UDIA WA are pleased to share the below responses from the Department of Planning Lands and Heritage in regards to the Aboriginal Cultural Heritage Act 2021.

The below advice has been provided directly from DPLH, in response to questions raised by attendees at UDIA WA's industry breakfast event on 27 April 2023 and UDIA WA's follow up briefing session hosted with Engineers Australia on 27 June 2023.

For any further information, including queries about specific scenarios or projects, contact DPLH at aboriginalheritage@dplh.wa.gov.au

ABORIGINAL CULTURAL HERITAGE ACT 2021

The *Aboriginal Cultural Heritage Act 2021* came into effect on 1 July 2023.
The responses below refer to regulations and guidance documents that support the Act.
These documents and more information can be found online at wa.gov.au/ach-act.

1. **Can any form of disturbance, such as for geotechnics test pits, be done without a DD**Only exempt activities do not require a DDA. Where one is required, the level of DDA varies with the level of ground disturbance of the activity. Approval is only required where there is a risk of harm to Aboriginal cultural heritage.

   Tier 1 - Low amount of activity (no approval)

   Where there is no, or minimal level, ground disturbance, but where there is a risk of harm to Aboriginal cultural heritage, the activity may proceed providing all reasonable steps possible to avoid or minimise harm to Aboriginal cultural heritage.

   Tier 2 - Medium activity (permit required)

   For activities involving low-level ground disturbance, the Act establishes a permit system based around due diligence and application to the Aboriginal Cultural Heritage Council.
   A nominal $100 administrative fee will apply for a permit.

   Tier 3 - High level of activity (management plan required)

   Activities that involve moderate to high level ground disturbance will require an Aboriginal Cultural Heritage Management Plan to be negotiated with the relevant Aboriginal parties.

   This includes a new mine site, deep excavation or land clearing, subdivisions or major construction projects.

   Tier 3 activities result in moderate to high ground disturbance that may cause harm to Aboriginal cultural heritage and requires a Due Diligence Assessment that will likely result in an agreed Management Plan developed in consultation with a Local Aboriginal Cultural Heritage Service or Native Title organisation.

As a first step, all proponents should check to find Aboriginal cultural heritage in their area.

If Aboriginal cultural heritage is present, a DDA should be undertaken to determine if an authorisation, permit or management plan is required. Undertaking a DDA in accordance with the Code may be used as a defence to the charge of an offence that an activity has harmed Aboriginal cultural heritage.

Proponents need to ensure that they are compliant with the new legislative requirements.

The Aboriginal Cultural Heritage Management Code sets out how DDAs should be undertaken.

2. Does 'Subdivision of land' include strata title and community title subdivision? Are developments of more than 5 apartments (or "lots" as build-strata) on less than 1,100sqm exempt?

Subdivision of land that results in the creation of no more than five planning and development lots or strata or community titles lots, each of which is less than 1,100sqm, is an exempt activity. Any residential development on subdivided lots less than 1,100 sqm will also be exempt.

3. For exempt activities, how is 'like for like' defined?

Refer Schedule 1, item 8 of the Regulations which sets out the definition of 'like for like'.

- **Is height a material consideration if the level of ground disturbance is the same?**
  Yes, the height of a development could have an impact on the aesthetics or spiritual value of an Aboriginal cultural heritage place.

- **Can the like for like exemption extend to the area surrounding the project area?**
  If the activity is like for like, it needs to be in an area that results in no greater disturbance than the existing land use or development. The area surrounding the project area may fall within that description, however, if not, a Due Diligence Assessment should be undertaken.

4. Why has 'like for like' been defined this way? The definition of 'area' and 'land' under the Act and LAA would seem to allow a broader application.

Definitions in the Act and Regulations were drafted with consideration of feedback industry stakeholders and Aboriginal people and were prepared by Parliamentary Council's Office based on that feedback. It focuses on the actual existing disturbance.

