

Flying Minute: WALGA Submission Aboriginal Cultural Heritage Act 2021 Co-design Process, Phase 1

By Alina Hobson, Policy Officer, Resilient Communities

That the submission to the Department of Planning Lands and Heritage relating to the Aboriginal Cultural Heritage Act 2021 Co-design Process, Phase 1 be endorsed.

RESOLUTION 215.FM/2022

CARRIED

Executive Summary

- The Aboriginal Cultural Heritage (ACH) Act 2021 passed through Parliament in December 2021 and is expected to commence in 2023.
- The Department of Planning, Lands and Heritage (DPLH) is currently undertaking Phase 1 of the co-design process for the regulations, statutory guidelines and operational policies that will support the ACH Act.
- WALGA's submission includes 24 Recommendations relating to the matters subject to consultation, and particularly relating to the proposed activity categories, the need for ongoing sector consultation, and the need to balance the protection of Aboriginal cultural heritage against the requirements for Local Governments to undertake necessary infrastructure and maintenance works in the interests of local communities.

Attachment

- WALGA submission: Aboriginal Cultural Heritage Act 2021 (tracked changes)

Policy Implications

This submission aligns with WALGA's existing Advocacy Positions and previous submissions:

3.1.3 Aboriginal Heritage Act 1972 and South West Native Title Settlement

The Association acknowledges Noongar people as the traditional owners of the South West Region. Local Government is supportive of conserving and protecting the State's Aboriginal heritage.

(State Council Resolution July 2019 – 68.5/2019)

3.1.2 Reconciliation

The Association supports the efforts of the Local Government sector to recognise and respect Aboriginal cultural practices and places of meaning, through the development of Reconciliation Action Plans.

(State Council Resolution September 2012 – 118.5/2012)

It should be noted that an updated WALGA Advocacy Position on Aboriginal cultural heritage is under development.

Previous WALGA submissions:

- *Aboriginal Heritage Act 1972 - 2018 Review Submission* endorsed by State Council in July 2018;
- *AHA Review Consultation Phase Two*, submission endorsed by State Council in July 2019;
- WALGA's 2020 response to survey in Phase 3, 2020 based on previous submissions and member feedback (including the Aboriginal Heritage Reference Group);

- WALGA and DPLH co-facilitated ten place based online workshops for Local Governments which considered the activities regularly undertaken by Local Government (included at Appendix 2 of this submission).

Background

The Aboriginal Cultural Heritage (ACH) Act 2021 passed through Parliament in December 2021 and is expected to commence in 2023. The new legislation provides a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage while recognising the fundamental importance of Aboriginal cultural heritage to Aboriginal people.

DPLH is currently developing the regulations, statutory guidelines and operational policies that will support the ACH Act. These materials are being developed through a co-design process with Phase One being launched for a short, five week consultation period beginning on 26 April 2022 with the release of a series of Factsheets to guide the consultation process. It is understood that these materials will be further consulted on during two subsequent consultation phases later in 2022.

Comment

WALGA's submission includes 24 recommendations, primarily relating to:

- The importance of the Activity Table being clearly described and defined in order to prevent confusion;
- Categorisation of activities being based on underlying condition of the land (previously disturbed land/ uncleared land etc);
- Requirements for the categorisation of particular activities conducted by Local Government and/or private landholders as exempt or Tier 1 (for example, emergency works, compliance with s.33 Notices under the Bush Fires Act 1954, ongoing maintenance and upgrades of existing infrastructure);
- Concerns around the application of the legislation to residential, freehold properties larger than 11 square metres in cities and towns;
- Need for processes to be scalable depending on size of area, type of activity and resources of proponents;
- Need for 12 weeks consultation during the next co-design phase; and
- Requirements for ongoing sufficient funding to support the the efficient establishment and ongoing functioning of the new Aboriginal heritage system, in particular with respect to the ACH Council, Local Aboriginal Cultural Heritage Services (LACHS) and Local Governments.

The submission has been informed by previous WALGA submissions on Aboriginal cultural heritage, the views of WALGA's Aboriginal Heritage Reference Group, and written feedback from some Local Governments. The short time frame provided has not allowed for thorough consultation with Local Governments. However WALGA arranged for DPLH to deliver two co-design workshops specifically for Local Governments on 20 and 23 May 2022, and encouraged Local Governments to provide direct submissions and/or survey responses to DPLH.

In 2021 WALGA and DPLH co-facilitated ten place based online workshops with Local Governments to identify activities regularly undertaken by Local Government, which 43 Local Governments participated in. At the conclusion of the consultation process WALGA submitted to DPLH a Draft Composite Local Government Activity List, Consultation Report, and Draft Activity Lists provided by the City of Kalamunda, Town of Port Hedland and Shire of Augusta-Margaret River. These documents have been resubmitted through Annexure 2 of the Submission.

FLYING MINUTE OUTCOME

Poll created: 20/05/2022 at 13:42

Poll closed: 26/05/2022 at 13:00

Total invited to survey: 24

Total finished survey: 17

Endorse the Recommendation: 11

Endorse the Recommendation subject to comment below: 4

Do not endorse: 2

First Name	Last Name	Completed Date
Carol	Adams OAM	23/05/2022 15:10
Phillip	Blight	25/05/2022 20:27
Laurene	Bonza	26/05/2022 6:45
Ruth	Butterfield	Not completed
Carl	Celedin	22/05/2022 19:54
Cheryl	Cowell	Not completed
Frank	Cvitan	Not completed
John	Daw	20/05/2022 19:17
Tony	Dean	20/05/2022 15:38
Catherine	Ehrhardt	Not completed
Russ	Fishwick	21/05/2022 16:01
Moira	Girando JP	23/05/2022 11:46
Logan	Howlett JP	25/05/2022 18:43
Mark	Irwin	26/05/2022 11:17
Paul	Kelly	22/05/2022 15:23
Peter	Long	Not completed
Chris	Mitchell JP	Not completed
Chris	Pavlovich	22/05/2022 8:02
Les	Price	26/05/2022 11:16
Michelle	Rich	26/05/2022 12:21
Helen	Sadler	24/05/2022 13:53
Ken	Seymour	Not completed
Stephen	Strange	23/05/2022 17:04
Doug	Thompson	22/05/2022 11:46

Responses

(11) Endorse the Recommendation: Paul Kelly (on: 22/05/2022 15:23), Russ Fishwick JP (on: 21/05/2022 16:01), Doug Thompson (on: 22/05/2022 11:46), Carl Celedin (on: 22/05/2022 19:54), John Daw (on: 20/05/2022 19:17), Chris Pavlovich (on: 22/05/2022 8:02), Moira Girando (on: 23/05/2022 11:46), Stephen Strange (on: 23/05/2022 17:04), Helen Sadler (on: 24/05/2022 13:53), Mark Irwin (on: 26/05/2022 11:17), Michelle Rich (on: 26/05/2022 12:21)

(4) Endorse the Recommendation subject to comment below: Tony Dean (on: 20/05/2022 15:38), Carol Adams OAM (on: 23/05/2022 15:10), Logan Howlett JP (on: 25/05/2022 18:43), Laurene Bonza (on: 26/05/2022 6:45)

(2) Do not endorse: Phillip Blight (on: 25/05/2022 20:27), Les Price (on: 26/05/2022 11:16)

Comments

President Cr Tony Dean on 20/05/2022 15:38

Very uncomfortable about endorsing this subject. Do not know a great deal about the subject to give worthwhile objective assessment.

Mayor Carol Adams OAM on 23/05/2022 15:10

Whilst the City of Kwinana endorse the submission, they have asked if WALGA can also pose the question: "what is the process for heritage approvals in the interim?"

Mayor Logan Howlett JP on 25/05/2022 18:43

Page 17 of 33 Conclusion statement is incomplete?

President Cr Phillip Blight on 25/05/2022 20:27

I have concerns of the impacts of this Bill and Regulations. Our submission should be stronger to "require " exemptions, not ask; "should be categorized as exempt." I firmly believe that recommendation 25 should be a request for a review of these regulations in the short term. It is very difficult to foresee the impact of this so an acceptance of the need to fine tune the Regs after the lived experience would be beneficial. That I have been unable to read comments from other State Councilors leaves me unable to endorse this submission.

