under category 1:

- (a) walking;
- (b) aerial surveying/ aerial- magnetic surveys;
- (c) traversing on existing tracks or water courses;
- (d) activities on land previously cleared and used for either intensive or extensive development;
- (e) environmental monitoring;
- (f) water and soils sampling;
- (g) fossicking or other exploration activity using hand held instruments;
- (h) spatial measurement;
- (i) commercial biological activities;
- (j) scientific research surveys, using hand held tools;
- (k) light vehicular access and camping; and
- (l) photography.

Category 2 - Activities causing no additional surface disturbance or minimal ground disturbance that are unlikely to disturb an Aboriginal site

Where an activity is a low impact activity or causes no additional surface disturbance of an area, such as the examples listed below, it is generally unlikely that the activity will disturb an Aboriginal site.

In these circumstances, subject to the measures set out in paragraphs 5.4 and 5.6 to 5.9 and the Heritage Risk Assessment Matrix, it is reasonable for the land use activity to proceed.

The following examples include (but are not limited to) activities that may generally proceed under category 2:

- (a) cultivation of an area which is currently, or has previously been, subject to cultivation;
- (b) grazing cattle on an area where cattle are currently, or have previously been, grazed;
- (c) maintenance of existing roads, tracks and powerlines within the existing infrastructure alignment, or other infrastructure footprint;
- (d) maintenance and protection of services and utilities (such as electricity infrastructure, water or sewerage disposal) on an area where such services and utilities are currently being provided;
- (e) maintenance and protection of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area immediately adjacent to where such services and utilities are currently being provided providing the activity does not involve additional surface disturbance;
- (f) low impact land management activities including feral animal eradication, weed, vermin and pest control, vegetation control and fire control; and
- (g) tourism and visitation activities on an area where such activities are already taking place.

Category 3 - Activities causing ground disturbance that will possibly disturb an Aboriginal site

Where an activity is of moderate impact and causes ground disturbance, it is possible that the activity will disturb an Aboriginal site, if present.

In these circumstances, subject to the measures set out in paragraphs 5.4 and 5.6 to 5.9 and the Heritage Risk Assessment Matrix, it is reasonable for the land use activity to proceed. It should be noted that as the likelihood of an Aboriginal site being present increases, consultation with DIA is recommended and applications under section 16 or section 18 of the Heritage Act may be required.

The following are examples of activities classified as ground disturbing activity:

- (a) exploration work program clearance;
- (b) drilling using hand held rig or rig mounted on any vehicle; and

- (c) new fire breaks.

Category 4 - Ground disturbance that is likely to disturb an Aboriginal site including areas previously subject to significant ground disturbance

Activities including medium to high impact ground disturbance and extensive land use are likely to disturb an Aboriginal site, if present. These activities are classified as being of Category 4 and are likely to require consultation with DIA and Aboriginal people and are likely to require section 16 or section 18 applications to be made.

Subject to the measures set out in paragraphs 5.4 and 5.6 to 5.9, it is reasonable that compliance with the Heritage Risk Matrix will substantially mitigate the likelihood of damage to an Aboriginal site.

Where an activity is proposed in an area which has previously been subject to significant ground disturbance it is generally unlikely that the activity will disturb an Aboriginal site and the activity will comply with these guidelines.

The following are examples of activities classified as having significant ground disturbance likely to disturb an Aboriginal site:

- (a) using mechanical equipment;
- (b) low impact, ground disturbing extensive land use;
- (c) mechanised soil and core sampling;
- (d) geophysical-technical surveys; and
- (e) creation of roads or tracks.

Category 5 - Ground disturbance that will disturb an Aboriginal site

If an Aboriginal heritage site is present, activities which cause major ground disturbance and/or extensive land use are highly likely to disturb the site. At a minimum, they will require consultation with DIA. Applications under section 16 or section 18 of the Aboriginal Heritage Act are highly likely if Aboriginal sites are present and site avoidance measures are impossible.

The following are examples of activities classified as having significant ground disturbance likely to disturb an Aboriginal site:

- (a) drilling;
- (b) mechanical digging, blasting, earthmoving;
- (c) land cultivation; and
- (d) construction works.

Where an activity is proposed under category 5 there is a real risk that it could impact on an Aboriginal Site.

