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1

Purpose

The purpose of this Guide is to assist Sponsors and Cultural Heritage Advisors to carry out a cultural heritage assessment and complete a Cultural Heritage Management Plan (“Management Plan”) in accordance with the requirements of the *Aboriginal Heritage Act 2006* (“the Act”) and the *Aboriginal Heritage Regulations 2007* (“the Regulations”). It will also assist registered Aboriginal parties (“RAP(s)”) to evaluate Management Plans by ensuring Management Plans are complete and consistently presented.

The Guide may assist Cultural Heritage Advisors engaged to conduct a cultural heritage audit (section 83). Further information on cultural heritage audits is provided in Appendix 1.

References to sections in this Guide refer to sections of the Act, and references to regulations refer to the Regulation numbers.

The Guide should be read in conjunction with Part 4 of the Act, the Regulations and the Approved Form for a ‘Cultural Heritage Management Plan’ when seeking to develop a Management Plan. This Guide:

- provides general information about processes to be followed when preparing a Management Plan;
- sets out minimum standards for the conduct of cultural heritage assessments;
- details the requirements for documenting and reporting on Aboriginal cultural heritage; and
- outlines the processes for identifying Aboriginal heritage management measures, with the primary objective of avoiding harm or minimising harm to Aboriginal cultural heritage.

Part 9 of this Guide provides a detailed explanation of the information required to complete the Management Plan in the Approved Form.

2

When is a Cultural Heritage Management Plan required?

The Act provides for the mandatory preparation of a Management Plan if required by the Regulations or the Minister, or if the activity requires an *Environment Effects Statement* under the *Environment Effects Act 1978* (sections 46 to 49). A Management Plan may also be prepared voluntarily by any person (section 45).

Regulation 6 provides that a Management Plan is required for an activity if:

- all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- all or part of the activity is a high impact activity.

Areas of cultural heritage sensitivity are set out under Part 2, Divisions 3 and 4 of the Regulations, and high impact activities are set out under Part 2, Division 5 of the Regulations. In addition Part 2, Division 2 of the Regulations sets out the activities that are exempt from preparing a Management Plan.

3

What is a Cultural Heritage Management Plan?

A Management Plan is an assessment of an area to determine the nature of Aboriginal cultural heritage and a written report detailing the results of the assessment and recommendations for measures to be taken before, during and after an activity to manage and protect Aboriginal cultural heritage identified in the assessment (section 42).

Where a statutory approval is required for the activity, such as a planning permit or work authority, the requirements of the statutory approval issued must be consistent with recommendations in the relevant Management Plan (section 52(3)).

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4

What about historical heritage?

The *Aboriginal Heritage Act 2006* and the *Heritage Act 1995* are separate pieces of legislation, each with their own requirements. Whilst both these Acts pertain to cultural heritage, satisfying the requirements of one of these Acts may not satisfy the requirements of the other. The following should be noted:

- a Management Plan prepared under the *Aboriginal Heritage Act 2006* must only contain the results of an assessment and recommendations to manage and protect Aboriginal cultural heritage (including Aboriginal historical heritage). A Management Plan must not contain recommendations for the management and protection of other heritage, as a Management Plan incorporates a legislative approvals process for Aboriginal cultural heritage only.
- if during the preparation of a Management Plan or excavation of an Aboriginal archaeological site an historical archaeological site or relic is discovered, (as defined under section 132 of the *Heritage Act 1995*) the discovery must be reported to Heritage Victoria.
- if you are undertaking an investigation or survey of any land for the purpose of finding an historical archaeological site or relic (as defined under the *Heritage Act 1995*), you are required to notify the Executive Director, Heritage Victoria of your intention.
- reporting requirements relating to the investigation or survey of any land for the purpose of finding an historical archaeological site or relic (as defined under the *Heritage Act 1995*) must be produced separately to a Management Plan, and lodged with Heritage Victoria.

It should also be noted that, whilst excavation may be undertaken during the preparation of a Management Plan for the purpose

investigating Aboriginal cultural heritage for that Management Plan (section 29(b) and section 34(2) of the *Aboriginal Heritage Act 2006*), a person must not knowingly uncover or expose an historical archaeological site or relic (as defined under the *Heritage Act 1995*) except in accordance with a consent issued under section 129 of the *Heritage Act 1995*.

Further information on historical heritage issues in Victoria can be obtained at Heritage Victoria's web site (www.heritage.vic.gov.au).

5

Who is the Cultural Heritage Management Plan Sponsor

The Sponsor is the person who is seeking to undertake an activity that requires a Management Plan under the Act or, in any other case, the person seeking the preparation of a Management Plan (section 4). It is the Sponsor who, in effect, prepares a Management Plan for an activity. A sponsor may be a person or a company.

6

Who is the Cultural Heritage Advisor?

The Sponsor must engage a Cultural Heritage Advisor to assist in preparing the Management Plan (section 58). A Cultural Heritage Advisor is a person who is appropriately qualified in a discipline directly relevant to the management of Aboriginal cultural heritage (such as anthropology, archaeology or history) or who has extensive experience or knowledge in relation to the management of Aboriginal cultural heritage (section 189(1)). A Cultural Heritage Advisor must be a natural person, not a company.

It is strongly recommended that Sponsors engage Cultural Heritage Advisors who are appropriately qualified and have extensive practical experience in and demonstrated knowledge of the management of Aboriginal cultural heritage.

The Minister has made guidelines specifying

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appropriate qualifications for Cultural Heritage Advisors (section 189(2)). A copy of these guidelines along with a list of people who have these qualifications is available on the Aboriginal Affairs Victoria (AAV) website at www.aboriginalaffairs.vic.gov.au. A sponsor should seek to engage a Cultural Heritage Advisor with the appropriate qualifications.

7 Who is the Registered Aboriginal Party?

At a local level, Registered Aboriginal Parties (RAPs) are the voice of Aboriginal people in the management and protection of Aboriginal cultural heritage. RAPs have responsibilities relating to the management of Aboriginal cultural heritage under the Act, which include evaluating Management Plans for their area.

RAPs are registered for a specified geographical area. A statewide map showing the location of all RAPs, along with detailed boundary maps and contact details for each RAP, can be found on the AAV website at www.aboriginalaffairs.vic.gov.au. This map is updated from time to time, so these details should always be checked at the commencement of a project.

8 The Process for Developing a Cultural Heritage Management Plan

Division 4 of Part 4 of the Act establishes the process for preparing a Management Plan (See Appendix 2 for a process flowchart).

8.1 Summary of the process

In all cases except where the Secretary is the Sponsor, the process may be summarised as follows:

8.1.1 Notice of Intention to prepare a Management Plan

Before the preparation of a Management Plan commences and before any field assessment is conducted, the Sponsor must provide

a 'Notice of Intent to Prepare a Cultural Heritage Management Plan' to each relevant RAP, the Secretary of the Department and the owner or occupier of any land within the area covered by the Management Plan (sections 54(1) and (2)). A suggested format for that notice is available for use on the AAV website.

The notice must specify the following information (section 54(3)):

- the name and contact details of the Sponsor;
- a description of the proposed activity to which the Management Plan relates;
- the area in respect of which the Management Plan is to be prepared, clearly identified; and,
- the dates within which the Management Plan is proposed to be prepared.

A location map of sufficient quality, preferably conforming to the requirements of the 'Map of the Activity Area of a Cultural Heritage Management Plan' Approved Form, is required to clearly identify and locate the activity area.

The description of the proposed activity must contain sufficient detail about the proposed activity to enable a RAP to make an informed decision about whether it wants to evaluate the Management Plan.

It will be beneficial for the RAP(s) to have as much information as possible to help with their decision about whether it wishes to evaluate the Management Plan. If appropriate, the RAP may be briefed on the proposed activity prior to the lodgement of the notification of the intention to prepare a Management Plan.

8.1.2 Response from a RAP

RAP(s) have 14 days from the date of receipt of the notice to respond to the Sponsor in writing, advising whether or not they intend to evaluate the Management Plan (section

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55(2)). A RAP(s) written response should advise:

1. Whether a RAP intends to evaluate a plan or not when complete; and
2. Whether a RAP intends to:
 - Consult with the sponsor and/or advisor in relation to the assessment of the area for the purposes of the plan;
 - Consult with the sponsor in relation to the recommendations to be included in the plan; and/or
 - Participate in the conduct of the assessment.

8.1.3 Notice to the Secretary that the RAP is not evaluating the Management Plan

The Sponsor must notify the Secretary of the Department if a relevant RAP elects not to evaluate a Management Plan, or the relevant RAP fails to advise the Sponsor in writing within 14 days of notification whether it wishes to evaluate the Management Plan (section 56(1)). In either of these cases, the Secretary assumes that RAP's evaluation duties for the Management Plan (unless another RAP has evaluation duties for that area).

8.1.4 Cultural Heritage Advisor

The Sponsor must engage a suitably qualified Cultural Heritage Advisor to assist in preparing the Management Plan (section 58). See **Part 6** of this document about who may be a Cultural Heritage Advisor.

8.1.5 Involvement of RAP

Where a RAP gives notice of its intention to evaluate a Management Plan, the Sponsor must make reasonable efforts to consult with the RAP before beginning the assessment and during the preparation of the Management Plan (section 59(2)). In addition, the RAP may consult with the Sponsor in relation to the cultural heritage assessment and management recommendations

and may take part in the cultural heritage assessment (section 60).

The Sponsor must make reasonable efforts to consult with the RAP before beginning the assessment and during the preparation of the Management Plan (section 59(2)), and the RAP is also required to use reasonable efforts to cooperate with the Sponsor in the preparation of the Management Plan (section 59(3)).

The Management Plan process relies heavily on effective negotiation. Good discussion and negotiation will usually contribute to the development of a clearer Management Plan, and better recommendations for the Sponsor and Aboriginal people. Therefore, it is critical to involve the relevant RAP or RAP(s) as early as possible in the planning process.

Face to face meetings may be required, and in many cases, desired. If so, the Sponsor should not assume that all parties will be able to easily attend such a meeting. In these cases, the Sponsor may consider options to facilitate attendance, such as the location and time of meetings and assistance to enable parties to attend. As a general rule (and unless otherwise arranged), 14 days notice should be given to parties in relation to meeting, fieldwork and other engagement in the process.

It is desirable to establish protocols for the first consultation between the Sponsor and the RAP(s). Such protocols may be established by the Sponsor or by the Sponsor in consultation with the RAP(s) and may specify:

- a) whether a formal meeting is required;
- b) whether the formal meeting or consultation must be held within a specified period after the RAP(s) written notice of its intention to evaluate the Management Plan;
- c) the location of the meeting or consultation;
- d) the form of consultation, if a formal meeting is not required;

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- e) reimbursement of any necessary expenses incurred by the RAP(s); and/or
- f) the nature of information to be exchanged.

The purpose of consultation with the RAP(s) is to ensure that the scope of the Management Plan is adequate to enable the RAP(s) to assess the potential impact on Aboriginal cultural heritage and the appropriateness of impact avoidance and/or mitigation strategies. The consultation may also include discussion of, and agreement on, the following matters:

- a) the identity and number of RAP representatives to:
 - i. attend meetings for the duration of the Management Plan; and
 - ii. assist the Cultural Heritage Advisor with assessment activities;
- b) the number and location of future meetings;
- c) the extent of the activity area covered by the Management Plan;
- d) the timing of the assessment activities;
- e) costs related to the employment of RAP representatives assisting with assessment activities;
- f) the cultural heritage values and significance of places or landscapes within the activity area;
- g) contingency planning for the discovery of Aboriginal cultural heritage finds during implementation of the Management Plan; and
- h) any other costs and considerations.

See **Part 10.2** of this document for further discussion regarding the participation of Aboriginal representatives in the Management Plan process.

8.1.6 Assessment and Reporting

The Cultural Heritage Advisor generally does the background research, holds consultation

meetings, does a desktop assessment and conducts field assessments (as required), along with the RAP(s), and writes the Management Plan for the Sponsor.

8.1.7 Application for evaluation of a Management Plan

The Sponsor seeks approval for the Management Plan. For a Sponsor who does not often undertake these projects, they may have the Cultural Heritage Advisor manage this part of the process for them. It is suggested that the Sponsor and the Cultural Heritage Advisor discuss and arrange in advance who will manage this process. Approval of a Management Plan must be sought from:

- a) any relevant RAP(s) who gave notice of their intention to evaluate the Management Plan (section 62); or
- b) the Secretary where (section 65):
 - there is no relevant RAP in relation to the activity area (or part of the activity area);
 - no relevant RAP gives notice to the Sponsor as to whether they wish to evaluate the Management Plan within 14 days;
 - all of the relevant RAP(s) give notice to the Sponsor that they do not wish to evaluate the Management Plan; or
 - the relevant RAP(s) do not give written notice of their decision to approve, or to not approve, the Management Plan within 30 days of receipt of the Sponsor's application for evaluation.

