

Aboriginal Cultural Heritage Act 2021

ACH MANAGEMENT CODE





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Overview

1. Introduction

The *Aboriginal Cultural Heritage Act 2021* (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 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.

A DDA must be undertaken in accordance with this Code.

2. Purpose

This Code sets out how a DDA is to be undertaken by a person proposing to carry out an activity. Undertaking a DDA is required to determine whether:

- the activity is in a protected area;
- there is any ACH located within an activity area;
- the activity should be carried out in such a way, such as using an alternative location or alternative method, to avoid harming ACH, and can therefore be carried out without any authorisation;
- authorisation is required for the proposed activity, which may require:
 - taking reasonable steps to avoid or minimise harm;
 - an ACH permit (Permit); or
 - an ACH management plan (Plan);
- engagement, and what type of engagement, with Aboriginal parties is required.

Undertaking a DDA in accordance with the Code may be used as a defence to the charge of an offence that an activity harmed ACH [s. 98].

3. Legislative context

Aboriginal cultural heritage is defined in section 12 of the Act as:

Aboriginal cultural heritage —

- (a) means the tangible and intangible elements that are important to the Aboriginal people of the State, and are recognised through social, spiritual, historical, scientific or aesthetic values, as part of Aboriginal tradition; and



(b) includes the following —

- (i) an area (an **Aboriginal place**) in which tangible elements of Aboriginal cultural heritage are present;
- (ii) an object (an **Aboriginal object**) that is a tangible element of Aboriginal cultural heritage;
- (iii) a group of areas (a **cultural landscape**) interconnected through tangible or intangible elements of Aboriginal cultural heritage;
- (iv) the bodily remains of a deceased Aboriginal person (**Aboriginal ancestral remains**), other than remains that are buried in a cemetery where non-Aboriginal persons are also buried or remains that have been dealt with or are to be dealt with under a law of the State relating to the burial of the bodies of deceased persons.

Section 102 provides that a DDA, undertaken in accordance with this Code, is an assessment about:

- (a) whether the area of the proposed activity includes any area that is part of a protected area;
- (b) whether the proposed activity is a —
 - (i) a tier 1 activity (no or minimal ground disturbance);
 - (ii) a tier 2 activity (low ground disturbance);
 - (iii) a tier 3 activity (moderate to high ground disturbance);
- (c) whether Aboriginal cultural heritage is located in the area where it is intended that the proposed activity be carried out;
- (d) whether there is a risk of harm being caused to ACH by the proposed activity;
- (e) in relation to a tier 2 activity or a tier 3 activity — the identity of the persons to be notified or the persons to be consulted about the proposed activity.

Section 90 provides that to *harm* ACH includes to destroy or damage ACH comprising:

- Aboriginal places,
- Aboriginal objects,
- Aboriginal ancestral remains and
- ACH (including cultural landscapes) located within protected areas.

An act carried out by an Aboriginal person in accordance with their traditional rights, interests, and responsibilities in relation to ACH is not considered harm to that ACH [s. 90].

Related Agreements

Steps taken under a related agreement [s. 106] can be used to satisfy the due diligence assessment referred to in section 102(c) or (d) in relation to a proposed activity that the proponent intends to carry out in the area in relation to:

- identifying whether ACH is located within an Activity area; or
- assessing whether there is a risk of harm being caused to ACH.



A related agreement is an agreement that contains provisions about:

- (i) the management of ACH in an area; and
- (ii) the carrying out of an activity to which authorisation under Part 6 is required.

and is between a proponent for the activity being, or a proposed activity intended to be, carried out in the area and:

- (i) a person who is an Aboriginal party to an approved or authorised Plan; or
- (ii) a person who is, or would be an interested Aboriginal party for the Plan; or
- (iii) one or more of the persons to be notified or the persons to be consulted about those activities, or proposed activities.

Appendix 3 sets out the process for engagement (notification or consultation) with Aboriginal people subsequent to the DDA process.

Exempt activities

Exempt activities are set out in the Act and the *Aboriginal Cultural Heritage Regulations 2022* (Regulations). An exempt activity that may harm ACH may be carried out provided it is not within a protected area (see the Directory) or is permitted by any conditions or regulations associated with a protected area. A DDA is not required. Advice should be sought from the Department as to whether the proposed activity is permitted.

Consistent with the objects and principles of the Act, exempt activities are encouraged to be undertaken in a manner that avoids or minimises harm to ACH.

Part A Undertaking a Due Diligence Assessment

4. Background to the DDA

4.1 Who should undertake a DDA?

It is a proponent's responsibility to undertake a DDA [s. 105].

4.2 When should a DDA commence?

It is recommended a DDA is undertaken as early as possible, particularly for tier 2 and tier 3 activities, when planning to carry out an activity, to allow the proponent to plan the proposed activity to avoid or minimise the risk of harm to ACH where practicable. The DDA process involves an assessment of, among other things, whether ACH is present in the activity area and whether there is a risk of harm to ACH caused by the proposed activity.

4.3 Over what area should a DDA be undertaken

A DDA is to be carried out in relation to the activity area.

Undertaking a DDA over as broad an area as practicable where the activity potentially may be carried out will assist in planning the activity to avoid or minimise harm to ACH.

Where ACH is located in the activity area and the activity is able to be altered or moved to avoid that ACH, the DDA will also need to include the area of the altered or moved activity.



4.4 DDA is not an approval to harm ACH

Under the Act, to *harm* ACH includes to destroy or damage ACH [s. 90].

A completed **DDA is not itself an approval to harm ACH.**

Where the DDA identifies that no ACH is present or that, where ACH is present, there is no risk of harm to ACH, the activity can be carried out without authorisation provided that all reasonable steps possible are taken to avoid or mitigate the risk of harm to ACH by the activity, including harm to ACH the proponent becomes aware of after undertaking the DDA.

Where the DDA identifies that ACH is present and that there is a risk of harm to ACH, authorisation is required under Part 6 of the Act.

Where a proponent becomes aware of new information about ACH in the area for which they have an authorisation, they are required by the Act to notify the Council [ss 128, 153, 167].

5. Due Diligence Assessment

5.1 Assessing whether the proposed activity is located within any part of a protected area – section 102(a)

The purpose of declaring a protected area [s. 70] is to:

- (a) recognise that there is ACH of outstanding significance in the area; and
- (b) provide special protection for that area from activities that may harm ACH.

