

8 Specific Cultural Heritage Management Requirements

8.1 Complex Assessment

The Complex Assessment (subsurface testing) component of this CHMP is yet to be completed. The Complex Assessment component must be completed once the final pipeline alignment has been decided, in order to determine the nature, extent, and significance of Aboriginal cultural heritage potentially impacted by the activity.

The following is a preliminary recommendation regarding each of the newly recorded sites, however discussions with both the Office of Aboriginal Affairs Victoria and the traditional owners will need to be undertaken both during and at the conclusion of the Complex Assessment.

Despite this, the following preliminary recommendations could apply.

8.2 Cultural Heritage Induction

A cultural awareness start-up meeting and a compliance checklist induction should be held on site with contractors prior to the commencement of any of the works discussed in this CHMP. The induction should be held by a CHA appointed by the Sponsor and representatives of the relevant traditional owner communities should be invited.

The session must include a brief history of the Aboriginal occupation of the activity area and broader region; a summary of the archaeological investigations conducted within the activity area; specific details of all Aboriginal Places and Heritage located during the CHMP assessment (if relevant); a summary of the recommendations and contingencies contained within the CHMP; and the obligations of site workers/contractors and Sponsors under the Victorian Aboriginal Heritage Act 2006.

The main aim of the cultural heritage induction training session is to explain the procedures outlined in the CHMP; show the site contractors examples of the most likely Aboriginal cultural heritage material to be located within the activity area; and explain the procedure outlined in the Contingency Plan Section of the CHMP in the unlikely event that this material is uncovered by them during the course of construction works.

This training session must be organised and paid for by the site contractors and/or Sponsor.

8.3 Potential recommendations for the newly located LDADs

8.3.1 No Go Zones

The Sponsor must not undertake any ground-disturbing activities within a 50m buffer zone placed around the primary grid coordinates of the following newly located LDADs.

The perimeter of the sub-components must be barricaded with star picket and orange webbing at least seven days prior to the surface collection. This Aboriginal Place must remain a No Go Zone and be communicated to all of the Sponsor's Civil Contractors.

8.3.2 Surface Collection

A CHA in conjunction with representatives from the Wurundjeri, Bunurong and Boon Wurrung must salvage the Aboriginal archaeological material associated with the newly located LDADs. The salvage includes a site inspection and the collection and documentation of all surface Aboriginal cultural heritage material at least seven days prior to the commencement of any ground-disturbing activities. The surface collection must occur within a 50m radius of each of the sub-components of the newly located Low-Density Artefact Distributions (LDADs).

The Sponsor will be responsible for the costs and expenses associated with any actions undertaken by a Cultural Heritage Advisor and the Wurundjeri, Bunurong and Boon Wurrung.

8.3.3 Reburial and Documentation

After the completion of any high impact activities associated with the development, a CHA in conjunction with representatives from Wurundjeri, Bunurong and Boon Wurrung must rebury the collected cultural material as close as practical to its original position. All cultural material must be placed in a durable container together with information about the site's provenance. The decision of where to place the container must be made in consultation with representatives from Wurundjeri, Bunurong and Boon Wurrung and the location must be documented and an updated Object Collection form must be submitted to the Heritage Registrar at the Office of Aboriginal Affairs Victoria within 30 days.

9 Contingency Plans

The following contingency mechanisms are to be employed by the proponent during the activity:

Prior to construction work beginning within the activity area, the following tasks must be undertaken in order to ensure maximum protection to any potential Aboriginal archaeological sites that may exist within the activity area. This must include:

1. Should Aboriginal cultural material, or suspected cultural heritage material be located, the contingencies outlined in Sections 9.3 and 9.3.2 will need to be strictly adhered to; and
2. Where possible avoid further harm. In the event that further harm cannot be avoided, salvage of a portion of the site in accordance with Section 9.3.2 must be undertaken.

9.1 Section 61 matters

In accordance with Section 61.c of the Victorian Aboriginal Heritage Act 2006, the contingency plans outlined below must be adhered to at all times during and after the activity.

9.2 Dispute Resolution

Under the Aboriginal Heritage Act 2006, formal dispute resolution processes are available to resolve any dispute in a cultural heritage management matter. These processes are discussed in Part 8 of the Act (Sections 111-124). Given the cost of legalistic approaches to formal dispute resolution, these methods should be regarded as a last resort option.

9.2.1 Informal Dispute Resolution

Prior to undertaking formal dispute resolution through recourse to the Alternative Dispute Resolution process (Sections 111-115 of the Act) or VCAT (Sections 116-124), it is recommended that all parties undertake a process of informal dispute resolution to negotiate a solution.

