

CULTURAL HERITAGE GUIDELINES

2007





Cultural Heritage Guidelines **Revision 1/2007**

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These Guidelines replace VicRoads *Cultural Heritage Guidelines 2003*.

The information contained in these Guidelines is for general information only and is not intended to constitute legal advice. VicRoads accepts no responsibility for any loss arising out of reliance on any information contained in this document.

This document has been printed on environmentally friendly paper.

Acknowledgements

These Guidelines were prepared by VicRoads Environmental Services department. All content in these Guidelines used from *VicRoads Cultural Heritage Guidelines 2003* was prepared by VicRoads in conjunction with TerraCulture Heritage Consultants.

VicRoads would like to acknowledge the assistance of all who provided comments on these Guidelines.

Fee Units and Penalty Units

The values of fee units and penalty units under Victorian legislation are updated at the beginning of each financial year by the State Government by notice published in the Government Gazette.

The current values of these units can be found on the Aboriginal Affairs website (www.dpced.vic.gov.au/aav) on the 'Fees and Penalties' page in the Heritage Services section.

Cover

Top: A scarred tree salvaged during construction works and reinstated at the Taungurung Country Rest Area near Mangalore (TerraCulture Image Bank); Bottom left: Construction works on the Murchison East Deviation of the Goulburn Valley Highway at Pranjip Creek (VicRoads Image Bank); Bottom right: Heritage bridge over the Barwon River on the Princes Highway West (VicRoads Image Bank).

FOREWORD

VicRoads recognises the importance of protecting cultural heritage values. We understand that cultural heritage sites and places have a crucial place in the community's sense of identity, and often have educational value as well as historical or spiritual significance.

VicRoads Environment Policy 2005 includes a commitment to protect and enhance the natural and cultural environment during VicRoads development and management of Victoria's road network.

These Cultural Heritage Guidelines will assist VicRoads in the achievement of this goal. They outline VicRoads cultural heritage management processes from site identification to the development and implementation of protection measures. In addition the Guidelines emphasise the importance of early and regular consultation with Indigenous and non-Indigenous stakeholders in effectively managing heritage issues.

By following these processes and working closely with our cultural heritage stakeholders VicRoads will continue to protect and enhance cultural heritage values into the future.

GARY LIDDLE

CHIEF EXECUTIVE



Top: VicRoads staff, Brian Moore and Ray Beavis, with Aboriginal monitor, Travis Morgan, on site on the Goulburn Valley Highway; Centre: Henry Atkinson and Alf Turner (Yorta Yorta Nation Aboriginal Corporation) sign the landmark VicRoads-Yorta Yorta Nation General Area Agreement; Bottom: A scarred tree located in a road reserve near Whittlesea. (VicRoads Image Bank.)

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1. INTRODUCTION

1.1 VicRoads Commitment to Cultural Heritage Management

Cultural heritage management is an important issue in road planning, road construction and road maintenance. VicRoads is committed to achieving a high standard of management for Aboriginal and non-Aboriginal heritage sites and places in Victoria.

We aim to:

- Address the requirements of cultural heritage stakeholders;
- Satisfy State and Federal cultural heritage legislation;
- Protect significant sites and places; and
- Maintain heritage values for present and future generations.

These guidelines outline a process for managing cultural heritage issues at all stages of road planning, construction and maintenance.

1.2 What is Cultural Heritage?

Australia has a history of human occupation covering more than 40,000 years. During this time there have been vast changes in the climate and environment of the continent and in the ways in which people have lived. Over the past 220 years the incursion of people from many different cultures around the globe has also had significant impacts on the Australian continent.

Human beings leave many different records of their history. Some are intentional monuments and documents of their time, others are contained in the landscape we see around us or in the objects used and discarded by people every day. All of these records can be used to interpret the past. It is this diverse record of the past which is our cultural heritage.

In a variety of ways the past can help inform our contemporary world. Conservation of our cultural heritage resources today will ensure future generations of Australians can tap into the past.

It is generally the material remains of past human activity (eg. buildings, structures,



Top: One of the 5,000 bridges listed on VicRoads Heritage Bridges Inventory; Centre: A scarred tree protected and conserved during the construction of the Pakenham Bypass; Bottom: Historic metal artefacts discovered on a construction site. (VicRoads Image Bank.)

Aboriginal places and other cultural heritage sites) that are most threatened by development activities such as road projects.

1.3 Purpose of the Guidelines

These Guidelines are intended to assist VicRoads in the assessment and management of cultural heritage, and apply to Aboriginal and non-Aboriginal cultural heritage sites and places that are likely to be impacted by road planning, construction and maintenance.

The Guidelines cover:

- Cultural heritage sites commonly encountered during road construction projects;
- Statutory requirements for the protection of Aboriginal and non-Aboriginal cultural heritage;
- Cultural heritage assessment processes;
- Consultation with Indigenous and non-Indigenous stakeholders regarding the identification and management of cultural heritage sites and places; and
- The development and implementation of cultural heritage management plans in the context of road projects.

Aboriginal Cultural Heritage and Native Title

It is important to remember that Aboriginal cultural heritage and native title are not the same thing.

Aboriginal cultural heritage relates to the identification and protection of significant Aboriginal places and objects (eg. scarred trees, burial sites), whereas native title concerns underlying rights in land and/or waters in accordance with traditional laws and customs (eg. rights to hunt, access rights, ceremonial rights). The fact that there is no native title over a particular area does not mean there are no Aboriginal places or objects in that location, and vice versa.

As cultural heritage management rights are commonly claimed as a part of the native title process there is an increasing convergence between the two areas. This means that there is an increasing representation of native title claimants and traditional owner groups in cultural heritage processes.

VicRoads needs to be satisfied that the requirements of both Aboriginal cultural heritage legislation and the *Native Title Act 1993 (Cth)* are met in relation to all works.

For more information on native title and how it relates to Aboriginal cultural heritage please refer to *VicRoads Native Title Guidelines 2003*.

2. CULTURAL HERITAGE SITES AND PLACES

This section highlights commonly occurring Aboriginal and non-Aboriginal cultural heritage sites and places that may be encountered during road projects.

A cultural heritage site is an area containing physical evidence of past human activity. It may comprise buried artefacts and structures and/or surface elements. Associations of related cultural heritage sites and environmental or landscape features can be defined as a 'cultural landscape'.

A cultural heritage place is an area which has historical associations or associations with cultural or religious traditions, irrespective of whether it contains physical remains of associated activities.

Cultural heritage sites and places are a non-renewable resource. They provide the community with one form of information about the past that cannot be recovered if destroyed. For this reason, every effort should be made to preserve cultural heritage sites or to allow them to be studied properly before they are disturbed or destroyed.

2.1 Aboriginal Sites and Places

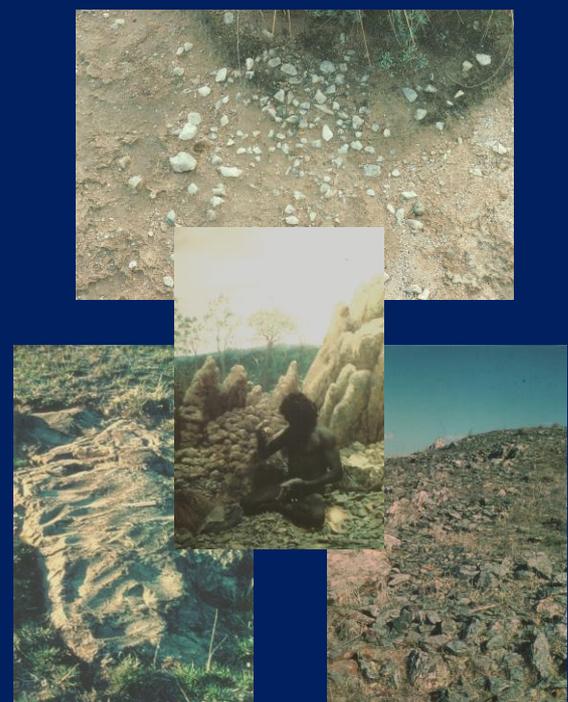
The 'natural' Australian environment is in part the product of over 40,000 years of human occupation. Indigenous Australians used and modified the natural resources of the continent to allow human settlement. They were not passive users of natural resources, but actively managed them. Probably the most widely known example of this is management of vegetation using fire. Over time, the use of natural resources, environmental management strategies and the material culture changed as people adapted to changes in their physical environment.

Indigenous Australians call the history of the formation of the land Dreamtime. The

Dreamtime forms the foundations of their law and culture and is a vital part of contemporary cultural identity. There are many places in the landscape associated with events that shaped the religion, law and culture of Indigenous Australians. These places have profound religious, social and historical significance to Indigenous Australians, irrespective of whether they are associated with the cultural heritage record.

Forty thousand years of land use has created a diverse range of cultural heritage sites spread across the Australian landscape. These sites contain physical evidence of people's settlement and land-use patterns over time.

This artefact scatter (top) bears little resemblance to the home (centre) that was once here, yet this is what most artefact scatters represent.



The extensive greenstone quarry (bottom right) is an outcrop of flakable stone that was quarried long ago by skilled toolmakers (centre). Axe blanks, made from greenstone, were traded throughout south-east Victoria. These axe blanks were sharpened and polished in sandstone outcrops, leaving behind tell tale grooves. (Bottom left: Aboriginal Affairs Victoria Photo Collection.)

The following are examples of Aboriginal cultural heritage sites and places that can occur within road corridors:

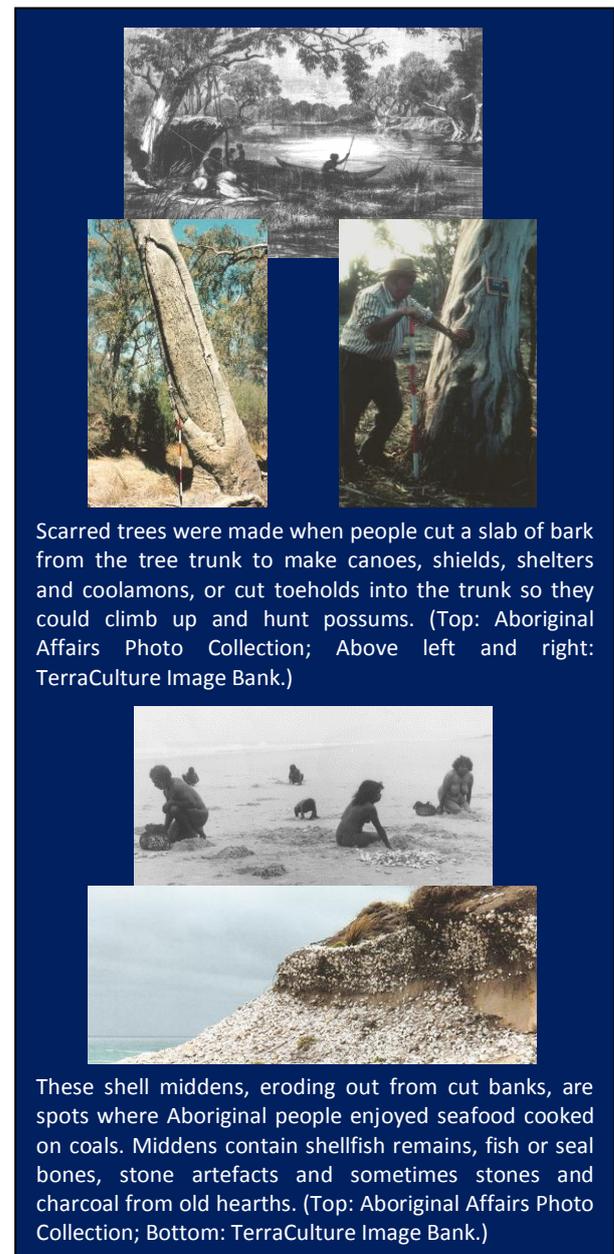
Surface Scatters and Stone Artefacts: Loose scatters of cultural material, usually stone artefacts, exposed on the ground surface. A surface scatter may be associated with buried cultural materials, and often consists of dispersed debris discarded at the location of a former campsite or other occupation site.