Any activity, regardless of whether it is exempt, tier 1, tier 2 or tier 3, that may harm ACH can only lawfully be carried out within any part of a protected area where it is permitted by the conditions or regulations applicable to the protected area in question.

Table 1 and Flowchart 1 set out the steps required to assess whether an activity is located within any part of a protected area.

	Steps for assessing whether the Activity area is located within the any part of protected area [s. 102(a)]	Supporting information/required action
Step 1	Search the Directory. ¹	All protected areas, including relevant conditions and regulations, are listed on the Directory.
Step 2	If the Activity area is not located within a protected area continue with the DDA.	Continue to 5.2 below
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.	The Department of Planning, Lands & Heritage (Department) can be contacted to enquire whether any conditions or regulations exist that would allow the activity.

Table 1 – Determining whether proposed activity is within a protected area.

¹ Additional information will be made available as to how to undertake a mapping analysis

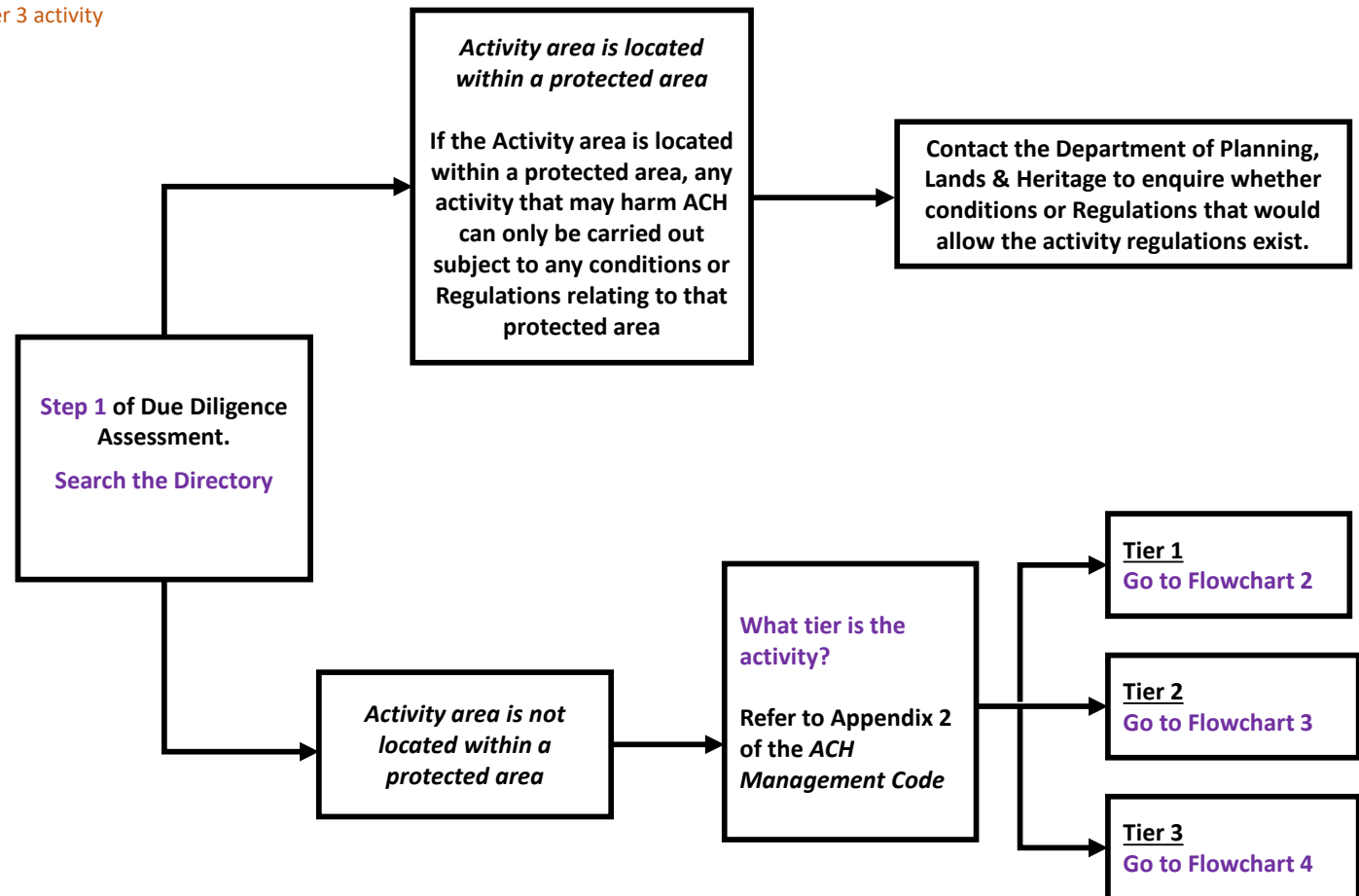


Flowchart 1 – Commencement of Due Diligence Assessment

- Whether there is a Protected Area
- Whether the proposed activity is an exempt activity
- Whether the proposed activity is a Tier 1, Tier 2 or Tier 3 activity

Flowchart 1 assumes the proponent has already established whether the proposed activity is an exempt activity noting that:

- Activities that are 'like for like' or less, are exempt activities.
- Exempt activities may proceed without completion of a due diligence assessment.
- Exempt activities cannot be undertaken within a protected area unless conditions or regulations associated with the protected area order permit the activity.
- The proponent of the activity must take responsibility to establish whether the proposed activity is planned to be carried out is within a protected area by checking the ACH Directory.





5.2 Assessing the tier of an activity – section 102(b)

The activity tier of the proposed activity can be assessed by referring to the *Table of Activity Tiers* set out in **Appendix 1** of this Code or in the Regulations. The Department can be contacted for advice to confirm in which tier the proposed activity falls.

Once it has been determined in which tier the proposed activity falls, a DDA must be undertaken by following the requirements for the relevant tier:

- (a) tier 1 activity – see section 5.3;
- (b) tier 2 activity – see section 5.4;
- (c) tier 3 activity – see section 5.5.

Where a proposed activity may harm ACH, the authorisation pathway corresponding to the relevant tier must be followed (see Table 2).