To ensure consistent standards are applied when management plans are evaluated, a '*Cultural Heritage Management Plan Evaluation Checklist*' has been developed and is available for reference on the AAV website. This checklist will also assist Cultural Heritage Advisors and Sponsors to review their own work before submitting it for evaluation and approval.

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8.1.8 Decision

The RAP(s) or Secretary (as applicable) has 30 days after receiving the application to evaluate the Management Plan and respond to the Sponsor with written notice of their decision to approve or refuse to approve the Management Plan (section 63(1)).

The following matters are required to be included in a Management Plan and must be considered by the RAP (or the Secretary) in evaluating the Management Plan (section 61):

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

8.1.9 VCAT Review of Decision to Refuse to approve a Management Plan

If the RAP or the Secretary refuses to approve a Management Plan, the Sponsor may apply to the Victorian Civil and Administrative Tribunal (VCAT) to review that decision. An application to review a decision must be made within 28 days of being notified of the decision (or within 28 days of the provision of a statement of reasons, if requested).

See Part 15 of this Guide for further information on dispute resolution.

8.1.10 Lodgement with the Secretary

Where a RAP(s) (or Secretary, as applicable) has approved a Management Plan, the Sponsor must lodge the approved Management Plan with the Secretary of the Department (section 64). Copies of each written notice of approval must be inserted after the title page of the approved Management Plan.

The approved Management Plan takes effect as soon as it is lodged with the Secretary. The lodgement requirements are:

- one hard copy and an electronic copy in Portable Document Format (PDF); and
- a copy of each written notice of that approval received by the Sponsor inserted after the title page.

8.1.11 Assessment Documentation

Where the Cultural Heritage Advisor has not already done so, the Sponsor must provide all assessment documentation to the Secretary within 14 days after the approval of a Management Plan (section 67(1)).

If a Management Plan is discontinued, the assessment documentation and a notice of the decision to discontinue must be provided to the Secretary within 14 days of the decision to discontinue (section 67(2)).

See **Part 11** of this Guide for further information on assessment documentation requirements.

8.2 Where the Secretary of DPCD is the Sponsor

Where the Secretary is the Sponsor (ie: where the Department of Planning and Community Development is the proponent) and there is a relevant RAP in relation to the activity area, the statutory process for developing a Management Plan is the same as the process set out at Part 7.1 of this Guide, unless:

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- the relevant RAP has failed to advise the Secretary in writing within 14 days of whether it wishes to evaluate the Management Plan; or
- the relevant RAP has given notice to the Secretary that it does not wish to evaluate the Management Plan; or
- the relevant RAP has failed to advise the Secretary in writing within 30 days of whether it has decided to approve or not approve a Management Plan.

Where there is no relevant RAP in relation to the activity area, or any of the above exceptions apply, the process for engagement of a Cultural Heritage Advisor, assessment and reporting, and lodgement of assessment documentation is the same as described under Parts 8.1.4, 8.1.6 and 8.1.10 of this Guide. However, the Secretary must apply to the Aboriginal Heritage Council (“the Council”) for approval of the Management Plan (section 66(1)).

The Council must decide whether to approve or to refuse to approve a Management Plan within 60 days after receiving the application, and may consult with any Aboriginal person or body during that period (sections 66(2) and (3)). A Management Plan approved by the Council takes effect on that approval (section 66(6)).

9 Presentation of a Cultural Heritage Management Plan

Only a Management Plan that complies with the prescribed standards can be approved (sections 63(3), 65(4) and 67). The approved form for a Cultural Heritage Management Plan largely dictates the presentation of a Management Plan. Relevant sections of the approved form are reproduced here verbatim in italics.

The Management Plan must be presented as follows:

- *Pages must be typed and numbered.*

- *References must be given to any reports, articles, primary sources, maps or books used.*
- *A standard set of contents set out in (2) below must be used.*

The front material (such as the executive summary and table of contents) should be numbered in Roman numerals. Numbering should recommence at the introduction, in standard western Arabic numerals, sequentially numbering each page of the remainder of the report including the Appendices.

Management Plans must be written in plain English¹, presented in a standard format, and must consist of a standard set of contents as prescribed in the approved form for a Cultural Heritage Management Plan.

The standard set of contents in a Management Plan must include at least the following:

- **Cover**
- **Title page**
- **Executive summary**
- **Table of contents**

PART 1 – Assessment

- *Introduction*
- *Activity description*
- *Extent of activity area covered by the management plan*
- *Documentation of consultation*
- *Aboriginal cultural heritage assessment*
- *Details of Aboriginal cultural heritage in the activity area (if any)*
- *Consideration of Section 61 matters*

PART 2 – Cultural Heritage Management Recommendations

- *Specific management measures*
- *Contingency plans*
- **References**
- **Appendices**

¹ See Eagleson, Robert D. 1990 *Writing in Plain English*, Australian Government Publishing Service, Canberra.

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It is possible to prepare a Management Plan in an amended format in particular circumstances. Such circumstance may include the situation where a Management Plan is required for a discrete Aboriginal place, for example, a scarred tree. If a Sponsor wishes to prepare a Management Plan in an amended format, the Sponsor should discuss the amended format with the relevant RAP(s) and then obtain the approval of the RAP(s) and the Secretary in writing. Any such amended format must still comply with the prescribed standards for the purposes of Section 53 of the Act and adequately address the matters set out in Section 61 of the Act.

The following items expand on the requirements prescribed in the approved form for a Cultural Heritage Management Plan.

9.1 Cover

The cover must set out:

- *the title of the Management Plan;*
- *the AAV Management Plan identifier;*
- *the name of the sponsor;*
- *the name of the cultural heritage advisor;*
- *the name of the author(s) if different or in addition to the cultural heritage advisor;*
and
- *the date of completion.*

The title of the Management Plan must commence with the name of the activity and its location (eg Greenfields Residential Development, Eastmeadows: Cultural Heritage Management Plan).

9.2 Title Page

The title page must set out:

- *the title of the Management Plan;*
- *the AAV Management Plan identifier;*
- *whether the activity is small, medium or large (in accordance with Regulation 68 of the Regulations);*

- *whether a desktop, standard and/or complex assessment was undertaken (in accordance with Regulation 56 of the Regulations);*
- *the name of the sponsor;*
- *the name of the cultural heritage advisor;*
- *the name of the author(s) if different or in addition to the cultural heritage advisor;*
and
- *the date of completion.*

In addition to the information on the Cover, the Title Page must state whether the activity is small, medium or large (in accordance with Regulation 68 of the Regulations); and whether a desktop, standard and/or complex assessment was undertaken (in accordance with Regulation 56 of the Regulations). This will assist the Sponsor and the RAP in calculating the correct evaluation fee for the Management Plan.

9.3 Executive Summary

A Management Plan must commence with an executive summary that briefly describes the nature and extent of the proposed activity, the results of the cultural heritage assessment and includes a brief summary of management recommendations. The executive summary must succinctly set out:

- *the activity;*
- *the location;*
- *the assessment undertaken;*
- *the results of the assessment;*
- *the Aboriginal cultural heritage in the activity area; and*
- *the recommendations.*

An executive summary is supposed to assist the reader in contextualising the Management Plan, and to provide an overview of the assessment and recommendations. For many people reviewing the applicability of a Management Plan to their circumstances, this will be all that they read. As such, it is critical that the salient features of the Management Plan are included in the executive summary.

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Whilst it is important that the executive summary is succinct, the main compliance aspects of the recommendations must be included. However, it may be appropriate to only briefly reference the type of contingency plans included, indicating where more detail can be found in the Management Plan should this be required.

9.4 Table of Contents

The table of contents must list the following items (as appropriate), giving page numbers for each item:

- *Headings*
- *Sub-headings*
- *Tables*
- *Maps*
- *Photographs*
- *Figures*
- *Gazetteer*
- *Appendices*
- *References*

9.5 PART 1 – ASSESSMENT

A Management Plan must be divided into two parts. Part 1 must contain details of the Assessment, and Part 2 must contain the Recommendations.

9.6 Introduction

The Introduction must contain the following information:

- *the reasons for preparing the Management Plan (in accordance with Regulation 63 of the Regulations);*
- *a reference to the Notice of Intention to Prepare a Management Plan submitted to each relevant party under Section 54 of the Act and attached in the Appendices;*
- *a brief description of the location of the activity area, including relevant cadastral details;*
- *the name of the sponsor;*

- *the name of the cultural heritage advisor who undertook the work and their qualifications and experience (in accordance with Section 189 of the Act);*
- *the name(s) of the owner(s) or occupier(s) of the land where the activity area is located;*
- *the RAP(s) with responsibility for the activity area; and*
- *whether any RAP has elected to evaluate the Management Plan.*

The following paragraphs provide additional detail to be included in various aspects of the introduction to the Management Plan as set out in the approved form for a Cultural Heritage Management Plan.

9.6.1 The reasons for preparing the Management Plan

The reason for preparing a Management Plan will be one of the following:

- voluntary (section 45);
- required by the Regulations (section 47). If required by the Regulations, the Management Plan must state the reason why the Regulations require the preparation of a Management Plan (regulation 63(2)). Normally, this should be done with reference to the listed 'high impact activity' under Part 2, Division 5 of the Regulations, and reference to the 'areas of cultural heritage sensitivity' under Part 2 Division 3 or 4 of the Regulations;
- required by the Minister (section 48); or
- as part of an Environment Effects Statement process (section 49).

9.6.2 Notice of Intention to Prepare a Management Plan

Reference to the Notice of Intention to Prepare a Management Plan submitted to each relevant party under section 54 of the Act should be made, and to the copy attached in the Appendices.

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Normally the same notice would be provided to the RAP, the Secretary, and to any owner or occupier of relevant land, and only a single copy need be attached in the Appendices. However, if a different notice is provided to land owners/occupiers (such as might occur for a large infrastructure project involving many landowners) then a copy of the generic form of that notice should also be provided.

9.6.3 The name of the Sponsor

The Sponsor is the person who is seeking to undertake the activity or who is seeking the preparation of the Management Plan. The Sponsor must be a legal entity. Where the Sponsor is an incorporated body, the Australian Company Number or other legal identifier must be provided with the name of the Sponsor.

9.6.4 The name of the Cultural Heritage Advisor

The name of the Cultural Heritage Advisor who undertook the work and their qualifications and experience must be provided. The qualifications and/or experience should be expressed in relation to how these meet the requirements of Section 189 of the Act, and the Minister's guidelines specifying appropriate qualifications for Cultural Heritage Advisors (section 189(2)). The Cultural Heritage Advisor must be a natural person, not a company.

9.6.5 The location of the activity area

A brief description of the location of the activity area in regional context must be provided, including relevant cadastral details.

9.6.6 The owners and occupiers of the land

The name(s) of the owner(s) or occupier(s) of the land where the activity area is located must be provided, if this is different to the Sponsor. Where an occupier does not wish to have their name recorded in the Management Plan, then the owner's name must be provided. The name of a land owner

is public information, which can be obtained from Land Victoria.

9.6.7 Registered Aboriginal Parties

The name of the RAP(s) with responsibility for the activity area must be provided, together with a statement about whether they have elected to evaluate the Management Plan.

9.7 Activity Description

A Management Plan must provide clear and relevant information about the nature and extent of the proposed activity in order to assess the scope for potential impact on Aboriginal cultural heritage.

In accordance with Clause 6.1, Schedule 2 of the Regulations, this information must include a detailed description of the nature of the proposed activity and any ancillary works associated with the activity as well as a description of the likely impact on the surface of the land and buried former land surfaces, in relation to its possible impact on Aboriginal cultural heritage.

If the activity is a subdivision, the activity description must also include a description of how each lot is intended to be used or developed or if no such description is provided in relation to a lot, a description of the use or development of each lot permitted by the relevant planning scheme (in accordance with Clauses 6.2 and 10, Schedule 2 of the Regulations).

Photographs may be included to give a visual description of the activity area.

For subdivision, "description of the use or development of each lot permitted by the relevant planning scheme" would normally be used to describe the activity, because whilst the use may be known, the exact development footprint (such as the location of houses, sewerage pipes, roads etc) may not. This allows for the ongoing use and development of the land to be covered by the Management Plan after the subdivision has occurred.

