

# Project Planning and Aboriginal Heritage

**The *Aboriginal Heritage Act 1988* (the Act) protects all Aboriginal sites, objects and ancestral remains throughout South Australia. Project planning that involves traditional owners and which carefully considers potential impacts on Aboriginal heritage can mitigate the risk of impact on Aboriginal heritage during project works.**

When projects are planned to take place in areas where known Aboriginal heritage exists, there is a risk project activities may damage, disturb or interfere with the known Aboriginal sites, objects or remains. In project areas where heritage is unknown or may be subsurface, there is also a risk of damage to Aboriginal heritage uncovered or discovered during project works. There are penalties under the *Aboriginal Heritage Act 1988* for unauthorised impact on Aboriginal heritage. The risk of impacting heritage may be mitigated by a planning process that includes consultation with Aboriginal parties to identify and assess heritage and which inform controls that manage the potential for impact on heritage during the project works.

## Identification of Aboriginal Heritage

Prior to commencing ground disturbing works, a proponent should gather as much information as possible about the known Aboriginal heritage and potential for discovery of Aboriginal heritage in the project area. Ways of collecting heritage information include:

- Requesting a search of the Register of Aboriginal Sites and Objects and the Central Archive maintained by the Premier
- Talking to the relevant Recognised Aboriginal Representative Body (RARB), or where there is no RARB appointed in the project area, the local Aboriginal heritage organisations, or the Native Title body, in conjunction with a suitably qualified archaeologist and/or anthropologist about the risk of damage to heritage in the project area. (Search the Register of RARBs for the contact details of the relevant RARB)

## Register of Aboriginal Sites and Objects and the Central Archive

The Central Archive, which includes the Register of Aboriginal Sites and Objects, is maintained by the Premier and contains information about Aboriginal sites, objects and ancestral remains (burials) across South Australia.

Enquiries about the presence of Aboriginal sites in a specified area are made by requesting a search of the Register. The response will be a letter indicating whether sites have been recorded in the area and if relevant, a basic map showing the approximate location of sites. For more detailed information, including map coordinates, permission from the traditional owners of the site is required.

Visit the Department of the Premier and Cabinet, Aboriginal Affairs and Reconciliation Heritage (DPC-AAR) website to lodge a request for a search of the Register.

The central archive is not an exhaustive record of Aboriginal heritage. The local RARB or other Aboriginal representatives may have additional information. Search requests should always be complemented with consultation with the relevant local RARB, or where there is no appointed RARB, with recognised representatives of the relevant Aboriginal communities of the project area.

## Recognised Aboriginal Representative Bodies

A RARB is an organisation that represents the views and knowledge of traditional owners of an area, site or object. A RARB can enter a Local Heritage Agreement (under the Act) with proponents to manage the effects of project works on Aboriginal heritage.

A RARB may negotiate a local heritage agreement with a proponent when either an application for authorisation to damage, disturb or interfere (section 23) with Aboriginal heritage, or an application to excavate for uncovering of an Aboriginal site, object or remains (section 21) is made under the Act. A local heritage agreement with a RARB can specify conditions under which Aboriginal heritage in a project area is managed in culturally appropriate ways. Before entering into a Local Heritage Agreement, a RARB may need to consult particular custodians who hold traditional knowledge about Aboriginal sites in the project area.

RARBs are appointed under the Act. All RARB appointments and contact details are listed on the Register of RARBs available from the DPC-AAR website.

## Other Aboriginal Organisations

In areas where there is no appointed RARB, the proponent may consult with the relevant Aboriginal heritage or native title organisation or committee to discuss Aboriginal heritage in the project area. Any discussions or agreements with these groups can form part of a proponent's strategy for managing the risk of impact on Aboriginal heritage.

## ASSESSMENT

### Aboriginal Cultural Heritage Surveys

Professional archaeologists and anthropologists, in consultation with relevant Aboriginal parties, are qualified to undertake surface heritage surveys which can identify Aboriginal sites of significance according to Aboriginal tradition, or to Aboriginal archaeology, anthropology or history. It is recommended consultant archaeologists/anthropologists engagement briefs include details of:

- engagement with the relevant RARB, or where there is no RARB appointed, the Aboriginal parties who have a traditional connection with the area and who are authorised by the relevant Aboriginal community to provide information about heritage in the area.
- arrangements for statutory reporting of any newly identified sites, objects or remains to the Minister for Aboriginal Affairs and Reconciliation in accordance with section 20 of the Act including arrangements for lodging reports and site cards with DPC-AAR.
- identification of 'go' and 'no go' zones within the project area from the perspective of protection of Aboriginal heritage. The significance of the areas to be avoided should be clearly explained.
- identification of mitigation, risk management and protective measures to secure or protect Aboriginal heritage.
- articulation of the steps to be taken on discovery of Aboriginal heritage
- assessment of the risk if development, exploration or mining activity occurs without seeking a section 23 authorisation under the Act.
- acknowledgement that only the Premier can authorise damage, disturbance or interference to Aboriginal sites, objects or remains, and a proponent cannot avoid seeking an authorisation solely through agreement making with a RARB or Aboriginal people.

