

Introductory

This document is produced as part of the “Appearing Places: The Methodological and Heritage Implications of Contemporary Nyungar Placemaking” ASWA Professional Development Workshop held on Friday, 25 September 2009. The processes and criteria discussed in this paper originate in the *Aboriginal Heritage Act 1972* (WA) (“AHA”).

Aboriginal Heritage Act

The purpose of the AHA as outlined in its long title is:

An Act to make provision for the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants, or associated therewith, and for other purposes incidental thereto.

The AHA is intended as a tool to protect and preserve any site or object that is of *significance to Aboriginal people, or has historical, anthropological, archaeological or ethnographic interest. The AHA provides blanket protection to Aboriginal sites irrespective of whether or not they have been previously recorded or reported. The Registrar of Aboriginal Sites is responsible under the AHA for maintaining a Register of places and objects (the Register) to which the AHA applies.

Relevant site assessment processes and criteria

There are two assessment processes under the AHA which are relevant to the present enquiry:

1. under s.18, in obtaining the Minister's consent to certain uses of the land; and
2. under s.38, the maintenance of the Register of Aboriginal Sites

Section 18 Ministerial Consents

Under the AHA the Aboriginal Cultural Material Committee (ACMC) has a number of responsibilities. Under s.18(2) it has a specific responsibility to investigate the existence of Aboriginal sites, evaluate the importance and significance of sites which are identified, and to make a recommendation to the Minister concerning his or her consent to a s.18 application.

These responsibilities are undertaken by the ACMC with the assistance of DIA officers. In relation to Aboriginal sites, DIA officers record information of places and make a recommendation to the ACMC to enable it to assess whether the AHA applies. The DIA officer recommendation is given to the ACMC which decides if a place is a site and should be protected under the AHA.

In relation to s.18(2), the ACMC effectively is required to make two separate and distinct decisions:

1. A Site Assessment Decision; determining under sections 5 and 39 AHA:
 - (a) Is the place a Site for the purposes of the Act?
 - (b) What is the importance and significance of any such Site?
2. A Consent and Condition Decision; if the place is a Site:
 - (a) Should consent be given for the purpose outlined by the applicant?
 - (b) Should there be any conditions subject to the consent?
 - (c) Should the application be wholly declined?

Site Assessment Decisions

In terms of the AHA an Aboriginal site is a place of importance and significance to Aboriginal people and to the cultural heritage of Western Australia as defined under sections 5 and 39 of the AHA. Under section 4 of the AHA, any place to which the AHA applies is an Aboriginal site.

Sites are not merely places that contain Aboriginal cultural material or are related to the beliefs of Aboriginal people; they are places that contain 'significant and important' Aboriginal cultural material or are 'significant and important' in Aboriginal beliefs. It is thus possible for a place to satisfy the definition of a site in every other respect but, other than storage places, still not be a site under the AHA because it is not important and significant.

The determinative factor is whether a place satisfies the criteria for an Aboriginal site under section 5 of the AHA.

Section 5(a) requires places to be of importance and significance and contain cultural material left by people of Aboriginal descent. Section 5(b) requires places to be of importance and special significance to Aboriginal people. Under section 5(c) of the AHA places of importance and significance to the cultural heritage of the State are recognised. Section 5(d) requires a place only to be where Aboriginal objects are or were traditionally stored.

Assessment Guidance from the AHA

The hierarchical criteria in s.39(2) of the AHA indicate that some places are more important and/or significant than others. Only some of them cross a threshold of heritage value that qualify them as Sites under the AHA and hence worthy of listing on the Register. The use of criteria requires the reasons that a place is important to be spelled out using the ethnographic evidence and/or the physical attributes of the place contained in survey reports of areas. This both clarifies the analysis of significance and provides a sound basis for making decisions about future management and conservation of the place.

What is an Aboriginal Site

For the purposes of the assessment, sites are categorised into the following types:

Artefacts	Historical	Painting
Ceremonial	Man-made Structure	Quarry
Engraving	Midden	Repository / Cache
Fish Trap	Modified Tree	Skeletal Material/Burial
Grinding Patches / Grooves	Mythological	

The above are the common site types that are used to identify and record sites on the Register of Aboriginal Sites.

The criteria

Under section 5 of the AHA a site is a place that can meet one or more of the following:

- a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;
- b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
- c) any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;
- d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

Typically, section 5 (b) is attributed to places which are considered to have mythological or ceremonial significance.

For example for section 5(b) to apply it is necessary to include a description of:

- a place;
- the sacredness, the ritual or ceremonial beliefs, activities and/or associations connected to the place;
- the importance and special significance of the place; and,
- the persons of Aboriginal descent to whom this importance and special significance applies.

The inclusion of terms such as 'importance and significance' [subs5(a) & (c)], 'special significance' [s5(b)] and 'interest' [s5(c)] in the wording of section 5 of the AHA mean

that the mere existence of artefacts, engravings, camping grounds or a belief in spiritual beings does not automatically convert reports of their locations/areas into 'Sites'.

The particular wording of the AHA means that the process of recording places and objects as 'Sites' to be registered is not simply a matter of reporting the existence of physical materials or stories that are spiritually laden. It is necessary to show through the recording process that these locations are places in the context of the sub-sections of section 5 of the AHA. Therefore, it is also necessary for assessors to see in the recorded information that, as 'places', these locations have an importance and significance distinct from their surroundings.