Stone Quarries: Stone extraction sites, can be large in extent and not dissimilar to some non-Aboriginal quarries. Indigenous people used many different types of stone for the manufacture of stone tools. Quartz, chert, mudstone, silcrete and basalt were commonly used. Stone was often broken up and removed to other places, where it was made into tools.

Scarred trees: Bark was cut and peeled from trees with stone (and later steel) axes and wedges to make canoes, shields, shelters, 'coolamons' (multi-purpose containers) and toeholds, and also may have been used for a variety of other purposes. The removal of bark left a scar on the trunk of the tree which in time healed as regrowth formed over the exposed sapwood. Scars formed by purposeful removal of bark can be distinguished by their regular form, even regrowth and position on the tree trunk. Most scars are found on eucalypts over 100 years old, and are one of the more visible Aboriginal cultural heritage sites in the landscape.

Shell Middens: The remains of campsites where shellfish were consumed. Shell middens occur in coastal regions of Victoria and banks of inland waterways and swamps. They are often visible as a layer of shell and charcoal in a dune, cliff face or embankment. Shell and charcoal are derived from the preparation and cooking of shellfish but other materials such as, bone, bone artefacts, stone artefacts and shell artefacts can often also be found in association with the shell deposit.

Oven Mounds: Earth ovens occur across most of Victoria and were used for cooking meat and plants. Campsites were established around these ovens and, with repeated use over many hundreds of years, large mounds of occupation debris accumulated. Characteristic features of oven mounds are soft soil deposits containing clay balls and stone used as heat retainers, charcoal and debris discarded at past campsites such as bone, shell and stone artefacts. They are usually circular or oval-shaped.



Aboriginal Burial Sites: Burials are of particular significance to Indigenous communities, and each community has strict policies in relation to the location and treatment of ancestral human remains. These require that the remains be treated with dignity and respect in accordance with tradition.

Funerary practices and burial techniques varied across Victoria. In some cases, bodies were interned in bark bundles and placed in trees. In-ground burials often occur in soft sandy or silty soils, such as those associated with sand dunes or alluvium near rivers and creeks. Grave goods can also be associated with burials.

Burial sites may be encountered on road projects either during planning or construction and it is important to consult fully with the Indigenous community about a process for dealing with them if they are found.

More Information on Aboriginal Heritage Sites

There are many other types of Aboriginal cultural heritage sites in Victoria including ceremonial sites, fish and eel traps, mia mia or hut sites, rock art sites and axe grinding grooves.

Aboriginal Affairs Victoria has produced a series of mini-posters describing the different types of Victorian Aboriginal cultural heritage sites. Copies of these posters are available through the VicRoads Environmental Management Toolkit.

Aboriginal Places: There are places that have traditional religious or social importance to Indigenous Australians that may not be associated with the physical remains of occupation. These may include landforms or landscape features that have spiritual meaning and can be an important part of connection with country.



The 'Corroboree Tree' in St.Kilda has been conserved as a place of special significance to the Wurundjeri people. (TerraCulture Image Bank.)

Aboriginal places can also include places that are associated with settlement since European colonisation of Australia (eg. mission sites, places where Indigenous political organisations formed, places where contemporary community organisations are, or were, based).

2.2 Non-Aboriginal Sites and Places

Non-Indigenous human occupation and settlement of Australia has had a significant impact on the landscape and environment. Victoria contains a huge variety of cultural heritage sites, all of which are physical evidence of the different types of activities associated with non-Indigenous settlement. Cultural heritage sites may often occur in association with elements of the built environment, for example, the floors under historic buildings may contain deposits of artefacts discarded by the occupants over a long period of time.

Many of these sites and places are of particular interest and importance to local communities, both Indigenous and non-Indigenous, and should be treated with due sensitivity and regard for the values which local communities may attach to them.

The following non-Aboriginal cultural heritage sites can occur within road corridors:

Historic Buildings: A wide range of historic buildings, such as houses, factories, warehouses, farm buildings and hotels, are found on or close to road reserves. Buildings that are not listed on the Heritage Register may be identified on local government heritage overlays, which afford statutory protection through the application of planning controls.

Building Remains: These can be above or below ground. They are often found in older road corridors, which have been used as routes of movement for many years. Small settlements, some of which expanded into the larger towns of today, grew along these corridors.

A wide range of buildings and ancillary structures was associated with settlements, including farm houses and outbuildings, inns or hotels, shops, stores or industrial sites such as mills, wool scours or blacksmiths. Where the buildings have been demolished, the sites are usually covered by a demolition mound that lies above the remains of footings and cellars.

Remains of structures that were associated with the building can also occur in association with the footings. These can include wells and cesspits or yards and gardens, which are often important sources of artefacts. In many cases artefacts that were deposited while the building was in use or at the time the building was demolished occur in the soil layers covering the footings. Artefacts associated with buildings, like those associated with refuse dumps, can provide valuable information about the lifestyles of the people who lived there.

Historic Road Surfaces: Old road surfaces can be cultural heritage sites. These might be buried under existing roads or on tracks which were used as routes of movement before later road re-alignments. Examples include cobbled roads and corduroy roads.

Historic Bridges: These are often encountered in road corridor projects. The style of historic bridges encountered reflects the types of raw materials that were locally available and the ease with which these could be transported to the site. Some of the earliest bridges were simple timber structures, including corduroy roads and bridges, and later timber bridges using arches, truss or trestle. Stone and brick were also used for bridge construction in the nineteenth century and later, metal and concrete.



Ruins, great and small, line the historic routes that have evolved into today's highways. (Top: Heritage Victoria Picture Collection; Bottom: TerraCulture Image Bank.)



Many of today's roads overlay historic byways like this cobblestone road and wooden corduroy road. (Top: Heritage Victoria Picture Collection; Centre: TerraCulture Image Bank; Bottom: Biosis Research Image Bank.)

VicRoads has a policy document for the management of heritage bridges and maintains a register of historic road bridges in Victoria. A detailed *Guide to Heritage Bridge Management (2001)* is published by Austroads. Copies of these documents can be obtained from VicRoads Road System Management department.



Pranjip Creek Bridge on the Hume Highway, listed on the VicRoads Heritage Bridges Inventory. (VicRoads Image Bank.)

Avenues of Honour: Following the First and Second World Wars, Victorian townspeople planted avenues of trees alongside roads to commemorate servicemen and women. In some cases, these were extended to commemorate those who had died in Korea, Vietnam and other conflicts. A striking example is the Calder Woodburn Memorial Avenue which extends along either side of the Goulburn Valley Highway on the approaches to Shepparton. Local residents often regard Avenues of Honour as highly significant. As well as functioning as memorials to fallen service people, these sites feature in the cultural identity of a community, particularly in regional centres. Their association with roadways means that these sites are often threatened by road construction, particularly road widening or duplication projects.

Mining Sites: Along historic goldfields routes, there are many different types of cultural heritage sites or complexes of sites associated with the mining and processing of gold. Mining sites include mine shafts and adits, windlasses and winding engines at the pitheads, the remains of engine houses, dredges and water races for sluicing alluvial

gold. Processing sites can include jaw crushers for rock breaking, stamp batteries for rock crushing, puddlers and mullock heaps.

Refuse Dumps: These are most often associated with settlement sites. It was common practice in the nineteenth and early twentieth centuries to dispose of waste products by dumping them near the building or structure in which it had been used. In some cases, material was discarded above ground. In other cases it was thrown into a hole. Cesspits were commonly used for this purpose. Because the refuse was disposed of near the place of use, the discarded material can provide valuable information about the lifestyles of the people who lived there.

Marine Sites: These can include submerged shipwrecks and historic pier complexes which can sometimes be impacted by coastal roadworks or bridgeworks.



The Mia Mia Bridge over the Campaspe River on the Heathcote-Kyneton Road is another example of a heritage bridge managed by VicRoads. (VicRoads Image Bank.)

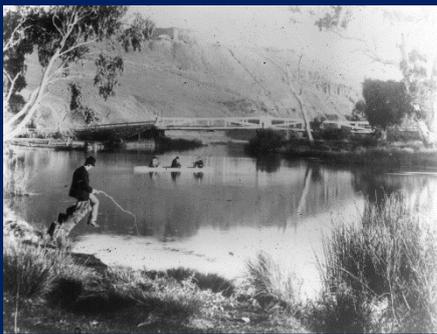


Marine sites, like shipwrecks and pier complexes, can sometimes be impacted by VicRoads projects. (Top: Heritage Victoria Picture Collection; Bottom: TerraCulture Image Bank.)

Heritage Landscapes: Gardens, individual trees and plantations, or fixtures that show the organisation of land (eg. fencing) may be important heritage landscape features, whether associated with buildings or not. For example, on the western plains and in some of the goldfields, whole areas are still subdivided with nineteenth century dry stonewall fencing. The fencing reflects the historical process of land subdivision and agricultural practices. It also provides an insight into the perceptions and values attached to land by the colonial government and society of the period.



This rare historic milestone, on the Calder Freeway near Carlsruhe, is a remnant of a historic landscape such as the one pictured below. (Top: TerraCulture Image Bank; Bottom: Heritage Victoria Picture Collection.)



Why do cultural heritage sites and places often occur in road corridors?

Both Aboriginal and non-Aboriginal cultural heritage sites and places often occur in road corridors. Within an existing road reserve, cultural heritage can sometimes be less disturbed than on the surrounding land. For example, scarred trees occur more frequently within a road reserve where vegetation clearance has been less intensive than on the surrounding land.

Older roads have sometimes developed from routes of movement which pre-date non-Indigenous occupation of Australia. Indigenous Australians maintained a network of well-travelled paths by which they moved to different places around their land. Early white explorers, such as Major Mitchell and later non-Indigenous settlers, sometimes used these pathways to access new country. These routes were subsequently identified on early survey plans as roads and then as road reserves on Parish Plans. Consequently, both Aboriginal and non-Aboriginal occupation sites may be associated with older road reserves. Examples of such routes are the Grand Ridge Road in the Strzelecki Ranges, parts of the Maroondah Highway in the Great Dividing Range and possibly parts of the Westernport Highway.

Indigenous and non-Indigenous human settlement of Australia has been widespread. Cultural heritage sites associated with human settlement occur on all elements of the landscape, and it is always likely that a new road corridor will impact on such sites.

3. LEGISLATION

The management and protection of cultural heritage sites and places in Victoria is governed by a number of Victorian and Australian Government statutes. These are summarised below.

A guide to the consents and permits required under the legislation can be found on VicRoads Environmental Management Toolkit.

3.1 Aboriginal Cultural Heritage

3.1.1 Aboriginal Heritage Act 2006 (Vic)

This Act provides blanket protection for all Aboriginal cultural heritage sites and places in Victoria. The Act is administered by the Victorian Minister for Aboriginal Affairs through the Secretary to the Department of Planning and Community Development and Aboriginal Affairs Victoria.

Under the *Aboriginal Heritage Act* it is illegal to knowingly do an act that harms Aboriginal cultural heritage where, at the time that the act was done, the person knew or was reckless or negligent as to whether the thing being harmed was Aboriginal cultural heritage, unless the act is done in accordance with a cultural heritage permit or approved cultural heritage management plan, during the preparation of a management plan, or because of an emergency.

This Act and the *Aboriginal Heritage Regulations 2007 (Vic)* outline the processes for obtaining cultural heritage permits and approved cultural heritage management plans, facilitate the registration of Aboriginal parties with an interest in cultural heritage management over particular parts of Victoria, and contain alternative dispute resolution clauses.