5. If a s18 was not required (eg. due to no registered cultural sites on the current database or surveys not identifying any ACH) for a development or multi-stage project that is already underway, can it proceed without a DDA or further approvals?

In many instances it can, however it is recommended advice is sought from the Department of Planning, Lands and Heritage on a case-by-case basis.

6. Can surveys older than 1 January 2013 that showed no ACH be relied upon for ongoing residential subdivisions, or does work need to stop until a DDA is undertaken?

Proponents are advised to check the Aboriginal Cultural Heritage Management Code and the Survey Guidelines. Full compliance would mean meeting all of the requirements set out in Section 2 of the Survey Guidelines which includes that it has been informed, agreed to or endorsed by the relevant Aboriginal party, subject to the Aboriginal party being the Aboriginal party as at 1 July 2023.

The Aboriginal Cultural Heritage Inquiry System is a high-resolution mapping and data search option that provides information on known Aboriginal cultural heritage across Western Australia. It is continually updated as new information about Aboriginal cultural heritage becomes available.

7. If there is an existing s18 in place for a site, can the development proceed without the need for a new approval or any further action?

Yes, providing there are no changes or amendments to the original project. If the proponent has any queries regarding their section 18 consent, they can contact the Department.

8. Who can produce Aboriginal Cultural Heritage Management Plans?

Management plans are developed through collaborative agreement reached with the proponent and the Local Aboriginal Cultural Heritage Service, when established, or the relevant Native Title organisation.

A Management Plan template will need to be populated for an application to the Aboriginal Cultural Heritage Council for the approval or authorisation. This can be undertaken on the Department's new ICT system, ACHknowledge.

9. If there is no LACHS, and a PBC or other Native Title group is performing the role and functions of the LACHS, are they bound by the prescribed timeframes and service fees set out in the guideline documents?

Yes. The timelines are set out in the regulations and all parties must adhere to them. Only a LACHS can charge fees.

10. What is the timeframe for the Minister to determine a recommended authorised plan in the event of a disagreement?

The Prescribed Timeframes state that – where the parties have not been able to agree that Aboriginal cultural heritage is of State significance, and the Aboriginal Cultural Heritage Council makes a recommendation to the Minister for Aboriginal Affairs – the Council has 90 days to make a recommendation to the Minister. There isn't a statutory timeframe for the Minister to make a decision.

11. Is there a 'chain of responsibility' obligation on consultants and contractors to ensure Aboriginal cultural heritage requirements have been met or is the onus solely on the proponent?

The proponent is ultimately responsibility for ensuring that all Aboriginal cultural heritage requirements have been met in accordance with the new legislation. It is up to the individual parties to determine who should be the proponent.

12. Do approved multi lot green field development approvals, with no known Aboriginal cultural heritage, need to undertake due diligence prior to construction?

All land users need to comply with requirements set out in the *Aboriginal Cultural Heritage Act 2021* (Act) to determine how to proceed. A DDA must be undertaken to assess whether:

- the proposed activity is in a Protected Area
- the tier of activity
- whether Aboriginal cultural heritage is located in the area
- whether there is a risk of harm to Aboriginal cultural heritage, and
- the Aboriginal persons to be notified or consulted (dependent on tier of activity) [see s. 102 of the Act].

Exempt activities as set out in the Act do not require a DDA or any kind of approval. However, exempt activities are not permitted within a Protected Area (unless permitted by the relevant regulations or conditions).

Undertaking a DDA in accordance with the Aboriginal Cultural Heritage Management Code may be used as a defence if an activity harmed Aboriginal cultural heritage. If a DDA indicated no risk of harm, work can proceed as planned, subject to all reasonable steps possible being taken to avoid or minimise the risk of harm e.g. where ACH is subsequently identified while carrying out the activity.

13. How ready are the LACHS to commence and deal with the wave/backlog of work on 1 July?

While Local Aboriginal Cultural Heritage Services – or LACHS – are a key feature of the new Act, they are not essential for its operation. LACHS will be existing Aboriginal organisations, with a particular focus on native title parties including Regional Corporations (RCs) and Prescribed Bodies Corporate (PBCs). These organisations, as well as Native Title Representative Bodies where there isn't a native title party, will be the primary contact point for proponents.

