

Aboriginal cultural heritage and the environment effects process

ENVIRONMENT EFFECTS ADVISORY NOTE

AUGUST 2007

Introduction

On May 29 2007, new procedures commenced to provide for a more transparent, consistent and effective approach to protecting and managing Aboriginal cultural heritage in Victoria. These procedures, implemented through the *Aboriginal Heritage Act 2006*, aim to ensure that cultural heritage issues are considered early in the development planning process, prior to the approval of a use or development.

The *Aboriginal Heritage Act 2006* recognises Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage. One of the ways in which Aboriginal people express their ongoing connection to land is through active involvement in the protection and management of cultural heritage places.

The preparation of an Environment Effects Statement (EES) has commonly involved an assessment of the potential effects of a project on Aboriginal cultural heritage. This is now mandatory. Under section 49 of the *Aboriginal Heritage Act 2006*, a Cultural Heritage Management Plan must be prepared for any project for which an EES has been required.

This advisory note provides information on when and how a Cultural Heritage Management Plan should be prepared in conjunction with the EES process.

Further information on the environment assessment process in Victoria can be found in the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (referred to here as the 'Guidelines'), available at www.dpcd.vic.gov.au/planning

What is Aboriginal cultural heritage?

Aboriginal cultural heritage includes the places, objects, artefacts, beliefs and behaviours that are valued by indigenous Victorians. Some elements of cultural heritage are old, and reflect a time when the environment was different from today. Other aspects of cultural heritage are contemporary, or have ongoing uses and associations.

Aboriginal cultural heritage can take a visible form in art sites, burials and artefact scatters, or as physical evidence of Aboriginal occupation such as shell middens, scar trees and stone arrangements. For other heritage values there may be no physical evidence of past cultural activities, although these can be identified through anecdotal investigations. Examples may include places of spiritual or ceremonial significance, traditional plant or mineral resources, or trade and travel routes.

Registered Aboriginal Parties

Under the *Aboriginal Heritage Act 2006*, Registered Aboriginal Parties (RAPs) are the cultural heritage decision-makers for a designated area. RAPs are determined by the Aboriginal Heritage Council.

Along with providing advice on heritage places and objects, cultural heritage permits and the repatriation of cultural heritage objects, RAPs have responsibility for the evaluation and approval (or refusal) of Cultural Heritage Management Plans.

RAPs may charge fees to consult with a proponent on cultural heritage assessments and recommendations to be included in a Cultural Heritage Management Plan, and also for the evaluation of the completed Plan.

Obligations under cultural heritage legislation

Under the provisions of the *Aboriginal Heritage Act 2006*, EES project proponents must notify the RAP(s) and the Secretary of the Department of Planning and Community Development (DPCD) of their intention to prepare a Cultural Heritage Management Plan. The RAP must respond within fourteen days by written notice outlining whether or not it intends to evaluate the Plan or refer this responsibility to Aboriginal Affairs Victoria (AAV) instead.

The proponent is responsible for ensuring that a Cultural Heritage Management Plan is prepared in accordance with the standards prescribed in the *Aboriginal Heritage Regulations 2007*, and that the RAP has been adequately consulted before beginning the assessment phase.

Once the proponent has applied to the RAP for approval of the completed Plan, the RAP must make a decision on the Plan within thirty days. The proponent may apply to VCAT for a review of the decision if the RAP decides not to approve the plan. The Plan takes effect when the proponent lodges a copy of the approved Plan with AAV.

Councils and other statutory decision-makers must not grant an authorisation for an activity until a Cultural Heritage Management Plan has been approved.

Approval of a Cultural Heritage Management Plan

The *Aboriginal Heritage Act 2006* specifies the criteria against which RAPs must evaluate Cultural Heritage Management Plans:

- whether the activity will be conducted in a way that avoids harm to Aboriginal Cultural Heritage
- if it does not appear possible to avoid harm, whether it is conducted in a way that minimises harm
- any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity
- any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of an activity
- requirements in relation to the custody and management of Aboriginal cultural heritage during the course of the activity.

How is cultural heritage considered in the EES process?

If a project has the potential for significant impacts on Aboriginal cultural heritage, this may trigger the need for the proposal to be referred to the Minister for Planning for a decision on whether an EES is required. The criteria for referral of a project are set out in the Guidelines.

If the Minister for Planning determines that an EES is required (due to impacts on cultural heritage OR a range of other environmental assets), the Minister will then issue scoping requirements specifying the matters to be investigated in the EES, which includes cultural heritage issues.

Generally, an EES should:

- clearly document both the consultation and investigation process undertaken with respect to Aboriginal cultural heritage
- identify Aboriginal sites and places by drawing upon existing sources, field studies and appropriate consultation
- assess potential impacts of the proposal on Aboriginal sites and places
- provide recommendations for the management of Aboriginal sites and places.

The investigation and assessment process should have regard to the knowledge, values and views of the relevant RAP, and should be undertaken by a suitably qualified heritage consultant. Project proponents should consult with the RAP as early as possible to agree on a study and consultation program.

Information compiled for the EES can be used to inform the preparation of a Cultural Heritage Management Plan.

The **scoping requirements** may also recommend a particular process (refer to 'Pathways within the EES process') be adopted to investigate cultural heritage and progress the Cultural Heritage Management Plan.

