



Technical Guidance

Environmental impact assessment of Social Surroundings – Aboriginal cultural heritage



Environmental Protection Authority
November 2023

Version	Change	Date
1.0	Initial version	June 2023
2.0	Updated to reflect repeal of the <i>Aboriginal Cultural Heritage Act 2021</i> and amendments to the <i>Aboriginal Heritage Act 1972</i>	November 2023

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National Relay Service

TTY: 133 677

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More information

EPA Services

Department of Water and Environmental Regulation

Prime House, 8 Davidson Terrace

Joondalup WA 6027

Locked Bag 10

Joondalup DC, WA 6919

p: 08 6364 7000

e: info.epa@dwer.wa.gov.au

w: www.epa.wa.gov.au

Cover image: Murujuga in Western Australia's Pilbara

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1 Introduction and background

1.1 Purpose

This Technical Guidance has been developed to:

- Outline the Environmental Protection Authority (EPA) environmental impact assessment (EIA) process for Social Surroundings – Aboriginal cultural heritage (ACH) under the *Environmental Protection Act 1986* (EP Act).
- Provide the information requirements for the EPA to decide:
 - whether a proposal is likely to have a significant effect on the **social surroundings** environmental factor, as it relates to ACH, and if it should be assessed by the EPA;
 - if ACH is being assessed by the EPA, the information needed for assessment; and
 - if the EPA decides the proposal may be implemented, whether reasonable conditions can be applied to protect ACH from significant harm.
- Outline how the EPA may take into account the statutory decision-making processes outlined in the *Aboriginal Heritage Act 1972* (AH Act 1972).

The EPA is releasing this Technical Guidance in response to the commencement of amendments to the AH Act 1972 in 2023, and will update this document as required.

1.2 Background

Under the EP Act, the EPA is required to consider social surroundings to the extent to which they directly affect or are affected by physical or biological surroundings. This may include impacts to ACH values through physical ground disturbance, changes to culturally significant ground or surface water resources, significant dust emissions received at ACH places, ecological impacts to culturally significant flora and fauna (such as flora or fauna used for bush tucker or teaching), or significant visual impacts to ACH cultural landscapes.

The EPA considers many effects to ACH may be mitigated by the **AH Act 1972 processes** which damage or alter **Aboriginal sites**¹, provided those processes are likely to result in avoidance or minimisation of harm to those sites. This will be evaluated on a case-by-case basis. Where AH Act 1972 processes are not reasonably likely to meet the EPA's objectives for social surrounding and ACH values, such as the AH Act 1972 does not apply to a particular place or impact, an EPA assessment may still be required.

¹ As defined under the AH Act 1972 section 4 and section 5.

2 Context

2.1 What is Aboriginal cultural heritage?

Aboriginal people have lived on this land for more than 65,000 years and in doing so have developed a living culture that is bound in tradition and manifested through, among other things, familial connections, languages, stories, songs, spiritual beliefs and practices, knowledge, art, sentiment and through the skilled adaptation of resources provided by the land and water.²

For the purpose of this document, Aboriginal cultural heritage (ACH) means the tangible and intangible elements that are important to the Aboriginal people of the state, and are recognised through social, spiritual, historical, scientific or aesthetic values, as part of Aboriginal tradition. It includes Aboriginal places, objects and cultural landscapes.

The EPA recognises that ACH has a range of different values for Aboriginal people which may change over time and that Aboriginal tradition includes both living and historical values.

Note: ACH includes Aboriginal sites under the AH Act 1972, but may also include other places and values - see section 4 of this Guidance for examples.

2.2 Environmental considerations

The EPA's objective for the social surroundings environmental factor is, *"To protect social surroundings from significant harm"*.

In order for the EPA to assess whether this objective is likely to be met and whether a proposal is likely to have a significant impact or effect on ACH values, the EPA may have regard to matters for Consideration of Significance, as specified in the EPA's [Statement of environmental principles, factors, objectives and aims of EIA](#).