Key elements of the *Aboriginal Heritage Act* include:

Registered Aboriginal Parties: Under the *Aboriginal Heritage Act* Aboriginal parties are able to apply to the Victorian Aboriginal Heritage Council to be registered as Aboriginal cultural heritage decision makers for an area. Once registered, these parties have a range of responsibilities, including endorsing or refusing Aboriginal Cultural Heritage Management Plans and making recommendations to the Secretary to the Department of Planning and Community Development on the approval of Aboriginal Cultural Heritage Permits (see below). Under this system more than one Aboriginal party may be registered for an area.

Cultural Heritage Management Plans: The Act prescribes the activities that will trigger the requirement for a Cultural Heritage Management Plan, which generally involves undertaking a standard cultural heritage investigation followed by the negotiation of cultural heritage management initiatives and processes with the relevant approval authorities. Most VicRoads road construction projects will need to undertake this type of Assessment. The approval of a Cultural Heritage Management Plan obviates the need for cultural heritage permits under the Act.

Cultural Heritage Permits: These are only required for activities that may harm Aboriginal cultural heritage but which do not require a Cultural Heritage Management Plan. Under the Act these permits will be granted by the Secretary to the Department of Planning and Community Development.

Cultural Heritage Audits and Stop Orders: The Minister for Aboriginal Affairs may order a Cultural Heritage Audit to re-assess activities that may be breaching an approved Cultural Heritage Management Plan or

Cultural Heritage Permit. This involves the preparation of an audit report which informs the Minister's decision on how best to proceed with the activity in question. A Stop Order will always be associated with such an audit. More information on Cultural Heritage Audits and Stop Orders can be found in Section 6 of these Guidelines.

Aboriginal Heritage Protection Declarations: The Minister for Aboriginal Affairs may make Interim and Ongoing Declarations to protect Aboriginal objects or places of exceptional significance.

Cultural Heritage Agreements: Under the Act people are able to enter into an Aboriginal Cultural Heritage Agreement for any matter involving the management of Aboriginal cultural heritage, which does not require a cultural heritage management plan or cultural heritage permit.

Dispute Resolution Mechanisms: The Act contains procedures allowing the resolution of disputes or disagreements between Registered Aboriginal Parties, or between proponents and Registered Aboriginal Parties, in the Victorian Civil and Administrative Tribunal (VCAT) for resolution.

More detail on the requirements of the *Aboriginal Heritage Act* can be found in *VicRoads Cultural Heritage Guidelines 2007: Addendum – Aboriginal Heritage Act 2006 (Vic)*, which is accessible through VicRoads Environmental Management Toolkit.

3.1.2 Coroners Act 1985 (Vic)

The *Coroners Act* requires the discovery of any suspected unidentified human remains to be reported immediately to the police or the coroner's office. This includes Aboriginal burials.

3.2 Non-Aboriginal Cultural Heritage

3.2.1 Heritage Act 1995 (Vic)

The *Heritage Act* protects all non-Aboriginal cultural heritage sites and places in Victoria, and is administered by Heritage Victoria.

There are two categories of listing under the Heritage Act - the Heritage Register and the Heritage Inventory.

The Heritage Register includes all places, relics, buildings, objects or shipwrecks within Victoria that are deemed to be of outstanding cultural significance. It is an offence to disturb or destroy a place or object on the Heritage Register without a permit from the Executive Director of Heritage Victoria.

The Heritage Inventory is a listing of all non-Aboriginal places or objects that are identified as historic archaeological sites, areas and relics. It is an offence to destroy a place or object on the Heritage Inventory without consent from the Executive Director of Heritage Victoria.

The Victorian Heritage Register and Victorian Heritage Inventory can be accessed online at www.heritage.vic.gov.au.

Sites and places which are not included in the Heritage Register or Heritage Inventory, but for which Heritage Victoria still keeps records, are given a 'D' classification. Consents or permits from Heritage Victoria are not required in relation to the disturbance of 'D' classified sites.

3.2.2 Planning and Environment Act 1987 (Vic)

The *Planning and Environment Act* allows for statutory planning scheme protection of both Aboriginal and non-Aboriginal heritage sites and places.

Heritage places of local significance are often identified within local municipal planning schemes and protected by the application of Heritage Overlay controls. A planning permit from the relevant local Council is required to impact on any site or place covered by such a Heritage Overlay.

3.2.3 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The *Environment Protection and Biodiversity Conservation Act* protects nationally significant Aboriginal and non-Aboriginal cultural heritage sites. The Act creates two heritage lists – the National Heritage List and the Commonwealth Heritage List.

The National Heritage List consists of places of national heritage significance, whereas the Commonwealth Heritage List is a listing of places of heritage significance that are in Commonwealth areas. Criteria for these lists can be found in the *Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)*.

While most of the heritage obligations under the *Environment Protection and Biodiversity Conservation Act* relate to the activities of Australian Government departments and agencies, it is an offence for any person (including VicRoads) to take an action that has, will or is likely to result in a significant impact on:

- The national heritage values of a place on the National Heritage List that is in a Commonwealth area;
- The Aboriginal heritage values of any place on the National Heritage list;

- The Commonwealth heritage values of a place on the Commonwealth Heritage List in a Commonwealth area; or
- The heritage values of a place on Commonwealth land (this includes places on the Register of the National Estate).

However, the Act provides that a person can take such an action:

- Where the Australian Government Minister for the Environment has given approval for the action pursuant to the processes outlined in the Act;
- Where the Australian Government Minister for the Environment decides under the Act that the proposed action does not need approval;
- Where a Ministerial direction or bilateral agreement made under the Act that provides that action does not require approval; or
- Where the action is an action that is subject to a special environmental assessment process under the Act.

VicRoads Environmental Services department is able to provide more advice on whether the *Environment Protection and Biodiversity Conservation Act* will apply to a particular project.



Mick McCarthy (VicRoads) and Uncle Colin Walker discuss cultural heritage at Pranjip Creek. (VicRoads Image Bank.)

4. CULTURAL HERITAGE STAKEHOLDERS

This section of the Guidelines contains information to help VicRoads staff identify key cultural heritage stakeholders.

Many people have a strong interest in cultural heritage. Cultural heritage stakeholders can include statutory authorities and Indigenous and non-Indigenous community organisations and groups. It is important to adopt an inclusive approach to consultation on cultural heritage issues to ensure that all views are represented. The process of identifying key cultural heritage stakeholders plays a critical role in effective cultural heritage management.

4.1 Aboriginal Cultural Heritage Stakeholders

4.1.1 Registered Aboriginal Parties

Registered Aboriginal Parties are the primary Aboriginal cultural heritage stakeholders under the *Aboriginal Heritage Act*.

Under the *Aboriginal Heritage Act* registered Aboriginal parties have the ability within the area for which they are registered to evaluate cultural heritage management plans, advise on cultural heritage permit applications, enter into cultural heritage agreements and negotiate the repatriation of Aboriginal human remains. As such they will always be key cultural heritage stakeholders in relation to any road project.

It is important to note that more than one body may be a registered Aboriginal party for a particular area. However, this will only occur in cases where the Victorian Aboriginal Heritage Council (see Section 4.1.4 below) is satisfied that having more than one registered Aboriginal party for the area will not unduly hinder the ability of any of the registered Aboriginal parties for the area to exercise

their powers and carry out their functions under the Act, and will not otherwise hinder the effective operation of the Act.

Where there is no registered Aboriginal party for a particular area, any evaluation and approval powers under the *Aboriginal Heritage Act* default to the Secretary to the Department of Planning and Community Development.

Contact details for these organisations can be found on Aboriginal Affairs Victoria's website. Further advice on which registered Aboriginal party or parties are relevant to a particular road project can be obtained from VicRoads Environmental Services department or Aboriginal Affairs Victoria.

4.1.2 Native Title Claimants and Traditional Owner Groups

In addition to these registered Aboriginal parties there may be other Indigenous stakeholders, such as native title claimants and traditional owner groups (see the discussion of native title on page 6 of these Guidelines), who have an interest in the Aboriginal heritage of a project area but who are not affiliated with the registered Aboriginal parties under the *Aboriginal Heritage Act*. It is important to contact these organisations or individuals where they are relevant to ensure that their views are represented in any cultural heritage work done.

Further advice on native title claimants and/or traditional owner groups who may be relevant to a particular road project can be obtained from VicRoads Environmental Services department, Native Title Services Victoria (the Native Title Representative Body for the State of Victoria) or the National Native Title Tribunal.

4.1.3 Aboriginal Affairs Victoria and the Secretary to the Department of Planning and Community Development

Aboriginal Affairs Victoria (AAV) is the Victorian Government's central point of advice on all aspects of Aboriginal affairs in Victoria. One of AAV's key objectives is to protect and promote Victoria's Aboriginal cultural heritage, and they assist the Secretary to the Department of Planning and Community Development with the administration of the *Aboriginal Heritage Act* and *Aboriginal Heritage Regulations*.

The Secretary to the Department of Planning and Community Development has two key powers under the *Aboriginal Heritage Act* – chiefly the power to grant cultural heritage permits in all cases, and to approve cultural heritage management plans in cases where there is no registered Aboriginal party for the relevant area.

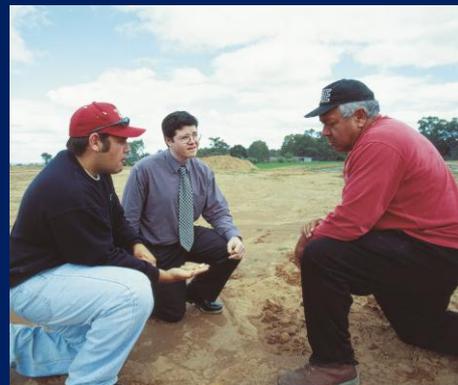
Two of the Secretary's other functions are to maintain a freely available map of Victoria which shows each area in respect of which an Aboriginal party is registered and a list of all registered Aboriginal parties that includes contact details.

4.1.4 Victorian Aboriginal Heritage Council

The Aboriginal Heritage Council is a body corporate established under the *Aboriginal Heritage Act* consisting of 11 Indigenous people appointed by the Minister. The Council has the following key functions under the Act:

- To advise the Minister in relation to the protection of Aboriginal cultural heritage in Victoria;
- To advise and make recommendations to the Minister on the exercise of his or her powers under the Act (including proposals by the Minister to require cultural heritage management plans for certain activities,

- and whether a cultural heritage audit is necessary); and
- To receive and determine applications for the registration of Aboriginal parties.



Christopher Reeve (centre, VicRoads), Wade Morgan (left) and Rod Briggs (right, Yorta Yorta Nation Aboriginal Corporation) examine the remains of an old Aboriginal campsite. (VicRoads Image Bank.)



VicRoads staff and representatives of the Boonwurrung people inspect artefacts discovered on-site on the Bass Highway. (VicRoads Image Bank.)

4.2 Non-Aboriginal Cultural Heritage Stakeholders

4.2.1 Heritage Victoria

Heritage Victoria administers the *Heritage Act* and has a key interest in all non-Aboriginal cultural heritage investigations. As it has sole responsibility for the granting of permits to destroy or disturb non-Aboriginal cultural heritage sites in Victoria, Heritage Victoria will always be a key cultural heritage stakeholder in relation to any road project.

4.2.2 Local Government

As discussed previously, Local Government often protects heritage places of local significance through the application of Heritage Overlay controls within local municipal planning schemes. The relevant local Council will be an important stakeholder in relation to any proposed impact on any site or place covered by such a Heritage Overlay.

4.2.3 Australian Government Department of the Environment, Water, Heritage and the Arts

The Australian Government Department of the Environment, Water, Heritage and the Arts administers the *Environment Protection and Biodiversity Conservation Act* and advises the Australian government on environmental matters, including the protection of cultural heritage places.

The Australian Government Minister for the Environment has to approve any action that will have a significant impact on certain nationally significant heritage places, and therefore the Australian Government Department of the Environment, Water, Heritage and the Arts will be an important stakeholder in relation to any project that is likely to affect such sites.