President Cr Laurene Bonza on 26/05/2022 6:45

Personally, I haven't spent much time on reviewing this Act other than attending an information session at Esperance, some time ago. It seems that we are presented new legislation to make submissions on without having any completed guidelines for absolute clarity. I am a bit late to this exercise and wondering if we have taken only activities affecting LG out of the Act to consider. Unless, the Activity list, Med/High Impact section, Activity 14 - mechanical digging of significant depth and scale (not defined), covers mining activities, there doesn't appear to be a process for that. It is also unclear to me, why something like 'flood remediation' would be classed as a significant disturbance. If the damage was done by something out of anyone's control, i.e. a flood, how does remediation (by definition, an activity designed to repair and/or stop further damage), and presumably costs involved with permits etc. become the focus of the disturbance activity? There remains much to be done on clarity and how this Act will, practically, work.

Cr Les Price on 26/05/2022 11:16

This Act is significant and it's operation will have far reaching outcomes, not just for Local Governments but for other land owners and stakeholders. I understand timing is an issue but I think the submission may well have been better addressed more comprehensively at State Council.

A few points:

- 1. We should be more definite in our submission. We need to be advocating a firm position and, in some cases, not providing an option. Where we are recommending 'Exempt or Tier 1' these activities should be proposed to be 'exempt'.*
- 2. Activities of an historical, ongoing, frequent or regular nature should be exempt. It is likely there has been land disturbance caused by past activities and it would seem unnecessarily burdensome to have to seek a permit for every activity that is not a Tier 1 activity. Local Government resources are already stretched.*
- 3. Existing infrastructure should be 'exempt'. Any disturbance has already occurred. This should include buildings, roads, road verges, bores and water source points, buildings, fence lines etc. Why should a LG have to apply for a permit or put in a management plan*

for every activity it intends and needs to undertake? For example, an activity around replacing old water lines or reticulation lines in parks and gardens or anywhere else on Council land should be 'business as usual'. To delay an activity is costly and counterproductive, not to mention the backlog of applications and the wait for a management plan to be developed (for each activity) and approved.

- 4. I fail to see why a modification or repair to an existing building is considered to be a Tier 2 activity. Equally, installing new keening on roads that already exist or removal of trees are proposed to be a Tier 2 Activity. There are many other activities that the Local Governments undertake in the course of their operations that require some level of ground disturbance. To require an ACH permit every time a grader blade or loader bucket is used is going to bring the State to a standstill if common sense does not prevail. The same will apply to all landowners and permitted stakeholders.*
- 5. To require a Local Government to prepare a management plan for every Tier 2 activity is unworkable and a further drain on limited resources.*
- 6. There needs to be consistency across all decisions surrounding the issuing of a permit and in particular, the determinations by the various LACHS groups, whose decisions will most certainly impact the outcome of a permit application and the acceptance or otherwise of a management plan.*
- 7. What would the situation be if a Local Government has entered into a contract to undertake a program of works prior to the implementation of the new Act.? Perhaps the activities being undertaken pursuant to a contract should be exempt otherwise the application of the Act would come across as retrospective.*
- 8. At present there are no rules and regulations around the administration of the Act and I wonder where WALGA is cementing it's position without any recourse. As the rules are developed it might well be that the Minister or the Department will take us down a pathway which could see WALGA having to change its advocacy position. I believe WALGA needs to be able to modify its position and retract or add to its submission. I note there are two further opportunities for comment at a later date but I am mindful that we have flexibility as and when the need may arise.*
- 9. Outside of the submission... I would like to have seen the Council issuing permits and approving management plans to have included a representation from LG and Industry to promote further accountability, transparency and fairness in all determinations. We will be in uncharted waters.*
- 10. I can see a situation where there will be inconsistency from one LG region to another when dealing with regional LACHS groups. Each group will have its own matters to deal with and they will each all have different considerations to contemplate. All regions will have different Aboriginal culture to identify and preserve.... hence the possibility of an inconsistent approach to determinations.*

In my opinion the submission covers a lot of unknown outcomes but there are some areas where we need be decisive and more specific. The submission should reflect that. Happy to endorse the submission if we can cover off on some of the issues I have raised.

Secretariat Comment

In response to Mayor Carol Adams:

The process for heritage approvals continues to be as provided in the *Aboriginal Heritage Act 1972* until the new Act commences, which is expected in 2023 (but no date is currently set). Proponents should continue to seek section 18 consent for any activity that will impact Aboriginal heritage and section 18 approvals will continue for a period of 5 years after the new legislation commences.

Information about the current legislation and processes is available [here](#).

For queries relating to Aboriginal heritage, Local Governments can contact Jeremy Elliott for further information:

Jeremy Elliott | Director Partnerships and Agreements | Aboriginal Heritage
140 William Street, Perth WA 6000
6551 8070
Jeremy.elliott@dplh.wa.gov.au

In response to Mayor Logan Howlett JP:

The conclusion has been updated to read:

“WALGA looks forward to continuing to work with DPLH and Local Governments to co-design the suite of guidelines and materials that will support the ACH Act”.

In response to President Cr Phillip Blight:

The submission has been amended so that where it previously stated that an activity should be exempt or Tier 1, it now states that the activity should be exempt. This includes submitting that activities on land previously disturbed or used for extensive grazing should be exempt. An additional Recommendation 25 has been added recommending that the Act and Regulations are reviewed after 5 years.

In response to President Cr Laurene Bonza:

The Activity Table applies to activities undertaken by all proponents including mining activities. Other activities in Tier 3 applicable to mining proponents include mechanised ground disturbance; mining exploration activities consisting of vehicle track creation and drill hole clearing; seismic surveys requiring clearing of tracks; various methods of sampling and drilling; small scale mining; blasting use of explosives; formation and mining of new borrow pits; and others. The materials developed as a result of this phase of consultation, including the Activity Table, will be released for two further phases of consultation. Further feedback on the specifics of the Activity Table will be provided during the next consultation phase. Detailed lists of Local Government activities are provided at Annexure 2.

In response to Cr Les Price:

WALGA and a number of other stakeholder groups requested an extension to the five-week consultation period, however this was refused by Department of Planning, Lands and Heritage, hence the need to progress this submission via the Flying Minute process.

The materials developed as a result of this phase of consultation, including the Activity Table, will be released for two further phases of consultation.



The submission has been amended so that where it previously stated that an activity should be 'exempt or Tier 1', it now states that the activity should be 'exempt'. This includes activities on land previously disturbed or used for extensive grazing.

The legislation does not require proponents to apply for a permit each time they undertake Tier 2 activities or apply for a management plan each time they undertake Tier 3 activities. This is necessary only if the activity is likely to impact Aboriginal heritage. A building may be a registered Aboriginal heritage site (for example, buildings on Rottnest Island where Aboriginal men were incarcerated) in which case an activity is likely to impact Aboriginal heritage and an approval must be sought.

Recommendation 6 of the submission has been amended to say that maintenance and repetitive activities should be exempt.



Aboriginal Cultural Heritage Act 2021

WALGA Submission

May 2022

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1.0 Executive Summary and Recommendations

1.1 Summary of Recommendations

Recommendation 1

The activities in the Activity Table need to be clearly described and defined in order to prevent confusion, and should be supported by a technical list. WALGA refers DPLH to the clearly described list of Activities provided in 2021, attached as Annexure 2.

For example:

- Clear definition of terms 'maintenance' and 'development'.
- Clarification on the term 'footprint' (i.e. is 'footprint' seal edge to seal edge or include maintenance zone including drains).
- Terminology differentiated between tiers e.g barriers vs bollards.
- 'Modification or repair of existing buildings' as a Tier 2 activity is confusing and unworkable.

Recommendation 2

Activities should be categorised in relation to the scope of the works to be undertaken, not based on the tools or equipment that is used to undertake the activity.

For example: handheld vs mechanical auger.

Recommendation 3

Activities should be described and categorised based on the underlying condition of the land as follows (and in alignment with existing legislation, for example the Environmental Protection Act Regulations, where possible):

1. Land previously disturbed (buildings, concrete pads) (exempt ~~or Tier 1~~)
2. Land previously disturbed (cultivated or cleared land) (exempt ~~or Tier 1~~)
3. Land used for extensive grazing (exempt ~~of Tier 1~~)
4. Uncleared land (Tier 2 or Tier 3)
5. Identified areas of cultural significance (Tier 2 or Tier 3).

Recommendation 4

Emergency works undertaken by Local Governments in the interests of public safety should be categorised as exempt.

Recommendation 5

Works undertaken to comply with Firebreak Notices issued by Local Governments pursuant to Section 33 of the *Bush Fires Act 1954*, and planned burning on private land, should be exempt ~~or Tier 1~~ activities.

