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| *Aboriginal Heritage Act 2006* |
| Information Sheet: Cultural Heritage Management Plans and Planning |

Developments and many activities in culturally sensitive landscapes – such as coastal dunes or areas near water – can cause significant harm to Aboriginal cultural heritage. The *Aboriginal Heritage Act 2006* prescribes the circumstances in which the preparation of a Cultural Heritage Management Plan is required.

### What is a Cultural Heritage Management Plan?

A Cultural Heritage Management Plan (Management Plan) is a written report containing the results of an assessment and conditions to be complied with before, during and after an activity to manage and protect Aboriginal cultural heritage in an identified area.

A Management Plan assesses whether a project will have any impact on Aboriginal cultural heritage values and provides appropriate agreed management conditions.

Preparation of a Management Plan is commissioned and paid for by the project proponent (the Sponsor).

Preparing a Management Plan involves a heritage advisor (an appropriately qualified person e.g. archaeologist, anthropologist or other heritage specialist with knowledge and experience in relation to the management of Aboriginal cultural heritage) working with Aboriginal community representatives to identify and assess cultural heritage values in relation to a proposed development or activity.

### Why are Cultural Heritage Management Plans important?

Aboriginal cultural heritage is an important part of the Victorian cultural past and the Victorian natural landscape. It is of particular importance to Aboriginal peoples.

Land use and development is the primary threat to the protection and management of Aboriginal cultural heritage.

Management Plans provide a process for the impacts of a development project on Aboriginal cultural heritage to be considered and mitigated, with the considered involvement and consent of relevant Traditional Owners.

Prior to 2007, most large infrastructure development projects in Victoria – such as freeways, rail developments, pipelines and mines – were preceded by an Aboriginal cultural heritage assessment.

However many land developments also went ahead with no consideration of their potential impacts on Aboriginal cultural heritage. This resulted in the unregulated destruction of numerous places of significance around the state each year.

The 2006 Act provides guidance to developers, industry and others on the circumstances that trigger the need for an approved Management Plan, allowing heritage to be considered in the planning stages of a project.

For certain activities, Government agencies, local councils and other authorities need to check whether there is an approved Management Plan for activities before issuing statutory approvals such as a work authority, licence or planning permit.

### What sort of activity requires a Cultural Heritage Management Plan?

Examples of activities that require preparation of a Management Plan include:

* Developments that require an Environment Effects Statement under the *Environment Effects Act 1978* or an Impact Management Plan or Comprehensive Impact Statement under the *Major Transport Project Facilitation Act 2009*.
* Larger scale residential or industrial subdivisions on areas of cultural heritage sensitivity, which have not previously been subject to significant ground disturbance.
* Substantial infrastructure or resource development projects on areas of cultural heritage sensitivity, which have not previously been subject to significant ground disturbance.

Other circumstances requiring a Management Plan are prescribed in the Aboriginal Heritage Regulations 2007 (the Regulations). In addition, the Minister for Aboriginal Affairs may require the preparation of a Management Plan.

It is an offence to fail to prepare a Management Plan before commencing an activity if one is required by the Act or the Regulations.

### Who approves a Cultural Heritage Management Plan?

Where a Registered Aboriginal Party (RAP) exists, it must be notified of a proponent’s intention to prepare a Management Plan and it then may choose to evaluate the Plan. Within 14 days of receiving the notice of intention, the RAP must give written notice to the sponsor specifying whether or not they have chosen to evaluate the plan. If a RAP chooses to evaluate the plan, the RAP has 30 days, after receiving the application, to decide to approve or refuse the plan. During the 30 day period, RAPs may make requests for additional information to be provided. If additional information is requested, the 30 day time period ceases to run until the requested information is received.

Once a Management Plan has been approved by a RAP, it must be lodged with the Secretary to the Department of Premier and Cabinet (DPC) to take effect.

### What if there is no Registered Aboriginal Party?

Where there is no RAP, the Secretary, DPC evaluates any Management Plan in that area.

### What if the RAP declines to evaluate the Plan, or fails to respond to the notice of intention within 14 days?

When this occurs, the sponsor must notify the Secretary that the RAP has declined to evaluate the Plan or has failed to respond within 14 days. The sponsor may apply to the Secretary to evaluate the Management Plan.

### What if there is more than one relevant Registered Aboriginal Party?

If there is more than one relevant RAP, each has equal powers regarding the Management Plan procedure and outcome for their registered area. In this circumstance, a Management Plan must be submitted to each relevant RAP for evaluation.

Before a Management Plan can be considered approved, each relevant RAP (who intends to evaluate and gives corresponding notice) must have separately determined to approve it.

### How much will the preparation of a Cultural Heritage Management Plan cost?

Preparing a Management Plan involves costs for undertaking on-ground assessment work, consulting with the RAP, and writing the Management Plan report.

These costs are not regulated and will vary depending on the size of the activity, the complexity of the Aboriginal heritage issues involved, and broader market forces.