4.2.4 Local Historical Societies

Local non-Indigenous community stakeholders often have an interest in both Aboriginal and non-Aboriginal cultural heritage. Local historical societies, for instance, play a very important role in conserving and maintaining cultural heritage and can be a great source of information about our Indigenous and non-Indigenous past. Their opinions and interests should

always be taken into consideration when conducting heritage assessments.

Further advice on which local historical societies are relevant to a particular road project can be obtained from VicRoads Environmental Services department, the Royal Historical Society of Victoria (for societies affiliated with the Royal Historical Society), Heritage Victoria or the relevant local government office.

4.2.5 National Trust of Australia (Victoria)

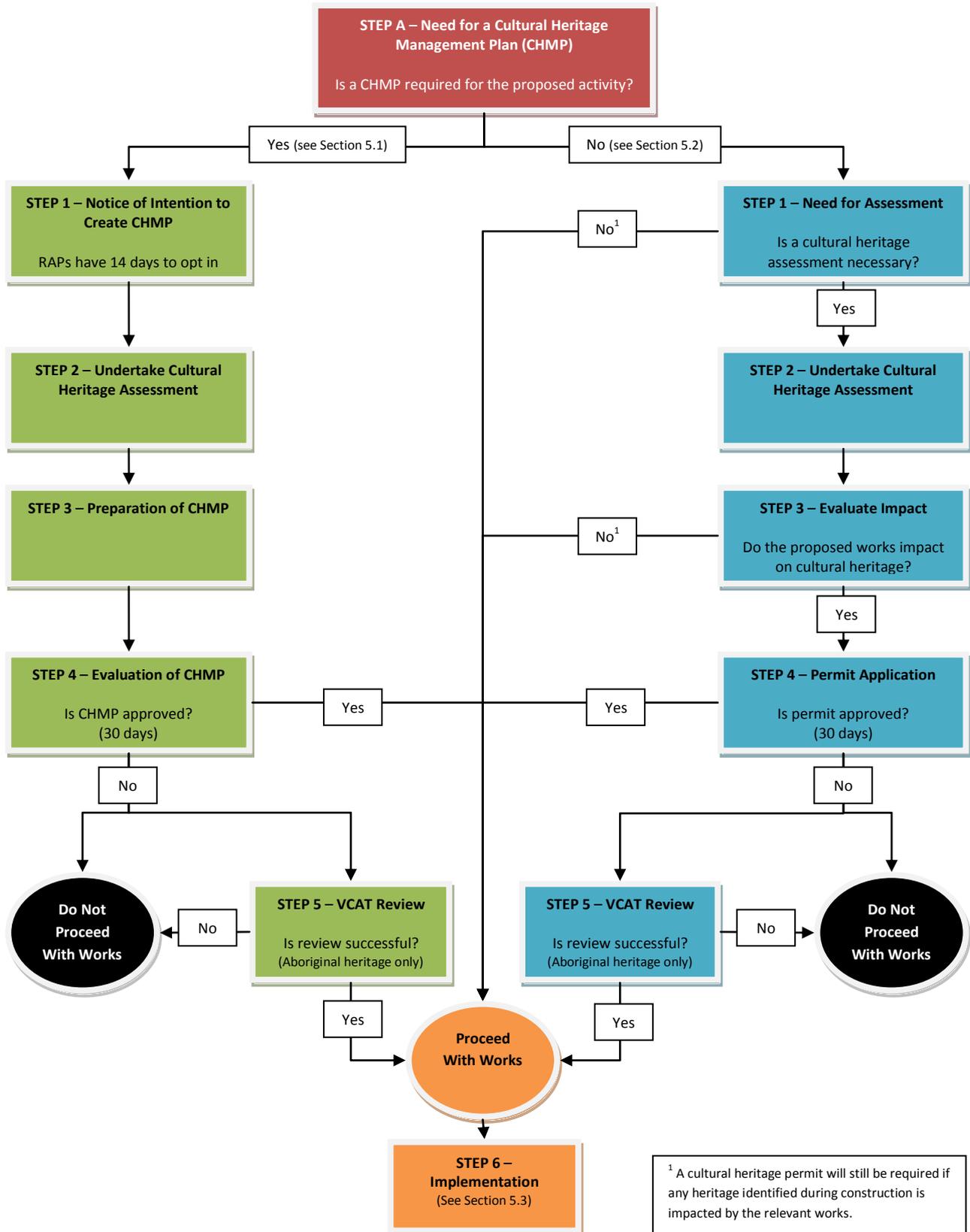
The National Trust of Australia (Victoria) is a non-profit, non-government agency involved with non-Indigenous heritage conservation. The Victorian branch of the National Trust maintains a register of historic buildings, structures and places, and, while classification of a heritage place by the National Trust does not provide statutory protection, it is an indication of its significance. National Trust classifications or nominations must always be taken into consideration when assessing historic cultural heritage values. The National Trust may also make submissions in relation to heritage matters affecting historic cultural heritage. The National Trust's website can be visited at www.nattrust.com.au.

4.2.6 Other Stakeholders

Local committees of management may look after some specific historic sites or places. These committees may also wish to have input into the consultation process if they are affected by the road project.

Other non-Indigenous heritage stakeholders may also be identified during the course of broader community consultation about a road project. These should be brought to the attention of the heritage consultant.

5. VICROADS CULTURAL HERITAGE PROCESS



This section of the Guidelines introduces the key processes involved in cultural heritage management for all aspects of VicRoads operations, from project planning and pre-construction to construction and road maintenance. These processes are outlined in the flowchart on the preceding page. More detailed flowcharts for each process step (where relevant) can be found with the text for that step.

Step A Determine the Requirement for a Cultural Heritage Management Plan

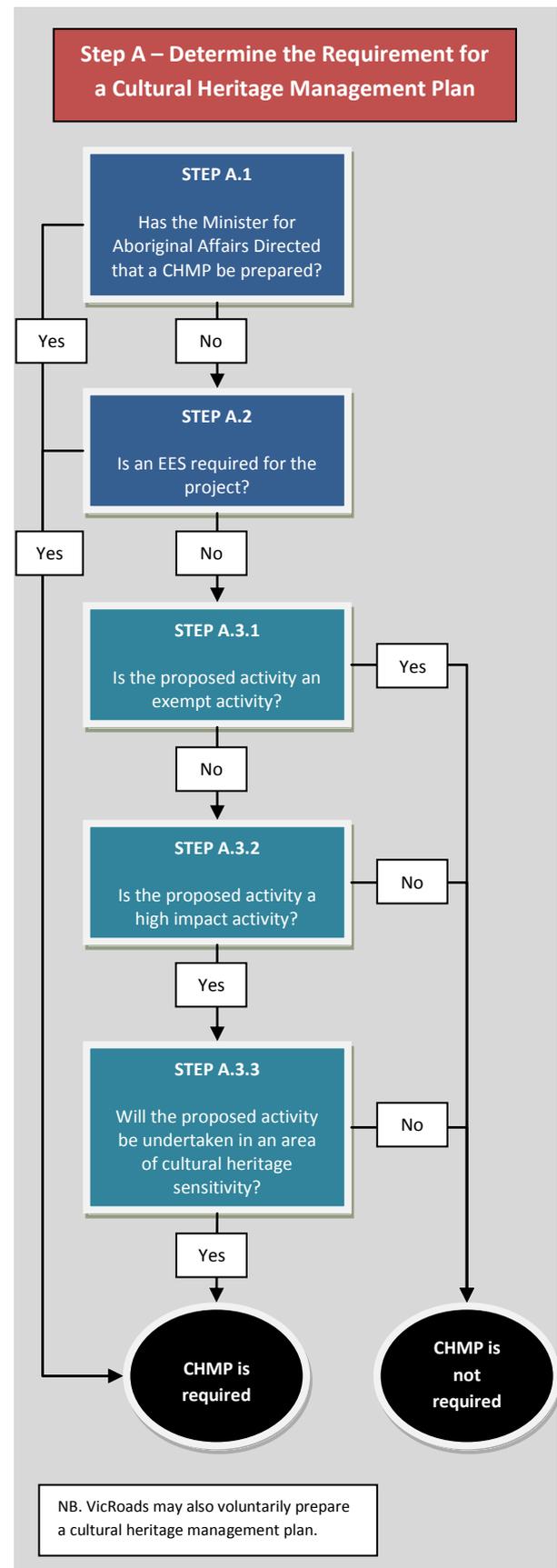
The first step in VicRoads cultural heritage process is to determine whether or not the *Aboriginal Heritage Act* specifies that a formal cultural heritage management plan is required for the proposed project.

If it is, then the cultural heritage management plan process will apply (see Section 5.1 of these Guidelines). If it is not, then the cultural heritage permit process will need to be followed (see Section 5.2).

Under the *Aboriginal Heritage Act* a cultural heritage management plan is required for a proposed activity if:

- The Minister for Aboriginal Affairs directs the preparation of a plan for the activity;
- An Environment Effects Statement under the *Environment Effects Act 1978 (Vic)* is also required for the activity; or
- The *Aboriginal Heritage Regulations 2007 (Vic)* require the preparation of the plan for the activity.

VicRoads may also voluntarily prepare a cultural heritage management plan for an activity even if the plan is not technically required under the *Aboriginal Heritage Act*.



Step A.1 Minister for Aboriginal Affairs directs that a cultural heritage management plan is required

If VicRoads receives such a direction from the Minister for Aboriginal Affairs it must not knowingly commence the activity to which the direction relates without first preparing a cultural heritage management plan.

Step A.2 An Environment Effects Statement is required for the project

Where an Environment Effects Statement is required for the activity under the *Environment Effects Act*, the *Aboriginal Heritage Act* requires that a cultural heritage management plan be prepared before works are commenced.

More information on Environment Effects Statements and the requirements of the *Environment Effects Act* can be found in VicRoads Environmental Management Toolkit.

Step A.3 Aboriginal Heritage Regulations require the preparation of a cultural heritage management plan

The *Aboriginal Heritage Regulations* specify that a cultural heritage management plan is required for an activity if:

- The activity is not an exempt activity under the Regulations (see Step A.3.1); **and**
- All or part of the activity is a high impact activity (see Step A.3.2); **and**
- All or part of the activity area for the activity is an area of cultural heritage sensitivity (see Step A.3.3).

Step A.3.1 Exempt activities

The following are exempt activities listed under the *Aboriginal Heritage Regulations* that are relevant to VicRoads:

- The construction or carrying out of minor works; and
- Works reasonably necessary, in an emergency, to protect the health or safety of a person, to protect property or to protect the environment.

Minor works are defined as:

- Works on, over or under an existing roadway or existing rail infrastructure;
- Maintenance or repair works, or the removal of works, associated with an existing high impact activity; or
- Other minor works associated with an existing high impact activity.

For example, most of VicRoads maintenance program would fit within this definition of minor works.

VicRoads Environmental Services department can provide advice on whether proposed works represent an exempt activity.

If a proposed activity is an exempt activity under the Regulations a cultural heritage management plan will not be required for it to proceed. It is important to note, however, that a cultural heritage permit (under either the *Aboriginal Heritage Act* or *Heritage Act*) will still be required for any impact that activity has on heritage sites and places.

Step A.3.2 High impact activities

The construction of a road or a bicycle track is deemed to be a high impact activity under the *Aboriginal Heritage Act* if that construction would result in significant ground disturbance. As such, most of VicRoads works program will be deemed to be a high impact activity.

Significant Ground Disturbance

Significant ground disturbance is defined under the *Aboriginal Heritage Regulations* as meaning disturbance of the topsoil or surface rock layer of the ground, or disturbance of a waterway, by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping. Deep ripping is defined as meaning the ploughing of soil using a ripper or subsoil cultivation tool to a depth of 60 centimetres or more.