Under the A*boriginal Heritage Act 1972* (1972 Act), proponents were required to seek a Section 18 approval where there was a risk of harm to Aboriginal cultural heritage. Many are therefore already engaged with a range of Aboriginal organisations. While the new Act changes the type of, and process for getting, approval; it doesn't impose a new obligation in terms of requiring approval to impact Aboriginal cultural heritage.

The State Government has established the LACHS Readiness Grants program to assist Aboriginal organisations prepare a readiness report to become a LACHS and identify any capacity building needs. Grants of up to $80,000 are being made available and interest in the program has been strong.

Aboriginal organisations that are designated a LACHS by the Aboriginal Cultural Heritage Council (Council) will receive a further one-off grant of $200,000 to assist with capacity building requirements and, when established, up to $300,000 each year to support their roles and functions, including responding to requests from proponents.

14. Do active infrastructure projects with native title agreements in place, but no Section 18, need to have management plans?

The obligation to obtain an approval where there is a risk of harm to Aboriginal cultural heritage is the same under the new Act as it was under the 1972 Act. A native title agreement did not replace the need for a Section 18 consent from the Minister for Aboriginal Affairs (Minister) under the 1972 Act; nor will it replace the need for approval under the new Act.

An Aboriginal Cultural Heritage Management Plan or Permit is only required where there is a risk of harm.

If the project presents no potential risk of harm to Aboriginal cultural heritage, no approval was required under the 1972 Act, and no approval will be required under the new Act.

Where a Section 18 consent has been granted, that approval will continue to be valid. Developers who are confident they have complied with the existing laws will have also complied with the new laws. Any developers who are unsure should contact the Department of Planning, Lands and Heritage (DPLH) to work through their compliance, noting the Department's commitment to an Education First approach.

15. Is a desktop assessment seen as sufficient due diligence for a site that has been previously disturbed?

A range of activities are exempt under the new Act and Regulations including those where there has been previous ground disturbance. They include 'like for like' activities that are undertaken within the same surface area, height and depth as an existing use as well as maintaining existing infrastructure and driving across previously disturbed ground. These exemptions do not exist under the 1972 Act.

The Code sets out the steps required for a DDA. In some instances, a desktop assessment may be sufficient.

16. Is it sufficient to use the MNG Access online mapping service Aboriginal heritage area layer as due diligence on whether you are developing on sensitive land?

For the purposes of this Act, proponents are required to undertake a DDA in accordance with the Code. The Department of Planning, Lands and Heritage has a high-resolution online mapping and data search option, the Aboriginal Cultural Heritage Inquiry System, which provides comprehensive information about the location of Aboriginal cultural heritage and, where possible, contact details of the relevant organisations.

17. Is it expected that decision makers (local governments, JDAP, WAPC etc) could hold up planning approvals if an Aboriginal Cultural Heritage Management Plan is not approved? Perhaps under cl 67 of deemed provisions?

No, the Act doesn't make any reference to the planning approvals process or prescribe a role for local government. Approval or impact or harm Aboriginal cultural heritage will be required under the new Act, as they are under the 1972 Act, as a separate process to the planning system.

The Department of Planning, Lands and Heritage acknowledges the role of local governments as an advisory service on planning and development matters and has worked closely with the Western Australian Local Government Association to ensure that local government officers and decision makers are aware of the Act and its requirements for land users.

Regulations that support the Act prescribe timeframes for all parties in relation to the process for permits and management plans. These timeframes will provide certainty for developers and allow approvals processes to be programmed accordingly.

18. How will "reasonable steps to mitigate risk of harm to heritage" be defined for tier 1 activities and who will define these steps?

The Code sets out the DDA requirements for Tier 1 activities, requiring all reasonable steps to avoid or minimise harm to Aboriginal cultural heritage.