When considering the likely effects of a proposal on ACH, the EPA will give consideration to the following:

1. The extent to which impacts to ACH values are directly³ affected by impacts to physical or biological surroundings.
2. The extent to which the harm to ACH is significant, by taking into account the nature of the ACH, and the extent of impacts to it.
3. The extent to which the AH Act 1972 processes can mitigate impacts to ACH which are significant, and whether the EPA's objective for the social surroundings environmental factor is likely to be met for the proposal. The EPA considers that in many cases, the AH Act 1972 processes that apply to potential damage or alteration of Aboriginal sites may meet the EPA objectives for those sites, where those processes are likely to require avoidance or minimisation of harm. This will be evaluated on a case-by-case basis.
4. The places where, and impacts to, ACH that may be affected by a proposal. This includes places where ACH is likely to be significantly impacted through impacts to physical or biological surroundings. These places may be outside Aboriginal sites or consent areas to which the AH Act 1972 applies, and may include off-site places. Aboriginal sites and other ACH places may also be subjected to impact types that the AH Act 1972 does not apply to. See section 4 of this Guidance for examples of places where, and impacts to, ACH which may be affected by proposal impacts to physical or biological surroundings.

² Section 6 of the *Aboriginal Cultural Heritage Act 2021* Management Code (now repealed).

³ See *Coastal Waters Alliance of WA v EPA* (1996) 90 LGRA 136 for examples of the type of effects to social surroundings which are not direct.

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5. The extent to which the EPA can recommend reasonable conditions to protect ACH from significant impact, such as conditions which establish avoidance areas, or require the proponent to achieve environmental outcomes which protect significant ACH values. The EPA cannot usually recommend conditions which require proponents to obtain the consent of or reach agreements with, or provide funding or compensation to, any specific third parties, including Aboriginal people.⁴

3 Information requirements

Proponents should refer to the EPA's [EIA Procedures Manual](#) for the information required for proposals at the various stages of assessment. In particular:

- **Referral information:** The EPA usually needs the information outlined in sections 3.1–3.3 of this Guidance to decide whether or not to assess a proposal due to its likely impacts on ACH as part of the social surroundings environmental factor.⁵
- **Assessment information:** If ACH is being assessed, the information outlined in sections 3.1–3.3 of this Guidance is needed to assess ACH and consider whether reasonable conditions should be recommended.⁶

The EPA usually requires the following information as part of a Social Surroundings – Environmental Impact Assessment Statement for ACH values report.

Proponents are encouraged to consider ACH values that are likely to be affected by the physical or biological impacts from the activity at all stages of their proposals. In particular, early and broad engagement with Aboriginal people about this provides a more holistic view of impacts to ACH values through the consideration of country, and provides a greater opportunity to protect ACH which may be affected by physical or biological surroundings. Proponents are encouraged to engage at the same time about their obligations under the AH Act 1972, as this is likely to result in a more efficient process, and to provide information relevant to sections 3.1-3.3 of this Guidance.

Proponents should refer to the EPA's EIA Procedures Manual, the Statement of environmental principles, factors, objectives and aims of EIA and the [Environmental Factor Guideline - Social Surroundings](#) for further guidance on usual EIA processes which also apply.

3.1 ACH impacts where harm is avoided or minimised by the AH Act 1972

Are AH Act 1972 processes likely to mitigate the potential impacts to ACH values and meet the EPA's objective for the social surroundings environmental factor?

The proponent should provide a summary of the following information for the EPA's consideration:

- a short description of the scope (proposal elements or activities within) and the boundary of the area likely to be subject to AH Act 1972 processes, within which Aboriginal sites will be considered;
- how the AH Act 1972 processes will consider ACH. The EPA understands this may often be restricted to considering direct physical disturbance to Aboriginal sites, but will consider information which shows the AH Act 1972 processes will consider other physical or biological impacts too;
- likely outcomes of the AH Act 1972 processes (in particular, whether the AH Act 1972 is likely to result in harm avoidance, or where minimisation conditions are likely for any consent to authorise harm to Aboriginal sites); and

⁴ Contractual arrangements with specific third parties, including Aboriginal people, may be proposed by a proponent as part of meeting their obligations for environmental management, monitoring or offsets, but cannot usually be required by Part IV EP Act conditions.

⁵ Section 38G of the EP Act.

⁶ Section 44 of the EP Act.

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- conclude whether - for what impacts in what places – application of the AH Act 1972 processes to the proposal are likely to result in consistency with the EPA’s objective to protect social surroundings from significant harm. See the EPA’s [Interim Guidance – Taking decision-making processes into account for EIA](#) for further guidance on information to support a conclusion.

Proponents are encouraged to refer to any AH Act 1972 guidelines for guidance on what places, impacts and harm avoidance and minimisation measures are considered by the AH Act 1972.