Step A.3.3 Areas of cultural heritage sensitivity

The following are deemed to be areas of cultural heritage sensitivity under the *Aboriginal Heritage Act* unless they have been subject to significant ground disturbance:

- A registered cultural heritage place or land within 50 metres of a registered cultural heritage place;
- A waterway or prior waterway, or land within 200 metres of a waterway or prior waterway;
- An ancient lake or land within 200 metres of an ancient lake;
- A declared Ramsar wetland or land within 200 metres of a declared Ramsar wetland
- Coastal Crown land;
- Land within 200 metres of the high water mark of the coastal waters of Victoria;
- A national park, State park, wilderness park, marine national park or marine sanctuary;
- The high plains;
- The Koo Wee Rup plain;
- A greenstone outcrop;
- The stony rises associated with the Mt Eccles, Mt Napier and Mt Rouse lava flows;
- The volcanic cones of western Victoria;
- A cave, rock shelter or cave entrance;
- A lunette;
- A dune or a source bordering a dune;
- A sand sheet, including the Cranbourne sands; and

- Areas specified in Schedule 1 to the *Aboriginal Heritage Regulations*.

Where there has been significant ground disturbance it is only the part of the relevant land subject to that disturbance that will be deemed not to be culturally sensitive.

The definitions of most of these areas are tied to distinct map layers managed by the Department of Sustainability and Environment. Maps showing Victoria's deemed areas of cultural heritage sensitivity have been prepared by Aboriginal Affairs Victoria and can be accessed through VicRoads Environmental Management Toolkit.

5.1 Process for Works Requiring a Cultural Heritage Management Plan

It is important that any cultural heritage management plan VicRoads develops for its works program should address both Aboriginal and non-Aboriginal heritage issues.

The preparation of a cultural heritage management plan for an area involves:

- An assessment of the area to determine the nature of any Aboriginal cultural heritage present in the area; and
- A written report setting out the results of the assessment, and recommendations for measures to be taken before, during and after an activity to manage and protect the Aboriginal cultural heritage identified in the assessment.

The final cultural heritage management plan document will therefore essentially be comprised of two sections – one containing the results of the cultural heritage assessment, and one containing heritage management initiatives and processes.

A standard layout for cultural heritage management plans, and guidelines for their preparation, can be found in VicRoads Environmental Management Toolkit.

Other Statutory Authorisations

The *Aboriginal Heritage Act* provides that if a cultural heritage management plan is required for an activity and VicRoads also needs a statutory authorisation before it can carry out the activity, then the relevant decision maker must not grant that statutory authorisation unless there is an approved cultural heritage management plan for that activity. In addition, the decision maker cannot grant a statutory authorisation for the activity if that activity would be inconsistent with the approved management plan.

Statutory authorisation as defined by the *Aboriginal Heritage Act* includes:

- A permit under the *Planning and Environment Act* to use or develop land for all or part of an activity, or an amendment to such a permit that allows a change in the use or development of land for all or part of the activity; or
- An approval under any Act or regulations to develop land for all or part of an activity (other than an approval under the *Planning and Environment Act* or an earth resource law) or an amendment to such an approval that allows a change to the development of the land for all or part of the activity.

It should be noted that this does not apply to Commonwealth permits and approvals such as referrals under the *Environment Protection and Biodiversity Conservation Act*.

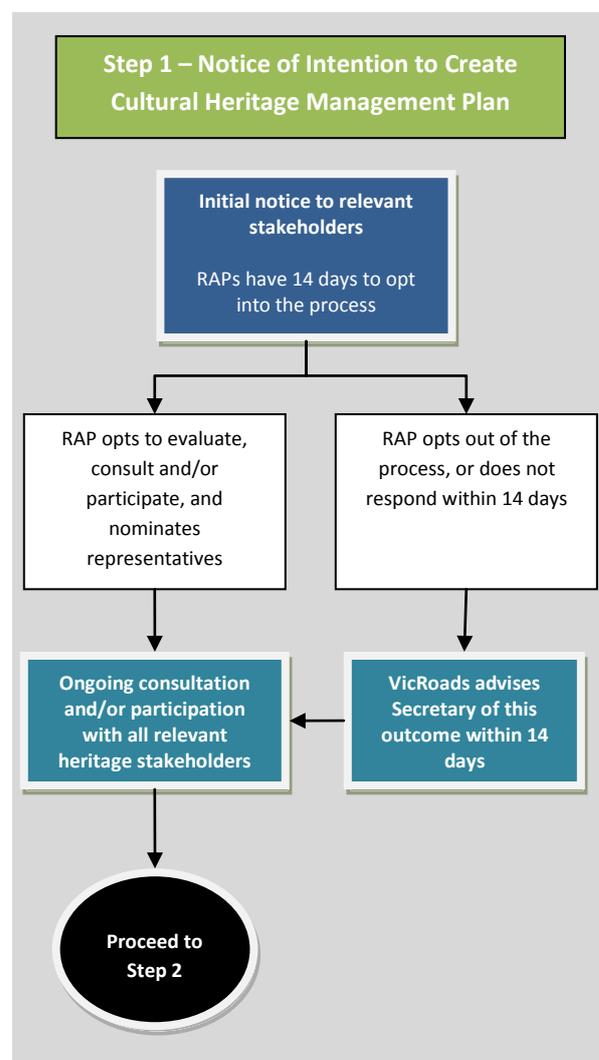
If the decision maker has a time period to grant a statutory authorisation, that time is deemed not to commence until the decision maker receives a copy of the approved cultural heritage management plan from VicRoads.

NB. This requirement doesn't prevent VicRoads from lodging an application for a statutory authorisation before a cultural heritage management plan is approved.

Step 1 Initial notice of intention to create a plan

Before commencing the preparation of the cultural heritage management plan VicRoads must give written notice of its intention to prepare a plan to each registered Aboriginal party for the relevant project area, the Secretary to the Department of Planning and Community Development, and the owner or occupier of any land within the area to which the plan relates. Ideally a copy of this notice should also be sent to Heritage Victoria.

The prescribed form for this notice can be found in VicRoads Environmental Management Toolkit.



Within 14 days of receiving this notice a registered Aboriginal party must give written notice to VicRoads specifying whether or not it intends to evaluate the cultural heritage management plan (see Step 4). A registered Aboriginal party that gives notice of its intention to evaluate the plan may also do any or all of the following:

- Consult with VicRoads in relation to the cultural heritage assessment of the area for the purposes of the plan;
- Consult with VicRoads in relation to the recommendations to be included in the plan; and/or
- Participate in the conduct of the assessment (see Step 2).

A relevant registered Aboriginal party must also notify VicRoads as soon as practicable of the name of each person it appoints to act as its representative in evaluating the plan, consulting on the assessment and/or recommendations, or participating in the assessment.

If a registered Aboriginal party gives notice that it intends to evaluate the cultural heritage management plan, then VicRoads must make reasonable efforts to consult with them before beginning the assessment and during the preparation of the plan. Similarly, the registered Aboriginal party must use reasonable efforts to cooperate with VicRoads in the preparation of the plan.

Importantly, VicRoads has to notify the Secretary if a registered Aboriginal party declines to evaluate the plan, or fails to respond to VicRoads notice within the 14 days.

Step 1.1 Identify key Indigenous and non-Indigenous stakeholders

A critical step in the cultural heritage management process is the identification of key cultural heritage stakeholders. As identified in Section 4 of these Guidelines there will often be numerous stakeholder groups with an interest in the cultural heritage

values of a particular project area and it is crucial to identify and then consult with all of them.

VicRoads Environmental Services department can assist with the identification of relevant heritage stakeholders.

Step 1.2 Initiate consultation with heritage stakeholders

Consultation is an essential part of the cultural heritage management process. The opinions of relevant cultural heritage stakeholders should always be considered during the conduct of any road project – successful outcomes frequently depend on organised and thorough consultation. Ideally consultation should begin as soon as key cultural heritage stakeholders have been identified.

Reasons for Early and Effective Stakeholder Consultation

Stakeholder consultation plays a key role in highlighting cultural heritage issues that are relevant to the project, and the earlier any such issues are identified the greater is the opportunity to develop mitigation measures to lessen any cultural heritage impacts. This can also reduce the delays and cost blowouts associated with the identification of issues in the later stages of the project.

Effective consultation with cultural heritage stakeholders also helps to build strong working relationships between VicRoads and both Indigenous and non-Indigenous groups, and can encourage community input and involvement in the project. This can give stakeholder groups a greater sense of ownership and participation in VicRoads projects.

It is important that, as much as possible, consultation with stakeholder groups is managed by VicRoads rather than being left solely to consultants.

The extent of stakeholder consultation may depend on the scale of the project, but may also depend on the scope of the heritage

issues involved. Depending on the location of works both large and small projects can have significant impacts on cultural heritage.

In many cases it will be beneficial to develop a cultural heritage consultation plan for the project. This plan should outline:

- How key cultural heritage stakeholders will be involved in cultural heritage management;
- The names and key contact details of Indigenous and non-Indigenous stakeholders;
- The methods of consultation that will be used (eg. regular meetings, newsletters);
- Parameters for ongoing involvement in the cultural heritage management process;
- Any resources required to implement the plan (eg. Indigenous representatives may need to be resourced in order to be able to attend meetings); and
- The timeframes involved.

It is important to allow sufficient time to hold meetings with Indigenous and non-Indigenous stakeholders to discuss the heritage impacts of the project – many cultural heritage representatives in the community have heavy demands made on their time and may not always be able to attend meetings.

For more information on developing and implementing a consultation plan, please refer to *VicRoads Community Participation Strategies and Guidelines 1997*. *Ask First: A Guide to Respecting Aboriginal Heritage Places and Values*, published by the Australian Heritage Commission in 2002, also provides a useful guide on the consultation process for developers, landowners and others who regularly undertake activities that may impact on Aboriginal cultural heritage.

Tips for Successful Stakeholder Consultation

- Face-to-face consultation is important in building mutual trust and co-operation. Although initial contact may be by telephone, people in most community organisations prefer face-to-face consultation.
- Ensure that the consultation process is transparent and that stakeholder views are documented and considered by all those involved in conducting the heritage assessment.
- Allow sufficient time for consultation. Do not ask or expect community representatives to engage in consultation at short notice. Always allow sufficient time for them to review and consider project documents. Do not try to pressure groups into making decisions at short notice.
- Describe the road project clearly and simply to stakeholders. Do not present information in the form of complex maps or documents; for example, maps of study corridors with excessive layers of information. Maps should be clear and straightforward – overlays of study corridors on aerial photos can be a good alternative.
- While Indigenous community representatives should always be invited to join a Consultative Committee or liaison group in many cases they prefer to be involved in a parallel consultation process.
- Remember that Indigenous stakeholders may identify separate heritage issues affecting men and women in accordance with traditional law. If this situation arises, the community may require separate consultation about these issues and it would be appropriate for male VicRoads staff to conduct the consultation with men and female staff to conduct the consultation with women.

Step 2 Undertake the Cultural Heritage Assessment

Once VicRoads has received notice of the level of participation desired by relevant registered Aboriginal parties, it can go ahead with the cultural heritage assessment of the project area. This will involve the engagement of a cultural heritage consultant.

All activities undertaken during the assessment of an area for the purposes of a cultural heritage management plan must comply with the *Aboriginal Heritage Regulations*, which specify requirements in relation to both the level and content of the assessment.

Importantly, a cultural heritage permit is not required to undertake cultural heritage investigations in cases where a cultural heritage management plan is required.