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9.8 Extent of Activity Area Covered by the Management Plan

*In accordance with Clause 7, Schedule 2 of the Regulations, the extent of the activity area to be covered by the Management Plan must be described with reference to a **map** or maps indicating:*

- *the location of the activity area in the regional context; and*
- *the relevant municipal district (if any) in which the area is located; and*
- *the salient prominent structures and works in, and natural features, of the activity area.*

The map(s) must be in a form approved by the Secretary (see the Approved Form under Schedule 2, Clause 7.1 of the Regulations, “Map of the Activity Area of a Cultural Heritage Management Plan for the purposes of the Aboriginal Heritage Act 2006”).

If a map relates to part of the activity area, a detailed description of that part must be provided.

9.9 Documentation of Consultation

If a RAP gives notice under Section 55 of the Act of its intention to evaluate a Management Plan, the Management Plan must:

- a) state the name and functions of any representative appointed by the RAP(s) (pursuant to Clause 4.3, Schedule 2 of the Regulations);*
- b) include detail of the any consultation between the sponsor and the RAP(s) in relation to the assessment of the area for the purposes of the Management Plan (pursuant to Sections 60(a) of the Act);*
- c) include detail of the RAP(s) participation in the conduct of the assessment for the Management Plan (pursuant to Section 60(c) of the Act);*
- d) include detail of the sponsor’s efforts to consult with the RAP(s) in relation to the recommendations to be included in the Management Plan (pursuant to section 60(b) of the Act);*

e) pursuant to Clause 8.2, Schedule 2 of the Regulations:

- *identify the RAP representatives, if any, who participated in Management Plan meetings and/or consultation (including tele-conferencing, video conferencing and internet hook-ups as acceptable alternatives to meetings); and,*
- *identify RAP representatives, if any, who participated in any field assessment.*

f) provide a summary of the outcomes of the consultation.

The Management Plan should document formal and, where possible, informal consultation processes that have taken place. It is important that the Management Plan also document the outcomes of the consultation, even if the parties do not agree.

9.10 Reporting the Results of an Aboriginal Cultural Heritage Assessment

A Management Plan must detail the results of any assessment of the Aboriginal cultural heritage present within an activity area. The requirements for conducting Aboriginal cultural heritage assessments are set out in Part 3 and Schedule 2 of the Regulations and in the approved form for a Cultural Heritage Management Plan and are explained in detail in Part 10 of this Guide. Therefore, this Part is limited to setting the minimum requirements for reporting on the results of an Aboriginal cultural heritage assessment.

In reporting the results of an Aboriginal cultural heritage assessment, a Management Plan must use the Victorian Aboriginal Heritage Register numbers to identify all Aboriginal cultural heritage found, discovered and/or subject to investigation.

Register numbers for new records will only be issued following receipt of completed Victorian Aboriginal Heritage Register record forms to the required standard. For Aboriginal cultural heritage that already has a Victorian

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Aboriginal Heritage Register number, a 'Place Inspection Form' must be completed and should be lodged prior to completion of the Management Plan.

A Management Plan must provide:

a) **Desktop Assessment** – Details of the desktop assessment pursuant to Regulation 57 and Clause 8.1, Schedule 2 of the Regulations, including the following information relating to the Aboriginal cultural heritage in or associated with the activity area:

1. a search of the Victorian Aboriginal Heritage Register for information relating to the activity area, including the date(s) the Victorian Aboriginal Heritage Register was accessed;
2. an identification and determination of the geographic region of which the activity area forms a part that is relevant to the Aboriginal cultural heritage that may be present in the activity area;
3. a concise **map** or maps showing the geographic region referred to in point 2 and the location of the activity area in that geographic region;
4. a review of the registered Aboriginal places in the geographic region referred to in point 2;
5. a review of reports and published works about Aboriginal cultural heritage in the geographic region referred to in point 2, relevant to the activity area;
6. a review of historical and ethno-historical accounts of Aboriginal occupation of the geographic region referred to in point 2, relevant to the activity area;
7. a review of the landforms or geomorphology of the activity area;
8. a review of the history of the use of the activity area, including discussion of prior disturbance to ground surfaces and soil deposits if available; and

9. a conclusion surmising from the desktop assessment whether it is possible Aboriginal cultural heritage may be located in the activity area.

b) **Standard Assessment** – When a cultural heritage assessment includes a ground survey, details of the assessment pursuant to Clause 8, Schedule 2 of the Regulations, including:

1. the method by which the Aboriginal cultural heritage present in the activity area was assessed, including ground survey strategies and techniques;
2. if any, a concise **map** or maps showing the ground survey areas and any Aboriginal places in the survey areas, including estimates of effective survey coverage;
3. the names of those taking part in the ground survey;
4. details of obstacles encountered, if any, in completing the ground survey; and
5. the results and conclusions of the ground survey, considered in light of the desktop assessment, including the identification of areas likely to contain Aboriginal cultural heritage (if any).

c) **Complex Assessment** – When a cultural heritage assessment includes subsurface testing and excavation, the Management Plan must also include (Clause 9, Schedule 2 of the Regulations):

1. the subsurface testing or excavation aims and methodology (including strategies employed and/or techniques used);
2. a concise map or maps showing the location of subsurface testing or excavation pits or transects and any Aboriginal places in the vicinity of the subsurface testing or excavation pits or transects;

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3. *scaled section drawings and/or scaled photographs of the profile of each controlled excavation subsurface testing or excavation pit or transect pit where Aboriginal cultural heritage is present;*
4. *scaled section drawings and/or scaled photographs of the profile of each controlled excavation subsurface testing or excavation pit or transect pit representative of a landform being investigated;*
5. *the co-ordinates for the location of subsurface testing or excavation pits or transects, including transect start and end points (Victorian Government standard GDA94 MGA for Eastings, Northings and Zone);*
6. *the names of those taking part in the subsurface testing or excavation;*
7. *the name of the person responsible for supervising the subsurface testing or excavation;*
8. *any physical or other obstacles to the carrying out of the subsurface testing or excavation (eg environmental conditions, weather, access restrictions, competency of participants, etc); and*
9. *the results and conclusions of the subsurface testing and/or excavation including the results of any radiometric or other dating, considered in light of the desktop and standard assessment.*

9.11 Details of Aboriginal Cultural Heritage in the Activity Area (if any)

If no Aboriginal cultural heritage is found, discovered and/or subject to investigation for the Management Plan, and no areas likely to contain Aboriginal cultural heritage are identified in the activity area, then this section should not be included.

A Management Plan must detail the results of any assessment of the Aboriginal cultural heritage present within an activity area.

Detailed analysis to establish the nature and significance of the Aboriginal cultural heritage must be included where relevant.

a) For the Aboriginal places or objects found, discovered and/or subject to investigation (if any) in the activity area (pursuant to Clauses 8 and 11, Schedule 2 of the Regulations) the following must be included:

1. *details of the assessment of the Aboriginal cultural heritage undertaken to determine the nature and significance of each Aboriginal place or object, including analysis of site formation processes and (where relevant): artefact analysis; shell or faunal analysis; radiometric dating; statistical analysis; and any other relevant analysis undertaken;*
2. *a summary of information, if any, provided by a member of a relevant RAP or other person about the Aboriginal cultural heritage of the activity area;*
3. *an accurate transcript of any oral information provided by a representative of a relevant RAP or other people who may possess information about the Aboriginal heritage of the activity area, if the person who provided the information consents;*
4. *the results of the assessment of the Aboriginal cultural heritage;*
5. *a concise **map** or maps of the activity area which locates all Aboriginal cultural heritage found, discovered and/or subject to investigation with reference to Victorian Aboriginal Heritage Register numbers.*

Providing details of the Aboriginal cultural heritage is crucial to its management. The following is the minimum information required to inform the management recommendations:

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b) For each Aboriginal place or object found, discovered and/or subject to investigation in the activity area, which may be subject to impact by the activity, presented by Victorian Aboriginal Heritage Register number, the following must be included (pursuant to Clause 11, Schedule 2 of the Regulations):

1. the Victorian Aboriginal Heritage Register number;
2. the full cadastral description of the land on which Aboriginal cultural heritage is located;
3. **the Extent** – a detailed **plan** of each Aboriginal place found, discovered and/or subject to investigation including co ordinates (Victorian Government standard GDA94 MGA for Eastings, Northings and Zone);
4. **the Nature** – a detailed description of the Aboriginal cultural heritage found, discovered and/or subject to investigation;
5. **the Significance** – a statement of the significance of the Aboriginal cultural heritage found, discovered and/or subject to investigation in terms of the definition of ‘cultural heritage significance’ in Section 4 of the Act; and
6. at least one representative photograph or digital image of the Aboriginal cultural heritage.

On occasion, an area will be identified which is likely to contain Aboriginal cultural heritage, but this area will not be impacted by the activity. Regulation 60(2) allows for such an area to be identified during the standard assessment in the Management Plan, without the assessment providing confirmation of the existence of Aboriginal cultural heritage in that area through excavation.

If such an area is identified, it should be given a reference and a relevant name (for example “Area A – Smith Property Sandy Rise”) for the purposes of the Management Plan.

c) If a cultural heritage assessment identifies areas likely to contain Aboriginal cultural heritage, which will not be impacted by the activity, the following must be included:

1. the reasoning behind the identification of each area likely to contain Aboriginal cultural heritage; and
2. a description of each area identified as likely to contain Aboriginal cultural heritage.

9.12 Consideration of Section 61 matters – Impact Assessment

For each Aboriginal place or object found, discovered and/or subject to investigation in the activity area, presented by Victorian Aboriginal Heritage Register number and in accordance with Section 61 of the Act, consideration of the following must be presented:

- a) whether the activity will be conducted in a way that avoids harm to the Aboriginal place or object;
- b) if it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal place or object, whether the activity will be conducted in a way that minimises harm to Aboriginal place or object; and
- c) any specific measures required for the management of the Aboriginal place or object likely to be affected by the activity, before, during and after the activity.

In accordance with Section 61 of the Act consideration of the following must be presented:

- any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity; and
- requirements relating to the custody and management of Aboriginal cultural heritage during the course of the activity.

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9.13 PART 2 – CULTURAL HERITAGE MANAGEMENT RECOMMENDATIONS

A Management Plan must be divided into two parts. Part 1 must contain details of the Assessment, and Part 2 must contain the Recommendations.

The following statement must be included immediately below the heading for Part 2:

“These recommendations become compliance requirements once the Cultural Heritage Management Plan is approved”

9.14 Specific Cultural Heritage Management Requirements

Specific management requirements must:

- a) be presented by Victorian Aboriginal Heritage Register number for known Aboriginal cultural heritage;*
- b) where identified, include requirements for ensuring areas likely to contain Aboriginal cultural heritage that are not to be impacted by the activity are protected; and*
- c) include a **map** or maps showing the location of specific requirements.*

These recommendations should include, without limitation:

- avoidance of as much of the Aboriginal cultural heritage as possible, based on the significance of the Aboriginal cultural heritage;*
- developing an appropriate salvage strategy to recover information about Aboriginal cultural heritage if it is not possible to avoid disturbance, based on the significance of the Aboriginal cultural heritage;*
- the removal and curation of Aboriginal cultural heritage;*
- requirements relating to the custody and management of Aboriginal cultural heritage during the course of the activity; and/or*
- any combination of the above measures.*

If no Aboriginal cultural heritage is found during the assessment, and no areas are identified as likely to contain Aboriginal cultural heritage, the Management Plan may specify that no specific cultural heritage management activities are required.

Guidelines for developing cultural heritage management recommendations are provided in **Part 13** of this Guide.

If no Aboriginal cultural heritage is found during the assessment, including background research, the Management Plan may specify that no further cultural heritage management activities are required, but must include requirements for the possible discovery of Aboriginal cultural heritage during works.

9.15 Contingency Plans

A Management Plan must include contingency plans for the possible discovery of Aboriginal cultural heritage during works.

A Management Plan must also include specific contingency plans (Clause 13(1) Schedule 2 of the Regulations) for:

- a) the matters referred to in Section 61 of the Act;*
- b) the resolution of any disputes between the sponsor and relevant RAPs in relation to the implementation of an approved Management Plan or the conduct of the activity (if a RAP is evaluating the Management Plan);*
- c) the management of Aboriginal cultural heritage found during the activity;*
- d) the notification, in accordance with the Act, of the discovery of Aboriginal cultural heritage during the carrying out of the activity; and*
- e) reviewing compliance with the Management Plan and mechanisms for remedying non-compliance.*

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Contingency plans are provided to cover unlikely events, such as the unexpected discovery of Aboriginal cultural heritage during works, or the Sponsor and the RAP unexpectedly disagreeing about the implementation of the Management Plan. Events that will happen, or are planned to happen, should already have been covered under Specific Cultural Heritage Management Requirements.