Understanding the requirements, obtaining a number of competitive quotes, and taking into consideration the experience and ability of people employed to do a job may reduce costs and result in better outcomes.

### How much will evaluation of a Cultural Heritage Management Plan cost?

A regulated administration fee is charged for evaluating the Management Plan.

See: [Department of Premier and Cabinet - Fees and penalties](http://www.dpc.vic.gov.au/index.php/aboriginal-affairs/aboriginal-cultural-heritage/fees-and-penalties)

Evaluation costs are greater for more complex Management Plans and less where Management Plans are simpler in terms of the type of assessment required and the size of activity area. Evaluation costs are tabulated in the regulations.

### Can a decision to reject a Cultural Heritage Management Plan be appealed?

Yes. If a decision is made by a RAP not to approve a Management Plan, this may be appealed at Victorian Civil and Administrative Tribunal (VCAT).

Where more than one RAP is involved in an evaluation and they do not agree on an aspect of the assessment or report, the Act has a process for resolving this kind of dispute, facilitated through the Victorian Aboriginal Heritage Council.

### How does the requirement to prepare a Cultural Heritage Management Plan relate to planning approvals?

Authorities like state government agencies and local councils are prevented by section 52 of the Act from making decisions about certain prescribed statutory applications until a Management Plan has been approved, if one is required. Statutory Authorities can, however, do everything else related to an application other than decide on it.

If an approved Management Plan is required but is not included with an application, the authority must refer the application back to the proponent for preparation of a Management Plan.

The Act encourages project proponents to consider Aboriginal cultural heritage and work with RAPs before applying to an authority for an approval. Understanding the cultural heritage management issues with an activity at an early stage means that there is maximum flexibility in dealing with these issues and reduces delays later on.

### Can I prepare a Cultural Heritage Management Plan even if I don’t have to?

### Yes. The Act allows for voluntary Management Plans to be prepared. Once approved, it is mandatory to abide by the conditions of a voluntary Management Plan. Voluntary Management Plans provide the same benefits in terms of certainty as required Plans.

### What are the consequences of non-compliance with conditions of a Cultural Heritage Management Plan?

Failure to comply with a condition of an approved Management Plan knowingly, recklessly or negligently is an offence under the Act.

### Can an approved Cultural Heritage Management Plan be amended?

Management Plans, approved under Division 4, can be amended within 5 years of when they were approved.

An application to amend an approved Management Plan must be made in the prescribed form and accompanied by the prescribed fee.

### How do I make an application to amend an approved Cultural Heritage Management Plan?

An application to amend an approved Management Plan is made in much the same way as the application to approve a Management Plan. The application to amend must be prepared in accordance with Division 4 of Part 4 of the Act. This includes the necessary notifications to the Secretary and to any relevant RAP.

Similarly, the approval of an application to amend occurs in much the same way as an approval of a Management Plan, and is subject to the sections set out in Division 5 of Part 4 of the Act. However, where the proposed amendment is considered minor in the opinion of the relevant authority, the proposed amendment can be approved within 14 days of receipt of the application. The relevant authority will advise whether the proposed amendment is considered minor.

An amendment to an approved Management Plan must be made in the prescribed form, and must include a detailed description of the proposed amendment. In addition, the proposed amendments should also be clearly presented in the Management Plan with any redactions or additions plainly visible. An example of how an amendment should be presented is provided below:

Example of an amendment to an approved cultural heritage management plan



### Can a decision to reject a proposed amendment to an approved Cultural Heritage Management Plan be appealed?

Yes. If a decision is made by the relevant authority not to approve a proposed amendment, it may be appealed at VCAT.

**Cultural Heritage Management Plan (CHMP) Process**

The following diagram is an example of the process a developer would follow when seeking approvals in a RAP area for a large scale subdivision.

**Developer decides that a CHMP is required after checking the planning tool, Regulations and any published guidelines.**

OR

**Developer submits application to Local Council without an approved CHMP.**

Developer engages Heritage Advisor to prepare the CHMP as appropriate.

**Developer notifies the Secretary, any relevant owners or occupiers, any municipal council whose municipal district includes the area to which the plan relates and any relevant Registered Aboriginal Party (RAP).**

**Local Council advises that it is a high impact activity in an area of sensitivity and that it cannot make a decision without an approved CHMP.**

**Local Council able to decide whether to grant or refuse approval for the subdivision.**

**Developer provides an approved copy of CHMP in support of application to Local Council for subdivision Permit.**

**Developer prepares CHMP.**

**RAP Responds to developer (within 14 days) and elects to evaluate the CHMP.**

**Developer submits finished CHMP and prescribed fee to RAP for evaluation.**

If RAP refuses to approve the Plan, the developer is able to appeal at VCAT

**RAP then has 30 days to review CHMP and to notify developer in writing of any decision (If additional information is requested the timeframe is extended).**

**Further Information**

If you would like more information please contact:

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