Activity Category	Authorisation requirements if activity may harm ACH
Tier 1 activity	All reasonable steps possible taken to avoid or minimise the risk of harm
Tier 2 activity	Permit or an approved or authorised Plan
Tier 3 activity	Approved or authorised Plan

Table 2 – Overview of authorisation process for activity tiers

5.3 Tier 1 activity – DDA requirements

Under section 110 of the Act, a tier 1 activity that may harm ACH is authorised if:

- (a) the activity is a tier 1 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person takes all reasonable steps to avoid or minimise harm to ACH by the activity.

Table 3 and Flowchart 2 outline the DDA process for a tier 1 activity.

As referred to under section 3 **Legislative context**, steps taken under a related agreement can be used to satisfy the due diligence assessment referred to in section 102(c) or (d).

Tier 1 Activity	Steps for undertaking a DDA for a tier 1 activity	Supporting information/Required Action
Step 1A	<p>Assessing whether ACH is located within the activity area of the proposed tier 1 activity [s. 102(c)]</p> <ol style="list-style-type: none"> Search the Directory and Consider whether you are otherwise aware that ACH is located in the activity area. 	<p style="text-align: right;"><i>Link to the Directory to be included</i></p> <p>If:</p> <ul style="list-style-type: none"> there is no ACH listed; or the listed ACH only partially covers the activity area; or you are otherwise aware that there is ACH that only partially covers the activity area; <p>proceed to Step 1B.</p> <p>If:</p> <ul style="list-style-type: none"> there is ACH listed on the Directory; or you are otherwise aware that there is ACH; <p>for the whole of the activity area, proceed to Step 2</p>



Tier 1 Activity	Steps for undertaking a DDA for a tier 1 activity	Supporting information/Required Action
<p>Step 1B</p>	<p>Visually inspect the area for ACH as close in time as is practical to carrying out the activity.</p> <p>A visual inspection does not require mechanical or electronic assistance and is reasonable or practicable.</p> <p><i>The ACH Identification Guidelines are able to be referred to for assistance.</i></p>	<p>If:</p> <ul style="list-style-type: none"> • there is listed ACH; or • you are otherwise aware that there is ACH; or • a visual inspection identifies ACH (whether the same as, or different to, the ACH identified in Step 1A), <p>proceed to Step 2.</p> <p>If:</p> <ul style="list-style-type: none"> • there is no ACH listed; and • you are otherwise not aware that there is ACH; and • a visual inspection does not identify ACH; <p>then, for the purposes of the DDA, there is no ACH located in the activity area and no risk of harm.</p> <p>You may carry out the activity without obtaining authorisation, however, you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH you become aware of after undertaking the DDA.</p>
<p>Step 2</p>	<p>Assess whether there is a risk of harm being caused to ACH by the proposed activity [s. 102(d)]</p> <p>Assess whether there may be any tangible or intangible elements of the ACH (recognised through social, spiritual, historical, scientific or aesthetic values) of importance to Aboriginal people that are at risk of harm.</p>	<p>If you are aware, or uncertain as to whether, there may be a risk of harm, the activity can be carried out provided you take all reasonable steps to avoid or minimise harm to ACH.</p> <p>Reasonable steps may include, where there is an alternative location or feasible alternative method to carry out the activity that will avoid or minimise harm, the activity being carried out in the alternative location or using the alternative method (provided you have undertaken a DDA that covers that alternative method or location).</p> <p>If you determine that there is no risk of harm, you may carry out the activity without obtaining authorisation. You must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH which you become aware of after undertaking the DDA.</p>

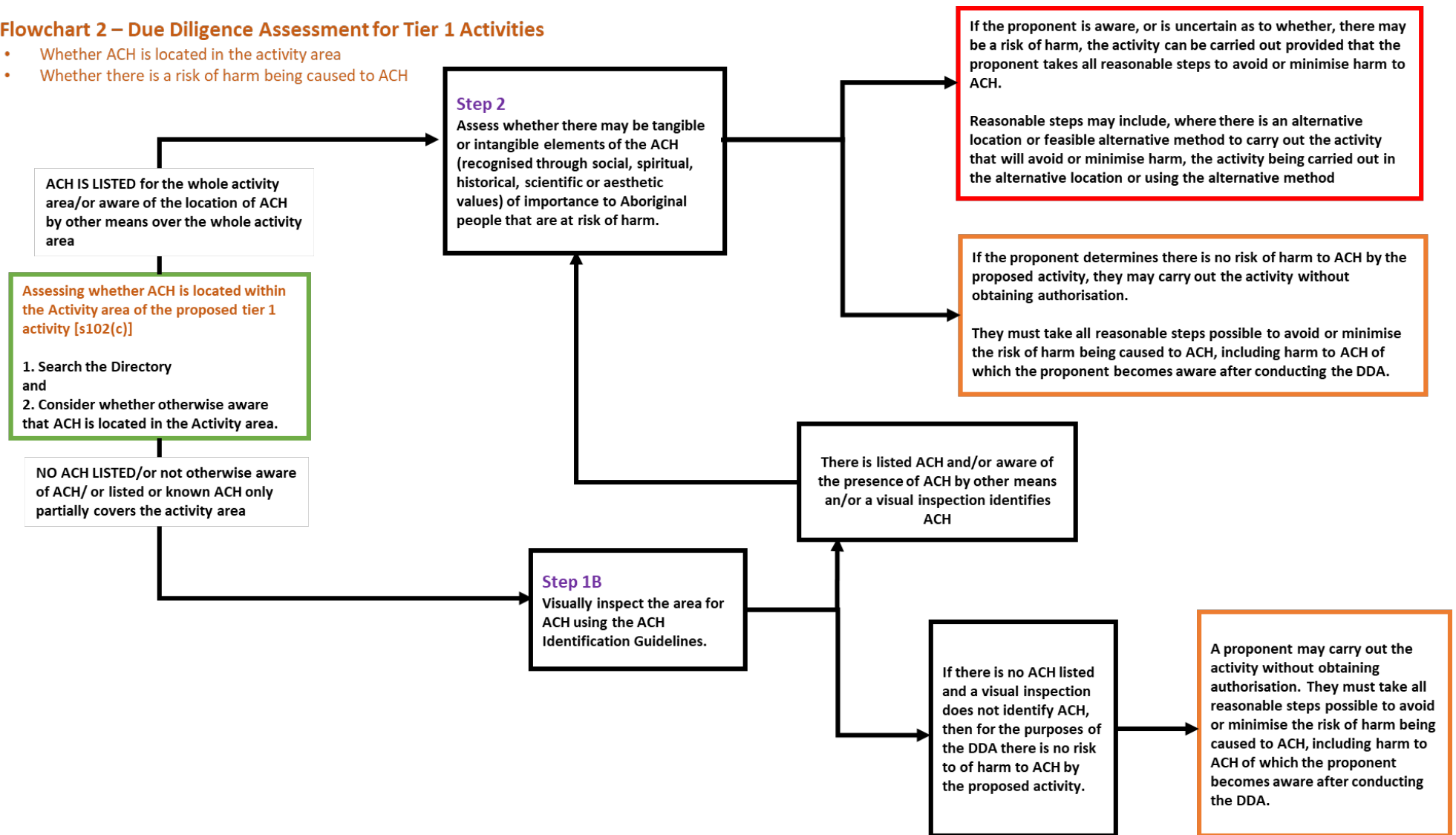
Table 3 – Steps for undertaking a DDA for a tier 1 activity [s. 110]

