

Project Planning

Introduction

The *Aboriginal Heritage Act 1988* (the Act) protects all Aboriginal sites, objects and remains throughout South Australia. Aboriginal heritage sites are defined as being an area of land that is of significance according to Aboriginal tradition, or significant to Aboriginal archaeology, anthropology or history. Examples include (but are not limited to) artefact scatters, shell middens, historical campsites, song lines, ceremonial grounds or landscape features of spiritual significance. It is an offence under the Act to damage, disturb or interfere with any Aboriginal sites, objects or remains without the authorisation of the Minister for Aboriginal Affairs and Reconciliation.

Risk assessment and the *Aboriginal Heritage Act 1988*

When projects are planned to take place in areas where known Aboriginal heritage exists, there is a risk that project activities may damage, disturb or interfere with those Aboriginal sites, objects or remains. In project areas where the heritage is unknown or may be subsurface, there is still a risk of damage to Aboriginal heritage which is discovered during the project works.

In either case, the risk can be mitigated by implementing a program of identification, consultation and assessment during your project planning phase followed by controls implemented during the project works. This approach may mitigate any risk of damage, disturbance or interference with any Aboriginal sites, objects or remains either known or uncovered during project works.

Identification of Aboriginal heritage in your project area

Prior to commencing development, exploration, mining or other ground disturbing operations, a proponent should gather as much information as possible about the known Aboriginal heritage in the project area. Ways of collecting heritage information include:

- Requesting a search of the Register of Aboriginal Sites and Objects and the Central Archive maintained by the Minister for Aboriginal Affairs and Reconciliation
- Search the Register of Recognised Aboriginal Representative Bodies (RARBs) to identify the relevant RARB
- Talk to the relevant RARB, or where there is no RARB appointed in relation to the project area, the local Aboriginal heritage organisations, or the Native Title body about the risk of damage to heritage in the project area.

To identify any unknown heritage or assess the possibility of subsurface heritage, talk to the relevant local RARB, or where there is no RARB appointed, the local Aboriginal heritage organisations or native title body, in conjunction with a suitably qualified archaeologist and/or anthropologist who may advise the conduct of an Aboriginal cultural heritage survey. See *further information about heritage surveys*.

REGISTER SEARCH

Register of Aboriginal Sites and Objects and the Central Archive

The Central Archive, which includes the Register of Aboriginal Sites and Objects, is maintained by the Minister for Aboriginal Affairs and Reconciliation and contains confidential and non-

confidential information about Aboriginal sites, objects and ancestral remains (burials) across South Australia.

Divulging confidential information from the Central Archive and divulging information in contravention of Aboriginal tradition each have serious penalties under the Act. The Department therefore strictly follows a process to manage all requests for information from the Central Archive and Register of Aboriginal Sites and Objects.

You can make enquiries about the presence of Aboriginal sites in a specified area by requesting a search of the Register. You will receive a yes or no answer and a basic map showing the approximate location of sites. For more detailed information, including map coordinates, permission is required from the traditional owners of the site. It is important to remember that the central archive is not an exhaustive record, and the Act protects all Aboriginal sites, objects and remains regardless of whether they are recorded in the central archive.

To access information from the central archive visit the Department of State Development, Aboriginal Affairs and Reconciliation Heritage website and request a search of the Register or email your project details, including lot/plan details, certificate of title numbers, tenement number, map and shape-file or grid references to dsdaarheritagesites1@sa.gov.au.

Searches of the central archive should always be complemented with consultation with the relevant local Recognised Aboriginal Representative Body (RARB), or where there is no appointed RARB for the relevant area, with recognised representatives of the relevant Aboriginal communities. The RARB or other representatives may hold information about Aboriginal heritage that is not recorded on the central archive, but which is important for you to know.

CONSULTATION

Recognised Aboriginal Representative Bodies

A Recognised Aboriginal Representative Body (RARB) is the organisation that can enter into a Local Heritage Agreement (under the Act) with proponents to manage the effects of project works on Aboriginal sites, objects or remains within a project area. A RARB may negotiate a Local Heritage Agreement with a proponent when either an application for authorisation to damage, disturb or interfere¹ with Aboriginal heritage, or an application to excavate for the purpose of uncovering of an Aboriginal site, object or remains² is lodged under the Act. A Local Heritage Agreement with a RARB can specify the conditions under which the Aboriginal heritage in the project area is managed in culturally appropriate ways. Before entering into a Local Heritage Agreement, a RARB may need to consult a particular family group or individual who holds traditional knowledge about Aboriginal sites in the project area.