In order to negotiate a solution, the following process is recommended:

1. That all matters in dispute be jointly investigated by the RAP(s) and the Sponsor
2. Where a breach of the CHMP or recommendations has occurred, the RAP and the Sponsor will agree to the best method / process to correct the breach,
3. Any correction of remedial activities required (i.e. repairing damage to a site) will be overseen by a RAP representative, and will be undertaken to the satisfaction of those representatives,
4. The Sponsor and/or its contractors must not undertake any works to salvage cultural material in accordance with Section 9.3.1 without the consent of the RAP or traditional owners,
5. The RAP or traditional owners will use their best endeavours to ensure there are no avoidable delays to work schedules,
6. Only issues directly related to cultural heritage management and the operations of this CHMP are to be discussed or resolved using these dispute resolution processes.
7. The informal dispute resolution process is straightforward. Within 48 hours of being notified that a disputed matter exists, the Authorised Project Delegates (APD) of the RAP or traditional owners and the Sponsor must meet to negotiate a solution as per 9.2.1. This matter will only be relevant to the cultural heritage management of the Activity area, and the operation of this CHMP. If the nominated parties cannot reach resolution, then it is recommended that alternative APR(s) attempt to resolve the matter.

If this is not successful within 7 days of the dispute notification, then the matter will need to be referred to professional dispute mediation.

9.2.2 Alternative Dispute Resolution (ADR)

Alternative dispute resolution (Sections 111 – 115 of the Aboriginal Heritage Act 2006) is only available as a recourse where the evaluation of a CHMP for which approval is sought is in dispute. It is not intended as a mechanism to resolve disputes involving the operation or workability of an approved CHMP. This can only be achieved using the methods outlined in Section 9.2.1 or more formal legal means (i.e. a breach of the CHMP may constitute a breach of contract).

9.2.3 Victorian Civil and Administrative Tribunal (VCAT)

A Sponsor may apply to VCAT for a review of a decision by AAV under Section 63 of the Aboriginal Heritage Act 2006 to refuse approval of a CHMP. The dispute must have undergone ADR (as per 9.2.2) prior to hearing by VCAT, or that the Chairperson of the Aboriginal Heritage Council is satisfied that ADR would not be successful. Once again, this is not intended as a mechanism to resolve disputes involving the operation or workability of an approved CHMP. This can only be achieved using the methods outlined in 9.2.1 or more formal legal means (i.e. a breach of the CHMP may constitute a breach of contract).

9.3 Discovery of Aboriginal cultural heritage during works

Should Aboriginal objects, artefacts or places be located during the works associated with the activity, the following management steps must be undertaken:

1. The APM must immediately suspend all relevant work(s) within 10m of the location of the discovery of the item in question,
2. The person identifying the find(s) must notify the Activity Project Manager (APM) within 24 hours,
3. The location of the find(s) are to be barricaded off using suitable materials (i.e. safety webbing, flagging tape) to a minimum distance of 10m.
4. All find(s) to remain in situ until assessed by the cultural heritage advisor,
5. Work(s) can continue outside of the barricaded area,
6. The APM must notify the cultural heritage advisor who will, in consultation with the RAP, fully assess the Aboriginal heritage culture and recorded the find(s).
7. The cultural heritage advisor must attend the activity area within 24 hours of notification to assess the new find(s) and advise on the appropriate management of the item(s), in consultation with the RAP.
8. Within 48 hours a decision or recommendation must be made in regard to the process to be followed in order to manage the newly located cultural heritage items in a culturally appropriate manner, in consultation with the RAP. Once the assessment is complete the cultural heritage advisor will notify the Secretary (AAV) of the discovery.

9.3.1 Human Remains

The discovery of human remains can be a deeply distressing and emotional time for all concerned. There are very strict legal guidelines as to how the discovery of human remains must be treated in Victoria. The remains may or may not be of Aboriginal origin. If the remains are not of Aboriginal origin and are more recent, they therefore may constitute a crime scene. It is imperative that human remains are not disturbed in any way prior to the assessment of the remains by the appropriate parties.

Actions to be taken in the event of the discovery of human remains

1. If it is suspected that human remains have been discovered, then all works must cease immediately within the vicinity of the discovery,
2. The remains must be left in situ and protected from all harm or damage,
3. Keep all unnecessary or unauthorised personnel away from the site to minimise the potential for damage to the site,
4. Do not contact the media.

Notifications

Once the site has been secured, the Victoria Police and the Coroner's Office must be notified immediately upon the discovery of any human remains:

If human remains are discovered:

1. Contact the Victoria Police,
2. Contact the Coroner's Office, and
3. If it is believed that the remains are of Aboriginal origin, the DSE Emergency Coordination Centre must be contacted immediately on 1300 888 544
4. Contact the RAP or traditional owners through the Cultural Heritage Advisor.

All details of the nature and location of the discovery of human remains must be made available to the authorities.

If it is confirmed that the human remains discovered are of Aboriginal origin, the Activity Project Manager must report the existence of the remains to the Secretary, Department of Planning and Community Development, in accordance with Section 17 of the *Aboriginal Heritage Act 2006*.

Mitigation or Salvage

Once it has been confirmed that the human remains discovered are of Aboriginal origin and the Secretary, Department of Planning and Community Development has been informed, then:

1. The Secretary will determine the appropriate course of action in accordance with S.18 (2) (b) of the Aboriginal Heritage Act 2006, and
2. An appropriate mitigation or salvage strategy as determined by the Secretary must be implemented. The strategy to be implemented will depend upon the circumstances of the discovery, the context, the location of the finds, the number of burials found, and the outcome of consultations with the relevant RAP applicants.