Recommendation 6

The Activity Categories need to consider frequency and repetition of activities. Activities that are repeated frequently should be exempt.

Recommendation 7

Local Government infrastructure maintenance works and works to upgrade or replace existing infrastructure should be exempt ~~or Tier 1~~ so that they do not need to reapply for permits or management plans for regularly occurring activities.

Recommendation 8

Where a permit or management plan is required because there is Aboriginal heritage present, the permit or management plan should include the regular undertaking of ongoing maintenance activities.

Recommendation 9

The Activity Categories need to clearly address the ongoing concerns around the application of the ACH Act to residential, freehold properties that are larger than 1100 square metres and located in cities and towns. Activities on freehold properties in cities and towns should be exempt.

Recommendation 10

Aboriginal heritage matters should be considered and addressed at the subdivision stage, enabling subsequent property owners to utilise the land as necessary to develop a residence ie activity thereafter should be exempt.

Recommendation 11

The ACH Management Code should provide a comprehensive, clear and easy to understand guide to enable proponents to undertake an adequate due diligence process in relation to Aboriginal cultural heritage.

Recommendation 12

The process should be scalable depending on size of area, type of activity and resources of the proponent. The first step should be a search of the Aboriginal Heritage Directory.

Recommendation 13

The Consultation Guidelines should provide a comprehensive, clear and easy to understand guide to enable proponents to undertake an adequate consultation process with Aboriginal people in relation to Aboriginal cultural heritage.

Recommendation 14

The level and extent of consultation should be scalable depending on size of area, type of activity, resources of the proponent and type and nature of Aboriginal cultural heritage. All parties should be required to act respectfully and in good faith.

Recommendation 15

Different ACH Management Plan templates should be developed, taking into account variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the proponent.

Recommendation 16

Consideration should be given to developing an ACH Management template specifically for Local Government.

Recommendation 17

The prescribed timeframes be further considered when the Activity Table is finalised.

Recommendation 18

Different LACHS fee structures to be developed for different size/ type of proponent.

Recommendation 19

Clarification be provided on the interrelationship between Local Government service delivery requirements and State significance areas.

Recommendation 20

Clarification be provided on the interrelationship between Local Government service delivery requirements and protected areas.

Recommendation 21

The term 'substantially commenced' should be defined in a similar way to its definition in existing planning and environmental legislation.

Recommendation 22

DPLH should allow 12 weeks for the next phase of consultation to allow Local Governments and other stakeholders the opportunity to comment on the draft materials produced from this round of consultation.

Recommendation 23

The State Government provide sufficient funding to support the efficient establishment and ongoing functioning of the new Aboriginal heritage system, in particular with respect to the ACH Council, LACHS and Local Governments.

Recommendation 24

An online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal Heritage Directory be developed to assist proponents understand the potential for activities to impact heritage and the approval requirements.

Recommendation 25

The Aboriginal Cultural Heritage Act and Regulations should be reviewed after 5 years.

2.0 Introduction

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 139 Local Governments in Western Australia, comprising 1,222 elected members and approximately 22,600 Local Government employees, as well as over 2 million constituents of Local Governments in Western Australia.

Western Australian Local Governments vary greatly in:

- size, ranging from less than 1.5 to over 370,000 square kilometres,
- population, just over 100 to more than 220,000 people,
- the number of staff employed, from less than 10 to over 1000,
- in revenue received, which in 2019-20 ranged from just over \$2 million to just over \$225 million.

This submission is in response to the current co-design process that the Department of Planning, Lands and Heritage (DPLH) is undertaking in relation to the regulations, statutory guidelines and operational policies that will support the *Aboriginal Cultural Heritage Act 2021* (ACH Act). It is understood that these materials will be further consulted on later in 2022.

WALGA supports the conservation and protection of Aboriginal cultural heritage in Western Australia and the modernisation of Western Australia's Aboriginal cultural heritage legislation.

As land managers and land use planning decision-makers, Local Government plays an important role in many activities that have the potential to impact Aboriginal cultural heritage. Local Government also acknowledges the role of Aboriginal people as community members, residents, ratepayers, and Elected Members in local communities.

Local Governments have powers, and obligations, to provide local services and facilities, and make local laws based on State Government legislation. The principal Act from which Local Governments gain their power is the *Local Government Act 1995* which provides for a system of elected Local Governments across the State. This legislation provides for the functions, elections, administration and financial management of Local Government.

Local Governments also derive powers from other Acts, including the *Planning and Development Act 2005*, which gives Local Governments the power to prepare local planning schemes and ensure orderly development. Other important statutes include the *Bush Fires Act 1954*, the *Cemeteries Act 1986*, and the *Environmental Protection Act 1986*.

Local Governments have both legislative and executive functions. The executive functions of Local Government include the administration of local laws and the provision of services and facilities. A Local Government can provide any service or facility that is necessary or convenient for the good governance of the people in its district or for the performance of any other function under the *Local Government Act*. Before commencing provision of a service or facility, a Local Government must satisfy itself that the service or facility integrates with State

or Commonwealth services, does not inappropriately duplicate any State, Commonwealth or private service, and is managed efficiently and effectively.

Local Governments across the State undertake a significant quantum of capital works each year in order to provide services and facilities for their local communities. By way of example, the City of Albany has 140 projects planned for the 2022-2023 financial year:

Table 1: City of Albany Projected Capital Works 2022-23

Roads	57
Paths	9
Transport Other	7
Drainage	5
Buildings	37
Reserves	25
TOTAL	140

Additionally, each Local Government undertakes hundreds of renewal and maintenance projects each year outside of their capital budget; for example, installing or replacing signs that require new posts, cleaning drains, installing/ replacing BBQ facilities/ playground equipment in developed parks. With 139 Local Governments across the State, this highlights the enormous contribution that Local Governments make to local communities and the need for the ACH Act to balance the protection of Aboriginal cultural heritage with the requirement for Local Government (and other proponents) to undertake activities in a timely and affordable manner. As land managers, Local Governments need to protect Aboriginal heritage while meeting the required level of service in the most cost-effective manner for present and future ratepayers and residents.

2.1 Sector Consultation

WALGA has established an Aboriginal Heritage Reference Group of Local Government staff with experience and knowledge of Aboriginal heritage to provide sector input into this, and previous, submissions. The limited time allowed for this round of consultation – 5 weeks – has not enabled a thorough engagement with the sector.

WALGA and DPLH delivered two online co-design workshops for the sector on 20 and 23 May 2022. Twenty nine Local Governments participated in these workshops and provided feedback directly to DPLH.

WALGA has also received feedback from Local Governments that the workshops delivered in regional areas by DPLH as part of the co-design process were limited in number and it was difficult for Local Governments to participate.

It is understood that the materials developed during this phase of consultation will be released for further consultation between July and mid-August, and again between mid-October to mid-December for further refinement.

It is recommended that DPLH allocate more time to subsequent consultation processes to provide sufficient opportunity for Local Governments to fully participate in the consultation process.

This submission was endorsed by WALGA State Council [on 26 May 2022](#).

3.0 Background

3.1 Relevant WALGA Advocacy Positions

3.1.3 Aboriginal Heritage Act 1972 and South West Native Title Settlement

The Association acknowledges Noongar people as the traditional owners of the South West Region. Local Government is supportive of conserving and protecting the State's Aboriginal heritage.'

(State Council Resolution July 2019 – 68.5/2019)

3.1.2 Reconciliation

The Association supports the efforts of the Local Government sector to recognise and respect Aboriginal cultural practices and places of meaning, through the development of Reconciliation Action Plans.

(State Council Resolution September 2012 – 118.5/2012)

3.2 Previous Submissions

WALGA has provided submissions in relation to each phase of the review of the *Aboriginal Heritage Act 1972* and the development of the ACH Act:

- **2018 Phase one:** [Aboriginal Heritage Act 1972 - 2018 Review Submission](#) endorsed by State Council in July 2018.
- **2019 Phase Two:** [Submission – AHA Review Consultation Phase Two](#), endorsed by State Council in July 2019.
- **2020 Phase three:** in 2020 a [Survey response](#) was lodged based on previous submissions and internal advice. The short consultation timeframe did not enable detailed consultation with the sector however feedback received from members (including the Aboriginal Heritage Reference Group) was incorporated into WALGA's response.
- **2021 Identification of Activities Consultation:** WALGA and DPLH co-facilitated ten place based online workshops with Local Governments to identify activities regularly undertaken by Local Government, and provided to DPLH (attached as Appendix 2):
 - A Draft Composite Local Government Activity List

- Consultation Report
- Draft Activity Lists from City of Kalamunda, Town of Port Hedland and Shire of Augusta-Margaret River.