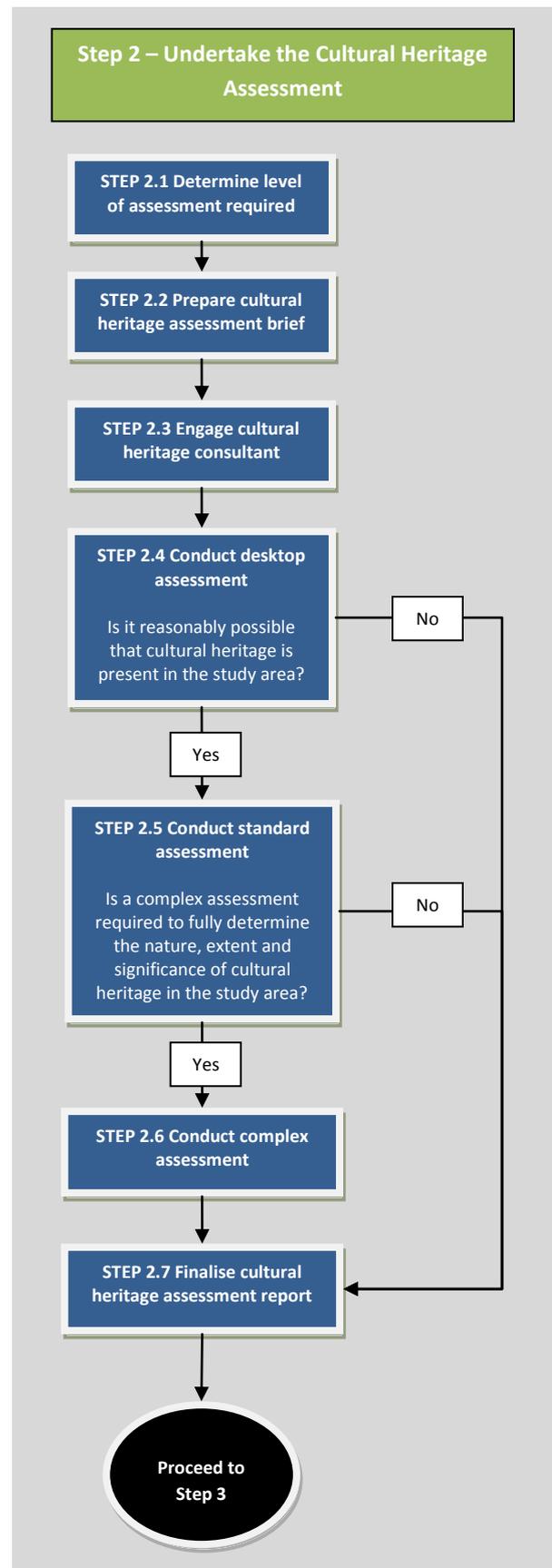
Aboriginal Affairs Victoria provides an outline of archaeological field practices in their *Guide to Preparing Cultural Heritage Management Plans 2007*. These specify the minimum standard of heritage work that is acceptable in cultural heritage assessments.

No time limit is provided under the legislation for the conduct of the assessment.

VicRoads Environmental Services department is able to review draft assessment reports for Projects and Regions, and can provide advice on the level of assessment required and the content of recommendations.

Consultation during the Assessment

It is important to establish contacts for liaison with each stakeholder group, and to assign a senior representative of the business area or project team as a contact for stakeholder groups on cultural heritage matters. Do not rely on obtaining feedback from all stakeholders only through participation in Consultative Committee or liaison groups.



Step 2.1 Determine the Level of Assessment Required

The *Aboriginal Heritage Regulations* outline three levels of assessment – desktop assessment, standard assessment (ie. ground survey) and complex assessment (ie. sub-surface investigation).

Every cultural heritage assessment undertaken for activities requiring a cultural heritage management plan must consist of at least a desktop assessment.

A standard assessment is required if the results of a desktop assessment show that it is reasonably possible that cultural heritage is present in the activity area. It is important to note, however, that a standard assessment is not required if a complex assessment of all, or all relevant parts of, the activity area is carried out following a desktop assessment.

A complex assessment is required if the desktop assessment or standard assessment shows that cultural heritage is, or is likely to be, present in the activity area, and it is not possible to identify the extent, nature and significance of cultural heritage in the activity area unless a complex assessment is carried out. Importantly, however, a complex assessment is not required in respect of an area to which the standard assessment applied, if the relevant activity will not harm cultural heritage in that area.

Depending on the scope or location of a particular road project it may be necessary to stage the cultural heritage assessment. It is not always possible to determine whether ongoing work (e.g. further exploratory or salvage excavation) will be necessary until a preliminary desktop assessment is made. Major projects are often divided into two stages, the first involving a preliminary desktop assessment of the cultural heritage values of the project area and the second consisting of field assessment.

Step 2.2 Prepare the Brief for the Cultural Heritage Assessment

The task brief for any cultural heritage assessment should be based on VicRoads standard cultural heritage shell brief. A copy of this shell brief can be found in VicRoads Environmental Management Toolkit.

Clear plans identifying the location and scope of the proposed works, or copies of aerial photographs, and appropriate technical specifications for the works should accompany the task brief. These plans do not have to be detailed, but should include information on the length and width of the study corridor, road reserve or works area, and any potential variations. If the survey is for a road construction project, rather than a planning study, information on the size and location of cut and fill areas will also be relevant to the heritage assessment.

Further advice on the contents of a particular task brief can be obtained from VicRoads Environmental Services department.

Step 2.3 Engage a Cultural Heritage Consultant

All consultants tendering for cultural heritage assessments must be prequalified to undertake VicRoads work according to the eligibility criteria specified in VicRoads Prequalification Scheme. There is a specific category for cultural heritage consultants in the Transport Planning and Project Assessment section of the Scheme.

A register of prequalified cultural heritage consultants can be accessed through VicRoads Environmental Management Toolkit.

When evaluating tenders it is important to ensure that the selected heritage consultant and any support staff have relevant qualifications and experience, and have the necessary resources to undertake the required work. Corporate procedures relating to obtaining quotes, evaluating tenders and

engaging contractors can be found in VicRoads Procurement Toolkit.

Step 2.4 Conduct Desktop Assessment

A desktop cultural heritage assessment is the first stage of data collection and involves a review of all existing data relevant to the Aboriginal and non-Aboriginal heritage of a study corridor. It is done to identify known and potential heritage issues, and to determine the need and methodology for any subsequent field assessment.

Depending on whether or not the cultural heritage assessment has been staged (see Step 2.1 above) the desktop assessment can be either a separate preliminary assessment of cultural heritage values, or combined with a standard and/or complex assessment.

A desktop assessment of an activity area must include research into information relating to cultural heritage in or associated with the activity area, including the following:

- A search of all relevant heritage registers for information relating to the activity area;
- A review of reports and published works about cultural heritage in the relevant geographic region;
- A review of historical and ethno-historical accounts of Indigenous occupation of the relevant geographic region;
- An identification and determination of the geographic region of which the activity area forms a part that is relevant to the cultural heritage that may be present in the activity area;
- A review of the landforms or geomorphology of the activity area to highlight archaeologically sensitive areas;
- A review of the history of the use of the activity area; and
- A review of issues of concern identified by key stakeholders and discussion of the field methodology that will be used to address them.

A desktop assessment may also include a collection of oral history relating to the activity area.

The desktop assessment should also include the provision of recommendations for further standard or complex assessment of the study area (where relevant), which should:

- Specify the most appropriate field survey methodology for sampling the study area;
- Demonstrate that the survey will adequately sample areas of high and low cultural heritage sensitivity within the study area; and
- Clearly identify any specific buildings or structures that will be targeted.

It is generally appropriate for the desktop assessment to be combined with a brief on-site investigation of the study area. This is useful for obtaining data that can be used to design the field assessment component of the cultural heritage investigation (eg. information on ground surface visibility can help the consultant decide if a surface or sub-surface survey is required to accurately gauge the presence of sites). If most of the area can be accessed by vehicle on public roads, it should not be necessary for the consultant to obtain entry to private land in order to conduct the inspection. Any such inspection must be conducted in association with an Indigenous community representative so that Aboriginal heritage issues can be resolved as they arise.

Step 2.5 Conduct Standard Assessment

Field assessment represents the second stage of heritage data collection. Whereas the desktop assessment involves a review of existing cultural heritage data relevant to a study corridor, a field assessment consists of primary investigations undertaken on-site. As discussed above the methodology employed for the field assessment is generally nominated based on the recommendations developed as an outcome of the desktop assessment (see Step 2.4 above).

Where a registered Aboriginal party has opted to participate in the assessment, an Indigenous representative must be present for all Aboriginal cultural heritage field assessments. The cultural heritage consultant will generally incorporate payment for this representative into their overall charges to VicRoads.

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, and may also include a collection of oral history relating to the activity area. The ground survey must be conducted in accordance with proper archaeological practice and must include an on the ground examination of:

- The surface of the activity area undertaken by traversing the area in a systematic manner;
- Any mature tree in the activity area; and
- Any cave, rock shelter or cave entrance in the activity area.

The ground survey may also include the use of ground penetrating radar survey, resistivity survey, remote sensing, ground magnetic survey, electromagnetic survey and/or soil and sediment testing with a manual auger no larger than 12 centimetres in diameter to assist in defining the nature and extent of identified Aboriginal cultural heritage.

Where relevant, the standard assessment should also involve the provision of recommendations for further complex assessment of the study area, which should:

- Specify the most appropriate sub-surface survey methodology for sampling the study area; and
- Clearly identify any specific areas, buildings or structures that will be targeted.

Permits to Undertake Cultural Heritage Investigations

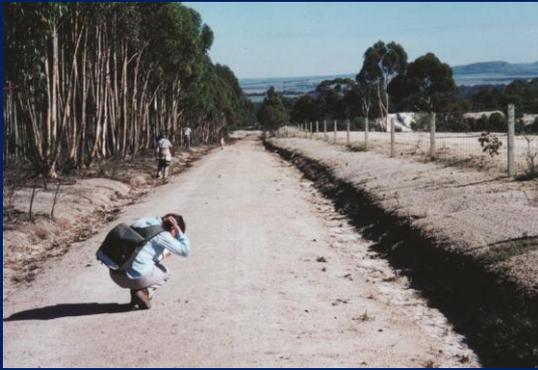
While under the *Aboriginal Heritage Act* an Aboriginal cultural heritage permit is not required to undertake cultural heritage assessments in cases where a cultural heritage management plan is being developed for a project, pursuant to the *Heritage Act* the heritage consultant must lodge a statutory Survey Notification Form with Heritage Victoria prior to conducting a non-Aboriginal cultural heritage field assessment. To facilitate an investigation that will result in disturbance to a historic site (eg. through sub-surface testing (see Step 2.6 below)), the heritage consultant should obtain permits from Heritage Victoria for places on the Heritage Register and consents from Heritage Victoria for sites or places on the Heritage Inventory (see Step 4.3 of Section 5.2 on pp.41 and 42 of these Guidelines for more details on these permit processes).

It will normally be the cultural heritage consultant's responsibility to obtain these permits and should be a requirement of the task brief.

Ground surveys normally involve the systematic sampling of parts of a study area by surveying it on foot. The consultant will generally suggest an appropriate sampling method (eg. surveying in blocks or transects).

A major influence on ground survey results is surface visibility. Dense vegetation (eg. grasses) can obscure much of the ground surface and where this is the case the probability of locating surface exposures of cultural material is significantly reduced. To assess the impact that poor ground surface visibility has on a cultural heritage assessment an appraisal of effective survey coverage should always be produced as part of a ground survey. This provides an estimate of how much ground surface was actually visible to the naked eye as opposed to the total area surveyed. Some cultural heritage sites, such as Aboriginal scarred trees and buildings or structural ruins, are more highly visible and will be less affected by poor surface visibility.

Because only the ground surface is assessed during a surface survey, unless the study area contains lagged surfaces or substantial exposure of soil profiles this method will only provide a partial view of the potential heritage values of an area. Where proposed works involve ground disturbing activity a complex assessment will often be required.



Surface surveying is used to identify and record the presence of sites found on or above the ground within areas of interest. (TerraCulture Image Bank.)



Sub-surface surveying involves searching for sites below the ground surface. Shovel probes are a common sub-surface testing method. (TerraCulture Image Bank.)