As a general rule, contingency plans should not include future actions or roles for Aboriginal organisations other than RAPs. If required (where there is no RAP), a contingency plan should allow for a Cultural Heritage Advisor to be engaged to assist in facilitating an appropriate outcome, including the involvement of relevant Aboriginal community representatives, for the contingency plan. (This should only apply to those contingency plans that do not already involve a cultural heritage advisor)

See **Part 13** of this Guide with respect to contingency plans that must be included in the Management Plan and implemented where Aboriginal cultural heritage is found during works.

9.16 Other Considerations

A Management Plan may also provide for the following:

- provision for Aboriginal people to continue to visit Aboriginal cultural heritage places within the activity area during and after the activity has been completed (this may require the development of a Cultural Heritage Agreement pursuant to section 68);
- protocols for handling sensitive information;
- communication of correspondence and information between the Sponsor and RAP(s), including timeframes for response;
- continuing involvement of RAP(s) in future stages of the activity;

- procedures where one party fails to abide by the terms of the Management Plan;
- cultural awareness training for employees or contractors;
- ongoing liaison between the Sponsor and RAP(s).

9.17 References

The References section of the Management Plan must list all reports, articles, primary sources, maps or books referred to in the Management Plan and be presented in accordance with standard referencing conventions, such as those set out in the Australian Style Manual².

9.18 Appendices

The following documents must be appended to the Management Plan:

- *the Notice of Intention to Prepare a Management Plan (including the map) provided by the sponsor to various parties under Section 54 of the Act;*
- *the notice from each relevant RAP to the sponsor specifying whether or not it intends to evaluate a Management Plan under Section 55 of the Act (where relevant);*
- *A glossary listing simple explanations for any technical terms specifically used in the Management Plan;*
- *A Gazetteer of all Aboriginal cultural heritage found, discovered and/or subject to investigation in the activity area indexed by Victorian Aboriginal Heritage Register numbers; and*
- *Any catalogues of data recorded about Aboriginal cultural heritage, such as detailed recording of stone artefact dimensions and features for analysis.*

² 2002 Australian Style Manual, for Authors, Editors and Printers, Department of Information, Communication Technology and the Arts, Wiley Australia.

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A Management Plan may also include, (without limit) as appendices:

- *relevant figures, tables, photographs not required in the body of the Management Plan; and*
- *correspondence between the sponsor and the RAP(s) (where appropriate).*

9.19 Maps

The Management Plan must include maps of sufficient quality to relocate the activity area, understand the assessment, relocate the extent of the Aboriginal cultural heritage in the activity area, and implement the management recommendations. These maps, and all others used in the Management Plan, should generally conform to the standards set out in the approved form for the 'Map of the Activity Area in a Cultural Heritage Management Plan', available on the AAV website.

The maps must provide a minimum of:

- *either geo-referencing or at least three readily identifiable features, eg road intersections, river crossings, prominent features, within the vicinity;*
- *a prominent North arrow;*
- *a scale bar using standard cartographic formats;*
- *the area covered by the Management Plan clearly shown; and*
- *any other salient prominent natural features, structures and works.*

10

Conduct of Aboriginal Cultural Heritage Assessments

Please note that Section 54(2) of the Aboriginal Heritage Act 2006 (the 'Act') requires that a 'Notice of Intent to Prepare a Cultural Heritage Management Plan' must be given to the relevant parties before commencing preparation of a Management Plan. Failure to provide notice prior to commencing preparation of a Management Plan, or undertaking a complex assessment prior to undertaking the desktop assessment, may expose the Sponsor or a cultural heritage advisor to prosecution under section 27, 28 and/or 34 of the Act.

The purpose of an Aboriginal cultural heritage assessment is to identify and record Aboriginal cultural heritage within the activity area and to develop recommendations for the management and protection of Aboriginal cultural heritage. Knowledge of Aboriginal cultural heritage that may be impacted by the proposed activity may be gained through background research, interviews with Aboriginal people, archaeological or ground surveys, and archaeological excavation and/or subsurface testing.

The results of a cultural heritage assessment should lead to appropriate recommendations for the future management and protection of the Aboriginal cultural heritage identified during the assessment. Therefore, the effectiveness of the Management Plan will depend on the quality of the work carried out to complete the cultural heritage assessment.

Aboriginal cultural heritage assessments for the purposes of a Management Plan must be in accordance with the prescribed standards (section 53). The assessment may involve research into information relating to Aboriginal cultural heritage, a ground survey to detect Aboriginal cultural heritage and the disturbance or excavation of the land to uncover or discover Aboriginal cultural heritage, but is not limited to these activities (section 43).

10.1 Sponsor Obligations during Cultural Heritage Assessments

The Sponsor must comply with the *Occupational Health and Safety Act 2004* ("the OHS Act") as amended from time to time. This should include, but is not limited to:

- the provision of induction and training necessary to meet requirements under the OHS Act;
- the management of conduct of all persons involved in the cultural heritage assessment to ensure compliance with the occupational health and safety requirements of the activity area; and

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- safe access to the activity area, appropriate first aid and other facilities necessary for the occupational health and safety of those involved in the cultural heritage assessment.

10.2 Aboriginal Representative's Involvement in Assessments

10.2.1 Identity and Number of Aboriginal Representatives

The identity and number of RAP representatives should be determined early in the process to avoid confusion and duplication later in the process. The representatives identified at this stage should be available for meetings for the duration of the Management Plan, should be the key RAP contacts for both the Sponsor and the Cultural Heritage Advisor for any issues arising during the preparation of the Management Plan, and should either participate in, or arrange alternative RAP representation on, any field assessment.

While it is desirable for equal numbers of representatives from all relevant RAP(s) to be involved in cases where more than one RAP has responsibility for the activity area, a RAP may elect to have fewer representatives than other RAP(s). Joint meetings involving all representatives from all RAP(s) are desirable but, in some cases, it may be necessary to schedule separate meetings with each RAP.

A process should be agreed to enable the RAP to change representatives. This process should not delay the completion of the Management Plan or inconvenience the Sponsor.

The Management Plan must identify the RAP representatives and record attendance in the field and at meetings (including teleconferencing, video conferencing and internet hook-ups as acceptable alternatives to meetings).

10.2.2 Inability to attend

All parties involved in the Management Plan are responsible for ensuring that assessment participants are able to undertake assessment duties and have the necessary skills to perform such duties.

Consultation should occur early in the Management Plan process about contingency planning for when a RAP representative is unable to attend assessment activities. Substitute RAP representatives may be made available.

It is not mandatory for RAP participation in assessment work, but it is preferable. Under section 60(b) a RAP can choose to participate in the assessment work; however they may also be unable to, or choose not to, participate. Where:

- a RAP has indicated that it wishes to be involved in assessment work; and
- the RAP has nominated a representative(s) who is unable to attend on the specified day or days; and

• no contingency arrangements are in place, the Cultural Heritage Advisor may exercise his or her judgment to continue the assessment without representation from that RAP.

10.2.3 Occupational Health and Safety

The Sponsor has the right to require the Cultural Heritage Advisor and all RAP representatives to comply with any occupational health and safety requirements that may be in force within the activity area before any assessment work begins.

10.3 Desktop Assessment

A desktop assessment must be undertaken as part of a cultural heritage assessment. A 'Notice of Intent to Prepare a Cultural Heritage Management Plan' must be given to the relevant parties before commencing the desktop assessment. The desktop assessment must comprise a number of activities, including (regulation 57):

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- a search of the Victorian Aboriginal Heritage Register for information that is related to the activity area;
- a review of reports and published works about Aboriginal cultural heritage relevant to the geographic region, and historical and ethno-historical accounts of Aboriginal occupation; and
- a review of the landforms, geomorphology and land use history of the activity area.

A search of the Victorian Aboriginal Heritage Register must currently be undertaken in person at AAV's offices at 1 Spring St, Melbourne. To arrange an appointment please contact AAV on (03) 9208 3274. A form for an 'Application for Access to Records' is available on the AAV website at www.aboriginalaffairs.vic.gov.au. At the discretion of the Regional Manager, the Register may on occasion be accessed at AAV's regional offices in Ballarat, Bendigo, Bairnsdale or Wangaratta.

A desktop assessment may also include the collection and review of oral history relating to the activity area (regulation 59(2)) and any other activities that the Cultural Heritage Advisor considers necessary or convenient to determine the presence and or nature of Aboriginal cultural heritage in the activity area.

The desktop assessment may, in limited circumstances, be the substantive part of the cultural heritage assessment. However, normally it informs the methodology for standard and complex assessments, including ground survey and excavation strategies.

If the results of the desktop assessment show that it is reasonably possible that Aboriginal cultural heritage may be present in the activity area, a standard assessment is required to complete the cultural heritage assessment (Regulation 58(1)). Note that if the results of a desktop assessment show that it is reasonably possible that Aboriginal cultural heritage could be present in the

activity area and a complex assessment for all, or all relevant parts of, the activity area is carried out, a standard assessment for that area is not required (Regulation 58(2)).

If the results of the desktop assessment activities show that it is not possible for Aboriginal cultural heritage to be found in the activity area (such as if the desktop established that all the activity area had previously been subject to an open-cut mining operation), no further assessment work is required to complete the Management Plan for submission to the RAP(s) (or Secretary, where relevant) for approval.

The desktop assessment (including a search of the Victorian Aboriginal Heritage Register) must be undertaken prior to the standard or complex assessment, to comply with regulation 58(1) and 60(1).

10.4 Standard Assessment

A standard assessment must include a ground survey of all or part of the activity area to detect the presence of Aboriginal cultural heritage in or associated with the activity area (Regulation 59(1)). A ground survey of an activity area must be conducted in accordance with proper archaeological practice (Regulation 59(5)). Amongst others, Burke and Smith³ provide a reference guide to surveying for and recording Indigenous and archaeological sites. Richards⁴ provides further commentary on survey strategies in relation to cultural heritage management projects.

3 Burke, Heather and Claire Smith 2004 *The Archaeologist's Field Handbook*, Allen and Unwin, Sydney

4 Richards, Thomas "Survey Strategies in Landscape Archaeology", in *Handbook of Landscape Archaeology* 2008 Ed. B. David and J. Thomas, Left Coast Press, California

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If the results of a standard assessment identify the extent, nature and significance of the Aboriginal cultural heritage found in the activity area, no further assessment work is required to complete the Management Plan for submission to the RAP(s) (or Secretary, where relevant) for approval.

Where the results of ground survey undertaken during a standard assessment have identified Aboriginal cultural heritage in the activity area, soil and sediment testing with a manual auger not larger than 12 centimetres in diameter may be used to assist in defining the nature and extent of that identified Aboriginal cultural heritage (Regulation 59(4)). Because of the narrowness of this sized auger, this sub-surface testing method is only useful in certain circumstances. It can, for example, assist in defining the extent of an Aboriginal earthen mound or shell midden lens, but is unlikely to be of any use for defining the extent of stone artefact scatters.

Where the desktop or standard assessment has found Aboriginal cultural heritage in the activity area, but has not been able to adequately identify the nature, extent and significance of the Aboriginal cultural heritage, a complex assessment must be undertaken. Where the desktop or standard assessment has identified areas likely to contain Aboriginal cultural heritage in the activity area, a complex assessment must be undertaken to identify the nature, extent and significance of that Aboriginal cultural heritage (Regulation 60(1)).

Note however, if the activity will not harm Aboriginal cultural heritage in the activity area, or part of the activity area, a complex assessment is not required (Regulation 60(2)).

10.5 Complex Assessment

A complex assessment is the disturbance or excavation of all or part of the activity area to uncover or discover evidence of Aboriginal cultural heritage (Regulation 61(1)). A complex assessment may also include the collection and review of oral history relating to the activity area. A complex assessment is required if the desktop or standard assessment show that the activity will impact on an area where Aboriginal cultural heritage is or is likely to be present, and a complex assessment is needed to identify the extent, nature and significance of that Aboriginal cultural heritage.

Areas that are not likely to contain Aboriginal cultural heritage do not require subsurface testing during the assessment. Such areas should be addressed by contingency planning (see **Part 13** of this Guide).

In assessing whether Aboriginal cultural heritage is 'likely' to be present, this is an assessment as to whether on the balance of probabilities Aboriginal cultural heritage will be present in that area. The plain meaning of the word "likely" is:

"likely ... 1. probably or apparently going or destined (to do, be, etc.): likely to happen. **2.** seeming like truth, fact, or certainly, or reasonably to be believed or expected; probable: a likely storey. **3. a.** apparently suitable: a likely spot to build on. **b.** promising, as for the yielding of gold, oil, etc.: she thought it a likely area. **4.** promising: a fine likely boy – adverb **5.** probably."⁵

The disturbance or excavation of land to uncover or discover Aboriginal cultural heritage is destructive and it is important that it only be carried out when necessary to identify and document the extent, nature and significance of Aboriginal cultural heritage that may be threatened by the proposed activity. Test excavations should not be designed as salvage operations, nor should they be undertaken in areas that will not be affected by the proposed activity.