Outside of the APY and MT Lands, RARBs are appointed by the State Aboriginal Heritage Committee. All appointments are listed on the Register of RARBs and contact details for each RARB are published on the DSD-AAR website. If there is no RARB appointed in relation to the project area, the proponent should contact the local heritage organisation or native title body.

Other Aboriginal organisations

In areas where there is no appointed RARB the proponent can consult with the relevant Aboriginal heritage or native title organisation or committee who may wish to provide information in relation to the Aboriginal heritage in the project area. These organisations cannot enter into

¹ Cf section 23 *Aboriginal Heritage Act 1988*

Local Heritage Agreements but any discussions or agreements with these groups can form a part of a proponent's strategy for managing the risk of breach of the Act.

ASSESSMENT

Aboriginal cultural heritage surveys

Professional archaeologists and anthropologists, in consultation with relevant Aboriginal parties, are qualified to undertake surface heritage surveys which can identify Aboriginal sites significant according to Aboriginal tradition, or to Aboriginal archaeology, anthropology or history. Briefs for the engagement of consultant archaeologists and/ or anthropologists should include details of:

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

Surface heritage surveys usually only give an indication of what may be present on the ground. Even when there is no heritage located on the surface, there may still be a risk of subsurface discoveries when the ground disturbing works commence. For further information about planning and conducting an Aboriginal cultural heritage survey, see the DSD-AAR Information Sheet: *Aboriginal Cultural Heritage Surveys*.

CONTROLS

Cultural Heritage Management Plans

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

Local Heritage Agreements

A local heritage agreement is an agreement between a land use proponent (e.g. a miner, developer or government agency) and a Registered Aboriginal Representative Body (RARB)

² Cf section 21 *Aboriginal Heritage Act 1988*

that deals with the impact of the proponent's activities on any Aboriginal sites, object or remains (Aboriginal heritage) in the area covered by the agreement.

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

Agreements under the Native Title Act and other acts

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

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

Monitoring

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

Discovery plan

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

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

A discovery plan does not authorise damage, disturbance or interference with an Aboriginal site, object or remains; authorisation from the Minister under section 23 of the Act is required for any damage, disturbance or interference with Aboriginal sites, objects or remains.

Discovery of ancestral remains

In the event of the discovery of bones which are suspected to be human, all works should immediately stop in the discovery area and the discovery must be reported to the South Australian Police (SAPOL). If SAPOL confirms the discovery as ancestral Aboriginal remains, the proponent may reach agreement under section 37 of the Act with the RARB, or where there is no appointed RARB, with the relevant local Aboriginal parties regarding the management of the discovery, including recovery, reburial and any associated ceremony.

In consultation with the State Aboriginal Heritage Committee, DSD-AAR has prepared a *Discovery Protocol for Ancestral Remains* which should be implemented immediately whenever skeletal remains are discovered during project works. The Protocol is based on proponents' responsibilities under the *Coroner's Act 2003* and the *Aboriginal Heritage Act 1988*.

Legislative Awareness Induction

All construction and site staff working on a project should be inducted as to their legal obligations should they discover an Aboriginal site, object or remains. To assist with the administration of the Act and the protection and preservation of Aboriginal sites, objects and remains, DSD-AAR provides information and legislative awareness workshops that may assist proponents and their contractors to understand obligations under the Act. For more information or to request a workshop visit the DSD-AAR website and submit a *Request a Workshop* form or call DSD-AAR on (08) 8226 8900.

Authorisation under section 23 of the *Aboriginal Heritage Act 1988*

Proponents who are unable to mitigate their risk of damage, disturbance or inference of Aboriginal heritage, or who wish to uncover a site, object or remains, are required to seek an authorisation under either section 21 or section 23 of the Act from the Minister for Aboriginal Affairs and Reconciliation.

For proponents who have opted to enter in a Local Heritage Agreement with a RARB, once the agreement is approved by the Minister, the section 21 or section 23 application will be approved concurrently.

For proponents who prefer not to enter a Local Heritage Agreement, a section 23 application will be processed in accordance with the consultation provisions in the Act and the Minister will decide whether or not to grant the authorisation.

Further Information

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