Records should be kept of all the steps undertaken in the DDA process, including the basis for any decision that there isn't a risk of harm.



Flowchart 2 – Due Diligence Assessment for Tier 1 Activities

- Whether ACH is located in the activity area
- Whether there is a risk of harm being caused to ACH





5.4 Tier 2 activity – steps to undertake a DDA

Under section 111 of the Act, a tier 2 activity that may harm ACH is authorised if:

- a) the activity is a tier 2 activity; and
- b) the area where the activity is carried out does not include any area that is part of a protected area; and
- c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- d) the person carries out the activity in accordance with –
 - (i) an ACH permit; or
 - (ii) an approved or authorised ACH management plan.

Table 4 and Flowchart 3 outline the DDA process for a tier 2 activity.

As referred to under section 3 **Legislative context**, steps taken under a related agreement can be used to satisfy the DDA referred to in section 102(c) or (d).

Tier 2 Activity	Steps for undertaking a DDA for a tier 2 activity	Supporting information/required action
Step 1A	<p>Assess whether ACH is located in the activity area of the proposed tier 2 activity [s. 102(c)]</p> <ol style="list-style-type: none"> 1. Search the Directory and 2. Consider whether you are otherwise aware that ACH is located in the Activity area. 	<p><i>Link to the Directory to be included</i></p> <p>If:</p> <ul style="list-style-type: none"> • there is no ACH listed; or • the listed ACH only partially covers the Activity area; or • you are otherwise aware that there is ACH that only partially covers the Activity area; <p>proceed to Step 1B.</p> <p>If:</p> <ul style="list-style-type: none"> • there is ACH listed; or • you are otherwise aware there is ACH; for the whole of the Activity area, proceed to Step 2.
Step 1B	<ol style="list-style-type: none"> 1. Review any ACH Reports relevant to the Activity area². and/or 2. Request advice from the Department as to whether any ACH (in addition to that listed on the Directory) is located in the Activity area. <p>Relevant ACH Reports can include reports that aren't on the Directory.</p>	<p>If:</p> <ul style="list-style-type: none"> • there is listed ACH; or • you are otherwise aware that there is ACH; or • ACH Reports or the Department confirm that ACH is located in the activity area; <p>proceed to Step 2.</p> <p>If:</p> <ul style="list-style-type: none"> • there is no ACH listed; and • you are otherwise not aware that there is ACH; and

²ACH Reports will need to cover the entire area of the Activity area for it to be confirmed there is no ACH.



Tier 2 Activity	Steps for undertaking a DDA for tier 2 activity	Supporting information/required action
	<p>ACH Reports that are consistent with the ACH Survey Report Guidelines can be relied upon for the purposes of a DDA. They will need cover the entire Activity area in order to confirm that there is no ACH.</p>	<ul style="list-style-type: none"> • ACH Reports or the Department confirm ACH is not located in the Activity area; then for the purposes of the DDA, there is no ACH located in the activity area and no risk of harm. <p>You may carry out the activity without obtaining authorisation, however, you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH you become aware of after undertaking the DDA.</p> <p>If ACH Reports or the Department are not able to confirm that ACH is not located in the Activity area, you will only be authorised to carry out a tier 2 activity that may harm ACH if you obtain a Permit (or Plan).</p>
Step 2	<p>Assess whether there is a risk of harm being caused to ACH by the proposed activity [s. 102(d)]</p> <ol style="list-style-type: none"> 1. Assess whether the activity can be carried out in a manner that avoids the ACH that is located in the activity area. or 2. Seek the views of persons who would be notified for a tier 2 activity as to whether the activity may harm ACH and/or how the activity may be carried out so as to avoid that harm. 	<p>If the activity cannot be carried out so as to avoid the ACH located in the activity area (and you choose not to seek the views of persons who would be notified), there is a risk of harm, and you are required to apply for a Permit or undertake a Plan process.</p> <p>If the proposed activity can be carried out to avoid the ACH, or if all persons to be notified confirm the activity will not harm the ACH, then for the purposes of the DDA there is no risk of harm.</p> <p>You may carry out the activity without obtaining authorisation, however, you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH which you become aware of after undertaking the DDA.</p>
Step 3	<p>Assess the identity of persons to be notified about the proposed activity [s. 102(e)]</p> <p>The persons to be notified are:</p> <ol style="list-style-type: none"> (a) each LACHS (b) if there is not a LACHS: <ol style="list-style-type: none"> (i) each native title party for the area; and 	<p>The Directory contains information on:</p> <ol style="list-style-type: none"> (a) LACHS; (b) native title parties; (c) knowledge holders (where known); (d) NTRBs. <p>Where one or more knowledge holders are to be notified, you will need to consider the Knowledge Holder Guidelines.</p>