Activity likely to impact upon an Aboriginal site

In these circumstances, the activity should not proceed without the conduct of an Aboriginal Heritage Survey. Any activity should then proceed on the basis of the Aboriginal Heritage Survey and consultation with DIA. Where necessary this also includes seeking the authorisation of the Registrar under section 16 to excavate the site(s) or the consent of the Minister under section 18 for particular land uses notwithstanding that they will damage or destroy a site.

Particular care should also be taken where land users propose to undertake activities causing additional surface disturbance in the vicinity of a registered Aboriginal site, sites which are yet to be assessed by the ACMC or which includes features that are set out under the heading 'Types of Aboriginal Sites' and 'Landscape features likely to contain a site', below (see page 15 below).

It is important to be informed about the likelihood of an area containing an Aboriginal site. Extra care must be taken prior to proceeding with any activity that may cause disturbance to a Aboriginal site or the area immediately surrounding a Aboriginal site.

Where an activity is proposed and it does impact upon an Aboriginal site or suspected Aboriginal site it is necessary to contact the relevant Aboriginal group and to:

- (a) seek advice as to whether the feature constitutes an Aboriginal Site; and
- (b) if it does, identify how best the activity may be managed to avoid disturbing the Aboriginal site;
- (c) where necessary, conduct of an Aboriginal Heritage Survey; and
- (d) seek the authorisation of the Registrar under section 16 or the consent of the Minister under section 18.

DIA can also assist and can provide useful information. They can be contacted on 9235 8000 or by email through their website: <http://www.dia.wa.gov.au/contact-us>.

Reaching Agreement about doing an Aboriginal Heritage Survey

Where a licence or permit is issued which triggers the 'future act' provisions under Division 3 of the *Native Title Act 1993* (Cth), particularly where the grant of the licence enables holders to undertake significant ground disturbing activity, it is likely that a form of Aboriginal Heritage Agreement with the Native Title Group for the area (such as the State Government Standard Heritage Agreement or other nominated agreement) will be required to provide for the conduct of Aboriginal heritage surveys of the area likely to be impacted upon by the land use activities.

An Aboriginal Heritage Agreement cannot disapply or modify the operation of the Heritage Act. All parties are bound by the provisions of the Heritage Act.

Failure To Reach Agreement about doing a Aboriginal Heritage Survey

Where agreement cannot be reached with the Native Title Group for the area to undertake an

Aboriginal Heritage Survey, land users continue to be bound under the Heritage Act.

If at any time it is likely that the proposed activity will in any way impact on a registered Aboriginal Site or suspected Aboriginal site the activity should cease immediately and land users should contact the DIA on 9235 8000 and the relevant Aboriginal group.

Likelihood of sites

Whilst the only way of ensuring that there are no sites in an area is to consult the relevant local Aboriginal group, the State provides the following list of the types of sites and the landscape features with which sites are often associated as a guide or early indicator of the need to carry out further investigations. The lists are not exhaustive and are only guides. Land users are encouraged to obtain their own advice on the impact of their activities.

Types of Aboriginal Sites

The following is an overview of the various types of sites that can be found in Western Australia. This list is not intended to be exhaustive.

Artefacts: An artefact site is a place where human activity is identifiable by the presence of a portable object/s (e.g., stone, glass, bone, shell) utilised or modified by Aboriginal people in relation to traditional cultural life past or present.

Fish Trap: A stone, wood, or other similar structure made by Aboriginal people for catching fish. Such structures are generally found on the coast of Western Australia, and in its lakes and rivers.

Man-made structure: The placement or arrangement, by Aboriginal people, of stone, wood or other material made into a structure for ceremonial or utilitarian purposes.

Mythological: A place that is connected to the great spirit ancestors, in their various manifestations, of the 'Dreamtime' which continues to be important and of special significance to persons of Aboriginal descent.

Repository / Cache: A place where cultural or utilitarian objects are/were taken, or stored, by Aboriginal people, either past or present.

Ceremonial: A place used for a formal act or series of acts prescribed by ritual, belief in a mythological manifestation, religious belief or observance, protocol or convention that is connected with the traditional cultural life of Aboriginal people past or present.

Grinding patches/Grooves: A place where grinding patches or grooves can be found. Grinding patches or grooves are smoothed areas or grooves on rock surfaces (non-portable) that have been created by grinding activity associated with food production such as seed milling, preparation of pigments, tool manufacture and/or maintenance and ritual.