As set out in the Code, reasonable steps may include where there is an alternative location or a feasible alternative method to carry out the activity that will avoid or minimise harm (provided that a DDA has been undertaken that covers that alternative method or location).

If the person determines that there is no risk of harm, they may carry out the activity without obtaining authorisation. They must take all reasonable steps possible to avoid or minimise the risk of harm being caused to Aboriginal cultural heritage, including new Aboriginal cultural heritage of which they become aware after undertaking the DDA.

19. If the parent development /subdivision has an approved Aboriginal Cultural Heritage Management Plan but has delivered/sold lots above 1100sqm, do you need a further plan for these lots?

Development carried out on a subdivided parcel of land is exempt if a residential building is or will be located on the land, the subdivision was the subject of a management plan and the development is consistent with the subdivision.

In addition, subdivision of land that results in the creation of no more than five lots, each of which is less than 1100sqm, is exempt.

20. How long will Aboriginal Cultural Heritage Management Plans be valid for?

The period for which the management plan will have effect will be determined by the parties where they can agree. Where the parties can't agree, the Minister will make that decision having regard to the views of both parties.

21. With existing multi-staged projects that are underway, will an Aboriginal Cultural Heritage Management Plan be required and what transitional arrangements are in place?

Where there is an existing risk of harm to Aboriginal cultural heritage, then a Section 18 consent should have been obtained under the former 1972 Act. Where that has not occurred, an approval will be required under the new Act if there is a risk of harm to Aboriginal cultural heritage (other than for exempt and Tier 1 activities).

Section 18 consents for which notice was given before 23 December 2021 (historical Section 18 consent) will be expire after 10 years from 1 July 2023, unless the Minister decides that the purpose for which the consent was granted has been substantially commenced. The Regulations set out how this can be demonstrated. It includes where the activity is part of a larger project for which a consent has been obtained.

Section 18 consents for which notice was given on or after 23 December 2021 are valid for five years.

22. What is local governments role in the approval process of applications and its consideration of Aboriginal Cultural Management Plans?

Local government does not have an approval role under the *Aboriginal Cultural Heritage Act 2021*.

23. What is the timing for LACHS to be established and what process will proponents need to follow in the interim/absence of these?

Sections of the Act and the required regulations have been put in place to allow the Council to designate LACHS. It is for Aboriginal organisations to determine if, and when, they wish to submit an application for designation.

The Act aligns with the Commonwealth *Native Title Act 1993* to reflect the cultural authority established through the native title process in giving priority to PBCs and RCs if they choose to apply to be a LACHS. In the absence of a LACHS, a proponent will need to engage, including in relation to agreement making on management plans for Tier 3 activities, with the PBC or RC (where they exist). In other instances, a proponent will need to engage with knowledge holders and/or the native title representative body.

24. Are there prescribed timeframes for the approval of management plans and permits?

Yes. The prescribed timeframes are set out in the Regulations.

25. How do proponents manage ad-hoc operational works that cause harm to ACH? Will a management plan need to be developed every time?

The approval required is dependent on the type of activity and whether there is a risk of harm to Aboriginal cultural heritage. Proponents should refer to the exempt activities and Activity Tiers set out in the Act and Regulations and, if required, undertake a DDA to determine if there is a risk of harm. Only Tier 3 activities that may harm Aboriginal cultural heritage require a management plan. The parties can agree the activities and timeframe to which a management plan applies.

26. Will the LACHSs represent all community and family groups required to be consulted?

LACHS establish a single point of contact to provide certainty and efficiency for proponents and other stakeholders as to the right people with whom to engage for a set area. Aboriginal organisations will need to satisfy the Aboriginal Cultural Heritage Council on a range of criteria to be designated a LACHS including having sufficient support of the local community. The Council has published a designation framework for LACHS.

27. In the event a developer is unable to source a LACHS for advice/consultation, or if there is divergent views on heritage from LACHS, what is the recourse?