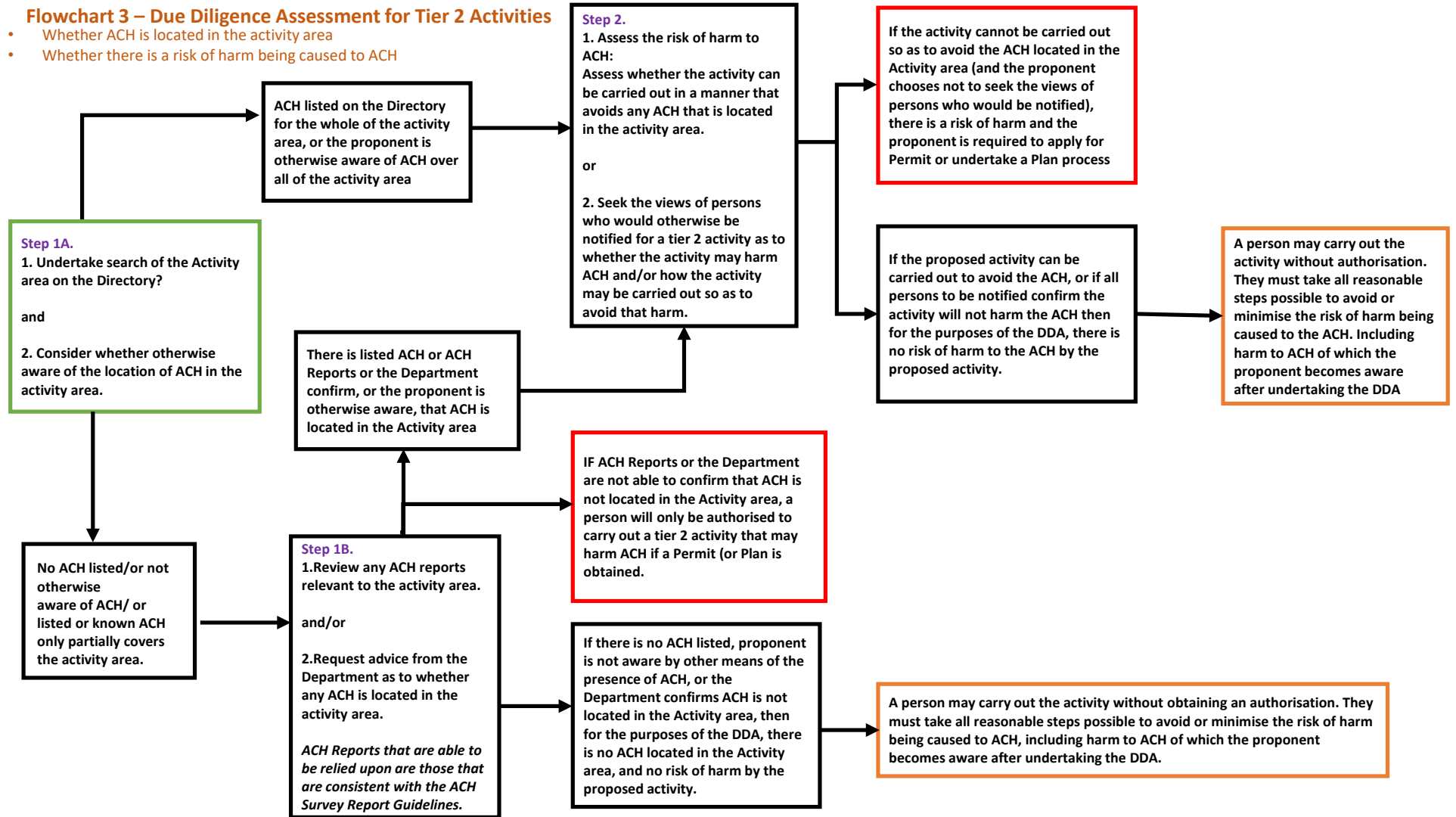
Tier 2 Activity	Steps for undertaking a DDA for a tier 2 activity	Supporting information/required action
	<p>(ii) each knowledge holder for the area;</p> <p>(c) if there is not a LACHS or native title party or knowledge holder, then each NTRB.</p>	

Table 4 - Steps for undertaking a DDA for a tier 2 activity [s. 111]



Flowchart 3 – Due Diligence Assessment for Tier 2 Activities

- Whether ACH is located in the activity area
- Whether there is a risk of harm being caused to ACH





5.5 Tier 3 Activity – Steps to undertake a DDA

Under section 112 of the Act, a tier 3 activity that may harm ACH is authorised if:

- a) the activity is a tier 3 activity; and
- b) the area where the activity is carried out does not include any area that is part of a protected area; and
- c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- d) the person carries out the activity in accordance with an approved or authorised ACH management plan.

Table 5 below and Flowchart 4 outline the DDA process for a tier 3 activity.

As referred to under section 3 **Legislative context**, steps taken under a related agreement can be used to satisfy the DDA referred to in section 102(c) or (d).

Tier 3 Activity	Steps for undertaking a DDA for a tier 3 activity	Supporting information/required Action
<p>Step 1A</p>	<p>Assess whether ACH is located in the Activity area of the proposed tier 3 activity [s. 102(c)]</p> <ol style="list-style-type: none"> 1. Search the Directory. and 2. Consider whether otherwise aware of the location of ACH in the Activity area. 	<p><i>Link to the Directory to be included</i></p> <p>If:</p> <ul style="list-style-type: none"> • there is no ACH listed on the Directory or • the listed ACH only partially covers the Activity area; or • you are otherwise aware that there is ACH that only partially covers the Activity area; <p>proceed to Step 1B.</p> <p>If:</p> <ul style="list-style-type: none"> • there is ACH listed on the Directory; or • you are otherwise aware that there is ACH; <p>for the whole of the Activity area, proceed to Step 2.</p>
<p>Step 1B</p>	<ol style="list-style-type: none"> 1. Review any ACH Reports relevant to the activity area³; and/or 2. Request advice from the Department as to whether any ACH (in addition to that listed on the Directory) is located in the activity area. <p>Relevant ACH Reports can include reports that aren't on the Directory.</p> <p>ACH Reports that are consistent with the ACH Survey Report Guidelines can be relied upon for</p>	<p>If:</p> <ul style="list-style-type: none"> • there is listed ACH; or • you are otherwise aware that there is ACH; or • ACH Reports or the Department confirm the location of ACH; <p>in the activity area, proceed to Step 2.</p> <p>If:</p> <ul style="list-style-type: none"> • there is no listed ACH; and • you are otherwise not aware of ACH; and • ACH Reports or the Department confirm ACH is not located in the activity area; <p>then for the purposes of the DDA there is no ACH located in the activity area and no risk of harm.</p>

³ACH Reports will need to cover the entire area of the Activity area for it to be confirmed there is no ACH.