Midden: A place where there is an accumulation of shell refuse that is derived from exploitation of a mollusc resource by Aboriginal people. Such sites may also contain artefacts, fireplaces, burnt shell and bones.

Painting: Places where Aboriginal people have painted on surfaces. Paintings (including daubings, drawings, stencils, prints) can be figurative or non-figurative markings or motifs on surfaces such as rocks, rock walls and trees at fixed locations that are produced by adding pigments and or mediums, such as ochre, blood, beeswax, animal fats, vegetable dyes, tree saps.

Skeletal material/Burial: A place where Aboriginal skeletal material is buried and/or where mortuary practices occurred.

Engraving: A motif (either figurative or non-figurative) on a rock surface produced by percussion or abrasion. Engravings are also often referred to as petroglyphs.

Historical: A place that has historical associations with Aboriginal people and may or may not contain physical evidence of those associations.

Modified or Scarred tree: A place with one or more tree(s), living or dead, that has been modified by Aboriginal people by removing the bark or wood resulting in the formation of a scar. This sort of modification was and is frequently done for the making of implements, tools or other materials that were used in traditional cultural practices.

Quarry: Places where there is evidence for the extraction of stone or ochre.

Landscape features which may contain sites

Landscape features, which may contain Aboriginal sites and should therefore be approached with some caution, include but are not limited to:

- (a) rock outcrops;
- (b) caves;
- (c) foreshores and coastal dunes;
- (d) ranges and hills;
- (e) areas of bio-geographical significance, such as natural wetlands;
- (f) permanent and semi-permanent waterholes, natural springs, gnamma holes, and watercourses;
- (g) some hill and mound formations; and
- (h) areas with potential archaeological deposit, such as rock shelters, caves, alluvial terraces, dune deposits and other relevant geo-morphological features.

The views of relevant Aboriginal people are a key factor in identifying and assessing sites. Appropriately qualified persons such as anthropologists, archaeologists and historians can also provide valuable assistance.

Heritage Risk Assessment Matrix

This Heritage Risk Assessment Matrix has been prepared by the State as a tool in assisting and improving the protection of Aboriginal cultural heritage. The approach assumes consideration and application of this risk assessment tool will maximise Aboriginal site identification and protection.

The Heritage Risk Assessment Matrix has been developed in reliance on well established practices to ensure compliance with the Heritage Act to assist and improve land users awareness of the potential existence of Aboriginal heritage and the minimisation of damage to Aboriginal sites.

The Heritage Risk Assessment Matrix is an essential component of the Cultural Heritage Due Diligence Guidelines. It cannot be definitive but focuses on reducing the risk of Aboriginal cultural heritage and/or Aboriginal sites from being impacted by land use activity.

All parties remain bound by the provisions of the Heritage Act.

Land Activity

LEVEL OF LAND OR WATER ACTIVITY IMPACT GUIDE		
Categories		Description
1	Insignificant	Very low impact activity; no ground disturbance activity and/or existing or prior significant ground disturbance.
2	Minor	Low impact; negligible ground disturbance activity and/or significant public traffic/activity or existing or prior ground disturbance.
3	Moderate	Medium impact; ground disturbing activity and/or regular public traffic/activity or ground disturbance.
4	Significant	Medium to high impact ground disturbance activity and limited public traffic/activity or existing or prior ground disturbance.
5	Major	High impact, significant intensive or extensive land use activity and no existing or prior ground disturbance.