⁵ The Macquarie Library, **The Macquarie Dictionary**, 3rd ed, Macquarie University, 1997, p1244.

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Practices such as surface stripping by grader often have greater impact on Aboriginal cultural heritage than the development that follows and must not be employed as a cultural heritage assessment tool. Where it is determined that mechanical excavation or mechanical sub-surface testing may be an appropriate method for uncovering or discovering Aboriginal cultural heritage, this must be preceded by controlled excavation (as defined in Regulation 61(7)) to establish the stratigraphy and general sub-surface nature of the area being investigated (regulation 62(4)).

It is essential that the RAP(s), where one exists and has elected to evaluate the Management Plan, is consulted in relation to the proposed disturbance or excavation of the land. Whilst the exact methodology must be suitable to the investigation of the Aboriginal cultural heritage in question, the RAP should be aware of the level of destructive excavation work being proposed, and have the opportunity to raise any concerns about this impact prior to taking place.

Subsurface testing and excavation are highly technical activities. The Regulations specify that a person appropriately qualified in archaeology must supervise the disturbance or excavation for a complex assessment and these activities must be carried out in accordance with proper archaeological practice (Regulation 61(3)). While it may be appropriate for a person with extensive experience or knowledge in relation to the management of Aboriginal cultural heritage to take part in subsurface testing or excavation, it is not appropriate for them to direct or supervise such work. Similarly, it is not appropriate for a person qualified in anthropology or history to direct or supervise subsurface testing or excavation. If the Cultural Heritage Advisor is not qualified in archaeology, they must engage a qualified archaeologist to supervise the disturbance and/or excavation.

The analysis and management of Aboriginal cultural heritage recovered during subsurface testing or excavation must also be the responsibility of a qualified archaeologist who has extensive experience or knowledge in relation to the analysis and management of excavated Aboriginal cultural heritage.

For reference, Burke and Smith⁶ provide a basic guide to archaeological excavation and the management of archaeological materials, and the analysis of stone flaked material should be informed by Holdaway and Stern⁷. Although a little out of date, Connah⁸ still provides much useful information on field archaeology. Some commentary on subsurface testing can be found in Richards⁹, and discussion of excavation and sub-surface testing may be found in Practice Notes on the AAV website at www.aboriginalaffairs.vic.gov.au. Aboriginal cultural heritage recovered during complex assessments must be managed in a way that conforms to established procedures for the treatment of cultural material¹⁰.

6 Burke, Heather and Claire Smith 2004 *The Archaeologist's Field Handbook*, Allen and Unwin, Sydney

7 Holdaway, Simon and Stern, Nicola 2004 *A Record in Stone*, Museum Victoria and Aboriginal Studies Press, Canberra

8 Connah, Graham (Ed.) *Australian Field Archaeology: a guide to techniques*, Australian Institute of Aboriginal Studies, Canberra

9 Richards, Thomas "Survey Strategies in Landscape Archaeology", in *Handbook of Landscape Archaeology* 2008 Ed. B. David and J. Thomas, Left Coast Press, California

10 See 1992 *Standards in the Museum Care of Archaeological Collections*, Museums & Galleries Commission, London.

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11

Assessment Documentation

Assessment documentation includes all completed site record cards, photographs, maps, plans and any other prescribed documentation relating to a management plan or the management plan itself.

11.1 Typical assessment documentation for a Management Plan

Assessment documentation for an approved management plan would normally include the following:

11.1.1 The Management Plan

One hard copy document and an electronic copy in Portable Document Format (PDF) of the Management Plan, with a copy of each notice of approval received by the sponsor inserted after the title page.

11.1.2 Victorian Aboriginal Heritage Register forms

Whilst these should have been lodged prior to approval of the Management Plan, any that have not yet been lodged (such as site inspection or radiometric dating forms) are assessment documentation.

11.1.3 Archaeological Survey and Excavation Attributes forms

For any archaeological survey or excavation undertaken the attributes must be recorded. For convenience an "Archaeological Survey and Excavation Attributes Form" is available on the AAV website, and should be used to record these attributes. These should accord with the shapefiles for these attributes.

11.1.4 Shapefiles

The following information must be provided to AAV as projected spatial data (eg. Polygon or Shape file):

- the activity area;
- ground survey areas (if any);

- subsurface testing or excavation pits or transects (if any); and
- the extent of each Aboriginal place found, discovered and/or subject to investigation (if any), normally provided when the Victorian Aboriginal Heritage Register form is lodged.

11.1.5 Photographs

A minimum of one representative image must be submitted for each recorded site. Where a site has various features (ie; a shelter may have 2 separate art panels on the wall and stone artefacts on the floor), representative images of each feature must also be submitted. Images should be provided as JPEG files at a resolution of at least 300 DPI (dots per inch).

All photographs submitted to Aboriginal Affairs Victoria must be fully labeled. The filename of each image should be labelled using the following conventions (see examples below):

- VAHR number (omit VAHR prefix)
- Name of site/image title
- Date/Year
- Photographer
- Additional details if necessary

Examples of the filename of each image are as follows:

7323-0074_Black Range 8_12Aug05_Harry Webber_view of shelter.jpg

7323-0074_Black Range 8_12Aug05_Harry Webber_art panel1.jpg

7323-0074_Black Range 8_12Aug05_Harry Webber_artefact scatter.jpg

11.2 Provision of assessment documentation

All digital assessment documentation (PDF of the Management Plan, Shapefiles and JPEG images) must be emailed to the Heritage Registrar at Aboriginal Affairs Victoria (VAHR@dpcd.vic.gov.au) or delivered on CD or DVD.

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When submitting any assessment documentation, it is the responsibility of the Cultural Heritage Advisor to ensure that Aboriginal cultural heritage is recorded in accordance with the requirements of the assessment documentation Approved Forms. Note that the Act requires discoveries of Aboriginal cultural heritage to be reported to the Secretary in all cases (sections 17 and 24).

The Sponsor must provide all assessment documentation to the Secretary within 14 days after the approval of the Management Plan (section 67(1)). However, Cultural Heritage Advisors are encouraged to assist Sponsors in providing this information to the Secretary at the earliest available opportunity.

In addition, if the Sponsor of a Management Plan decides to discontinue preparation of the plan, all assessment documentation must be provided to the Secretary within 14 days after deciding to discontinue the plan (section 67(2)).

11.3 Quality of Aboriginal Cultural Heritage Documentation

When documenting Aboriginal cultural heritage, Cultural Heritage Advisors must avoid assumptions about what may be present and should only report what is determined after appropriate investigation.

Personal opinions or claims about the past-use (or non-use) of a place should be treated with caution. Verification from other independent sources (eg historical accounts, material remains, and/or oral history) is required to substantiate information that may otherwise be based on hearsay.

The Management Plan may also identify areas that have a low potential for subsurface Aboriginal cultural heritage and have not been the subject of subsurface testing during the assessment. Such areas should be addressed by contingency planning (see **Part 13** of this Guide).

12

Cultural Heritage Significance

Section 4 defines 'cultural heritage significance' as including:

- archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance; and
- significance in accordance with Aboriginal tradition.

Note that Aboriginal tradition is not static and unchanging from a distant 'authentic' past¹¹. 'Tradition' is the handing down of beliefs from one generation to the next but that does not mean that 'significance in accordance with Aboriginal tradition' requires an immutable value from 'time immemorial'. A scatter of discarded waste flakes from a one-off utilitarian task may acquire 'significance in accordance with Aboriginal tradition' with the passage of time and cultural change.

A statement of the significance of the Aboriginal cultural heritage found, discovered and/or subject to investigation in terms of this definition of 'cultural heritage significance' is an essential step in the process of developing cultural heritage management recommendations. All Aboriginal cultural heritage may have 'cultural heritage significance' but the preservation of all Aboriginal cultural heritage is not possible. Therefore, a process of assessing significance is necessary to determine which elements of the Aboriginal cultural heritage in an activity area require management. In this context, 'management' is not synonymous with 'preservation'¹², but may involve salvage or controlled destruction.

The Burra Charter defines the basic principles, processes and practices to be observed in the conservation of important

¹¹ Smith, Laurajane 2006 *The Uses of Heritage*, Routledge, London at 294.

¹² Burke, Heather and Claire Smith 2004 *The Archaeologist's Field Handbook*, Allen and Unwin, Sydney, at 246.

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places and is widely accepted and adopted as the standard for heritage conservation practice in Australia¹³. While the Burra Charter provides sound general guidelines for assessing significance, its genesis in the 'built environment' and focus on a Western model of preservation of cultural significance limits its application to Aboriginal cultural heritage where different value sets may apply. Burke and Smith also provide a brief outline of the processes involved in assessing cultural heritage significance¹⁴.

Further discussion of significance assessment will become available in a Practice Note on the AAV website at www.aboriginalaffairs.vic.gov.au.

13

Cultural Heritage Management Recommendations

A Management Plan involves an assessment of an area to determine the presence and nature of any Aboriginal cultural heritage and a written report detailing the results of the assessment and recommends measures to manage and protect any Aboriginal cultural heritage identified in that area. The requirements for documenting and reporting on Aboriginal cultural heritage are set out above. This section focuses on cultural heritage management recommendations (Part 2 of a Management Plan).

The Act requires a Management Plan to set out recommendations for measures to be taken before, during and after the activity to manage and protect the Aboriginal cultural heritage identified during the cultural heritage assessment (section 42).

As noted in Part 9.5 of this Guide, a Management Plan must provide a precise description of the nature of the proposed

activity and ancillary works associated with the activity as well as a description of the likely impact on the surface of the land and buried former land surfaces in order to assess the scope for potential impact on Aboriginal cultural heritage.

The development of management recommendations then involves an assessment of the Aboriginal cultural heritage present in the activity area and the likely impacts of the proposed activity on that Aboriginal cultural heritage, in order to identify appropriate management measures. These measures should aim to avoid or minimise harm to the Aboriginal cultural heritage.

If it is not possible for the proposed activity to proceed without harming Aboriginal cultural heritage, the Management Plan must recommend measures to mitigate the impact of the activity, considered in light of the significance of the Aboriginal cultural heritage.

Cultural heritage management recommendations should be informed by the views of the RAP(s) and must be based on sound cultural heritage management principles with the first principle being to avoid harming Aboriginal cultural heritage.

13.1 Specific Cultural Heritage Management Requirements

13.1.1 Recommendations to Avoid Harming Aboriginal Cultural Heritage

The purpose of the Act is to provide for the protection of Aboriginal cultural heritage in Victoria (section 1). Therefore, the principle objective of the cultural heritage management plan process is to avoid disturbing or damaging Aboriginal cultural heritage. This may mean that the proposed activity cannot proceed or can proceed only if modified to mitigate its impact on Aboriginal cultural heritage.

Where recommendations are needed to avoid Aboriginal cultural heritage, the Management Plan must state how harm is to be avoided.

¹³ Walker, Meredith and Peter Marquis-Kyle 2004 *The Illustrated Burra Charter: good practices for heritage places*, Australia ICOMOS Inc

¹⁴ Refer to the chapter on Managing Cultural Heritage.

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13.1.2 Recommendations for the Salvage of Aboriginal Cultural Heritage

Aboriginal cultural heritage is to be salvaged only when it is not possible for that cultural heritage to be preserved *in situ*.

Recommendations for the salvage of Aboriginal cultural heritage must include a research design and methodology developed in consultation with the RAP(s), where one or more have elected to evaluate the Management Plan. The research design is to maximise the quality of information derived from the salvage operation. The methodology developed must include the analysis of salvaged Aboriginal cultural heritage material and the means by which the information derived from the analysis is provided to the RAP(s), the Secretary and other interested parties.

The Management Plan must identify the resources required for the salvage of Aboriginal cultural heritage, analysis of the salvaged Aboriginal cultural heritage material, and the reporting of the results of the analysis.

When the salvage involves archaeological excavation, absolute dating (such as radiometric or optically stimulated luminescence dating) of occupation deposits and features must be obtained where possible.

The person who supervises the salvage of Aboriginal cultural heritage involving archaeological excavation must be appropriately qualified in archaeology and have extensive experience or knowledge in relation to excavation and analysis of excavated material.

13.1.3 Recommendations for the Removal and Curation of Aboriginal Cultural Heritage

Recommendations for the removal and curation of Aboriginal cultural heritage must be consistent with established procedures for

the treatment of cultural material¹⁵.