Tier 3 Activity	Steps for undertaking a DDA for a tier 3 activity	Supporting information/required Action
	<p>the purposes of a DDA. They will need cover the entire activity area in order to confirm that there is no ACH.</p>	<p>You may carry out the activity without obtaining authorisation, however, you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH you become aware of after undertaking the DDA.</p> <p>If ACH Reports or the Department are not able to confirm that ACH is not located in the Activity area, proceed to Step 1C.</p>
<p>Step 1C</p>	<p>Undertake an ACH Investigation in accordance with the Investigation Guidelines</p>	<p>If an ACH Investigation identifies ACH in the area, proceed to Step 2.</p> <p>If an ACH Investigation confirms that ACH is not located in the Activity area, then for the purposes of a DDA, there is no ACH located in the Activity area and no risk of harm.</p> <p>You may carry out the activity without obtaining authorisation, however you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH, including harm to ACH you become aware of after undertaking the DDA.</p>
<p>Step 2</p>	<p>Assess whether there is a risk of harm being caused to ACH by the proposed activity [s. 102(d)]</p> <ol style="list-style-type: none"> 1. Assess whether the activity can be carried out in a manner that avoids the ACH that is located in the Activity area. <p>or</p> <ol style="list-style-type: none"> 2. Seek the views of persons who would be consulted for a tier 3 activity as to whether the activity may harm ACH and/or how the activity may be carried out so as to avoid that harm. 	<p>If the activity cannot be carried out so as to avoid the ACH located in the activity area (and you choose not to seek the views of persons who would be consulted) you will be required to undertake the process for a Plan.</p> <p>If the proposed activity can be carried out so as to avoid the ACH, or if the views of all persons to be consulted confirm the activity will not harm the ACH, then for the purposes of a DDA there is no risk of harm.</p> <p>You may carry out the activity without obtaining authorisation, however, you must take all reasonable steps possible to avoid or minimise the risk of harm being caused to the ACH including harm to ACH which you become aware of after undertaking the DDA.</p>
<p>Step 3</p>	<p>For a proposed tier 3 activity, the persons to be consulted activities are:</p> <ol style="list-style-type: none"> (a) each LACHS (b) if there is not a LACHS: <ol style="list-style-type: none"> (i) each native title party for the area; and 	<p>The Directory contains information on:</p> <ol style="list-style-type: none"> (a) LACHS; (b) native title parties; (c) knowledge holders (where known); (d) NTRBs <p>Where a LACHS has not been appointed, the</p>



	<p>(ii) each knowledge holder for the area;</p> <p>(c) if there is not a LACHS or native title party or knowledge holder for the area, then, each NTRB.</p>	<p>proponent will also need to have regard to the Knowledge Holder Guidelines.</p>
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Table 5 - Steps for undertaking a DDA for a tier 3 activity [s. 112]

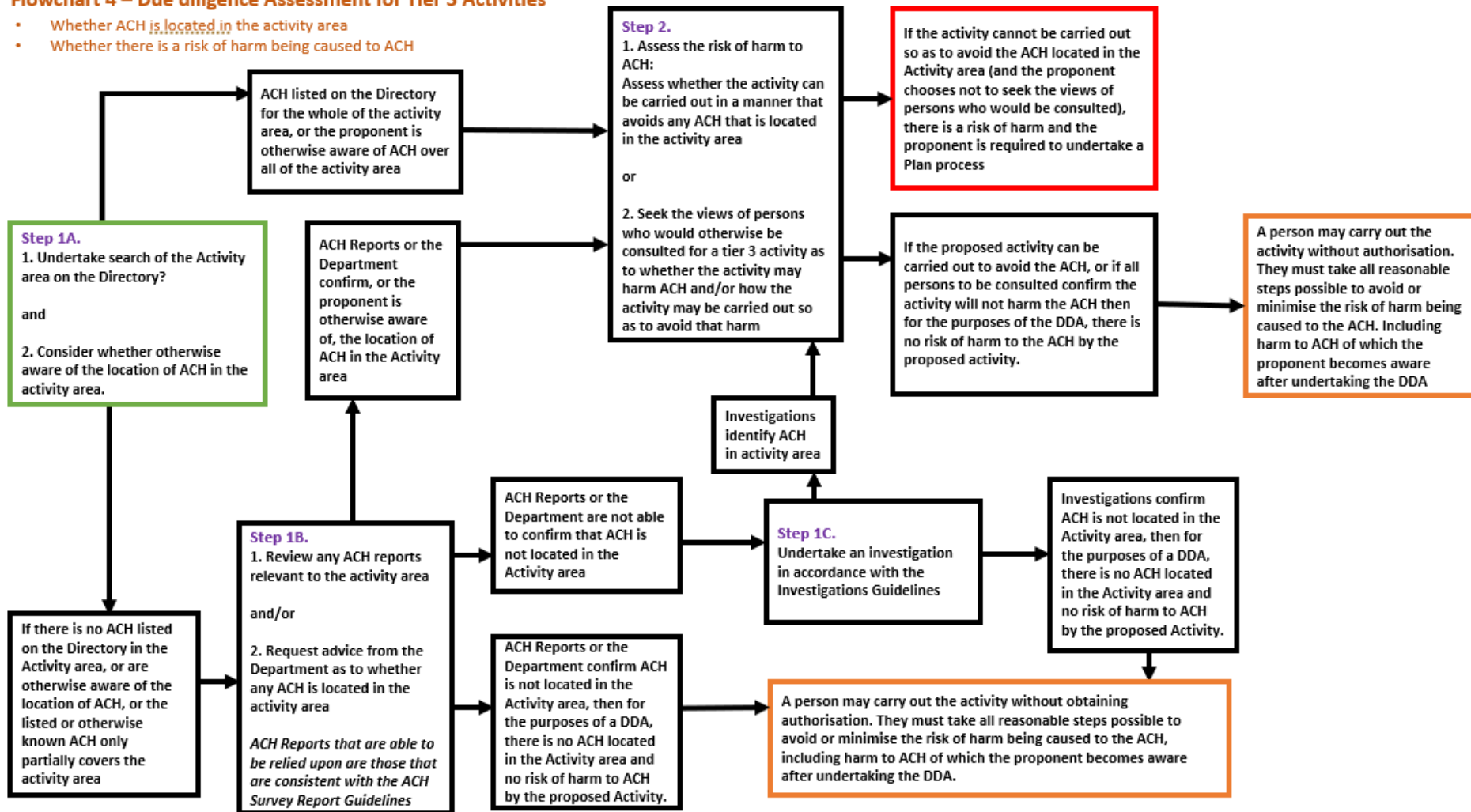


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Flowchart 4 – Due diligence Assessment for Tier 3 Activities

- Whether ACH is located in the activity area
- Whether there is a risk of harm being caused to ACH





Part B Tools to assist due diligence

6. Searching the Directory

The Directory is a tool that assists with undertaking a DDA.