## CONTROLS

### Cultural Heritage Management Plans

In consultation with the RARB, or if there is no appointed RARB, the relevant Aboriginal representative parties, the proponent may wish to develop a cultural heritage management plan (CHMP) to specify the culturally appropriate protection and management of Aboriginal heritage in the project area. A CHMP is normally drafted as an outcome of a heritage assessment or survey and should detail the nature, extent and significance of any Aboriginal cultural heritage sites identified in the project area and specify recommendations or measures to be taken before, during and after project activities to manage the protection of the heritage.

### Local Heritage Agreements

A local heritage agreement is an agreement under the Act between a land use proponent and a RARB that deals with the impact of the proponent's activities on any Aboriginal heritage in the area covered by the agreement.

A local heritage agreement is submitted to the Premier who may, if satisfied that the agreement satisfactorily deals with any heritage that may be in the relevant area, approve the agreement. Once approved, the Premier must grant an authorisation to the proponent to excavate the land or to damage, disturb or interfere with any sites, objects or the remains on the condition that the proponent complies with the agreement. For more information about Local Heritage Agreements, see the *Aboriginal Heritage Guideline 3 Local Heritage Agreements*.

### Agreements under Native Title and other Acts

Agreements that deal with Aboriginal heritage but have been made under other legislation can be approved by the Premier under the *Aboriginal Heritage Act 1988* providing they sufficiently deal with the impact of a land use proponent's (e.g. a miner, developer or government agency) activities on Aboriginal heritage in the area covered by the agreement. Agreements made under other legislation that can be recognised under the Act are:

- 1) an indigenous land use agreement under the *Native Title Act 1993* of the Commonwealth (NTA);
- 2) an agreement under Part 2 Division 3 Subdivision P of the NTA;
- 3) a native title mining agreement under the *Mining Act 1971* or the *Opal Mining Act 1995*; and
- 4) an agreement under the *Land Acquisition Act 1969* relating to native title rights and made in relation to a prescribed private acquisition (within the meaning of that Act).

Agreements under these Acts can be lodged for approval under the *Aboriginal Heritage Act 1988*. For further information see *Aboriginal Heritage Guideline 2 Division A2 Agreements*

### Authorisations and Agreements

An approved local heritage agreement by itself does not allow proponents to impact heritage as described in the agreement. This requires additional authorisation from the Premier. Applications can be made through the DPC-AAR website. Although this is an additional step, if an approved local heritage agreement is submitted with a request for authorisation, the Premier must grant authorisation for the activities described in the agreement.

A proponent may request an authorisation to impact heritage without a local heritage agreement, in which case the request will be processed in accordance with the consultation provisions in the Act and the Premier will decide whether to grant the authorisation.

## Monitoring

Where an Aboriginal heritage survey has identified areas of potential archaeological significance and/or subsurface burials, a risk management option to consider is employing suitably qualified archaeologists and Aboriginal monitors to undertake specified tasks in relation to ground disturbing works in those areas. The terms of Aboriginal monitoring may be defined in a local heritage agreement with the relevant RARB, or where there is no appointed RARB, a CHMP or a formal agreement between the proponent and the relevant Aboriginal heritage organisation or native title body.

## Discovery plan

Where there is a high risk of a subsurface discovery, it is recommended that prior to ground disturbing works, proponents work with the relevant RARB, or where there is no appointed RARB, the relevant local Aboriginal organisation, and plan for the event of a discovery. A discovery plan must be included in a local heritage agreement, and may be included in a CHMP or any other agreement. A discovery plan developed in consultation with the Aboriginal party and may specify:

- The Aboriginal contact person/s for any discoveries.
- A preferred archaeologist/anthropologist to be called in the event of a discovery.
- A preferred approach for the preservation in situ of any Aboriginal sites or objects discovered.
- A preferred approach to the preservation in situ or recovery of any ancestral remains discovered.
- A secure location for the storage of any recovered ancestral remains prior to a reburial.
- Arrangements for the reporting of the discovery to the Premier, in compliance with section 20 of the Act.

A discovery plan does not authorise impact on Aboriginal heritage; authorisation from the Premier under section 23 of the Act is required for any damage, disturbance or interference with Aboriginal sites, objects or remains.

## Discovery of Ancestral Remains

The *Discovery Protocol for Ancestral Remains* has been developed in consultation with the State Aboriginal Heritage Committee and should be implemented immediately whenever skeletal remains are discovered. The Protocol is based on proponents' responsibilities under the *Coroner's Act 2003* and Aboriginal peoples' rights under the *Aboriginal Heritage Act 1988*.

In summary, in the event of discovery of bones which may be human, all works in the discovery area should immediately stop and the discovery must be reported to the South Australian Police (SAPOL). If SAPOL confirms the discovery as Aboriginal ancestral remains, the proponent and RARB, or where there is no appointed RARB the relevant local Aboriginal parties, may reach agreement to manage the discovery; including recovery, reburial and any associated cultural ceremony.

## Legislative Awareness Workshops

DPC-AAR provides Aboriginal Heritage legislative awareness workshops designed to assist proponents and their contractors understand obligations under the Act. For more information or to request a workshop, visit the DPC-AAR website and submit a *Request a Workshop* form.

## Contact

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