The application of Section 39

Having determined that the place is a site in terms of s 5 of the AHA, consideration is then given to section 39 of the AHA.

Site assessors must consider section 39 (1), (2) and (3) with regard to assessment and evaluation of Aboriginal sites. Section 39 relates to the functions of the ACMC which needs to pay due regard as follows:

In respect of section 39(1) the functions of the Committee are:

- to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;
- where appropriate, to record and preserve the traditional Aboriginal lore related to such places and objects;
- to recommend to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister.

In section 39(2), when evaluating the importance of places and objects the Committee shall have regard to:

- any existing use or significance attributed under relevant Aboriginal custom;
- any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;
- any potential anthropological, archaeological or ethnographical interest; and
- aesthetic values.

At section 39(3) the direction to the ACMC in their assessment is of particular note. Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of the AHA.

Evaluation of importance and significance

The existence of a place is not enough for it to be a site under the AHA it also needs to have importance and significance.

Importance:

Is the qualitative value applied to a place identifying it as being entitled to more than ordinary consideration or notice.

Significance

Is the idea that a place is meaningful, in a holistic sense and incorporates all the elements that contribute to its meaning. Significance needs to be specific or related to a particular context. It means that the relative value of a place should be expressed in terms of sacred, ceremonial, ritual, traditional, historic, scientific, aesthetic or social worth to Aboriginal people in a traditional/spiritual sense and/or archaeologists/ anthropologists/ historians in a scientific sense.

Some places are more important than others. It should be noted that “importance” is general in nature and “significance” is the specific reason(s) why a place is a site in terms of the AHA. Recording the observed characteristics of a site does not address matters of importance and significance.

The assessment of places is about considering sections 5 & 39 together to make a decision about whether or not it is a site.

Site Assessment Process

Step	Responsible Officer	Task
1	Heritage Information Officer	Site Recording is checked for previous registrations
2	Heritage Assessment Officer	New site entered in the database, given a unique DIA Site ID
3	Heritage Assessment Officer	Completes preliminary assessment in in-house Aboriginal Heritage Management System database
4	Heritage GIS Officer	Maps location of site in GIS
5	Heritage Assessment Officer	Progresses sites to Site Assessment Group (SAG)
6	Site Assessment Group	Completes site assessment recommendation to ACMC referring to sections 5 and 39 of the AHA
7	Senior Heritage Officer	Prints Site Assessment Recommendation from AHMS for relevant ACMC item.
8	ACMC	Completes final assessment
9	Project Officer	Updates the Register with the ACMC decision

Key Principles of the process

- ACMC is responsible for the final decision on sites and it can re-assess any site at its request and at any time.
- A Site Assessment Group (SAG) provides site assessment recommendations for all sites to be assessed by ACMC.
- SAG refers to the AHA criteria when assessing sites.

Site Assessment Group (SAG)

- Can consist of Heritage Assessment Officers, Senior Heritage Officers, Heritage GIS Officers and one of the Managers from with the Heritage & Culture Branch
- Meets twice weekly to review preliminary assessments and make assessment recommendations for the ACMC's consideration.

Administrative Rules

- All newly registered places are entered as "Lodged" (L).
- SAG only assesses sites that have complete data in the AHMS database:
 - ✓ a Site ID and site file;
 - ✓ a site description in the Assessment module of the Register;
 - ✓ an access status (Open / Closed);
 - ✓ a preliminary assessment under sections 5 and 39 with stated reasons; and,
 - ✓ a spatial mapping in the GIS part of the Register.
- SAG is guided by the AHA criteria and assesses sites on a case by case basis.
- All sites within land subject to section 18 notices are assessed by SAG in time for ACMC members to receive these assessments with their meeting papers prior to a section 18 notice being considered by the ACMC.
- The record for sites assessed by ACMC as meeting the terms of section 5 will be updated on the Register of Aboriginal Sites with a site status as "Permanent" (P).

Consent and Condition Decisions

Having determined the importance and significance of any site on the Land subject to a s18 notice, the ACMC considers the impact the proposed use may have on this identified site of importance and significance. It is the ACMC's task to assess the extent of the impact against the importance and significance of the site.

After forming its opinion about the landowner's notice, pursuant to s 18(2) the ACMC will submit the notice and its recommendation in writing to the Minister. The ACMC will recommend to the Minister whether or not he/she should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which his/her consent should be given.

Conditions of consent recommended by the ACMC to the Minister seek to minimise the impact of a proposed development on the significance and importance of Aboriginal heritage.

Under s 18(3), the Minister in making a final decision about the Notice shall consider the ACMC recommendation and take into account the general interest of the community. The Minister then shall either:

- (a) consent to the use of the land, or a specified part of it, for the purpose required, subject to such conditions, if any, that the Minister may specify; or
- (b) wholly decline to consent to the use of the land.

The Minister must then inform the landowner in writing of his/her decision.

Site Registration Processes

As will be seen above, the Site Assessment Decision process can itself lead to the registration of Aboriginal sites. However, on occasions the need to assess sites with a view to registration can arise from other causes – principally from reports under s.15 of the AHA.

When such occasions arise, the investigation, reporting and recommendation procedure as outlined above is applied. This will lead to a decision on whether or not the sites qualify for registration, and the Registrar will be advised accordingly by the ACMC.