Curation and Storage

The on-going treatment, curation and/or storage of any Aboriginal human remains discovered will be at the direction of the Secretary, Department of Planning and Community Development. Appropriately managed to ensure the reburied material is not subsequently disturbed.

Reburial of Human Remains

Any reburial of salvaged human remains must be:

1. Fully documented and undertaken by a qualified archaeologist,
2. Clearly marked and all details provided to AAV,
- Appropriate management measures must be implemented to ensure that the remains are not disturbed in the future.

9.3.2 Contingency if Aboriginal Cultural Heritage is located during construction

If any previously unrecorded Aboriginal archaeological site is discovered during the works and cannot be retained within the development, then the Aboriginal cultural material or feature should be salvaged using the following methodology:

1. If the nature and extent of the newly recorded cultural material has not been defined, a series of shovel test probes will need to be excavated to delineate the vertical and horizontal boundaries of the material,
2. A 1 x 1m excavation unit will be hand excavated in spits of 0.1m increments to provide stratigraphical information on the newly recorded site,
3. All artefacts will be analysed, leading to an understanding of the artefact density and significance of the newly recorded site, and
4. All surface artefacts located within the site's boundaries to be impacted will be collected. A percentage of the newly recorded site will be excavated to mitigate the effects of the proposed impacts by recovering cultural materials. The quantum (a % of the total subsurface extent of the site) will be decided on the basis of the significance rating of the site and in consultation with the RAP.

9.3.3 Recommencing Works

Works may recommence within the 10m area(s) of exclusion established as a result of Section 9.3 once:

1. The steps outlined in 9.3 have been followed,
2. When the requirements for updating the relevant Aboriginal cultural heritage records have been collected or completed by the cultural heritage advisor, and
3. No dispute exists as to the course of action(s) to be undertaken.

9.3.4 Curation and Storage of Cultural Materials

Any Aboriginal cultural material recovered or salvaged from within the activity area remains the property of the traditional owners. Any salvage or recovery undertaken within the activity area is to be agreed to through discussion between the heritage advisor, the RAP(s) or the relevant Aboriginal communities. The cultural heritage advisor will be responsible for:

1. Cataloguing any items of Aboriginal cultural heritage,
2. Labelling and packaging any such items in a competent archival manner,
3. Arrange storage for the items of Aboriginal cultural heritage in an appropriate location, and
4. If required, facilitate the reburial of items of Aboriginal cultural heritage in consultation with the RAP(s) or the relevant Aboriginal communities. Should reburial be an option, the following steps will need to be followed:
 - a. The relevant VAHR place record form will be updated and an Object Collection component form will be completed and submitted to Heritage Registrar, AAV.
 - b. The reburial location will be recorded to sub-metre accuracy, be relocatable, and in an area which is protected from future development or disturbance.

Artefacts to be reburied will be placed in a durable container with a record of provenance and with the catalogue and assessment documentation on an archive-quality storage medium.

9.3.5 Activity Area Access

The Sponsor and the cultural heritage advisor will facilitate access to the activity area for traditional owners in the following situations:

1. During the initial cultural heritage survey of the activity area, and
2. If new Aboriginal cultural heritage material is located as per Section 9.3

9.4 CHMP Compliance

To ensure that this CHMP is complied with, and any unnecessary dispute(s), audit or stop work orders are prevent edit is essential that all of the requirements and steps outlined in the contingencies section are adhered to at all times. To ensure this, the following procedure is recommended:

1. All Parties should be familiar with the content and intent of this CHMP,
2. All personnel involved in the Activity / Activity Area should be inducted as to the requirements of this CHMP prior to works commencing,
3. Contact details of all parties to be available at all times. Changes to relevant contact details should be communicated immediately, and
4. All queries or questions should be addressed immediately by the Activity Project Manager in consultation with the RAP and the heritage advisor to avoid non-compliance with this CHMP.

9.5 Remediating CHMP non-compliance

The Activity Project Manager is responsible for remediating non-compliance with a CHMP. In the event that the contingencies set out in this CHMP are not adhered to, a record of the breach must be made and immediate action taken to remedy the breach. The record of the breach must include the reasons for non-compliance. The Activity Project Manager must take immediate action to remedy non-compliance in accordance with the relevant contingency recommendation. All acts of non-compliance that harms Aboriginal cultural heritage must be reported to AAV and will be investigated by an AAV inspector.

A record of CHMP compliance must also be maintained by the Activity Project Manager at all times and must be available for inspection by either an Inspector under the Act or other representative of the Secretary.

9.6 Authorised Project Delegates

For the purposes of continuous communication(s) and informal dispute resolution, the following persons shall initially act as Authorised Project Delegates:

Organisation	Individual	Contact
Melbourne Water Corporation	Nick Macdonald	0433 278 547
The Office of Aboriginal Affairs Victoria	Secretary	(03)9208 3333

Table 9-1: Authorised Project Delegates.

Any change in personnel or to the APD(s) should be notified to all parties as soon as is practicable.

9.7 Intellectual Property

It is recognised by all parties that culturally sensitive information will not be disclosed or discussed without the express consent of the relevant parties.

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