4.0 Response to Fact Sheets

4.1 Fact Sheet 1: Activity Categories and Draft Activity Table

In early 2021 WALGA and DPLH co-facilitated ten online place based workshops in order to gather input from Local Governments on the types of activities that they undertake. Forty three Local Governments participated and WALGA provided to DPLH written feedback, including a comprehensive activity list and lists prepared by Town of Port Hedland, Shire of Augusta-Margaret River and City of Kalamunda. The comprehensive activity list had the activities listed as exempt, minimal impact (Tier 1 under the new Regulations); low impact (Tier 2 under the new Regulations); and medium to high impact (Tier 3 under the new Regulations). The Activity Table provided for this consultation does not reflect the feedback provided by the sector in 2021. The 2021 documents are included as Appendix 2 with this submission.

It is evident from the current phase of consultation that ~~the~~ Local Governments' position with respect to the appropriate approach to categorisation of activities remains largely unchanged. A significant number of activities in the Activity Table require shifting to a different category and descriptions are incomplete and confusing. Activities need to be clearly defined to enable proponents to easily determine what tier the proposed activity falls into.

The draft Activity Table categorises some activities with respect to the underlying condition of the land (for example, '*revegetating degraded areas*', '*rehabilitating previously disturbed areas*'; '*installation of new bores or watering systems in developed reserves*') but for others it does not (eg '*burning for hazard reduction*', '*installing new kerbing*'). It is essential that activities undertaken ~~o~~in previously disturbed land are ~~exempt placed into lower categories (ie exempt or Tier 1)~~ to prevent the permit system (Tier 2) being overwhelmed with applications for permits for activities that are occurring in already developed or disturbed areas and are unlikely to impact Aboriginal heritage.

Local Governments undertake emergency works to make infrastructure and natural areas safe after natural disasters and other events. These activities should be categorised as 'exempt' to enable Local Governments to act immediately when necessary for public safety without concern for breaching the AH Act when conducting work required pursuant to other legislative obligations.

Under the *Bush Fires Act 1954* Local Governments are required to issue an annual section 33 Firebreak Notice which requires s land occupiers to clear and maintain a firebreak to assist with the prevention, control and extinguishment of bush fires or to prevent the spread or extension of a bush fire to any adjoining land. The draft Activity Table includes '*weed control using mechanical methods of control*' as a Tier 2 activity, meaning that a property owner is required to undertake due diligence to determine if Aboriginal heritage is present and may be impacted by the activity, and apply to the Aboriginal Heritage Council for an ACH Permit if it is.

In order to understand the scale of this work, by way of example the Shire of Serpentine-Jarrahdale alone issued 12,825 s.33 Notices in 2021.

The activity of '*burning for hazard reduction (non-emergency situations)*' is also listed as a Tier 2 activity. This relates to hazard reduction burning on private land only (burning carried out for fire prevention or control purposes or other fire management works on Crown land by a public authority, is exempt). Categorising as Tier 2 works carried out by private landholders to comply with s.33 Notices, as well as hazard reduction burning, runs the risk of landholders not complying with s.33 Notices, and could prejudice enforcement activities that Local Governments undertake. There is also a risk that fire mitigation activities are delayed due to timing and cost implications of the permit process. The opportunity for fire mitigation works to be undertaken each year is limited due to weather and seasonal conditions, and bushfires and other natural disasters are occurring with increasing frequency and severity due to climate change. WALGA submits that these activities should be categorised as exempt ~~or Tier 1~~ activities.

Local Governments are continually maintaining, upgrading and/or replacing existing infrastructure within developed parks and reserves to ensure that it is safe, useable and fit for purpose. These activities should be exempt ~~or Tier 1~~ so that Local Governments are not required to continually reapply for Permits or Management Plans.

WALGA looks forward to providing further feedback on the next draft Activity List which it understands will be released for consultation in early July 2022.

Considering the Activity Categories Fact Sheet and Activity Table WALGA submits:

Recommendation 1

The activities in the Activity Table need to be clearly described and defined in order to prevent confusion, and should be supported by a technical list. WALGA refers DPLH to the clearly described list of Activities provided in 2021, attached as Annexure 2.

For example:

- Clear definition of terms 'maintenance' and 'development'.
- Clarification on the term 'footprint' (i.e. is 'footprint' seal edge to seal edge or include maintenance zone including drains).
- Terminology differentiated between tiers e.g barriers vs bollards.
- 'Modification or repair of existing buildings' as a Tier 2 activity is confusing and unworkable.

Recommendation 2

Activities should be categorised in relation to the scope of the works to be undertaken, not based on the tools or equipment that is used to undertake the activity.

For example: handheld vs mechanical auger.

Recommendation 3

Activities should be described and categorised based on the underlying condition of the land as follows (and in alignment with existing legislation, for example the Environmental Protection Act Regulations, where possible):

6. Land previously disturbed (buildings, concrete pads) (exempt ~~or Tier 1~~)
7. Land previously disturbed (cultivated or cleared land) (exempt ~~or Tier 1~~)
8. Land used for extensive grazing (exempt ~~of Tier 1~~)
9. Uncleared land (Tier 2 or Tier 3)
10. Identified areas of cultural significance (Tier 2 or Tier 3).

Recommendation 4

Emergency works undertaken by Local Governments in the interests of public safety should be categorised as exempt.

Recommendation 5

Works undertaken to comply with Firebreak Notices issued by Local Governments pursuant to Section 33 of the *Bush Fires Act 1954*, and planned burning on private land, should be exempt ~~or Tier 1~~ activities.

Recommendation 6

The Activity Categories need to consider frequency and repetition of activities. Activities that are repeated frequently should be exempt.

Recommendation 7

Local Government infrastructure maintenance works and works to upgrade or replace existing infrastructure should be exempt ~~or Tier 1~~ so that they do not need to reapply for permits or management plans for regularly occurring activities.

Recommendation 8

Where a permit or management plan is required because there is Aboriginal heritage present, the permit or management plan should include the regular undertaking of ongoing maintenance activities.

Recommendation 9

The Activity Categories need to clearly address the ongoing concerns around the application of the ACH Act to residential, freehold properties that are larger than 1100 square metres and located in cities and towns. Activities on freehold properties in cities and towns should be exempt.

Recommendation 10

Aboriginal heritage matters should be considered and addressed at the subdivision stage, enabling subsequent property owners to utilise the land as necessary to develop a residence ie activity thereafter should be exempt.

4.2 Fact Sheet 2: ACH Management Code

Under the ACH Act, proponents of proposed activities will need to complete a due diligence assessment in accordance with the ACH Management Code prior to conducting activities. The ACH Management Code will outline the steps that a proponent needs to undertake so that they don't harm Aboriginal cultural heritage unless the activity is being carried out subject to a Permit or a Management Plan.

It is difficult to provide detailed feedback when a draft Code has not been provided. However, the following principles should apply in drafting the ACH Management Code:

- It must be easy to use and understand and written in plain English;
- It must be clear in advising proponents of the steps that they must undertake in order to adequately conduct a due diligence process; and
- That the first step should be a search of the Aboriginal Heritage Directory for registered sites and other information.

The current Aboriginal Heritage Due Diligence Guidelines (2013) provide a sound foundation for developing the ACH Management Code. Importantly, the Due Diligence Guidelines include a risk matrix that enables proponents to understand the likelihood of Aboriginal heritage being present in a particular area, taking into account the level of disturbance of the area and the type of activity to be conducted. As stated above, one approach to the underlying condition of the land is:

1. Land previously disturbed (buildings, concrete pads)
2. Land previously disturbed (cultivated or cleared land)
3. Land used for extensive grazing
4. Uncleared land
5. Identified areas of cultural significance.

Further feedback will be able to be usefully provided when the consultation draft Code is produced.

Recommendation 11

The ACH Management Code should provide a comprehensive, clear and easy to understand guide to enable proponents to undertake an adequate due diligence process in relation to Aboriginal cultural heritage.

Recommendation 12

The process should be scalable depending on size of area, type of activity and resources of the proponent. The first step should be a search of the Aboriginal Heritage Directory.

