



Aboriginal Cultural Heritage Act 2021

STATE SIGNIFICANCE GUIDELINES

Consultation Draft



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1. Purpose

One of the principles of the *Aboriginal Cultural Heritage Act 2021* (Act) is that places, objects and landscapes have a range of values for different individuals, groups and communities – including the State of Western Australia as a whole; these include social, spiritual, historical, scientific and aesthetic values.

To recognise the value of Aboriginal cultural heritage (ACH) to the State, the Act ensures that activities that may harm ACH are appropriately managed. The Act does this to provide balanced and beneficial outcomes for Aboriginal people as well as the broader Western Australian community – with clarity, confidence and certainty.

ACH found to be of State significance is important in understanding the story of Western Australia – its history, identity and its people. It is important to note, however, that this does not mean that ACH that is found to be of State significance is **more** important than other ACH that is important to only Aboriginal people; rather ACH of State significance is being recognised for different values.

These guidelines lay out the factors to be used by the ACH Council (Council) to determine whether ACH should be found to be of State significance, which is defined by the Act to be ‘of exceptional importance to the cultural identity of the State’ [s100].

2. Overview

The Council will only consider whether ACH is of State significance when there is an application for approval or authorisation of an ACH Management Plan (Plan). In considering the information provided about the ACH, the Council may form the view that the ACH is of State significance.

Where the Council determines that ACH is of State significance, the Plan under consideration can only be authorised by the Minister for Aboriginal Affairs (Minister). This applies even in circumstances where there has been agreement between the interested Aboriginal party and the proponent on how the ACH is to be managed.

Exempt, tier 1 (no/minimal impact) and tier 2 (low ground disturbance) activities are not affected unless otherwise incorporated in a Plan.

This document does not outline how Plans should be developed, including who should be consulted. Further guidance on these matters is contained in the ACH Management Code and the Plan template and guiding notes. Specific conditions to mitigate or manage harm to ACH of State significance may be imposed by the Minister as part of the authorisation process.

3. Legislative Context

The Act defines ACH of State significance under Section 100:

State significance, in relation to Aboriginal cultural heritage, means that the Aboriginal cultural heritage is of exceptional importance to the cultural identity of the State;

Section 134(2) states that:

An ACH management plan that has been authorised under section 165(1)(b)(i) is required before the commencement of a tier 3 activity —

- (a) that may harm Aboriginal cultural heritage determined under section 176(1)(b)(i) to be of State significance for the purposes of this Act.



In order to establish that ACH is of State significance, Section 176 'Determination about Aboriginal cultural heritage of State significance' states:

- 1) The ACH Council must, within the prescribed period beginning at the end of the period for submissions included in a public notice given under section 175(3)(c) —
 - a) consider any submissions in relation to the Aboriginal cultural heritage made to the Council in response to the notice; and
 - b) make a determination that the Aboriginal cultural heritage —
 - i) is of State significance for the purposes of this Act; or
 - ii) is not of State significance for the purposes of this Act.
- 2) The ACH Council may make a determination under subsection (1)(b)(i) only if the Council is satisfied, after taking into consideration the factors set out in the State significance guidelines, that the Aboriginal cultural heritage is of State significance for the purposes of this Act.

4. Scope

This document sets out the factors the Council must consider in determining whether ACH is of State significance as part of the approval or authorisation process for a Plan.

These guidelines are also relevant to the interested parties requiring notification under the Act should the Council form the view that ACH may be of State significance and provides clarity to Aboriginal people and/or parties and stakeholders on the process of determining whether ACH is of State significance as defined by the Act.

5. Determination of State significance

5.1. Why is State significance assessed?

Good management decisions about the future of ACH are informed by a strong understanding of its heritage values. This understanding is important to determine how any proposed activity will affect those values. This means that informed decisions to take reasonable steps to avoid, or minimise, the risk of harm to these values can be made.

Places, objects, cultural landscapes and Aboriginal ancestral remains are ACH because they are important to Aboriginal people. The Act also considers whether ACH may be of significance to the cultural identity of the State.

5.2. What triggers an assessment?

An assessment of ACH of State significance must be undertaken by the Council when an application is made for the approval or authorisation of a Plan or an amendment to a Plan. This assessment may result in the Council determining that the ACH is of State significance.

If ACH is determined to be of State significance, the Council must refer a proposed Plan to the Minister to decide whether to authorise the Plan.

In doing so, the Minister must consider the interests of the State, which is defined under section 11 of the Act as for the social or economic benefit of the State, including:

- for the social or economic benefit of Aboriginal people; and
- the interests of future generations.



5.3. How State significance is established

The Council may determine the presence of ACH of State significance based on the following:

- The assessment of the Plan application and supporting information.
- Giving notice and opportunity for submissions to be made should the Council form the view that ACH associated with a Plan may be of State significance.
- Submissions from Aboriginal parties, landholders, public authorities and any other interested parties following the required notification and public notice that the ACH is being considered as being of State significance.
- Consideration of the factors outlined in these guidelines.