When developing recommendations for the removal and curation of Aboriginal cultural heritage, it must be borne in mind that most RAP(s) will not have the capacity to curate Aboriginal cultural heritage. Furthermore, the accumulation of unprovenanced collections of 'salvaged' cultural material is to be discouraged.

If the RAP(s) does not have the capacity to curate Aboriginal cultural heritage, the Cultural Heritage Advisor should identify alternative arrangements for the curation of Aboriginal cultural heritage prior to the salvage commencing.

It is the responsibility of the Cultural Heritage Advisor in consultation with the RAP to:

- catalogue the Aboriginal cultural heritage;
- label and package the Aboriginal cultural heritage with reference to provenance; and
- arrange storage of the Aboriginal cultural heritage in a secure location together with copies of the catalogue, assessment documentation, Management Plan and the results of the analysis of the cultural heritage.

13.1.4 Monitoring construction work should not be included

The monitoring of construction work, as has previously been practised, is an activity that has little or no cultural heritage management benefit. As a general rule, monitoring construction works should not be included in the recommendations of a Management Plan.

The Act allows for a Management Plan to be prepared to provide an 'upfront' heritage management process, designed to deal with heritage management issues as best as can be done prior to construction commencing. Monitoring of construction work does not

¹⁵ For example, see 1992 *Standards in the Museum Care of Archaeological Collections*, Museums & Galleries Commission, London.

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provide an appropriate mechanism for the management of Aboriginal cultural heritage and does not adequately address the requirements of section 61(c) of the Act. Recording Aboriginal artefacts after they are removed from their position by machinery fails to adequately record their original context, and adds little (if any) value to the understanding of the Aboriginal cultural heritage. It is also inconsistent with the reason for preparing cultural heritage management plans prior to works commencing, which is to avoid or minimise harm to Aboriginal heritage values.

In areas that are likely to contain subsurface Aboriginal cultural heritage, the assessment must include a complex assessment (i.e. subsurface investigations) of the area. The only exception to this is where the area will be avoided and not impacted on by the activity. In areas where no Aboriginal cultural heritage has been identified or areas that have a low potential for subsurface Aboriginal heritage, contingency plans for the discovery of Aboriginal cultural heritage during an activity must be a part of the Management Plan.

For an Aboriginal organisation that wishes to gather a collection of representative artefacts from an activity area, monitoring construction works is probably the least productive way to achieve this outcome. Targeted salvage excavation with an appropriate methodology will achieve this aim far more readily, and with more relevant contextual information.

Whilst monitoring construction work should generally not be included in the recommendations of a Management Plan, an exception may be considered under limited circumstances when:

- it is appropriate for ensuring the avoidance of known Aboriginal cultural heritage when an activity is underway;
- avoidance, salvage or relocation is not reasonably possible (because of protected flora, for example) in areas immediately

abutting the area where Aboriginal cultural heritage is found during the assessment (including background research) within the activity area; or

- it is likely burials will be encountered during construction, and despite this likelihood, the activity must proceed in this area (such as a project of state significance). It should be noted that, unless exceptional circumstances arise, the activity should nonetheless avoid such an area. The Secretary [and presumably a RAP] would not normally approve a Management Plan that will impact on an area likely to contain Aboriginal burials.

Under these limited circumstances, supervision by the Cultural Heritage Advisor is necessary and one representative from any relevant RAP(s). Wherever possible, monitoring of a particular location should be a single occurrence. Representatives of the Sponsor may also be involved in monitoring activities. All participants in the Management Plan process should make every effort to ensure that duplication of monitoring does not occur unless impractical, as any duplication of monitoring will unnecessarily increase timeframes and costs.

13.1.5 Future access to Aboriginal cultural heritage

The Management Plan may make provision for Aboriginal people to continue to visit Aboriginal cultural heritage places within the activity area during and after the activity has been completed. Such provision should include any appropriate notification to the Sponsor, owner and occupier of the area concerned and require compliance with any safety requirements of the Sponsor, owner and/or occupier.

A Cultural Heritage Agreement under Part 5 of the Act may also be entered into between the owner of the activity area (who may or may not be the Sponsor) and relevant RAP(s) to deal with future access to Aboriginal

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cultural heritage within the activity area. A Cultural Heritage Agreement must be completed in the approved form which can be found on the AAV website.

13.2 Contingency Plans

Assessments should be as comprehensive as possible, but the Management Plan must set out procedures in relation to Aboriginal cultural heritage not previously identified and other matters which may affect the conduct of the activity such as disputes, delays and other obstacles (section 61(d)).

Aboriginal cultural heritage found during works must be reported to the Secretary. Therefore, a normal contingency would be to notify the Cultural Heritage Advisor of any finds during the conduct of the activity. The Cultural Heritage Advisor would then record the find and follow the agreed contingency plan relating to discoveries of Aboriginal cultural heritage during the conduct of the activity. Such contingencies could include:

- stopping work and leaving the Aboriginal cultural heritage *in situ* until RAP inspection;
- enabling the RAP(s) to remove any heritage found;
- ceasing or restricting work of the Sponsor on or near the identified Aboriginal cultural heritage;
- ceasing all work threatening the identified Aboriginal cultural heritage;
- establishing timeframes for notifying the Cultural Heritage Advisor and the RAP(s) of the find;
- establishing timeframes for inspection and removal of Aboriginal cultural heritage discovered; and/or
- establishing timeframes for when the activity may recommence in the area.

For example, the parties may agree on a protocol requiring the Sponsor, through the Cultural Heritage Advisor, to notify the RAP(s)

within 24 hours of a discovery. Notification could:

- describe the find;
- outline proposed remedial action or procedure to be put in place to protect the find from harm;
- invite the RAP(s) to inspect the find;
- propose a management activity to protect the find in the long term; and/or
- invite the RAP(s) to agree to the proposed management activity or propose an alternative.

The Management Plan may allow the activity to continue, as it is not always necessary for the activity to cease. If the activity can proceed without risk to the find the activity should be able to continue, albeit in restricted intensity within an agreed buffer until a plan for managing the find is agreed.

Details regarding the recording of the find, its relocation (if appropriate) and the timing of such activities should be included within the Management Plan contingency planning recommendations.

13.3 Addressing the matters referred to under section 61 in the recommendations – when a RAP is evaluating the Management Plan

Section 61 of the Act provides the matters which a RAP can consider in deciding to approve or refuse to approve a Management Plan. As this is a discretionary decision, it is important that the RAP and the Sponsor are able to communicate about what may be considered appropriate recommendations for the management of any Aboriginal cultural heritage in the activity area, and any contingency plans to be contained in the Management Plan.

The Act provides for this communication by requiring that the Sponsor consult with the RAP in relation to the recommendations

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to be included in the Management Plan (section 60(b)). Consultation around these matters should be well documented and understood. Draft recommendations for discussion should be provided to the RAP at least a week prior to any meeting(s). If there are points of contention, these may require further consultation to resolve. If they remain unresolved the Sponsor should be aware that the RAP may refuse to approve the Management Plan on these grounds.

13.4 Addressing the matters referred to under section 61 in the recommendations – when the Secretary is evaluating the Management Plan

Section 61 of the Act provides the matters which the Secretary can consider in deciding to approve or refuse to approve a Management Plan. The Act does not provide a formal avenue for the Sponsor consult with the Secretary in relation to the recommendations to be included in the Management Plan, however if peculiar circumstances arise AAV staff may be able to meet to discuss the proposed recommendations.

The following information outlines AAV's policy position on the matters under section 61 of the Act in a Management Plan, where the Secretary has the discretion to decide whether or not to approve a Management Plan. It should always be noted that the Secretary retains the discretion to approve or refuse to approve a Management Plan, with one of the relevant considerations being whether the matters at s.61 of the Act are adequately addressed.

13.4.1 Whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage (s.61(a) of the Act)

In the first instance, AAV's position is that harm to Aboriginal cultural heritage should be avoided.

13.4.1.1 Where the Management Plan does not identify any Aboriginal cultural heritage in the activity area (the area covered by the Management Plan)

It is sufficient in this case for the Management Plan to set out the Sponsor's requirements should Aboriginal cultural heritage be found during the conduct of the activity. This may be sufficiently addressed by the contingency plans.

13.4.1.2 Where the Management Plan identifies Aboriginal cultural heritage in the activity area and harm to the Aboriginal cultural heritage will be avoided during the conduct of the activity

AAV is of the opinion that the Management Plan should state how harm to the Aboriginal cultural heritage is to be avoided. This may include measures such as:

- not undertaking any works within an appropriate distance of the Aboriginal cultural heritage;
- fencing of the Aboriginal cultural heritage during the conduct of the activity;
- signage restricting access to the Aboriginal cultural heritage during the conduct of the activity; and/or
- information about avoiding Aboriginal cultural heritage being included in an induction manual, or training for contactors engaged during the conduct of the activity.

13.4.1.3 Where the Management Plan identifies Aboriginal cultural heritage in the activity area and the Aboriginal cultural heritage will be harmed during the conduct of the activity

AAV is of the opinion that the Management Plan should clearly explain why it does not appear to be possible to conduct the activity in a way that avoids harm to the Aboriginal cultural heritage. The Management Plan should contain a discussion about the cultural heritage significance of the Aboriginal cultural heritage that will be harmed.

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In deciding whether to approve or refuse to approve a Management Plan on the basis of the matters under section 61(a) of the Act, AAV should take into consideration the cultural heritage significance of the Aboriginal cultural heritage as assessed in the Management Plan.

For example, where Aboriginal cultural heritage will be avoided during the conduct of the activity and the Aboriginal cultural heritage is a disturbed artefact scatter assessed (within the Management Plan) as being of low significance, it may be sufficient to state that works will not be undertaken within a particular distance of the established boundary of the disturbed artefact scatter, without restricting access to that area. Where Aboriginal cultural heritage is assessed in the Management Plan as being of high significance, measures to avoid harm should be more substantial (such as restricting access to the area, and fencing the Aboriginal cultural heritage during the conduct of the activity).

In deciding whether to approve or refuse a Management Plan on the basis of the matters under section 61(a) of the Act, AAV should take into consideration the broader impacts of the activity, such as the impact of the activity on *values associated* with the Aboriginal cultural heritage that extend into the activity area.

Example: The values associated with Sunbury rings (near Melbourne) include a notional path between the rings, and a visual link between the rings. In this instance the Secretary would consider not just whether the activity would harm the rings themselves, but also whether the activity would have an impact on the visual link between the rings, and the notional path between them.

13.4.2 If it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal cultural heritage, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage (s.61(b) of the Act)

If it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal cultural heritage, the activity should be conducted in a way that minimises harm to Aboriginal cultural heritage, and the Management Plan should state how harm to Aboriginal cultural heritage will be minimised.

Conducting the activity in a way that minimises harm to Aboriginal cultural heritage could include:

- adjusting the location of the activity (for example moving a pipeline so that it impacts on less of the Aboriginal cultural heritage);
- changing the type of activity in that area (for example using that area for open space in a housing subdivision); and/or
- undertaking the activity in a less destructive manner.

13.4.3 Specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity (s.61(c) of the Act)

If there are no specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, such as where the Management Plan does not identify any Aboriginal cultural heritage in the activity area, then section 61(c) has no application.

Where the Management Plan does not identify any Aboriginal cultural heritage in the activity area, the Management Plan should state that no specific measures are required.

Where Aboriginal cultural heritage will be, or is likely to be, affected by the activity, specific

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Aboriginal heritage management measures should be developed and clearly set out in the Management Plan. These may include:

- salvage excavation (to salvage the contextual information that will be lost by harm to the Aboriginal cultural heritage);
- fencing of part of that Aboriginal cultural heritage during the conduct of the activity;
- signage restricting access to part of that Aboriginal cultural heritage during and after the conduct of the activity; and/or
- information about avoiding Aboriginal cultural heritage being included in an induction manual, or training for contactors engaged during the conduct of the activity.

13.4.4 Contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity (s.61(d) of the Act)

Section 61(d) of the Act requires contingency plans to be developed in relation to disputes, delays and other obstacles that may affect the conduct of the activity. These contingency plans should tell the sponsor what to do in the event that disputes, delays or other obstacles in relation to Aboriginal heritage arise during the conduct of the activity, and should be tailored to suit the activity in question.

Some contingency plans are also required by the Aboriginal Heritage Regulations 2007. Comments relating to the contingency plans required by the Aboriginal Heritage Regulations are included under point 13.4.6. It should be noted that where the Secretary is evaluating the Management Plan, contingency plans for disputes required by Schedule 2, 13(1)(b) of the Regulations has no application.