4.3 Fact Sheet 3: Consultation Guidelines

Under the ACH Act, the Consultation Guidelines will provide the standards that will need to be adhered to where consultation is required with Aboriginal people ie when a proponent intends to carry out an activity under an ACH Management Plan. There are also other instances where

engagement with Aboriginal parties may be required, in particular pursuant to the ACH Management Code.

Further feedback will be able to be usefully provided when consultation draft guidelines are produced.

Recommendation 13

The Consultation Guidelines should provide a comprehensive, clear and easy to understand guide to enable proponents to undertake an adequate consultation process with Aboriginal people in relation to Aboriginal cultural heritage.

Recommendation 14

The level and extent of consultation should be scalable depending on size of area, type of activity, resources of the proponent and type and nature of Aboriginal cultural heritage. All parties should be required to act respectfully and in good faith.

4.4 Fact Sheet 4: Knowledge Holder Guidelines

No submission. This is a matter for Aboriginal people to determine.

4.5 Fact Sheet 5: Aboriginal Cultural Heritage Management Plan Template Fact Sheet

An ACH Management Plan is required before the commencement of a Tier 3 activity that may harm Aboriginal cultural heritage, and provides for the management of that activity. The proponent and each interested Aboriginal party must use best endeavours to reach agreement on an ACH Management Plan within the timeframes set in the Regulations. Interested Aboriginal parties are the Local Aboriginal Cultural Heritage Service (LACHS) where one exists, or the native title party or native title representative body if there is no LACHS.

There should be different ACH Management Plan templates to account for variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the proponent. Consideration could be given to developing a template specifically for Local Government. Further feedback will be able to be usefully provided when consultation draft template/s are produced.

Recommendation 15

Different ACH Management Plan templates should be developed, taking into account variations in the size of the area to be impacted, the complexity and purpose of the proposed activities and the resources of the proponent.

Recommendation 16

Consideration should be given to developing an ACH Management template specifically for Local Government.

4.6 Fact Sheet 6: Prescribed Periods for ACH Permits and ACH Plans

DPLH is consulting on the prescribed timeframes associated with ACH Permits and ACH Management Plans. Once finalised the prescribed timeframes will be included in the Regulations and will be required to be adhered to by the ACH Council, proponents and Aboriginal parties.

The proposed timeframe for the issue of an ACH Permit (required for a Tier 2 activity that might harm Aboriginal cultural heritage) is 35 days (15 working day notification period to LACHS; 20 working days for ACH Council to make decision to issue Permit or not). This timeframe seems reasonable, although it is difficult to ascertain if it would be appropriate for all of the potential activities that are undertaken in Tier 2, given that the Activity Table is not finalised. Timeframes may also be difficult for the ACH Council and LACHS to comply with if there are a larger number of activities listed in Tier 2 and Tier 3, increasing the overall load on the system.

The proposed timeframes for an ACH Management Plan (required for a Tier 3 activity that might harm Aboriginal cultural heritage) are 80 working days for Aboriginal party and proponent to reach agreement on the terms of the Plan, and 20 working days for the ACH Council to decide whether to approve the Plan. If the parties can't agree a Plan and the ACH Council needs to make a recommendation to the Minister on the matter, a timeframe of 120 working days is allowed.

Again, these timeframes seem reasonable but it is difficult to ascertain the extent of the overall workload being undertaken by the system in the absence of a finalised Activity Table.

Given the timeframes required to issue ACH Permits and approve ACH Management Plans, maintenance and other works that Local Governments undertake regularly and for community safety and amenity should be exempt ~~or Tier 1~~ activities.

Local Governments have prescribed financial processes that see them all undertaking annual budgeting activities at the same time each year. Local Governments would likely be submitting applications for ACH Permits and ACH Management Plans at the same time for their annual budgeting purposes, increasing the resource pressure on LACHS and the ACH Council.

Local Governments rely heavily on grant funding for infrastructure and projects and these timeframes may cause issues with respect to making timely grant funding applications as well as expenditure of funds within grant funding timeframes.

Further feedback will be able to be usefully provided when the Activity Table is further refined.

Recommendation 17

The prescribed timeframes be further considered when the Activity Table is finalised.

4.7 Fact Sheet 7: LACHS Fees Guidelines

Under the ACH Act, LACHS are able to charge fees for services to proponents to recoup costs associated with undertaking relevant functions as set out in the legislation. The ACH Council will endorse a schedule of fees. No guidance has yet been provided by DPLH as to whether the ACH Council may charge fees.

Local Governments provide facilities and services for the benefit of local communities. Local Governments operate on a not-for-profit basis, obtaining revenue from rates, Commonwealth Financial Assistance grants, borrowings and fees and charges.

LACHS fees need to cover the costs of LACHS undertaking the functions set out in the legislation, while at the same time being affordable for different proponents and recognising that different landholders conduct activities for profit or not-for-profit. It is recommended that differential fees be developed for different size/type of proponent.

Further feedback will be able to be usefully provided when a proposed fee structure is produced.

Recommendation 18

Different LACHS fee structures to be developed for different size/type of proponent.

4.8 Fact Sheet 8: State Significance Guidelines: Protecting Aboriginal Cultural Heritage of State Significance

The State Significance Guidelines will include factors to determine whether Aboriginal cultural heritage is of State significance, in which circumstance only the Minister for Aboriginal Affairs can make a decision that may allow harm to occur to that heritage because the heritage is of exceptional significance to the cultural identity of the State, meaning the community as a whole.

When determining State significance, the view of Aboriginal people on the matter should be considered first, and then the relevance of the heritage to the cultural identity of the State. Local Governments should be engaged in the consultation process at that time.

It is unclear how Local Governments will be able to provide municipal and other services in areas of State significance. Assuming areas of State significance are most likely to be located away from cities and towns, the most likely intersect will be in relation to Local Government road maintenance obligations.

Further feedback will be able to be usefully provided when draft State Significance Guidelines are produced.

Recommendation 19

Clarification be provided on the interrelationship between Local Government service delivery requirements and State significance areas.

4.9 Fact Sheet 9: Protected Area Order Guidelines Fact Sheet

Under the ACH Act, special protection can be granted to an area of land where Aboriginal cultural heritage is of outstanding significance, by declaring an area a 'protected area'. Aboriginal cultural heritage that is located within a protected area is afforded the highest level of protection under the ACH Act. A protected area declaration means that an ACH Permit or ACH Management Plan cannot be applied for over the protected area. The Protected Area Guidelines will guide Aboriginal knowledge holders as to what will need to be considered and the evidentiary requirements prior to lodging an application for an area to be declared a protected area.

It is unclear how Local Governments will be able to provide municipal and other services in protected areas if they are unable to undertake activities. Assuming protected areas are most likely to be located away from cities and towns, the most likely intersect will be in relation to Local Government road maintenance obligations.

Further feedback will be able to be usefully provided when draft Protected Area Order Guidelines are produced.

Recommendation 20

Clarification be provided on the interrelationship between Local Government service delivery requirements and protected areas.

4.10 Fact Sheet 10: Defining Substantially Commenced

Under the ACH Act, proponents who have been granted section 18 consents to undertake works have a period of 10 years until those consents expire, unless the works associated with the purpose of the consent have 'substantially commenced'.

The term 'substantially commenced' is defined in existing legislation including environmental and land use planning legislation. A similar definition should be used in this instance.

Recommendation 21

The term 'substantially commenced' should be defined in a similar way to its definition in existing planning and environmental legislation.

5.0 General Submissions

Recommendation 22

DPLH should allow 12 weeks for the next phase of consultation to allow Local Governments and other stakeholders the opportunity to comment on the draft materials produced from this round of consultation.

Recommendation 23

The State Government provide sufficient funding to support the efficient establishment and ongoing functioning of the new Aboriginal heritage system, in particular with respect to the ACH Council, LACHS and Local Governments.

Recommendation 24

An online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal Heritage Directory be developed to assist proponents understand the potential for activities to impact heritage and the approval requirements.

Recommendation 25

The Aboriginal Cultural Heritage Act and Regulations should be reviewed after 5 years.