6. Contacting interested parties

In considering a proposed Plan, should the Council form the view the ACH may be of State significance, it must give public notice [s175]. It must also specifically notify particular parties identified in the Act comprising:

- LACHS;
- native title parties;
- knowledge holders;
- land holders; and
- each public authority or any other person that the Council considers has an interest in the land or is within the area of the Plan.

The notice should contain the details of the ACH (not including culturally sensitive information) and the details of the area where the ACH is located. The Council must consider any submissions in determining whether the ACH demonstrates State significance (see 7.2 below).

7. Threshold for ACH Demonstrating State Significance

Understanding the cultural significance of ACH is an important first step to making informed decisions in relation to the protection of that significance, including managing any potential harm.

When considering whether ACH is of State significance, the Council will consider the following cultural values in terms of whether a place demonstrates **exceptional** importance to the cultural identity of the State. For ACH to meet the threshold for State significance, it must demonstrate **one or more** of these values.

7.1. The Burra Charter

The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Heritage Significance 2013 (Burra Charter), provides guidance for the protection, conservation and management of cultural heritage places, including ACH, and recognises the fundamental importance of ACH to Aboriginal people. The Burra Charter provides comprehensive guidelines for the assessment of ACH which may be deemed to be of State significance, and these have been adopted for the purpose of these guidelines.

The Burra Charter determines significance by the consideration of cultural heritage values, which are assessed against various criteria. **A place does not need to demonstrate all values** – if it meets any one of those values (see below), the Council may determine it to be of State significance. As noted above, the consideration of State significance in relation to ACH should identify values that demonstrate **exceptional** importance to the cultural identity of the State.



The Burra Charter cultural values discussed in this document are:

Aesthetic – Historic – Scientific – Social

7.2. Identifying cultural values

Aesthetic

Aesthetic value is necessarily subjective and should not simply rely on a common perception or most popular view. There is a need to consider aesthetics as understood by different cultural and community groups in terms of what is considered beautiful or artistic. Aesthetic value can also refer to the sensory and perceptual experience of place, such as sounds and smells, which can impact the way that we experience a place by evoking strong feelings or special meanings.

For ACH to demonstrate aesthetic value in terms of State significance, a place or area should have **exceptional** importance to Western Australia for **any** of the following:

- For demonstrating a high degree of creative, design or artistic excellence, innovation or achievement.
- For demonstrating exceptional aesthetic value in terms of its setting, demonstrated by its landmark quality, or impact on important vistas.

Historic

Historic value considers the value of ACH to the wider story of Western Australia. A place demonstrating this value may be the site of an important event, phase, movement, or activity in the State's history, or may be associated with a notable person or cultural group.

Historic associations should be strong and verified by evidence. For ACH to demonstrate this value in terms of State significance, a place should have **exceptional** importance for **any** of the following:

- For the density or diversity of cultural features illustrating the human occupation of the State, or for demonstrating patterns in the development of the State.
- For its association with an event, phase, or activity of significant historic importance in Western Australia.
- For its close association with an individual or cultural group whose life, works or activities have been significant within the history of Western Australia.

Scientific

Scientific value of ACH is considered by the potential of a place to contribute to a further understanding of the natural or cultural history of Western Australia. Scientific value is commonly used to assess the significance of identified, or potential, archaeological deposits. For ACH to demonstrate this value in terms of State significance, a place should have **exceptional** importance for **any** of the following:

- Its potential to provide information/archaeological material contributing to a wider understanding of the natural or cultural history of Western Australia, by virtue of its use as a research site, teaching site, type locality, reference, or benchmark site.
- For demonstrating an exceptionally high degree of technical innovation or achievement.



Social

Social value refers to the ties that a place has for a particular community and the meanings that it holds for it. Places of social value may be symbolic or landmark places that contribute to a community’s sense of place and cultural identity.

To identify the social value of ACH to the broader Western Australian community, consideration is given to the social value of places with **contemporary** associations and meanings, that contribute significantly to the cultural identity of Western Australia and the stories it tells about itself.

A place will not normally be considered to meet the threshold if the associations are not held very strongly or cannot be demonstrated satisfactorily to others, or if the social value is historical rather than in the present day. ACH demonstrating this value in terms of State significance should have exceptional importance as a place highly valued by the community of Western Australia for reasons of cultural symbolic educational or social associations.

8. Related Documents

The following documents support these guidelines:

- The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013
- Practice Note - Understanding and assessing cultural significance (Australia ICOMOS, 2013)
- ACH Management Code
- ACH Management Plan Template and Guiding Notes

9. Terms Used

ACH	Aboriginal cultural heritage
Act	<i>Aboriginal Cultural Heritage Act 2021</i>
Council	Aboriginal Cultural Heritage Council
Department	Department of Planning, Lands and Heritage
LACHS	Local Aboriginal cultural heritage services
Minister	Minister for Aboriginal Affairs