13.4.5 Requirements relating to the custody and management of Aboriginal cultural heritage affected during the course of the activity (s.61(e) of the Act)

The Act requires a Management Plan to set out custody and management procedures for Aboriginal heritage which will be affected by an activity, for the duration of the activity (see s.61(e) of the Act). Custody arrangements will be applicable where Aboriginal heritage is to be salvaged either before or during an activity.

Cultural Heritage Advisors should note that AAV takes the view that the term “management” in this section relates to the management of custodial arrangements, not to cultural heritage management arrangements in general. Sponsors are encouraged to include in the Management Plan details about custody arrangements for Aboriginal heritage found or affected both during the course of the activity and after the activity has been completed.

In circumstances where the Secretary has the responsibility for deciding whether or not to approve a Management Plan, the custody of Aboriginal cultural heritage (with the exception of Aboriginal human remains or secret or sacred objects) discovered during or after an activity should comply with the requirements established by the *Aboriginal Heritage Act 2006* and be assigned according to the following order of priority, as appropriate;

1. any relevant RAP that is registered for the land from which the Aboriginal heritage is salvaged;
2. any relevant registered native title holder for the land from which the Aboriginal heritage is salvaged;
3. any relevant native title party (as defined in the *Aboriginal Heritage Act 2006*) for the land from which the Aboriginal heritage is salvaged;

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4. any relevant Aboriginal person or persons with traditional or familial links with the land from which the Aboriginal heritage is salvaged;
5. any relevant Aboriginal body or organisation which has historical or contemporary interests in Aboriginal heritage relating to the land from which the Aboriginal heritage is salvaged;
6. the owner of the land from which the Aboriginal heritage is salvaged;
7. the Museum of Victoria.

AAV encourages sponsors to take into account the willingness and the capacity of the proposed custodian to adequately and appropriately manage, protect or dispose of in accordance with Aboriginal tradition, salvaged Aboriginal heritage material, in preparing a Management Plan.

13.4.6 Contingency plans required under the Regulations

The Regulations (at Schedule 2, paragraph 13) require a Management Plan to contain contingency plans about a number of matters, which are discussed below.

13.4.6.1 Contingency plans for matters under section 61 of the Act

Paragraph 13(1)(a) at Schedule 2 of the Regulations requires a Management Plan to contain contingency plans about the matters referred to at s.61(a)-(e) of the Act.

Although a Management Plan must contain contingency plans about what will occur if changes take place during the an activity, it should be noted that if the changes to an activity require a statutory authorisation (for example, an amendment to the planning permit) the sponsor must prepare and submit a new Management Plan for approval (see s.52(1) and the definition of “statutory authorisation” at s.50 of the Act).

For contingency plans about the custody and management of Aboriginal cultural

heritage found during the course of an activity (see s.61(e) of the Act), if the custody and management arrangements established by the Cultural Heritage Management Plan must change, then any Aboriginal cultural heritage should be returned to the ‘owner’ of that heritage.

13.4.6.2 Other contingency plans required under the Regulations

- *Contingency plans for the resolution of any disputes between the sponsor and relevant registered Aboriginal parties in relation to the implementation of the plan or the conduct of the activity (Schedule 2, paragraph 13(1)(b) of the Regulations)*

Where the Secretary is evaluating the Management Plan, this requirement has no application.

- *Contingency plans for reviewing compliance with the cultural heritage management plan and mechanisms for remedying non-compliance (Schedule 2, paragraph 13(1)(c) of the Regulations)*

The Management Plan should include a contingency plan with a checklist referring to the matters that must be complied with under the Management Plan. The sponsor may use the checklist to check compliance at any time. This list should be as detailed as possible, and contain everything the sponsor must do to comply with the Management Plan. The list should be referred to, in the event that compliance with the Management Plan is questioned.

As the Secretary has audit powers in relation to Management Plan’s under Division 1 of Part 6 of the Act, AAV does not believe it is necessary that a Management Plan contain detailed compliance mechanisms and remedies for non-compliance, such as would be required where a RAP is responsible for deciding whether to approve a Management Plan.

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In evaluating the checklist, AAV will take into consideration the scale of the activity and the significance of the Aboriginal cultural heritage (as assessed within the Management Plan) in relation to the way the Management Plan proposes to examine compliance.

- *Contingency plans for the management of Aboriginal cultural heritage found during an activity (Schedule 2, paragraph 13(1)(d) of the Regulations)*

There would appear to be three different situations in which contingency plans could be considered appropriate in a Management Plan. Two of these may be considered as appropriate, given the circumstances of a particular activity, and the third relates to the management of human remains and should not vary between Management Plans.

a) Isolated or dispersed scatters of Aboriginal cultural heritage

For isolated stone artefact scatters (less than 5 artefacts), the contingency plan should state that after recording the material, no further management is required. This may also be appropriate in other circumstances where the Aboriginal cultural heritage found (whilst not identified during the assessment) is not unexpected. An example might be the dispersed remains of shell midden material in a coastal environment. The contingency plan in the Management Plan should list circumstances when this management process will be adopted.

b) Other Aboriginal cultural heritage

In the case of Aboriginal cultural heritage other than isolated or dispersed scatters of Aboriginal cultural heritage the contingency plans should state that it is preferable to avoid impacts if possible. Where it is not possible to avoid impact, the contingency plan in the Management Plan should state that impacts will be

minimised where possible, and salvage excavation of the Aboriginal cultural heritage undertaken to mitigate impact. The process of salvage excavation (including the provision of a report to AAV detailing the results of the excavation) should be outlined. The contingency plan in the Management Plan should list circumstances when this management process will be adopted.

Note: Above ground, structural or substantial Aboriginal cultural heritage e.g. rock art, scarred trees or historical structures

Aboriginal cultural heritage such as rock art, scarred trees and historical structures should normally be identified during the assessment carried out as part of the Management Plan process, and management recommendations should be provided in the Management Plan. These types of Aboriginal cultural heritage should not generally require contingency plans for their management.

c) Suspected human remains

If suspected human remains are found, the contingency plans must account for the requirements of the *Coroners Act 1985* and the *Aboriginal Heritage Act 2006*. To avoid confusion, the example contingency for the discovery of skeletal remains suggested in Appendix 3 of this Guide should be included verbatim.

- *Contingency plans for the notification (in accordance with the Act) of the discovery of Aboriginal cultural heritage during the carrying out of the activity (Schedule 2, paragraph 13(1)(d) of the Regulations).*

Where Aboriginal cultural heritage is found during an activity, a Cultural Heritage Advisor should take the lead role in investigating, reporting, and facilitating an appropriate outcome in accordance with the relevant contingency plans,

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and should report the discovery to the Secretary by lodging a Victorian Aboriginal Heritage Register record card. The Cultural Heritage Advisor should be required to facilitate the involvement of any RAP (if one exists for the area at the time) in the on-site investigation and assessment of the significance of the Aboriginal cultural heritage.

14

Review process

A contingency plan for reviewing compliance with the Management Plan must be included and mechanisms for remedying non-compliance. This is particularly pertinent in light of the audit provisions under Part 6 of the Act.

15

Dispute Resolution

It is the responsibility of the parties involved in the preparation of a Management Plan to reach agreement on a dispute resolution procedure to be implemented after a Management Plan is approved and include this procedure as part of the contingency plans in the Management Plan's recommendations (section 61(d)).

15.1 Disputes between RAPs over the evaluation of a Management Plan

The Act allows for more than one RAP to have cultural heritage decision making responsibility for a single part of Victoria. Therefore, disputes between RAP(s) may arise over the evaluation of a Management Plan. Disputes may be dealt with by mediation or another form of alternative dispute resolution ("ADR"), or as a last resort, by VCAT.

However, due to the costs involved in ADR and VCAT, where disputes occur, it may be in the best interests of all parties to negotiate a resolution without resorting to the formal processes available within the Act.

15.1.1 Alternative Dispute Resolution

ADR includes preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that:

- a) the parties are fully aware of their rights and obligations; and
- b) there is full and open communication between the parties concerning the dispute (section 112(1)).

Where there is a dispute between two or more RAP(s) arising in relation to the evaluation of a Management Plan for which approval is sought (under section 62), the Sponsor or a RAP (or both) may refer the dispute to the Chairperson of the Aboriginal Heritage Council ("Council") for ADR (section 113(1)). Within 30 days after the referral, the Chairperson must arrange for the dispute to be the subject of:

- a) mediation by a mediator; or
- b) another appropriate form of ADR by a suitably qualified person (section 113(2)).

Mediation or other ADR must take place within 30 days after the date on which the dispute is referred to the Chairperson of the Council (section 113(3)). The costs of ADR are to be paid by the parties in the proportions that the parties agree among themselves, or if the parties cannot agree, in equal shares (section 114).

15.1.2 Dispute Resolution in VCAT

As a last resort, the Sponsor may apply to VCAT for resolution of a dispute between two or more RAPs if the Chairperson of the Council has certified in writing that ADR has failed, or is unlikely to resolve the dispute.

15.2 Dispute resolution where the Secretary is evaluating the Management Plan

Where only the Secretary is evaluating the Management Plan, the dispute resolution requirements of the legislation in relation to Management Plans have no application.

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The Secretary has other mechanisms to address disputes, such as the audit provisions of the Act.

The Sponsor may wish the Management Plan to outline the Sponsor's own process or general principles for dispute resolution.

15.3 Victorian Civil and Administrative Tribunal Review

A Sponsor may apply to VCAT to review a decision of (section 116) a RAP not to approve a Management Plan if each relevant RAP has decided to refuse to approve the Management Plan under section 63; or

- i. a relevant RAP has decided to refuse to approve the Management Plan under section 63; and
- ii. the dispute arising from that decision has been referred to the Chairperson of the Council for ADR; and
- iii. the Chairperson has certified in writing that ADR has failed, or is unlikely to resolve the dispute.

A Sponsor may apply to VCAT to review a decision of the Secretary not to approve a Management Plan under section 65.

An application for review to VCAT must be made within 28 days after the later of (section 116(3)):

- a) the day on which the applicant is notified of the decision not to approve the Management Plan;
- b) if the applicant has requested a statement of reasons for the decision from the RAP or the Secretary (as applicable), the day on which the statement of reasons is given to the applicant or the applicant is informed that a statement of reasons will not be given, under the *Victorian Civil and Administrative Tribunal Act 1998*.

The parties to a proceeding in VCAT are the Sponsor and the relevant RAP or the Secretary (as applicable) (section 117).

VCAT has the power to (section 118):

- a) approve the Management Plan; or
- b) approve the Management Plan with amendments; or
- c) refuse to approve the Management Plan.

However, before deciding to approve a Management Plan, VCAT must be satisfied that the Management Plan makes sufficient provision for the activity to which it relates to be managed so as:

- a) to avoid harm to Aboriginal cultural heritage in the area to which the Management Plan applies; and
- b) to the extent that harm cannot be reasonably avoided, to minimise harm to Aboriginal cultural heritage (section 120).

16 Costs of Developing a Cultural Heritage Management Plan

The cost of preparing, developing and implementing a Management Plan is the Sponsor's responsibility. However, costs should be negotiated between the parties and determined and assessed in accordance with what is reasonable in the circumstances.

Factors that may affect what is reasonable include:

- the nature of work to be undertaken;
- the location of the activity area and its remoteness;
- if the work requires overnight stay;
- timeframes for undertaking the work;
- the size of the activity area covered by the Management Plan;
- the number of RAP representatives; and/or
- industry standards and the market value of labour.

Guide to preparing a Cultural Heritage Management Plan

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Evaluation of a Cultural Heritage Management Plan

17.1 When a RAP is evaluating a Management Plan

17.1.1 Submitting a Management Plan to a RAP for evaluation

When submitting a Management Plan to a RAP for evaluation, the Sponsor should ensure that it is complete and in a format suitable for the RAP to evaluate (either hardcopy or, if agreed by the RAP, an electronic PDF copy). A form (“Application to a Registered Aboriginal Party for Approval of a Cultural Heritage Management Plan”) is available on the AAV website at www.aboriginalaffairs.vic.gov.au to accompany an application to a RAP.

It is the Sponsor’s responsibility to ensure the RAP receives the Management Plan for evaluation, and receives the associated statutory fee for evaluation. The RAP has a 30 day statutory time period to evaluate the Management Plan, which does not commence until the RAP receives the Management Plan and the statutory fee.