6.0 Conclusion

Thank you for the opportunity to provide this submission. WALGA looks forward to continuing to work with DPLH and Local Governments to co-design the suite of guidelines and materials that will support the ACH Act. ~~and to further consultation on...~~

Appendix 1: WALGA Engagement

Aboriginal Heritage Reference Group Members

City of Rockingham	Shire of Augusta-Margaret River
City of Albany	City of Wanneroo
Town of Claremont	Town of Port Hedland
City of Canning	Shire of Broome
City of Vincent	City of Perth
Shire of Denmark	City of Cockburn
Shire of Lake Grace	

Participants at online co-design workshops, 20 and 23 May 2022

20 May 2022

City of Albany	Shire of Dundas
City of Bayswater	Shire of Esperance
City of Belmont	Shire of Lake Grace
City of Bunbury	Shire of Mt Magnet
City of Canning	Shire of Ravensthorpe
City of Kalamunda	Shire of Sandstone
City of Karratha	Shire of Serpentine Jarrahdale
City of Subiaco	Shire of Shark Bay
City of Swan	Shire of Waroona
City of Vincent	Shire of West Arthur
City of Wanneroo	Shire of Woodanilling
Shire of Broomehill-Tambellup	Shire of Yalgoo
Shire of Carnarvon	Town of Claremont
Shire of Cue	

23 May 2022

City of Vincent

City of Belmont

City of Swan

Shire of Waroona

Shire of Sandstone

Shire of Lake Grace

Shire of Esperance

Shire of Broome

Shire of West Arthur

Town of Claremont

Shire of Dowerin

City of Karratha

Shire of Carnarvon

City of Bayswater

Shire of Serpentine -Jarrahdale

City of Kalamunda

Written Comments

Shire of Serpentine-Jarrahdale

City of Albany

Participants in 2021 Place Based Online Workshops regarding Activities

City of Albany

Shire of Carnamah

City of Armadale

Town of Claremont

Shire of Augusta Margaret River

City of Cockburn

Town of Bassendean

Shire of Dardanup

City of Bayswater

Town of East Fremantle

City of Belmont

Shire of Esperance

Shire of Broome

Shire of Gingin

Shire of Bruce Rock

Shire of Gnowangerup

City of Bunbury

City of Greater Geraldton

City of Busselton

City of Kalamunda

Town of Cambridge

Shire of Katanning

City of Canning

City of Karratha

Shire of Derby/ West Kimberley

Shire of Meekatharra

City of Mandurah

City of Perth

City of Melville

Shire of Merredin

Shire of Murchison

Shire of Nannup

City of Swan

Shire of Wyndham/ East Kimberley

Shire of Trayning

Town of Port Hedland

City of Rockingham

City of South Perth

City of Stirling

City of Wanneroo

Shire of Toodyay

Shire of York

Other Communications

- WALGA InfoPage to all Local Government CEOs, 13 May 2022
- Discussion at People and Place Policy Team meeting, 18 May 2022
- Request for feedback to Local Government Emergency Management Advisory Group, 13 May 2022
- LG News Items (various dates)



Draft Composite Local Government Activity List

March 2021

This Draft Composite Activity List was developed during nine online place-based online workshops co-facilitated by WALGA and the Department of Planning, Lands and Heritage (DPLH) in February and March 2021. A total of 40 Local Governments participated in the Workshops.

An activity list, previously developed by the City of Albany in consultation with Traditional Owners as a supplement to the existing Due Diligence Guidelines, was used to guide the discussion at each Workshop. A Consultation Report highlighting key themes from the Workshops was also prepared.

This Draft Composite Activity List is a draft only and does not represent the endorsed view of WALGA or any member Local Government as to the appropriate categorisation of activities under the new Aboriginal Cultural heritage legislation. The focus of the Workshops was on developing a detailed activity list, not determining a sector position on activity categorisation.

GENERAL COMMENTS:

Feedback during the Workshops highlighted the need for clear guidance in the new legislation as to the interaction between activity, known or unknown heritage values, and levels of previous ground disturbance. The language used must be consistent and clear.

Options for consideration for land disturbance category include:

1. Land previously developed (buildings, concrete pads)
2. Land previously disturbed (cultivated land, cleared land)
3. Land used for extensive grazing
4. Uncleared land
5. (Identified areas of cultural significance)

It is apparent that some activities require further definition, and may fit into more than one category depending on the actual activities involved. These activities are highlighted in red text below.

The creation of an online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal heritage database (of registered sites and existing surveys) would assist proponents to understand the potential for activities to impact Aboriginal cultural heritage and approval requirements.

EXEMPT ACTIVITIES

Exempt activities include private/residential development, recreational activities, activities conducted during an emergency, small subdivisions.

Land disturbance categories:

1. Land previously developed (buildings, concrete pads)
2. Land previously disturbed (cultivated land, cleared land)
3. Land used for extensive grazing
4. Uncleared land
5. Identified areas of cultural significance

1	Walking, surveying (further description of "surveying" required)
2	Environmental monitoring (water and soils sampling) (may require drilling)

3	Use of existing roads, tracks or water courses
4	Recreational activities; beach and bush driving (off-road driving), fishing, walking pets (including off the leash)
5	Emergency Responses, including the use of fire retardant, fire pits and fire walls, and preventative backburns. DRFA-WA works and other relief and recovery works. (On the premise that avoiding Heritage where known/ possible) (unclear and requires extensive clarification)
7	Activities occurring on residential property (include the construction of sheds, granny flats, subdivision)

MINIMAL IMPACT

These activities require no approval but are considered 'minimal impact' in acknowledgment of their potential to impact Aboriginal cultural heritage.

Land disturbance categories:

1. Land previously developed (buildings, concrete pads)
2. Land previously disturbed (cultivated land, cleared land)
3. Land used for extensive grazing

1.	<p>Maintenance of existing public infrastructure or within adjacent service areas, which includes:</p> <ul style="list-style-type: none"> • Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) <ul style="list-style-type: none"> • Shire of Broome have provide this photo (right) of a rural road that has been dug out and has a built up verge of around 2 metres • Clearing, grading or mowing of existing firebreaks where clearing has already occurred • Replacing existing kerbing or installing new kerbing • Maintaining or replacing existing drainage (including reshaping of drains & maintenance of existing basins, sediment and erosion control measures) • 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 • Reconstruction or maintenance of pathways or trails • Stabilisation and maintenance of existing 4WD tracks or walking and cycling trails, including associated drainage structures • Grading roads including rural 	
2.	Landscaping, mowing, planting (including tree planting) or other maintenance works in developed reserves (verge maintenance and streetscape enhancement) (Further clarity on definition of "landscaping" and the involvement of soil/plant removal and soil brought in for landscaping purposes required)	
3.	Modification, repair or maintenance of existing buildings (includes leasehold)	
4.	Installation of new telecommunications equipment on or maintenance of existing	
5.	Installation or replacement of signs in constructed road reserves or established tracks / trails using hand-held or mechanical augers	
6.	Installation or replacement of signs in recreation reserves using hand held or mechanical augers	

7.	Reconstruction or significant maintenance of existing parking areas
8.	Installing new drainage infrastructure within an existing road reserve (requires further clarity – refer to EP Act which talks about maintenance zones)
9.	Replacement of existing bollards or fencing
10.	Maintaining or reconstructing existing retaining walls (land and sea included)
11.	Replacement of existing bores or watering systems
12.	Replacement of existing toilet facilities
13.	Geotechnical testing with no digging required
14.	Refurbishment and maintenance of bridges
15.	Observational flora and fauna surveys (without digging) including treatments <ul style="list-style-type: none"> - Dieback surveys - Injections and spraying - Mosquito treatments (including non-invasive trapping, treatments including fogging (adulticides and larvicides) through chemical-use and spraying)
16.	Weed and pest control as part of land maintenance including use of hand, mechanical or chemical methods.
17.	Off-road vehicle use for surveying and revegetation
18.	Cemetery services including grave digging and maintenance
19.	Redevelopment of existing landfill or waste facilities, including the development of transfer stations
20.	Re-vegetation works in natural reserves (“Revegetation” requires clarifying, i.e. differentiate with use of tools)
21.	Events on nature reserves and beaches (i.e. festivals)
22.	Lighting – street lighting, lighting on sports reserves (can be up to depths of 5)

LOW IMPACT

These activities will require a permit if Aboriginal cultural heritage is known to be present in the area.

Land Disturbance Categories:

2. Land previously disturbed (cultivated land, cleared land)
3. Land used for extensive grazing
4. Uncleared land
5. Identified areas of cultural significance

1.	Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) involving widening outside of the existing road footprint
2.	Activities in road verges, including clearing, crossovers, bus shelters etc
3.	Installing new kerbing
4.	Installation or replacement of signs in natural or developed reserves
5.	Installation of new bollards or fencing
6.	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) – no clearing involved
7.	Creation of new firebreaks that require disturbance to land
8.	Installation of new bores or watering systems in developed reserves
9.	Tree removals (including land surrounding with roots) around infrastructure or otherwise
10.	Geotechnical testing with digging required
11.	Jetty and boat ramp development
12.	Park development which could include bores, fences, garden, tree planting, turf, toilet, BBQs, seating, pavillions and maintenance
13.	Beach development i.e. moving sand for sand banks or ramps (including repairs)
14.	Modification or repair of existing buildings
15.	Commercial and industrial subdivisions of any size
16.	Tourism related activities – such as conducting tourism operations that are based in established facilities, or require the establishment of new facilities that require no or minor ground disturbance.