Note: The standard of information provided should allow the EPA to be reasonably satisfied that the AH Act 1972 processes can mitigate the potential impacts of the proposal on ACH values which are subject to the AH Act 1972. If not, the EPA is likely to request the information outlined in 3.2 of the Guidance.

3.2 ACH impacts not considered by AH Act 1972

- Outside the area likely to be subject to the AH Act 1972 processes, are there places where the proposal is likely to have a physical or biological impact which is likely to cause significant harm to ACH values?*
- Inside the area likely to be subject to the AH Act 1972 processes, are there physical or biological impacts which may cause significant harm to ACH values which the AH Act 1972 will not apply to?*

The proponent should provide the following information about these places and impacts for the EPA’s consideration:

- the physical or biological impacts and whether they are “on-site” or “off-site” from the area likely to be subject to the AH Act 1972;
- the ACH values likely to be significantly harmed by those impacts, and whether they are likely to be Aboriginal sites under the AH Act 1972;
- the extent and duration of the impacts on ACH, taking cumulative effects into account;
- the proposed avoidance and mitigation of impacts to ACH;
- residual impacts to ACH values; and
- the proposed environmental outcomes to protect ACH values which are likely to be significantly harmed by a physical or biological impact from the proposal.

Proponents are encouraged to obtain and provide targeted information to meet the specific requirements of section 3.2 of this Guidance, rather than providing the EPA with detailed Aboriginal site investigations or surveys for all areas.

3.3 Reasonable steps to consult

Were reasonable steps taken to consult with relevant people about physical or biological impacts likely to cause significant harm to ACH values?

Proponents should provide information about the following reasonable steps for the EPA’s consideration:

- identification of who should be consulted by the proponent. In the event of any dispute about this, the EPA will usually expect consultation with native title parties⁷ relevant to an affected ACH place, and other parties identified by the Department of Planning, Lands and Heritage for this purpose;
- provision of sufficient information to people to allow for their informed consultation about the proposal and its physical or biological impacts on ACH values;

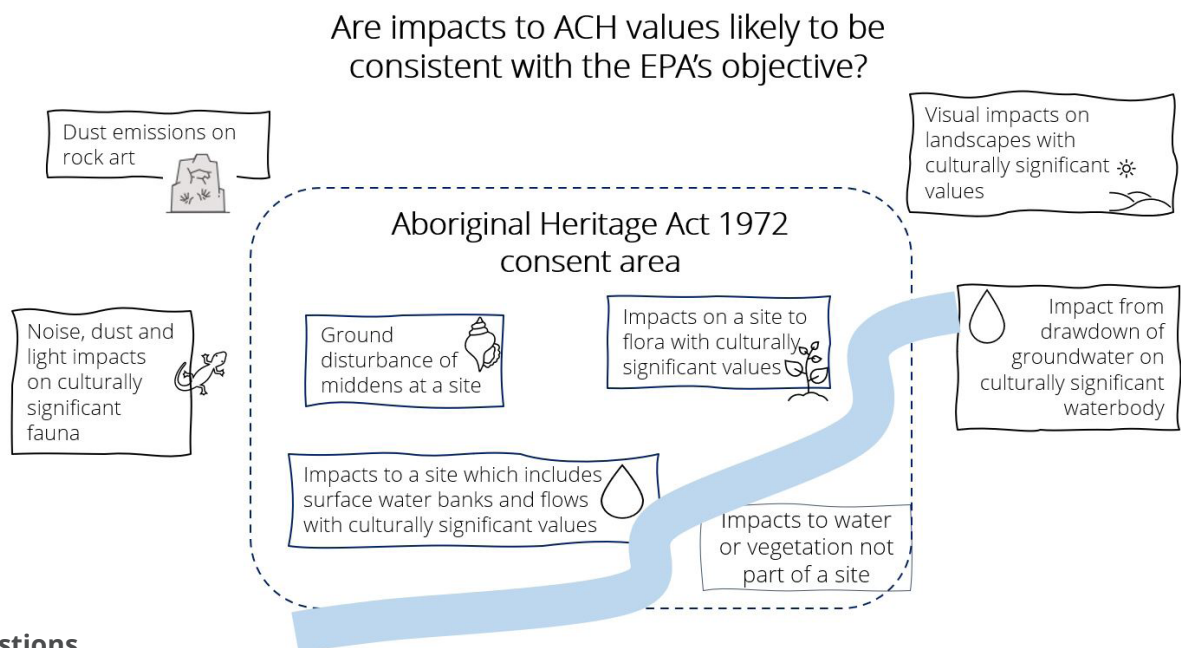
- provision of information about proposed avoidance and mitigation;
- provision of a reasonable opportunity for people to state and explain their position about ACH values, physical or biological impacts on those values, and proposed avoidance and mitigation. Including genuine attempts at contact and reasonable steps to follow up;
- the outcome of the reasonable steps to consult (for example, avoidance areas and environmental outcomes which will protect ACH from significant harm); and
- a summary of the consultation process and outcome, as it relates to a proposal's physical or biological impacts on ACH values.