Examples of Land Activity

LEVEL OF LAND OR WATER USE ACTIVITY CATEGORY EXAMPLES				
1	2	3	4	5
Insignificant	Minor	Moderate	Significant	Major
<p>Aerial surveying/ aerial-magnetic surveys</p> <p>Field mapping, including cadastral surveys, not involving the permanent disturbance of soil and vegetation</p> <p>Traversing on existing tracks or watercourses.</p> <p>Activities on land previously cleared and used for either intensive or extensive development</p> <p>Environmental monitoring</p> <p>Water and soils sampling [this may need explanation as soil sampling could be ground disturbing]</p> <p>Fossicking or other exploration activity using hand held instruments</p> <p>Spatial measurement</p>	<p>Cultivation or grazing of an area which is currently, or has previously been, subject to cultivation or grazing</p> <p>Minor repairs without ground disturbance</p> <p>Maintenance of existing tracks.</p> <p>Maintenance or repair of services infrastructure e.g. water bores, water monitors, and electricity and gas reticulation</p> <p>Low impact land management activities including feral animal eradication, weed, vermin and pest control, vegetation control and fire control</p> <p>Tourism and visitation activities on an area where such activities are already taking place</p> <p>Geophysical, biological, environmental or conservation surveys, including installing monitoring plots and marker posts</p> <p>Establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks</p> <p>Collecting and removing loose rocks, firewood, flora or fauna</p> <p>Maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures</p>	<p>Work program clearance</p> <p>Drilling using hand held rig or rig mounted on any vehicle.</p> <p>New fire breaks</p> <p>Drilling using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots)</p>	<p>Using mechanical Equipment</p> <p>Low impact, ground disturbing extensive land use.</p> <p>Mechanised soil and core sampling.</p> <p>Geophysical-technical surveys.</p> <p>Creation of roads or tracks.</p>	<p>Drilling,</p> <p>Mechanical digging, blasting, earthmoving,</p> <p>Land cultivation,</p> <p>Construction works</p>

LEVEL OF LAND OR WATER USE ACTIVITY CATEGORY EXAMPLES				
1	2	3	4	5
Insignificant	Minor	Moderate	Significant	Major
<p>Commercial biological activities</p> <p>Scientific research surveys, using hand held tools</p> <p>Light vehicular access and camping</p> <p>Photography</p> <p>Conducting tests for water, site contamination, or other scientific or conservation purposes</p> <p>Maintaining existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks</p> <p>Carrying out species recovery programs</p>	<p>Revegetating of degraded areas, including fencing areas of vegetation</p> <p>Rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting</p> <p>Carrying out species recovery programs</p> <p>Erosion control activities around existing roads, infrastructure or facilities</p> <p>Conducting tourism operations that:</p> <ul style="list-style-type: none"> are based in established facilities; or require the establishment of new facilities that require no, or only minor, ground disturbance <p>Establishing emergency management operations points, staging areas and control points</p> <p>Digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes</p> <p>Erecting signage and barriers using hand and mechanical augers</p> <p>Removing soil and flora samples and cores up to 20 kilograms, and up to a depth of two metres from the natural surface</p>			

Heritage Impact

In each case the AHIS is used as a first tool of assessment.

LIKELIHOOD OF ABORIGINAL HERITAGE IMPACT GUIDE	
Categories	Description
1	Rare Not likely to impact upon an Aboriginal heritage site. No registered site, and no site or other listed on the AHIS.
2	Unlikely Unlikely to impact upon an Aboriginal heritage site. No known sites in the locality or vicinity of the land use activity.
3	Possible Possible Aboriginal site identified. Heritage sites are in the vicinity; the topography or other land features are known to be places of heritage significance.
4	Likely Likely Aboriginal heritage site. Site has been lodged for assessment with DIA.
5	Certain Identified Aboriginal or Registered site.

Heritage Assessment Guide

HERITAGE ASSESSMENT MATRIX						
HERITAGE IMPACT	LAND ACTIVITY IMPACT					
		Insignificant	Minor	Moderate	Significant	Major
	Rare	Low	Low	Low	Low	Moderate
	Unlikely	Low	Low	Moderate	Moderate	Moderate
	Possible	Low	Low	Moderate	High	High
	Likely	Low	Moderate	High	Critical	Critical
	Certain	Moderate	Moderate	High	Critical	Critical

Heritage Assessment Guide

ASSESSMENT & ACTION REQUIRED GUIDE	
Overall Impact Assessment	Action to take (refer to definitions for details)
Low	<ol style="list-style-type: none"> 1. Reference to AHIS.
Moderate	<ol style="list-style-type: none"> 1. Reference to AHIS and if an Aboriginal Site is identified consultation with DIA recommended.
High	<ol style="list-style-type: none"> 1. Reference to AHIS required. 2. If an Aboriginal Site is identified consultation with DIA and consultation with Aboriginal people required including Aboriginal heritage survey where necessary. Proposal modification may be required to avoid impact. 3. Consideration for a section 16 or 18 application under the AHA where necessary.
Critical	<ol style="list-style-type: none"> 1. Reference to AHIS required. 2. If an Aboriginal Site is identified consultation with DIA and consultation with Aboriginal people required (proposal modification to avoid impact). 3. Aboriginal heritage survey required; 4. Section 16 or 18 application under the AHA required.