The Act and Consultation Guidelines set out the process for consultation and negotiation of a management plan. Where a LACHS has been designated, then the proponent only needs to engage with the LACHS. It will be for the LACHS to provide the relevant advice to the proponent.

Both the Act and the Consultation Guidelines establish timeframes within which the various processes much be undertaken. In the event those timeframes are not met, a proponent can continue in accordance with the process set out.

28. What are Protection Areas and how are they defined? Do they have the same protections as Registered Sites?

Like the 1972 Act, the Act recognises that some Aboriginal cultural heritage is of outstanding significance to Aboriginal people. Subject to a process set out in the Act, such Aboriginal cultural heritage can be declared a Protected Area, the purpose of which is to provide the highest level of protection from activities that may harm Aboriginal cultural heritage.

Once a Protected Area is declared, activities that may harm Aboriginal cultural heritage cannot be authorised under Part 6 of the Act to be carried out. Only those activities permitted by the regulations and conditions that apply to the specific Protected Area are permitted. Before an area can be declared a

Protected Area, the Council is required to undertake a consultation process, including with landholders and public authorities.

29. The surveyors required to complete due diligence are already at capacity – how should businesses proceed to ensure continuity of supply of building materials?

As per the current processes under the 1972 Act, proponents will need to engage with the relevant Aboriginal organisations, which may include undertaking a survey. Unlike the current 1972 Act, the new Act and Code now identify when a survey may or may not be required.

30. Who will be responsible for enforcing compliance with management plans?

Management plans will need to include provisions relating to the protection and management of Aboriginal cultural heritage. This may include prior to, during, and at the completion of the activity. The parties will be able to agree to the terms of a management plan. Where the parties cannot agree, the Minister will determine the terms.

The parties will need to act in accordance with a management plan. As under the 1972 Act, DPLH will undertake investigations where it is alleged there is a breach of the Act, including a breach of the terms of a management plan.

31. What have you learnt and built in from the pain when the Victorian legislation came in?

Relevant legislation and experiences in other jurisdictions were considered as part of the process of developing the Bill. A comprehensive consultation process was undertaken with a wide range of stakeholders in relation to the Act, as well as the three-phase co-design process for the key regulations and statutory guidelines.

32. How does DPLH view the role of local government in facilitating best practice management/design when not aligned with LG policies?

As referred to above, the Act does not establish a role for local government.

33. Will there be a statutory approval period for management plans?

Yes. The Regulations set out a range of statutory timeframes, including in relation to both permits and management plans

34. What will be the fee structure for assessment and approval of management plans?

The LACHS Fees Guidelines set out the fees a LACHS can charge for services it provides in connection with its functions, including the development of a management plan. Only a LACHS can charge fees under the Act.

The Government has established a range of application fees for permits and management plans. These are set out in the *Regulations* that were published in the Government Gazette on 23 June 2023. More information on fees and charges can be found online.

35. Consultation is outlined to take 6 months, but there's no guidance on what happens if the LACHS cannot be contacted. What then?

The Consultation Guidelines set out the steps that a proponent needs to undertake, including the relevant timeframes.

36. How will maintenance work in public infrastructure be managed, which might be impactful, like dams, shipping channels, ports, roads, etc

Unlike the 1972 Act, the Act and Regulations establish a range of exempt activities for the first time. These include maintenance of existing infrastructure (that does not involve disturbance to ground beyond that which was disturbed during the construction or earlier works in relation to, the infrastructure) and 'like for like' activities (see Schedule 1, items 6 & 8 of the Regulations).

37. How can proponents do the due diligence assessment now without the ACH directory being available?

The Aboriginal Cultural Heritage Inquiry System is the online, fit-for-purpose digital platform providing access to a range of Aboriginal cultural heritage information, locations and surveys.

38. In Victoria CHMPs can't be lodged until sites are registered by the Department, who are now taking 3-4 months to register site. How will this be prevented.