Assessing Cultural Heritage Significance

The assessment of significance is a crucial part of the cultural heritage assessment process and has a direct bearing on the development of management initiatives in the final cultural heritage management plan.

Section 1.2 of the *Australia ICOMOS Charter for the Conservation of Places of Cultural Significance 1999* (Burra Charter) requires consideration of aesthetic, historic, scientific, social and spiritual value for past, present and future generations in conducting an assessment of cultural significance. This means that factors such as the landscape or environmental context, and the value placed on a heritage site by a community must also be considered. The Burra Charter can be viewed at www.icomos.org/australia/charter.html.

In this context, stakeholder consultation plays a vital role in assessing non-scientific values. For example, a group of freshwater shell middens that are degraded but retain an association with swamps and depressions and traditional plant and animal foods may be of low scientific value, but within their environmental context they gain greater contemporary cultural value to the Indigenous community than a single site in good condition with no environmental associations.

It is important that every cultural heritage assessment report contains a statement of cultural significance that briefly summarises the cultural heritage values assessed. For Aboriginal cultural heritage the assessment should include a written statement from Indigenous stakeholders describing their assessment of the cultural and possible spiritual significance of the study area.

Step 2.6 Conduct Complex Assessment

A complex assessment of an activity area is an assessment involving the disturbance or excavation of all or part of the activity area to uncover or discover Aboriginal and/or non-Aboriginal cultural heritage, and may also include a collection of oral history relating to the activity area.

A complex assessment may be conducted immediately following a desktop assessment or as a result of a standard assessment. This method is used where:

- Ground surface visibility is poor;
- Detailed assessment of cultural heritage values is required; and/or
- There is a high probability of the existence of buried cultural materials within the study area.

A disturbance or excavation for a complex assessment must be supervised by a cultural heritage consultant and be carried out in accordance with proper archaeological practice. While the method and extent of sub-surface testing in each case will vary depending on specific environmental conditions and project requirements, the minimum depth of subsurface deposits tested should ideally be at least to the maximum depth of the proposed works.

The *Aboriginal Heritage Regulations* specify that the stratigraphy and initial sub-surface nature of the area being investigated must be established by controlled excavation before any other disturbance or excavation is carried out. Controlled excavation means an archaeological investigation to uncover deposits or features using accepted stratigraphic methods and standard hand-held archaeological equipment, such as trowels, spades, sieves and brushes. If it is not possible to use this equipment, mechanical equipment can be used to proceed with the investigation in as careful a manner as an excavation carried out with standard hand-held archaeological equipment.

If machinery is used in a disturbance or excavation, the disturbance or excavation must be conducted on a detailed stratigraphic basis. In addition, if the use of machinery in a disturbance or excavation results in the finding of occupation deposits or features, the deposits or features must be uncovered and assessed by controlled excavation.

Some of the most common methods of sub-surface testing are:

Shovel Probes: These are dug with a shovel along linear transects or a grid. Holes are placed at regular intervals along a transect and are usually excavated to the depth of the shovel probe. This method is often effective for exposing cultural material located close to the surface, but is less effective for exposing material at greater depths or in hard, compact or rocky soils.

Auguring: This involves placing auger holes by hand or machine auger along linear transects or a grid. This method achieves a greater depth than shovel probes.



Sub-surface surveying is often used in areas where ground visibility is poor and/or buried cultural deposits are expected to be present. Here, archaeologists are shovel testing. (TerraCulture Image Bank.)



Wurundjeri community representative, Ronald Terrick, inspecting the contents of a backhoe trench. (TerraCulture Image Bank.)

Backhoe Scrapes: This involves cutting shallow scrapes with a backhoe along linear transects. The advantages of this method are that it can be a faster way of sampling and provides greater surface exposure. The disadvantages are that it is a crude method of sampling and can cause disturbance to the land around the worksite. For these reasons it is not appropriate to use this method in areas that are likely to contain intact cultural heritage sites or in areas with high environmental values.

Test Excavation: This consists of digging trenches by hand in a systematic, controlled fashion. This is the most accurate method of sampling for cultural heritage sites as it provides greater depth of excavation, more information on site structure and a higher rate of artefact recovery. The disadvantage is that it is more time consuming and costly than the aforementioned methods of sub-surface testing. Consequently it is more appropriate for use in areas of high sensitivity, namely areas that are likely to contain sites such as human burials or intact cultural heritage deposits.

Remote sensing: This is a more specialised form of subsurface testing that involves the use of a range of non-intrusive techniques, including ground penetrating radar, earth resistivity and multi-spectral imagery, to detect features below the ground surface. These techniques are not often applied in cultural heritage management at present and can be expensive to use. However, with further technological refinement, they are likely to play a bigger role in cultural heritage management in the future.

Step 2.7 Finalise Cultural Heritage Assessment Report

The results of all levels of assessment should be combined to produce a draft cultural heritage assessment report. This report should explain the cultural heritage values of the study area and the potential impact of the proposed works on those values.

The draft assessment report should always be reviewed in detail against the requirements of the task brief to ensure that the activities required have been completed and that the objectives and outcomes set have been achieved.

The report should be reviewed by relevant VicRoads staff, relevant approval authorities, Indigenous stakeholder groups and other community stakeholders where necessary. For smaller planning studies or minor projects without significant cultural heritage impacts it is generally only necessary for the draft report to be reviewed by a VicRoads Environmental Officer or VicRoads Environmental Services department, and any relevant registered Aboriginal party. Any comments should be provided to the consultant as soon as possible to enable the report to be finalised.

When reviewing the report it is important to identify what information Indigenous stakeholders are prepared to make public and what they would like to see withheld. Indigenous stakeholders may not wish to make public sensitive information about the location of places or sites of religious importance.

Heritage Site and Place Information

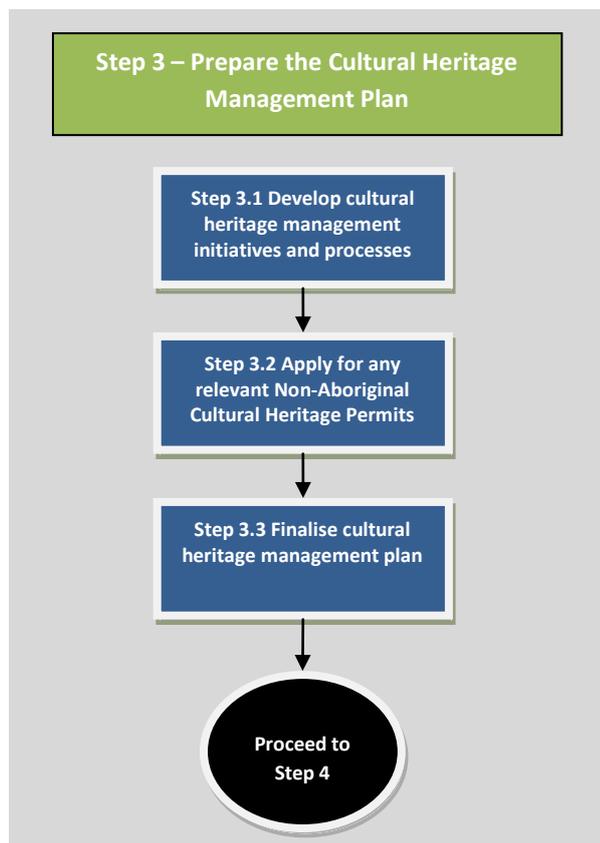
All Aboriginal and non-Aboriginal cultural heritage sites and places identified during the cultural heritage assessment must be registered with Aboriginal Affairs Victoria and Heritage Victoria respectively on the completion of a field assessment.

If the relevant VicRoads project involves sensitive Aboriginal heritage values, the heritage consultant should omit detailed maps of Aboriginal cultural heritage site locations from any version of the report that is to be released publicly.

Step 3 Prepare the Cultural Heritage Management Plan

A standard layout for cultural heritage management plans, and guidelines for their preparation, can be found on VicRoads Environmental Management Toolkit.

While this standard form should eliminate the need for some negotiation, it is anticipated that the development of each cultural heritage management plan will still involve ongoing consultation and the exchange of drafts between VicRoads and the relevant approval authority.



Step 3.1 Develop Cultural Heritage Management Initiatives and Processes

Once the cultural heritage assessment is undertaken for the relevant project area VicRoads should have clear information on the Aboriginal cultural heritage values present in that area. Potential impacts can then be

assessed and heritage management initiatives determined.

Ideally these should aim to conserve as much of the cultural significance of the heritage sites and places identified in the study area as possible, and can include, but are not limited to:

- Mitigation measures including alignment modifications (NB. These should be developed in conjunction with VicRoads planning staff), salvage works in cases where impacts cannot be avoided, on-site cultural heritage management during construction, and heritage interpretation and recognition initiatives;
- Any consents and permits that are required for impacts to non-Aboriginal cultural heritage sites and places in instances where impacts cannot be avoided; and
- Any post-construction cultural heritage management initiatives (eg. site protection measures).

More information on these elements can be found on pp.44 and 45 of these Guidelines.

The determination of these initiatives and processes will form the final part of the cultural heritage management plan for the project.

Stakeholder consultation

It is always desirable to be able to demonstrate that Indigenous and non-Indigenous cultural heritage stakeholders support any suggested cultural heritage management initiatives and processes.

Ideally VicRoads should discuss and agree on proposed recommendations with these stakeholders before they are finalised in the cultural heritage management plan.

Step 3.2 Apply for Non-Aboriginal Cultural Heritage Permits (where relevant)

VicRoads will need to apply to the relevant approval authorities for permits to authorise impacts on any identified non-Aboriginal heritage sites. More information on these permits can be found in Step 4.3 of Section 5.2 on pp.41 and 42 of these Guidelines.

Step 3.3 Finalise Cultural Heritage Management Plan

As highlighted earlier a standard layout for cultural heritage management plans can be found on VicRoads Environmental Management Toolkit.

In preparing the plan, VicRoads and each registered Aboriginal party that has opted to be involved in the evaluation of the plan must make every reasonable effort to reach agreement on each of the matters listed in Step 4.2A on p.35 of these Guidelines.

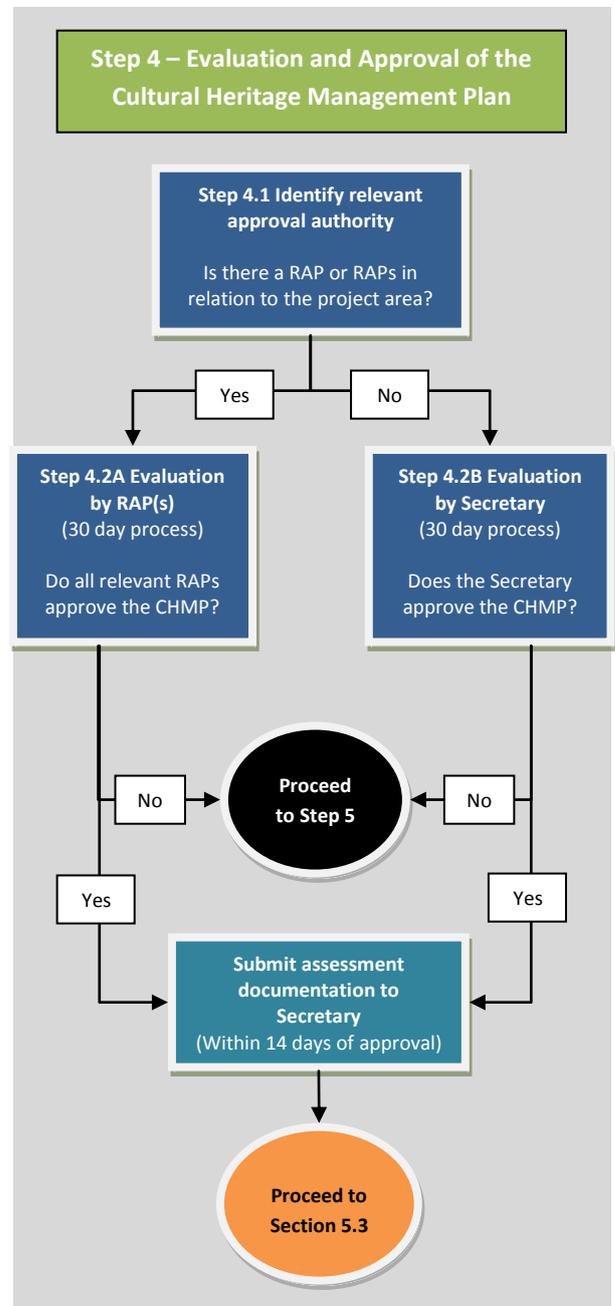
A summary of the information that must be included in any cultural heritage management plan can be found in Appendix 1 to these Guidelines.

