

Aboriginal Cultural Heritage Bill 2021 - Tiered assessment process



Proponent undertakes Due Diligence Process in accordance with the ACH Management Code. The first step of this process is to understand whether the activity is either an Exempt Activity, or a Tier 1, 2, or 3 Activity. The list for the different categories of activities will be widely available to the public and is the first step of the assessment process. Under the legislation the role of determining whether Aboriginal Cultural Heritage is present rests with Aboriginal people.



Exempt Activities

Exempt Activities are activities that proponents don't need permission to do, including walking, taking photos, going onto country in an emergency and building houses in small lots. If the proposed activity is an Exempt Activity, proponent may proceed with the activity.



Tier 1 Activities

If the proposed activity is a Tier 1 Activity such as conducting an aerial survey or maintaining existing infrastructure, the activity may proceed subject to steps being taken to avoid or minimise harm. Proponent may request confirmation from the Department of Planning, Lands and Heritage that the proposed activity is in fact a Tier 1 Activity.



Tier 2 Activities

Due Diligence Process

Once confirmed the proposed activity is a Tier 2 Activity the Proponent continues with the due diligence process to understand whether the activity will harm Aboriginal Cultural Heritage. If the proposed activity will not cause harm to Aboriginal cultural heritage it may proceed.

Ascertain level of impact

If due diligence process indicates the proposed Tier 2 Activity is likely to harm Aboriginal cultural heritage then an ACH Permit will be required.

Notify

Proponent notifies Aboriginal people before applying for an ACH Permit.

Apply

Proponent submits permit application to the ACH Council which includes any submissions provided by Aboriginal people notified.

Procedural fairness

ACH Council informs Aboriginal people it has received an ACH Permit application and seeks their views on that application.

Decision

The Council may request additional information, approve or refuse the permit application. If the ACH Council grants the permit the proposed activity can proceed.



Tier 3 Activities

Due Diligence Process

Once confirmed the activity is a Tier 3 Activity the Proponent continues with the due diligence process to understand if proposed activity may harm Aboriginal Cultural Heritage. If the proposed activity will not cause harm to Aboriginal cultural heritage it may proceed.

Ascertain level of impact

If due diligence process indicates that the proposed Tier 3 Activity is likely to harm Aboriginal cultural heritage, the proponent will need to develop an ACH Management Plan that will set out how the activity will be conducted.

Notify

Proponent must consult relevant Aboriginal parties about the activity.

Apply

Proponent is required to negotiate with Aboriginal parties on the ACH Management Plan. Some of the details to be negotiated will include what places may need to be avoided, whether there should be fencing and monitoring, whether any places will be salvaged, and what to do if new information arises.

Agreement (a) or Mediation (b) or No agreement (c)

- If the Proponent and Aboriginal parties reach agreement on the details of the ACH Management Plan then it will be submitted to the Council for its endorsement and approval and in which case the activity can proceed.
- If the Proponent and Aboriginal parties are not able to reach agreement the Proponent can submit an ACH Management Plan to the Council. Once received the ACH Council will liaise with the parties and try to facilitate an Agreement.
- If there is still no agreement between the Proponent and the Aboriginal Party the decision to authorise the ACH Management Plan will rest with the Minister. If the Minister approves the ACH Management Plan the activity can then proceed.

Other Important Information about ACH Management Plans

All ACH Management Plans must say what will happen if new Aboriginal cultural heritage is found and when there is new information about the importance of the heritage. Even if there is agreement between the Proponent and the Aboriginal Party any ACH Management Plan that includes causing harm to Aboriginal cultural heritage that is of State significance will require authorisation from the Minister.