17.	Dredging of natural waterways (e.g. wetlands, rivers, foreshores) to remove sand that has been deposited over time from drainage pipes. (Some Local Governments have experienced a build-up of sediment in these environments that needs to be manually removed at intervals by excavation, and given they are waterways they are generally Registered Aboriginal Sites)
18	Stockpiling of construction materials or temporary storage of machinery for works

MEDIUM TO HIGH IMPACT

Aboriginal Cultural Heritage Management Plan Required. Activities involve clearing of land/ development on undeveloped, natural areas.

Land Disturbance Categories:

4. Uncleared land
5. Identified areas of cultural significance

1	Development of new roads, tracks, trails, pathways or parking areas
3	Constructing new retaining walls (sea and land inclusive)
4	New toilet facilities and associated leach drains/tanks
5	New development by leaseholders and Local Governments, including buildings, outbuildings, club rooms, toilets, tracks, sports grounds, etc
6	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) – clearing, digging and drilling involved
8	Erosion control activities associated with the ocean and significant waterways (includes walls, barriers, reshaping of beach areas, construction of groynes etc) (Requires further consideration)
9	Creation of suspended walkways over sensitive environments or waterways including construction of boardwalks and walkways (with consideration of Heritage, water course mapping over years and high water mark)
10	Flood remediation and mitigation activities (Requires further clarification and consideration of dams, seawalls, sand nourishment and landscaped revetments, as well as consideration of categorisation of flood repair)
11	Installation of new services (power, water, sewer, telecommunications)
12	Extension of existing buildings
13	Development of new bridges
14	Mechanical digging of significant depth and scale (Requires further clarification as to specifics of “depth and scale”)
15	Development of a new cemetery



Consultation Report on Aboriginal Cultural Heritage Place-Based Online Workshops: 22 February – 2 March 2021

This Consultation Report summarises the key themes from nine place-based online workshops co-facilitated by WALGA and the Department of Planning, Lands and Heritage (DPLH) held in February and March 2021. A total of 40 Local Governments participated in the Workshops.

An activity list, previously developed by the City of Albany in consultation with Traditional Owners as a supplement to the existing Due Diligence Guidelines, was used to guide the discussion at each Workshop. A Draft Composite Activity List was also developed. The Draft Composite Activity List is a draft only and does not represent the endorsed view of WALGA or any member Local Government as to the appropriate categorisation of activities under the new Aboriginal Cultural heritage legislation. The focus of the Workshops was on developing a detailed activity list, not determining a sector position on activity categorisation.

KEY THEMES

Key themes that emerged during the Workshops related to:

- The need for clear and consistent language when describing proponent activities and processes under the legislation
- The need for clarity about the interaction between activity, known or unknown heritage values, and levels of previous ground disturbance
- The costs to Local Government of conducting Aboriginal heritage surveys, particularly in areas with high levels of mining activity
- The need for the provision of supporting guidelines and materials to educate the Local Government sector and assist them comply with legislative requirements
- The value to the Local Government sector of engaging with DPLH in the development of the Regulations and further supplementary materials.

LANGUAGE

Local Government feedback indicated that the language used in the activity list needs to be clear and concise, with consistent terminology. Commonly understood technical terms should be used where possible.

It is apparent that some activities in the Draft Composite Activity List require further definition, and may fit into more than one category depending on the actual activities involved. “Flood remediation activities”, “landscaping”, “recreational activities” and “re-vegetation” were terms noted by Local Governments during the workshops as requiring further explanation.

The provision of a technical list in conjunction with the activities list, providing specific measurements for particular activities and aligned with other existing legislation where relevant, would assist Local Governments to determine the correct classification of activities. WALGA could assist DPLH to work with the sector to develop a technical list and/ or detailed technical descriptions of activities.

PREVIOUS LAND DISTURBANCE

Feedback during the Workshops highlighted the need for clear guidance in the new legislation as to the interaction between activity, known or unknown heritage values, and levels of previous ground disturbance.

Listing activities cross-referenced with land disturbance categories would make the requirements of the legislation clearer and may encourage proponents to undertake works in disturbed land where possible. Land disturbance categories should align with existing legislation where possible (for example, the *Environmental Protection Regulations* refer to the 'maintenance zone' as land 'previously disturbed'), and might include:

1. Land previously developed (buildings, concrete pads)
2. Land previously disturbed (cultivated land, cleared land)
3. Land used for extensive grazing
4. Uncleared land
5. (Identified areas of cultural significance)

EMERGENCY MANAGEMENT

DPLH advised at the Workshops that further consultation will be undertaken on the appropriate categorization of emergency management activities. Local Government's have various legislative obligations in relation to emergency preparation, response and recovery, and welcome the opportunity to provide further feedback on this in due course.

FINANCIAL IMPACT OF SURVEYS

Some Local Governments, especially large regional Local Governments with active mining industries, raised concerns about the financial impost of conducting Aboriginal heritage surveys, and the expectation that Local Government pay the same rates as highly profitable mining companies. Local Governments are interested to understand how this might be managed under the new legislation and what assistance might be available to assist Local Governments comply with their legislative requirements.

INTERACTIVE PORTAL

The creation of an online, interactive Aboriginal heritage assessment tool, linked to the Aboriginal heritage database (of registered sites and existing surveys) would assist proponents to understand the potential for activities to impact Aboriginal cultural heritage and approval requirements.

GUIDELINES AND RESOURCES

Feedback from Local Government participants in the Workshops highlighted the need for DPLH to develop supporting guidelines and materials, in consultation with the Local Government sector, to educate the sector about the new legislation and support compliance.

ONGOING ENGAGEMENT

Feedback from Local Government participants in the Workshops was positive, and the Workshops provided a useful forum for updating the sector on the new legislation as well as refreshing their understanding of the ongoing obligations under the existing Aboriginal heritage legislation. The sector welcomes the opportunity for continued engagement with DPLH over coming months as DPLH drafts the new Regulations and supporting guidelines and materials.

Approval Procedures: Scenario examples

Maintenance and construction type activities undertaken by City at identified sites.

To determine if there are different “trigger points” for different ranges of work actions and risk exposure related to the extent of activity.

Project Delivery	Excavation / ground disturbance activities <i>referred to in R10 part (b)</i>	To determine if there is a standardised, or differing approval processes for consent to types of activity on “developed” and cleared areas such as: <ul style="list-style-type: none"> • Existing sports fields • Verges and footpath areas • Building envelopes • Car parking areas • Roadways
	Is there a basis for any exemptions for the need to make an application that are acceptable? e.g., if on an existing already developed part of the site	If yes, information on clauses for exemption. If no, refer to potential construction scenarios in below table to determine what is required.
Examples: <i>To nominal depths with activity descriptions. (non-exhaustive, general only)</i>		
	up to 250mm depth on developed areas and verges: <ul style="list-style-type: none"> • Footpath renewal works, • Footpath new works (no clearing. Dirt/gravel filled areas) • Road resurfacing works 	Consent for activity or long- standing MOU with list of activities/reserve that are suitable without on-going referral.
	up to 1m depth on developed areas, playing fields and verges: <ul style="list-style-type: none"> • trenching for electrical conduits and pits. • Water supply and Irrigation/reticulation works. • Installation of (new) fencing or bollards. Includes service providers such as Western Power, Atco Gas & Water Corporation.	Accepted application and approvals process. Who, when & how? Conditions required to be clear and achievable within established timeframes.
	up to 2.5m depth on developed areas, playing fields & verges, <ul style="list-style-type: none"> • Sewer/ wastewater connections and service chambers • Soak-wells (drainage) • Flagpoles 	
	up to 5m depth for lighting pole footings between on developed areas, playing field or verges, <ul style="list-style-type: none"> • Sports Lighting • Car park lighting • Street lighting • CCTV cameras 	

Building / Construction

Project Delivery	Demolition or renewal of existing structures <i>*refer to sections R10 part (a+b)?</i> <ul style="list-style-type: none">• Buildings• fencing• bollards• players shelter• playgrounds• park equipment• batting nets• cricket wickets	
	New constructions <ul style="list-style-type: none">• Buildings (all classes)• Retaining walls• Storage sheds• Bin enclosures• Mobile phone towers	

Draft Local Government Activity List

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Language – terminology and language is key below. In some instances installation, development and new is used, but would be good to keep it consistent so no confusion. Also, where key words are the differentiators, such as “within existing footprint” or “outside of existing footprint” it would be good to make these clear. Maybe at the start of the dot point, or underlined? I think a lot of the commentary will make more sense once they have been merged with DPLH’s new categories and the rationale for such will mean that this is more nuanced and not a ‘one size fits all’ approach.