17.1.2 Statutory Fee for Evaluation of a Management Plan

The Sponsor is responsible for payment of the statutory fee relating to an application to a RAP for approval of a Management Plan under section 62 of the Act and Part 5 of the Regulations. Appendix 4 outlines the statutory fee in fee units. The amount of a fee unit can be found on the Office of the Chief Parliamentary Counsel’s website at www.ocpc.vic.gov.au

(Fee units are used in Victoria’s Acts and Regulations to describe the amount of a fee. The rate for fee units is indexed annually, so that it is raised in line with inflation. Any change to the value of a fee unit will happen on 1 July each year.)

The fee is payable to all relevant RAP(s) that give notice of their intention to evaluate a

Management Plan (under section 55). The fee is payable upon application for approval of a Management Plan to the RAP(s).

17.2 When the Secretary is evaluating a Management Plan

17.2.1 Submitting a Management Plan to the Secretary for evaluation

When submitting a management plan for evaluation by the Secretary, DPCD, the Sponsor should forward the following to Aboriginal Affairs Victoria:

- One complete electronic copy of the Management Plan, either by email to vahr@dpcd.vic.gov.au or burnt onto a disk, in Portable Document Format (PDF); and
- A completed application form (“Application to the Secretary for Approval of a Cultural Heritage Management Plan”) available on the AAV website at www.aboriginalaffairs.vic.gov.au

There is no statutory fee associated with the Secretary evaluating a Management Plan.

17.3 What if there is more than one evaluator?

If an activity area crosses the boundary of a RAP area, either into another RAP area or into an area where the Secretary is the evaluator, there will be more than one evaluator. For the purpose of the following example we will assume the area of the Management Plan crosses the boundary of a RAP area into an area where no RAP has been appointed, meaning the Secretary is the evaluator:

1. The Management Plan must be submitted by the Sponsor to both the RAP and the Secretary for evaluation and approval;
2. the RAP must evaluate and may approve the Management Plan only as it relates to its registered area;
3. the Secretary must evaluate and may approve the Management Plan only as it relates to the remaining part of the activity area specified in the Management Plan.

Guide to preparing a Cultural Heritage Management Plan

It would be desirable for the RAP and the Secretary to consult, to the extent necessary, to ensure that the decisions affecting both parties in the project are consistent to the maximum extent possible.

The plan will only come into effect in its entirety once:

- a) the RAP approves the plan (as it relates to its activity area , and the relevant documents are lodged with the Secretary (s.64(1)(a) and (b)); and
- b) the Secretary approves the plan as it relates the remaining part of the activity area (s.65(6)).

Appendix 1 – Cultural Heritage Audits

Causing harm to Aboriginal cultural heritage is an offence under the *Aboriginal Heritage Act* 2006. Stop Orders provide a process for halting activities that threaten or harm Aboriginal cultural heritage and the Minister for Aboriginal Affairs may also order the sponsor of an activity to carry out a Cultural Heritage Audit of the impact of the activity on Aboriginal cultural heritage under certain circumstances.

Cultural Heritage Audits may be ordered where it is believed that the recommendations of an approved Management Plan or the conditions of a Cultural Heritage Permit have been contravened.

The Minister for Aboriginal Affairs may order a Cultural Heritage Audit, on advice from:

- an inspector;
- the Secretary to the Department of Planning and Community Development (DPCD); or,
- the Aboriginal Heritage Council.

and if the Minister reasonably believes that the:

- activity has contravened, or is likely to contravene, the recommendations of an approved Management Plan or fails to comply, or is likely to contravene, a condition of a Cultural Heritage Permit.
- impact on Aboriginal heritage is greater than was expected at the time when the Management Plan was approved or the Cultural Heritage Permit was granted.

The Minister must issue a stop order if he or she orders a Cultural Heritage Audit. The stop order remains in force until revoked by the Minister. However, recommendations contained in an approved Cultural Heritage Audit override the conditions of a stop order.

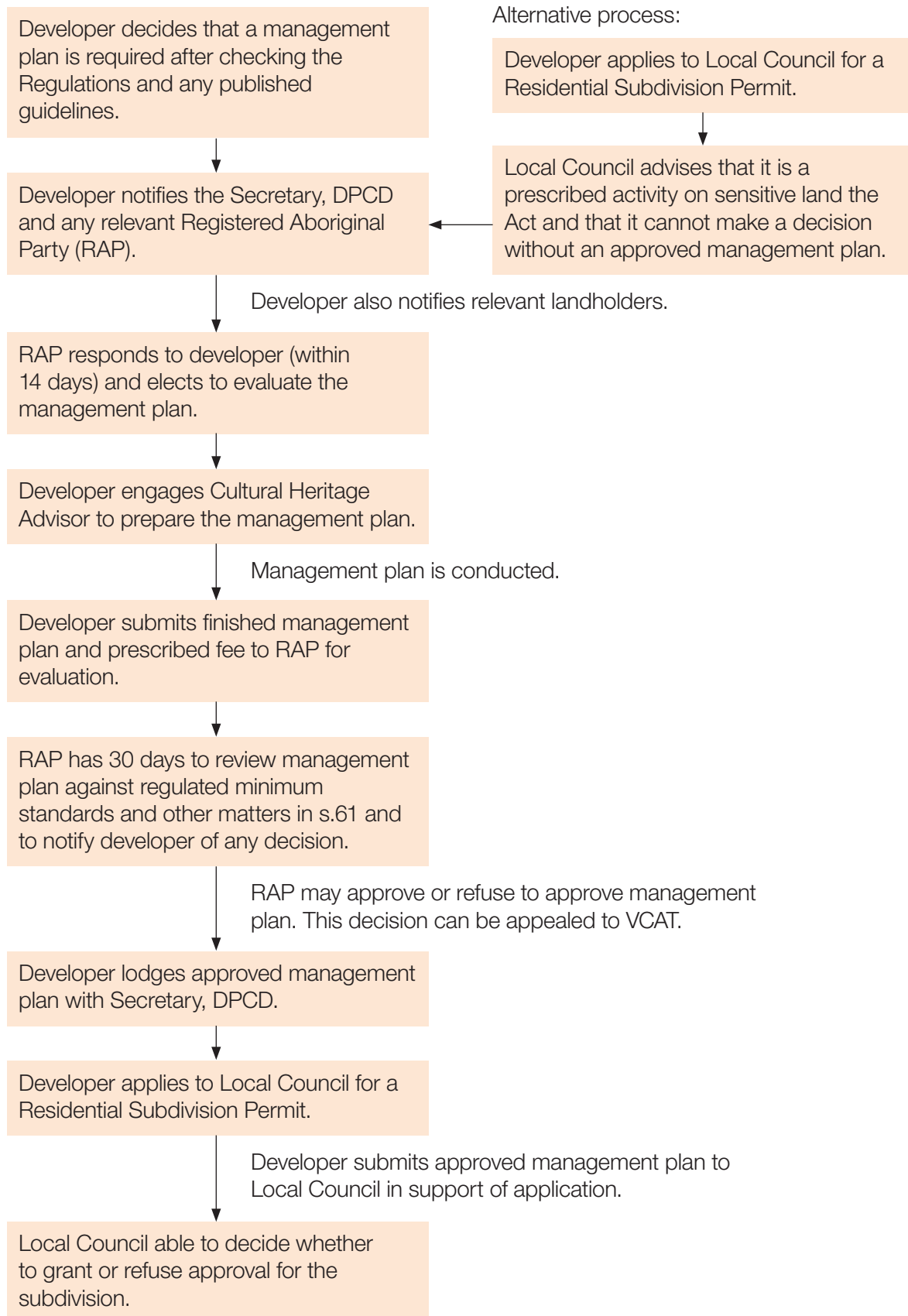
An Audit must be conducted by, or under the direction of an inspector appointed under the Act and the Secretary, DPCD may direct that the proponent of a development or an activity engage a Cultural Heritage Advisor to conduct the Audit.

A Cultural Heritage Advisor engaged to conduct an Audit, must comply with a direction from an inspector to give the inspector a written report of the findings of the audit. The Cultural Heritage Advisor must also comply with any other reasonable direction of the inspector.

An inspector who conducts or directs an Audit must provide a written report of the findings of the Audit to the Minister. The Minister may then approve the report if he or she is satisfied that the report's recommendations are consistent with the standards prescribed for the preparation of a Management Plan (section 53). Refer to Item 12, Cultural Heritage Management Recommendations, and Item 13, Contingency Planning, for information about developing recommendations in accordance with the prescribed standards.

The Minister may then amend the Management Plan in accordance with the Audit recommendations and the amended plan becomes the approved Management Plan for the activity. If the Audit relates to a Cultural Heritage Permit, the Secretary must amend the conditions of the permit in accordance with the report recommendations, and the amended permit becomes the Cultural Heritage Permit for the activity.

Appendix 2 – Management Plan – Process Flowchart



Appendix 3 – Example Contingency for the Discovery of Skeletal Remains

If any suspected human remains are found during any activity, works must cease. The Victoria Police and the State Coroner's Office should be notified immediately. If there are reasonable grounds to believe that the remains are Aboriginal, the Department of Sustainability and Environment's Emergency Coordination Centre must be contacted immediately on 1300 888 544. This advice has been developed further and is described in the following 5 step contingency plan. Any such discovery at the activity area must follow these steps.

1. Discovery:

- If suspected human remains are discovered, all activity in the vicinity must stop to ensure minimal damage is caused to the remains; and,
- The remains must be left in place, and protected from harm or damage.

2. Notification:

- Once suspected human skeletal remains have been found, the Coroners Office and the Victoria Police must be notified immediately;
- If there is reasonable grounds to believe that the remains could be Aboriginal, the DSE Emergency Co-ordination Centre must be immediately notified on 1300 888 544; and
- All details of the location and nature of the human remains must be provided to the relevant authorities.
- If it is confirmed by these authorities that the discovered remains are Aboriginal skeletal remains, the person responsible for the activity must report the existence of the human remains to the Secretary, DPCD in accordance with s.17 of the Act.

3. Impact Mitigation or Salvage:

- The Secretary, after taking reasonable steps to consult with any Aboriginal person or body with an interest in the Aboriginal human remains, will determine the appropriate course of action as required by s.18(2)(b) of the Act;
- An appropriate impact mitigation or salvage strategy as determined by the Secretary must be implemented by the Sponsor.

4. Curation and further analysis:

- The treatment of salvaged Aboriginal human remains must be in accordance with the direction of the Secretary.

5. Reburial:

- Any reburial site(s) must be fully documented by an experienced and qualified archaeologist, 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.

Appendix 4 – Statutory Fees for the Evaluation of a Cultural Heritage Management Plan by a RAP

Fee payable under section 62(3) – one relevant registered Aboriginal party:

Type of cultural heritage management plan	Fee
A plan in relation to a small activity involving a desktop assessment	10 fee units
A plan in relation to a medium-size activity involving a desktop assessment	20 fee units
A plan in relation to a large activity involving a desktop assessment	40 fee units
A plan in relation to a small activity involving a standard assessment	40 fee units
A plan for a medium-size activity involving a standard assessment	80 fee units
A plan in relation to a large activity involving a standard assessment	160 fee units
A plan in relation to a small activity involving a complex assessment	80 fee units
A plan in relation to a medium-size activity involving a complex assessment	160 fee units
A plan in relation to a large activity involving a complex assessment	320 fee units

Fee payable under section 62(2) – two relevant registered Aboriginal parties:

Type of cultural heritage management plan	Fee
A plan in relation to a small activity involving a desktop assessment	8 fee units
A plan in relation to a medium-size activity involving a desktop assessment	15 fee units
A plan in relation to a large activity involving a desktop assessment	30 fee units
A plan in relation to a small activity involving a standard assessment	30 fee units
A plan in relation to a medium-size activity involving a standard assessment	60 fee units
A plan in relation to a large activity involving a standard assessment	120 fee units
A plan in relation to a small activity involving a complex assessment	60 fee units
A plan in relation to a medium-size activity involving a complex assessment	120 fee units
A plan in relation to a large activity involving a complex assessment	240 fee units

Fee payable under section 62(2) – three or more relevant registered Aboriginal parties:

Type of cultural heritage management plan	Fee
A plan in relation to a small activity involving a desktop assessment	7 fee units
A plan in relation to a medium-size activity involving a desktop assessment	13 fee units
A plan in relation to a large activity involving a desktop assessment	27 fee units
A plan in relation to a small activity involving a standard assessment	27 fee units
A plan in relation to a medium-size activity involving a standard assessment	53 fee units
A plan in relation to a large activity involving a standard assessment	107 fee units
A plan in relation to a small activity involving a complex assessment	53 fee units
A plan in relation to a medium-size activity involving a complex assessment	107 fee units
A plan in relation to a large activity involving a complex assessment	213 fee units

The amount of a fee unit can be found on the Office of the Chief Parliamentary Counsel's website at www.ocpc.vic.gov.au

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