The Directory contains prescribed information about ACH that is located throughout the State. This includes information about ACH previously held on the Register of Aboriginal Sites and other information submitted under the *Aboriginal Heritage Act 1972*, as well as records of new ACH as submitted.

The Council endeavours to keep the Directory as accurate and up to date as practicable, however, the Directory *does not* contain records for all the ACH that is located within Western Australia.

Aboriginal people have lived on this land for more than 65 000 years and in doing so have developed a living culture that is bound in tradition and manifested through, among other things, familial connections, languages, stories, songs, spiritual beliefs and practices, knowledge, art, sentiment and through the skilled adaptation of resources provided by the land and water. The tangible manifestations of this living culture are widespread throughout the State, large sections of which have not yet been surveyed, or not surveyed comprehensively, by Aboriginal people. As such, there may be no record on the Directory of the ACH that exist in these areas.

The table below demonstrates how the information in the Directory assists with the DDA process and the relevant paragraph of section 102:

Information and documents on the Directory	Section 102 due diligence assessment
Protected areas boundaries	(a) whether the area, where it is intended that the proposed activity be carried out, include any area that is part of a protected area.
List of activity categories	(b) whether the proposed activity is — (i) a tier 1 activity; or (ii) a tier 2 activity; or (iii) a tier 3 activity.
Information about ACH of the State, including, where relevant: (i) a description of the characteristics of the ACH; and (ii) description of the location of the ACH; and (iii) in relation to an Aboriginal object, a description of where it is reasonably believed to have originated from; and (iv) in relation to intangible ACH — recordings (including photographs, films, audio, video, digital); (v) any other information and documents, including historical information and documents, relevant to ACH.	(c) whether ACH is located in the Activity area; <i>[see also “Important information to consider when using the Directory” below]</i> and (d) whether there is a risk of harm being caused to ACH by the proposed activity
LACHS	(e) in relation to a proposed activity that has been assessed as a tier 2 activity or a tier 3



	activity — identify the persons to be notified or the persons to be consulted about the proposed activity.
Native title parties	(e) in relation to a proposed activity that has been assessed as a tier 2 activity or a tier 3 activity — identify the persons to be notified or the persons to be consulted about the proposed activity.
Knowledge holders for: (i) a particular area; (ii) particular ACH.	(e) in relation to a proposed activity that has been assessed as a tier 2 activity or a tier 3 activity — identify the persons to be notified or the persons to be consulted about the proposed activity.

Table 6 - Using the Directory for undertaking a DDA

Important information to consider when using the Directory

If a search of the Directory for a given area returns no listed ACH or does not contain any reports, it must not be presumed that ACH is not located in the area nor that a proposed activity will not result in harm to ACH.

Certain ACH listings considered as being culturally sensitive will be masked by the application of a *dithered boundary*. A dithered boundary alerts to the location of ACH by providing the general locality of the ACH rather than its specific location. The harm provisions of the Act apply only to ACH and therefore may not apply to the entirety of the area covered by the dithered boundary. The Directory clearly articulates which ACH entries contain a dithered boundary.

The Department may be contacted where there is a query as to specific locations and boundaries. Due to historical factors, it is possible that some ACH listings may not represent the precise ACH location or associated boundary. Persons accessing the Directory can contact the Department if they have any doubt as to the accuracy or completeness of information displayed on the Directory.

There will be instances where ACH that is listed on the Directory no longer exists on the ground, including because it may have been removed by a previous activity. In such circumstances, a proponent should contact the Department to check the status of that ACH.

The best way to determine whether ACH is located within a proposed Activity area is to discuss with the relevant Aboriginal people. This includes LACHS, the native title parties and knowledge holders.

7. Other considerations when undertaking activities that may harm ACH

To facilitate meeting the objects and principles of the Act as well as achieving positive outcomes for all parties and to assist in meeting statutory obligations, it is recommended that the following steps be undertaken:

- develop a positive and respectful relationship with the relevant Aboriginal organisation(s) (including LACHS), Aboriginal community and/or Aboriginal people;
- seek to be informed as to where ACH may be located, and its importance to Aboriginal people, in a culturally appropriate way recognising **Aboriginal people are not required to disclose culturally sensitive information**;
- ensure the Aboriginal organisation(s)/community/individuals are informed at the earliest possible stages of proposed activities and their potential impacts to ACH;



- be aware of statutory responsibilities associated with the carrying out of activities that may cause a risk of harm to ACH;
- undertake early planning and engagement in order to understand the benefits and opportunities to modify proposals to avoid or minimise harm to ACH, which may result in avoiding the need for any authorisation under the Act; and
- undertake the DDA process for tier 2 and tier 3 activities as early as possible to determine whether a Permit or Plan will be required.

8. Related documents

This Code relates to the following documents:

- Consultation Guidelines
- Knowledge Holder Guidelines
- State Significance Guidelines
- LACHS (Fees) Guidelines
- ACH Management Plan Form and Guiding Notes