The Code sets out the DDA process that is required to be carried out. The DDA is undertaken at a point in time for the activity or activities in question and provides a defence to the charge of an offence that an activity harmed Aboriginal cultural heritage [s. 98]. The Act establishes the processes and statutory timeframes that need to be undertaken in relation to a Plan, including the consultation process and timeframes as per the Consultation Guidelines.

39. How is cultural heritage significance best assessed in areas without a native title determination (e.g. Kalgoorlie)?

The Act and Code establish the processes that need to be followed, including where there isn't a LACHS and there hasn't been native title determination. This includes consultation (for Tier 3 activities) with registered claimants and knowledge holders (as per the Knowledge Holder guidelines) or, in the absence of both of these, the Native Title Representative Body.

40. Will taking surface and groundwater samples for monitoring be affected (not ground disturbing activity), given the strong cultural connections to water?

Activities impacting only water are a tier one activity, meaning they can proceed subject to not being in a protected area and the proponent taking all reasonable steps possible to avoid or minimise the risk of harm being caused to Aboriginal cultural heritage.

41. 2021 Act refers to s18 approvals under 1972 Act lasting 10 years. What should a proponent do if it has a s18 approval but has not substantially commenced?

A historical section 18 consent is one where notice was given to the Aboriginal Cultural Material Committee (ACMC) prior to 23 December 2021. Historical Section 18 consents issued under the 1972 Act will expire at the end of 10 years from 1 July 2023, unless the Minister decides that the purpose for which the consent was given has been substantially commenced [s. 325(2)]. The Regulations set out the criteria for determining whether the purpose has been substantially commenced.

42. How do proponents manage changes to the legislation and the outdated Noongar Standard Heritage Agreement?

Existing and future heritage agreements under the South West Native Title Settlement are negotiated between two third parties, being the proponent and the Prescribed Bodies Corporate (PBC) or Indigenous Land Use Agreement (ILUA) group. However, the State Government is considering proposed minimal amendments to the Standard Heritage Agreement templates.

Aboriginal cultural heritage requirements remain in place at the present time. Proponents will be notified of the review and any implications for existing heritage arrangements.

Proponents will need to act in accordance with any Standard Heritage Agreement in accordance with the terms of that agreement. Like any agreement, it is open to the parties agree to amend its terms. Proponents will also need to comply with the Act from 1 July 2023, in the same way they currently need to comply with the 1972 Act.

43. What are the requirements for scheme amendments and structure planning?

The Act only applies to ground disturbing activities.

44. LACHS will be a monopolistic business and decision maker, has the ACCC been involved?

Where designated by the Council, a LACHS will undertake the functions set out in the Act. They are not a decision-making body.

45. At what point of the planning process should the due diligence be undertaken? At what point should the management plan be approved?

It is recommended a DDA be undertaken as early as possible, particularly for Tier 2 and Tier 3 activities, as part of the planning to carry out the activity, including to allow for the relevant statutory timeframes for the negotiation of a management plan. It is up to an individual proponent to determine when it should commence the process in the context of any other approvals that may be required.

46. Is there an amnesty period for LACHS and developers for 6 months from 1 July to enable issues/problems with implementing the new act to proceed?

The Act came into effect on 1 July 2023. The Act allows a six-month period to deal with Section 18 notices that have been lodged prior to this date.

47. Will LACHS manage no go areas (important sites)? Will these areas be transferred as a Reserve or some other land instrument? How will they be maintained?

The Act allows for the declaration of protected areas, being areas of outstanding significance. Activities that may harm Aboriginal cultural heritage cannot be authorised under Part 6 of the Act to be carried out within a Protected Area. Unlike the situation under the 1972 Act which exclusively vests protected areas in the Minister, Aboriginal organisations will be able to manage these areas.

The parties to a management plan will be able to agree how individual Aboriginal cultural heritage should be protected and managed, including any heritage that should not be impacted.

48. What are the approval timelines for Management Plans with LACHS? Will the council decide for a LACHS if approvals stall?