1. Negligible Disturbance

1	Walking, surveying
2	Environmental monitoring (water and soils sampling)
3	Use of existing roads, tracks or water courses
4	<u>Mosquito monitoring (non-invasive trapping – zero impact to land etc)</u>
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2. Minimal Disturbance

1	Maintenance of existing public infrastructure within the existing footprint and adjacent service areas, which includes: <ul style="list-style-type: none"> a) Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) b) Clearing, grading or mowing of existing firebreaks c) Replacing existing kerbing or installing new kerbing within existing road footprint d) Maintaining or replacing existing drainage within existing footprint (including reshaping of drains & maintenance of existing basins) e) 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 f) Reconstruction or maintenance of existing pathways within the existing footprint g) Stabilisation and maintenance of existing 4WD tracks or walking trails
2	Landscaping, mowing, planting (including tree planting) or other maintenance works in developed reserves

3	Modification, repair or maintenance of existing buildings (includes leasehold) within existing building footprint
4	Installation of new telecommunications equipment on or within existing infrastructure
5	Installation of signs in constructed road reserves or established tracks / trails
6	Installation of signs in recreation reserves using hand held or mechanical augers
7	Replacement of existing bollards or fencing
8	Maintaining or reconstructing existing retaining walls
9	Natural reserves land maintenance activities (includes weed, pest, vegetation and fire control works)
10	Replacement of existing bores or watering systems
11	Prescribed burns
12	Installation of new environmental monitoring equipment
13	Mosquito control through adulticides (fogging)
14	Mosquito control through larvicides (application of chemicals to ponding water)
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Commented [CW1]: Installation of environmental monitoring equipment – some may require ground disturbance (ie drilling) others may be on a concrete plinth so less disturbance

3. Moderate Disturbance

1	Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) involving widening outside of the existing road footprint)
2	Activities in road verges, including clearing, crossovers, bus shelters etc
3	Reconstruction or significant maintenance of existing parking areas
4	Installing new drainage infrastructure within an existing road
5	Installing new kerbing within a widened road footprint
6	Installing new pathways
7	Installation of signs in natural or developed reserves involving clearing
8	Installation of new bollards or fencing
9	Replacement of existing toilet facilities within existing footprint
10	Re-vegetation works in natural reserves
11	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) – no clearing involved
12	Creation of new firebreaks
13	Installation of new bores or watering systems in developed reserves
14	Redevelopment of existing landfill or waste facilities, including the development of transfer stations on significantly disturbed land
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Commented [SS2]: Causing confusion –if we are replacing toilets in an existing park within the existing footprint then why would this would be a moderate disturbance?

Commented [SS3]: Same comment as above.

4. Significant Disturbance

1	Development of new roads, tracks , trails or parking areas
2	Maintaining, replacing or reshaping existing drainage with new ground disturbance outside of existing footprint
3	Constructing new retaining walls
4	New toilet facilities
5	New development by leaseholders, including buildings, outbuildings, club rooms, toilets, tracks, sports grounds, etc
6	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) where clearing is required
7	Modification, extension, repair or maintenance of existing buildings outside of existing disturbed footprint
8	Erosion control actions associated with the ocean and significant waterways (includes walls, barriers, reshaping of beach areas, construction of groynes etc)
9	Creation of suspended walkways over sensitive environments or waterways
10	Flood remediation activities – seawalls, sand nourishment, landscaped revetments?
11	Installation of new services (power, water, sewer, telecommunications)
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5. Major Disturbance

1	Creation of new extensive drainage infrastructure
2	Development of new large-scale public facilities i.e. recreation grounds, community centres, libraries etc
3	Establishment of new gravel pits or quarries
4	Development of new waste or landfill facilities involving extensive clearing
5	Any activity involving mechanical digging, blasting or earthmoving
6	All major construction works
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Commented [DN1]: Need to clarify if the list relates only to activities within designated aboriginal heritage sites

1. Negligible Disturbance

1	Walking, surveying, <u>environmental surveys (flora, fauna, etc)</u>
2	Environmental monitoring (water and soils sampling)
3	Use of existing roads, tracks or water courses
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2. Minimal Disturbance

1	Maintenance of existing public infrastructure within the existing footprint and adjacent service areas, which includes: <ul style="list-style-type: none"> a) Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) b) Clearing, grading or mowing of existing firebreaks c) Replacing existing kerbing or installing new kerbing within existing road footprint d) Maintaining or replacing existing drainage within existing footprint (including reshaping of drains & maintenance of existing basins, <u>sediment and erosion control measures</u>) e) 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 f) Reconstruction or maintenance of existing pathways <u>or trails</u> within the existing footprint g) Stabilisation and maintenance of existing 4WD tracks or walking <u>and cycling trails, including associated drainage structures</u>
2	Landscaping, mowing, planting/ <u>revegetation</u> (including tree planting) or other maintenance works in developed reserves
3	Modification, repair or maintenance of existing buildings (includes leasehold) within existing building footprint
4	Installation of new telecommunications equipment on or within existing infrastructure
5	Installation <u>or replacement</u> of signs in constructed road reserves or established tracks / trails <u>using hand-held or mechanical augers</u>
6	Installation <u>or replacement</u> of signs in recreation reserves using hand-held or mechanical augers
7	Replacement of existing bollards or fencing
8	Maintaining or reconstructing existing retaining walls

9	Natural reserves land maintenance activities (includes weed, pest, vegetation and fire control works)
10	Replacement of existing bores or watering systems
11	Prescribed burns
12	<u>Works in already highly disturbed or altered areas</u>
13	<u>Weed control using hand, mechanical and chemical methods</u>
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3. Moderate Disturbance

1	Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) involving widening outside of the existing road footprint)
2	Activities in <u>undisturbed portions of</u> road verges, including clearing, crossovers, bus shelters etc
3	Reconstruction or significant maintenance of existing parking areas
4	Installing new drainage infrastructure within an existing road
5	Installing new kerbing within a widened road footprint
6	Installing new pathways <u>and trails</u>
7	Installation <u>or replacement</u> of signs in natural or developed reserves involving clearing
8	Installation of new bollards or fencing <u>requiring clearing of native vegetation</u>
9	Replacement of existing toilet facilities within existing footprint
10	<u>Re-vegetation works in natural reserves</u>
11	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) – no clearing <u>of native vegetation</u> involved
12	Creation of new firebreaks
13	Installation of new bores or watering systems in developed reserves
14	Redevelopment of existing landfill or waste facilities, including the development of transfer stations on significantly disturbed land
15	<u>Stockpiling of construction materials or temporary storage of machinery</u>
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Commented [DN2]: What is the difference between this and the works described above in Table 2, Item 2?

Commented [DN3]: Move to minimal disturbance

4. Significant Disturbance

1	Development of new roads, tracks-, trails or parking areas
2	Maintaining, replacing or reshaping existing drainage with new ground disturbance outside of existing footprint
3	Constructing new retaining walls
4	New toilet facilities <u>and associated leach drains/tanks</u>

5	New development by leaseholders, including buildings, outbuildings, club rooms, toilets, tracks, sports grounds, etc
6	Installation of new infrastructure in developed or natural reserves (i.e. seating, picnic tables, bbqs, playgrounds etc) where clearing of native vegetation is required
7	Modification, extension, repair or maintenance of existing buildings outside of existing disturbed footprint
8	Erosion control actions associated with the ocean and significant waterways (includes walls, barriers, reshaping of beach areas, construction of groynes etc)
9	Creation of suspended walkways over sensitive environments or waterways
10	Flood remediation activities
11	Installation of new services (power, water, sewer, telecommunications)
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5. Major Disturbance

1	Creation of new extensive drainage infrastructure
2	Development of new large-scale public facilities i.e. recreation grounds, community centres, libraries etc
3	Establishment of new gravel pits or quarries
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