Levels of assessment

The *Aboriginal Heritage Regulations 2007* provides a framework for the assessment of Aboriginal cultural heritage. Three levels of assessment are identified. These may provide a basis for a staged approach to investigations in the EES.

DESKTOP

For all EES projects, proponents should undertake a desktop study as the starting point in preparing a Cultural Heritage Management Plan.

This includes accessing relevant information in the Register, identifying the relevant geographic area, landforms and geomorphology, and reviewing reports, published work, historical and ethno-historical accounts of Aboriginal occupation and the history of use in the area.

A desktop assessment may include a collection of oral history.

STANDARD

If it is reasonably possible that Aboriginal cultural heritage could be found in the area, a 'standard assessment' is required. A standard assessment includes a ground survey of the sites' surface area, trees, caves and rock shelters. This would not involve subsurface investigations.

Ground penetrating radar survey, remote sensing, ground magnetic survey or electromagnetic survey may be conducted.

A standard assessment may include a collection of oral history.

COMPLEX

If it is necessary to identify the extent, nature and significance of the Aboriginal cultural heritage in an area, and this cannot be accomplished without subsurface excavation, a 'complex assessment' is required.

A complex assessment involves disturbance or excavation of all or part of the activity area. Controlled manual excavation using trowels, spades, sieves and brushes should be undertaken before other methods are used.

A complex assessment may include a collection of oral history.

For those EES projects with a lower level of risk to Aboriginal cultural heritage assets, a standard assessment may be adequate.

Where cultural heritage issues are more complicated, and a higher level of risk to values and assets exists, a complex assessment may be needed.

Pathways within the EES process

The timing of preparation of a Cultural Heritage Management Plan by the proponent and approval of the plan by the RAP(s) within the broader EES process is flexible. It may be able to be finalised either before or after the EES process is finalised, depending on the complexity of the cultural heritage issues in each individual project.

There are two possible pathways, both with the objective of providing an efficient and effective process for protecting Aboriginal cultural heritage. The most appropriate will depend upon the current knowledge of existing heritage values, the potential for further unidentified values and assets to be found, and risks to the protection of these.

Pathway 1

This option may be appropriate for those projects where values and assets are known to exist, and are straightforward to assess and take account of in project planning. It has the merit of providing early certainty for the project proponent.

Contingency options built into the Plan allow for the management of issues as they evolve.

Under this option, the Minister for Planning is able to consider an approved Cultural Heritage Management Plan in the assessment of environmental effects of a project under the *Environment Effects Act 1978*.



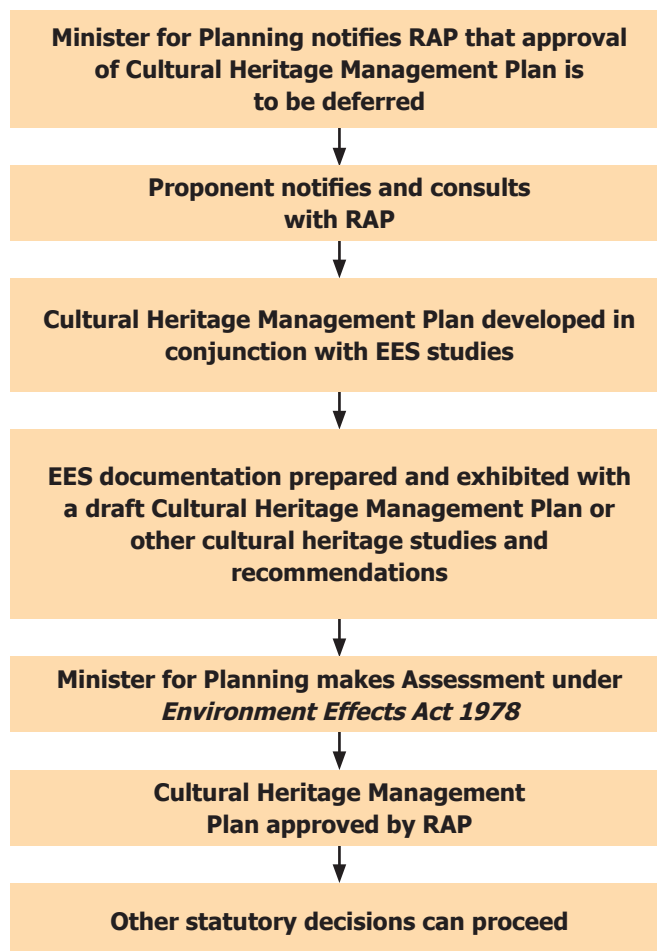
Pathway 2

This option may be appropriate for projects with a higher degree of uncertainty or complexity, or where a range of project options are being considered (for example, road alignments) and it is not prudent to pre-empt project design or location decisions.

It enables the details of a Cultural Heritage Management Plan to be resolved as part of the development and assessment of an EES, in the broader context of other environmental, social and economic issues.

Whilst cultural heritage issues still need to be documented in the EES, the approval of a Cultural Heritage Management Plan is deferred until the Minister for Planning has made an assessment of the project under the *Environment Effects Act 1978*.

If this option is to be adopted, the Minister for Planning will formally notify the RAP in writing.



Further information

Further information about the environment assessment process is available at www.dpcd.vic.gov.au/planning.

Further information on Aboriginal cultural heritage management, including a template for a Cultural Heritage Management Plan, is available at www.dpcd.vic.gov.au/aav.

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