The Regulations prescribe the notification period for a permit for Tier 2 activities and the negotiation period for a management plan for Tier 3 activities. The Consultation Guidelines set out the timeframes for the consultation process relating to Tier 3 activities.

If the parties are unable to agree a management plan, including within the statutory timeframes, a proponent will be able to apply to the Council for the plan to be authorised by the Minister. Statutory timeframes also apply to this process.

49. What responsibilities do sub-contractors to land developers have in DD and the creation of Aboriginal Heritage plans?

A proponent who is proposing to undertake a ground disturbing activity (which is not an exempt activity) will need to have the relevant authorisation. It will be up to individual parties as to how they want to manage the process of obtaining that authorisation, including whether it should be by a contractor/sub-contractor.

50. How does the framework impact on Aboriginal businesses with existing capability in culture and heritage.

Individual Aboriginal organisations can apply to become a LACHS with the Act gives priority to RCs and PBCs. A LACHS must be an existing corporation established under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The Act sets out a range of requirements for designation including the ability to provide LACHS functions such as the ability to identify and preserve Aboriginal cultural heritage and the ability to engage and negotiate with proponents. A LACHS will be able to charge a fee for service in accordance with a fee structure that is consistent with the LAHCS fees guidelines and approved by the Aboriginal Cultural Heritage Council at the time of designation.

51. Will all the LACHS across the State be listed before 1 July? What happens if the LACHS aren't ready on 1 July?

As referred to above, the Act is not reliant on the establishment of LACHS. The Act gives priority to RCs and PBCs and there has been strong interest in the readiness grant program that has been set up to assist

Aboriginal organisations determine their readiness to take on the role of a LACHS. Where there isn't a LACHS, proponents will need to seek to negotiate a management plan with the relevant native title party or NTRB.

52. Are the LACHS to be established by geographical area? I.e. they specialise in a certain area? How do we know which LACH group to engage?

A LACHS will need to identify the specific geographic area for which it seeks designation. It is anticipated that this will relate to native title areas for PBCs and RCs however it will be up to the individual Aboriginal organisation to determine. There can only be one LACHS per geographic area. LACHS will be identified on the DPLH website once designated.

53. Are infrastructure works within existing road reserves affected by the new legislation.

As per the 1972 Act, the Act applies to activities that risk harm to Aboriginal cultural heritage.

Unlike the 1972 Act, the new Act establishes a range of exemptions including maintenance of existing infrastructure and 'like for like' activities. Activities that fall outside these parameters and the other exemptions will need to go through the DDA process set out in the Code, including determining the tier of the activity.

54. Does this process apply to city & suburban lots > than 1100sqm ie say a 3000sqm newly zoned apartment site that had accommodated 3 ~1950 houses (ie Nedlands)

Residential development (that is not a like for like development) on lots greater than 1100sqm will require a permit if there is a risk of harm to Aboriginal cultural heritage. A range of development activities relating to residential developments, including ancillary dwellings and other minor development activities, are exempt in alignment with the *Planning and Development (Local Planning Schemes) Regulations 2015 Schedule*.

55. Knowledge holders not part of a LACH, how can they be engaged? How will it work? If they are not in the management plan? How do you find them?

Where there is a LACHS, it will be the responsibility of the LACHS to engage with the knowledge holders. Where there is no LACHS, proponents will need to engage with the native title party and any knowledge holder, and should refer to the Knowledge Holder Guidelines.

56. The Act focuses on compliance to protect Aboriginal Culture and Heritage. What about taking that culture and heritage narrative and integrating into design?

Proponents are strongly encouraged to positively engage with the relevant Aboriginal parties in relation to any authorisations required under the Act for ground disturbing activities, which could include incorporating Aboriginal cultural heritage from a design perspective.

Where an authorisation is not required by the Act, it is open to any proponent as to how they engage with Aboriginal people or organisations as part of undertaking their project or activities and would be consistent with the objectives of the Act relating to the value of Aboriginal cultural heritage both to Aboriginal people and the wider Western Australian community and promoting its appreciation.