9. Acronyms and definitions

ACH	Aboriginal cultural heritage
ACH Report	Report of an investigation associated with the identification of ACH that may be present in a defined area.
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
activity	An activity involving no, minimal, low or moderate to high level of ground disturbance that may harm ACH
activity area	The area where it is intended that the proposed activity will be carried out
CEO	Chief Executive Officer of the Department of Planning, Lands and Heritage
Code	ACH Management Code
Council	Aboriginal Cultural Heritage Council
Directory	ACH Directory
DDA	Due diligence assessment
Department	Department of Planning, Lands and Heritage
harm	Harm to ACH includes to destroy or damage the ACH
ILUA	Means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the <i>Native Title Act 1993</i>
interested Aboriginal party	Each of the following persons is an interested Aboriginal party for a Plan that relates to the carrying out of a proposed activity in an area — <ul style="list-style-type: none"> (a) each person designated as a local ACH service for the area or a part of the area; (b) if there is not a person designated as a local ACH service for the area or a part of the area — <ul style="list-style-type: none"> (i) each native title party for the area or the part of the area; or (ii) if there is not a native title party for the area or the part of the



	area — each native title representative body for the area or the part of the area.
investigations	ACH Investigations taken in accordance with the ACH Investigations Guidelines
knowledge holder	An Aboriginal person who — (a) in accordance with Aboriginal tradition, holds particular knowledge about ACH and areas containing ACH; and (b) has traditional rights, interests and responsibilities in respect of the ACH. (Refer to the Knowledge Holder Guidelines)
LACHS	Local Aboriginal cultural heritage service
native title party	In relation to an area, means — (a) a registered native title body corporate for the area; or (b) a registered native title claimant for the area; or (c) a person who was a registered native title body corporate for the area or a registered native title claimant for the area but — (i) under an ILUA, has surrendered their native title rights and interests in respect of the area; or (ii) whose native title rights and interests in respect of the area have been compulsorily acquired or otherwise been extinguished; or (d) if the area is the subject of a settlement ILUA — a regional corporation in relation to that area;
native title representative body	Means — (a) a body that is recognised as a representative body under the Native Title Act section 203AD; or (b) a person or body funded under the Native Title Act section 203FE to perform all, or specified, functions of a body referred to in paragraph (a).
protected area	ACH of outstanding significance to a knowledge holder (refer to the Protected Area Order Guidelines)
Permit	ACH permit – granted pursuant to Part 6 Division 5 of the Act
Plan	ACH management plan – approved or authorised under Part 6 Division 6 of the Act
proponent	A person who — (a) intends to carry out an activity that may harm Aboriginal cultural heritage; or carries out an activity authorised under Part 6 Division 4
proposed activity	An activity that a proponent intends to carry out
regional corporation	Has the meaning given in section 40 of the Act
registered native title body corporate/ claimant	Has the meaning given in section 253 of the <i>Native Title Act 1993</i>
Regulations	<i>Aboriginal Cultural Heritage Regulations 2022</i>



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
<p>1. The following types of development —</p> <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; 		<p>38. Internal building work in relation to a building that is Aboriginal cultural heritage listed on the ACH Directory.</p>	<p>48. The demolition of a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.</p>



<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 	



<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>20. 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>			



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.



	(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.



<p>3. Digital capture of Aboriginal cultural heritage.</p> <p>4. Non-digital photography.</p> <p>5. Probing.</p>		<p>investigation purposes;</p> <p>(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. 	
<p>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.</p>			
<p>60. Investigation of Aboriginal cultural heritage located in an area by, or with the written approval of —</p> <p>(a) a local ACH service for the area; or</p> <p>(b) if there is not a local ACH service for the area —</p> <p>(i) a native title party for the area; or</p> <p>(ii) if there is not a native title party for the area — a native title representative body for the area.</p>			
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
<p>63. Anchoring a boat in a waterway or coastal waters.</p>		<p>77. Installing a mooring into, or anchoring a mooring to, the bed or banks of a waterway or coastal waters.</p>	
<p>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.</p>			<p>81. Capital dredging.</p>
	<p>65. Taking water from a waterway or coastal waters without causing ground disturbance.</p>		<p>80. Reclaiming land from a waterway or coastal waters or reshaping a beach.</p>
	<p>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.</p>	<p>72. Discharging water into a waterway or coastal waters, other than as described in item 66.</p>	
	<p>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 —</p> <p>(a) removing more than 4 kg of material;</p> <p>(b) disturbing more than 10 m² of the bed or banks of the waterways or coastal waters</p>	<p>73. Monitoring and sampling in relation to a waterway or coastal waters, other than as described in item 67.</p>	



	<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.		
	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 —	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 —	82. Removing flora from a waterway or coastal waters, other than as described in item 69 or 75.
	<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>(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>	
	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.
	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 —	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 —	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>(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>(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>	
		74. Stabilising the bed or banks of a waterway or coastal waters using handheld equipment only, including —	79. Stabilising the bed or banks of a waterway or coastal waters using non-handheld equipment.
		<p>(a) matting installation; or</p> <p>(b) brushing; or</p> <p>(c) surface preparation for application of materials.</p>	



		76. Installing a structure to enable the movement of fauna within a waterway or coastal waters.	84. Establishing an aquaculture or mariculture pen 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	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	102. A field investigation (including exploration), other than as described in item 99 or 100.



	total; (c) disturbing more than 1 m ² of contiguous ground; (d) excavating to a depth of more than 0.5 m.	in total; (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. Costeaming.
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	125. A remediation activity not described by another



		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 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.	item in this Division.
	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;in
- **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);
- **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 2 – Engagement with Aboriginal people subsequent to the DDA process

1. Notification to Aboriginal parties

A proponent intending to carry out a **tier 2 activity** that may harm ACH must give written notice to the persons to be notified [s. 113] providing details of:

- (i) the proposed activity; and
- (ii) the area where the proponent intends to carry out the activity;

and including an opportunity to submit a statement about the person's views about the risk of harm being caused to ACH located in the area.

In considering submissions, the proponent should take all reasonable steps possible to avoid or minimise risk of harm to ACH by the activity/located in the area.

In deciding whether to grant a Permit, the Council needs to be satisfied that the applicant will take all reasonable steps possible to avoid or minimise the risk of harm being caused to ACH by the activity.

2. Consultation with Aboriginal parties

A proponent intending to carry out a tier 2 or tier 3 activity that is the subject of a Plan must consult with the persons to be consulted [s. 139]. Consultation must be carried out in a reasonable time and in accordance with the Consultation Guidelines.

3. Persons to be notified or consulted [s. 107]

The persons to be notified or consulted about an activity that is proposed to be carried out are:

- (a) each person designated as a local ACH service for the area or a part of the area;
- (b) if there is not a person designated as a local ACH service for the area or a part of the area
 - (i) each native title party for the area or the part of the area; or
 - (ii) each knowledge holder for the area or part of the area;
 - (iii) if there is not a LACHS, native title party or knowledge holder for the area or the part of the area — each NTRB for the area or the part of the area.