Proponents are also encouraged to refer to any AH Act 1972 guidelines for guidance on who and how to consult with Aboriginal people.

4 Examples of ACH places and impacts

A visual example of types of ACH places and impacts, including key questions for considering whether the AH Act 1972 processes may mitigate the potential impacts on ACH and are likely to meet the EPA's objective for the social surroundings environmental factor is included below.

Note: the proposal is hypothetical and for example purposes only; each proposal will be considered on a case-by-case basis.



Key questions

What is the physical or biological

impact? (direct? indirect? cumulative?)

Is there likely to be a significant effect on ACH values?

What protection is likely provided under AH Act 1972, including:

- 1) is the effect on an Aboriginal site?
- 2) is the impact type considered under the AH Act 1972?
- 3) is there protection likely under the AH Act 1972, e.g. avoidance, minimisation?

Figure 1: Visual representation of hypothetical environmental impact assessment as it relates to ACH.

⁷ As defined in section 18 of the AH Act 1972.

5 Conditions

The following is provided to outline the type of conditions that may be considered to ensure the EPA's objective for social surroundings environmental factor can be met.

5.1 Outcome-based conditions

Outcome-based conditions are the preferred condition type recommended by the EPA as they provide clarity of the environmental values to be protected, enhanced, conserved and maintained, see the EPA's [Interim Guidance on Environmental Outcomes and outcomes-based conditions](#).

If the EPA considers the proposal may be implemented, the EPA's preference is to recommend outcome-based conditions to ensure ACH which may be directly affected by proposal impacts to the physical or biological surroundings are protected from significant harm. For example, the EPA may recommend avoidance areas to limit visual impacts on culturally significant landscapes, controls on dust emissions to limit impacts to culturally significant flora, requirements to maintain streamflow of culturally significant water courses, or limits on groundwater drawdown of culturally significant water sources.

The EPA may also recommend conditions which require reporting against achievement of environmental outcomes to Aboriginal people, where appropriate.

5.2 Objective-based conditions

The EPA would not usually recommend objectives-based management plan conditions, unless outcomes-based conditions are not practical. This means an ACH Management Plan would not usually be recommended as a condition under Part IV of the EP Act unless outcomes-based conditions are not practical.

The EPA understands there may be an ACH Management Plan agreed as a result of the AH Act 1972 or native title processes and outcomes, and encourages proponents and the relevant Aboriginal peoples to agree to these to deal with ACH that may be affected by proposal impacts to physical or biological surroundings.

If an environmental management plan dealing with ACH is proposed by a proponent or required by the EPA to ensure the social surroundings environmental factor is met, the EPA's [Instructions on how to prepare Environmental Protection Act 1986 Part IV Environmental Management Plans](#) can be referred to by proponents for further information.

6 Definitions

Word, phrase or acronym	Definition for the purpose of this Technical Guidance
Aboriginal site(s)	As defined under the <i>Aboriginal Heritage Act 1972</i> section 4 and section 5.
AH Act 1972 processes	The processes outlined in the <i>Aboriginal Heritage Act 1972</i> (AH Act 1972).
Assessment information	Referral information (section 38 and where applicable, section 38A and/or section 39A(2)(b) and/or additional information (section 40)) of the <i>Environmental Protection Act 1986</i> .
Referral information	The information provided at referral (section 38) and, where applicable, from requests for further information (section 38A) and/or from information derived from the EPA's investigations and inquiries (section 38G(3)(c)) of the <i>Environmental Protection Act 1986</i> .
Social surroundings	In the case of humans, the reference to social surroundings in the definition of environment (section 3) is a reference to aesthetic, cultural, economic and other social surroundings to the extent to which they directly affect or are affected by physical or biological surroundings (refer to section 3(2) of the <i>Environmental Protection Act 1986</i>).