Any cultural heritage management initiatives and processes set out in the plan should be clear and contain enough detail to allow them to be written into contract documentation and enacted during the construction stage of the road project. It is important that the plan clearly identifies:

- How specified actions will be implemented;
- Who is responsible for their implementation; and
- The timeframes for implementation.

Step 4 Evaluation and Approval of the Cultural Heritage Management Plan

Once a cultural heritage management plan has been developed, VicRoads must send the final version to the relevant approval authority for approval.



Step 4.1 Identify the Relevant Approval Authority

If a registered Aboriginal party has given notice of its intention to evaluate the cultural heritage management plan (see Step 1 above) VicRoads must apply to them for approval of the plan.

If more than one registered Aboriginal party has given notice of their intention to evaluate, VicRoads must apply to each for approval.

Importantly, VicRoads can apply to the Secretary to the Department of Planning and Community Development for approval of the cultural heritage management plan if:

- There is no registered Aboriginal party in relation to the area covered by the plan;
- No relevant registered Aboriginal party has given notice within the time required of its intention to evaluate the plan;
- All of the relevant registered Aboriginal parties have given notice that they do not wish to evaluate the plan; or
- No relevant registered Aboriginal party has given notice of their approval of the plan to VicRoads within the required time (see Step 4.2A below).

While Heritage Victoria currently has no statutory approval powers in relation to cultural heritage management plans, where a plan addresses non-Aboriginal heritage issues a copy of the final plan should also be sent to them for comment.

Step 4.2A Evaluation by Registered Aboriginal Parties

Each relevant registered Aboriginal party must, within 30 days after receiving the application, decide to approve the plan, or refuse to approve the plan, and give written notice of their decision to VicRoads and any other relevant registered Aboriginal parties.

A registered Aboriginal party must refuse to approve the plan if it has not been prepared in accordance with prescribed standards, but

otherwise may only reject the plan if they are not satisfied that the plan adequately addresses any of the following matters:

- Whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage;
- 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 that harm;
- Any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity;
- Any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity; or
- Requirements related to the custody and management of Aboriginal cultural heritage during the course of the activity.

Evaluation Fees

Any application to one or more registered Aboriginal parties for approval of a cultural heritage management plan must be accompanied by the prescribed fee.

The evaluation fees (shown in fee units) vary depending on the size of the project and the level of assessment undertaken and are set out in the table below:

	One RAP			Two RAPs			Three or more RAPs		
	D	S	C	D	S	C	D	S	C
Small	10	40	80	8	30	60	7	27	53
Medium	20	80	160	15	60	120	13	53	107
Large	40	160	320	30	120	240	27	107	213

Legend:
 D – Desktop Assessment Small – 1 kilometre or less
 S – Standard Assessment Medium – 1 to 5 kilometres
 C – Complex Assessment Large – Over 5 kilometres

NB. Under the *Aboriginal Heritage Regulations* the size of a linear project is determined by its length in kilometres.

The fees listed in the table above are payable to each relevant registered Aboriginal party.

Step 4.2B Evaluation by the Secretary to the Department of Planning and Community Development (where relevant)

In cases where the Secretary to the Department of Planning and Community Development has authority to evaluate and approve cultural heritage management plans, he or she must, within 30 days after receiving any such application, decide whether to approve the plan or to refuse to approve the plan. In considering any such application the Secretary must consult with, and consider the views of, any Indigenous person or Indigenous body that the Secretary considers relevant to the application.

The Secretary must refuse to approve the plan if it has not been prepared in accordance with prescribed standards, but may otherwise only reject the plan if he or she is not satisfied that the plan adequately addresses the five matters set out above in Step 4.2A.

No evaluation fees are required to be paid in relation to evaluation of a cultural heritage management plan by the Secretary.

Step 4.3 Approval of the Cultural Heritage Management Plan

Where the approval decision is made by one or more registered Aboriginal parties, the plan takes effect as an approved cultural heritage management plan when:

- It is approved by each relevant registered party or, if one or more of the relevant Aboriginal parties fails to grant or refuse approval within the required time, it is approved by each of the other relevant registered Aboriginal parties; and
- VicRoads lodges with the Secretary to the Department of Planning and Community Development copies of the cultural heritage management plan and each notice of approval received from relevant registered Aboriginal parties.

Where the approval decision is made by the Secretary, the cultural heritage management plan takes effect on that approval.

Once the cultural heritage management plan has been approved VicRoads can proceed to implementation (see Section 5.3 of these Guidelines).

If the plan is not approved, VicRoads can refer that decision to the Victorian Civil and Administrative Tribunal for review (see Step 5 below).

As a final step, VicRoads must, within 14 days of the approval of the cultural heritage management plan, or within 14 days after deciding to discontinue the preparation of a plan or the activity to which the plan relates, give the Secretary to the Department of Planning and Community Development all assessment documentation relating to Aboriginal cultural heritage prepared or obtained in the course of the conduct of the assessment for the plan. Assessment documentation includes site records, photographs, maps, plans and any prescribed documentation relating to the assessment for the cultural heritage management plan or the plan itself.

VicRoads must also give notice to the Secretary of any decision to discontinue the preparation of a cultural heritage management plan within 14 days of that decision.

Step 5 Resolution of Cultural Heritage Management Plans Disputes

A dispute between two or more registered Aboriginal parties in relation to the evaluation of a cultural heritage management plan, or a decision not to approve the plan by one or more registered Aboriginal parties (or the Secretary to the Department of Planning and Community Development where relevant) can be referred for alternative dispute resolution.

Step 5.1 Dispute between Two or More Registered Aboriginal Parties During Evaluation

A registered Aboriginal party or VicRoads (or both) may refer a dispute between two or more registered Aboriginal parties, arising in relation the evaluation of a cultural heritage management plan for which approval is sought, to the Chairperson of the Victorian Aboriginal Heritage Council for alternative dispute resolution.

In such a case the 30 days for a decision on approval of the cultural heritage management plan ceases to run until the Chairperson certifies in writing that the dispute has been resolved or that alternative dispute resolution has failed, or is unlikely, to resolve the dispute.

Once referred, the Chairperson must arrange for the dispute to be the subject of mediation by a mediator, or another appropriate form of alternative dispute resolution by a suitably qualified person. This mediation or other alternative dispute resolution must take place within 30 days of the dispute being referred.

If this alternative dispute resolution is not successful, the Chairperson must certify in writing to the relevant parties that alternative dispute resolution has failed, or is unlikely, to resolve the dispute. The parties may then elect to refer the disputed cultural heritage management plan to the Victorian Civil and Administrative Tribunal (VCAT) for a final decision.

Step 5.2 Dispute Resolution at VCAT

VicRoads may apply to VCAT for review of a decision of a registered Aboriginal party to refuse to approve a cultural heritage management plan if:

- Each registered Aboriginal party has refused to approve the plan; or
- A relevant registered Aboriginal party has refused to approve the plan, the dispute arising from that decision has been

referred to the Chairperson of the Council for alternative dispute resolution, and the Chairperson has certified in writing that the alternative dispute resolution has failed, or is unlikely, to resolve the dispute.

VicRoads may also apply to VCAT for review of a decision of the Secretary to the Department of Planning and Community Development to refuse to approve a cultural heritage management plan.

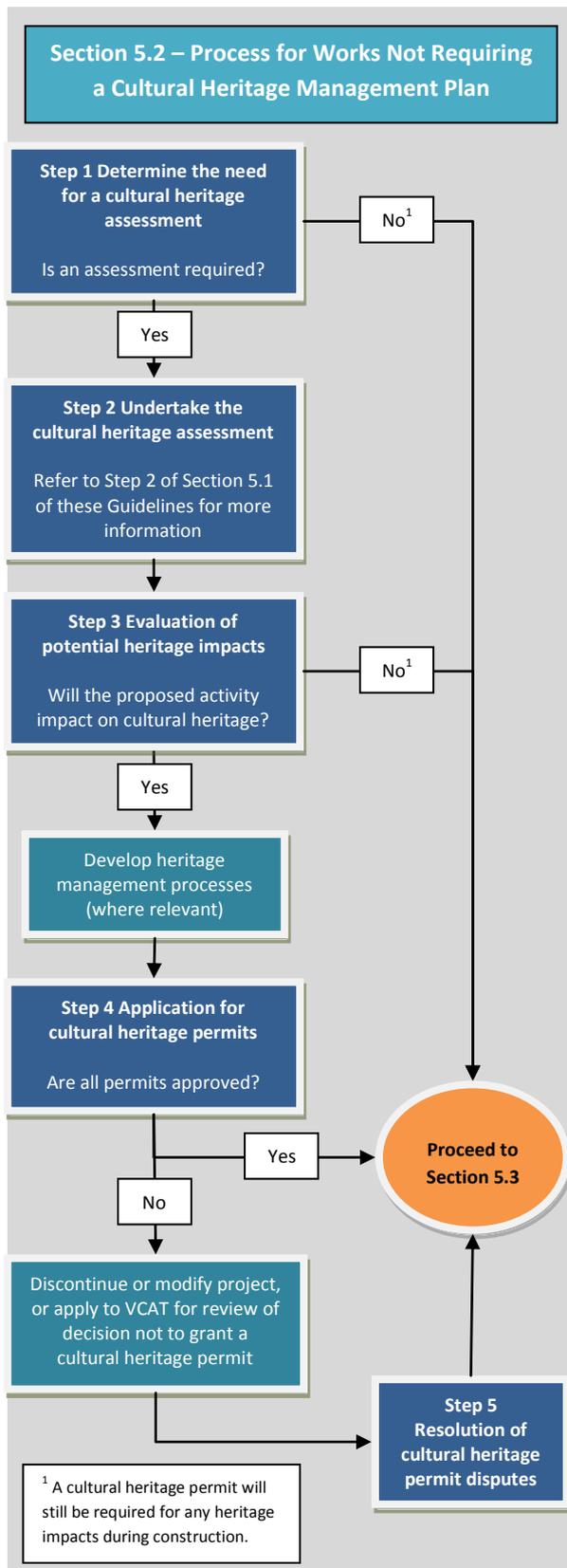
This application for this review must be made within 28 days after the later of:

- The day on which the applicant is notified of the decision to refuse to approve the plan; or
- If VicRoads requests a statement of reasons for the decision under the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, the day on which the statement of reasons is given to VicRoads or VicRoads is informed under s.46(5) of that Act that a statement of reasons will not be given.

On any such application VCAT may approve the cultural heritage management plan, approve the plan with amendments, or refuse to approve the plan.

Before reaching a decision VCAT must consider any matter that the registered Aboriginal party or Secretary (whichever is relevant) was required to consider when making the decision in respect of which the application is made. Importantly, before deciding to approve a cultural heritage management plan VCAT must be satisfied that the plan makes sufficient provision for the activity to which it relates to be managed so as to avoid harm to Aboriginal cultural heritage in the area to which the plan applies and, to the extent to which harm cannot reasonably be avoided, to minimise harm to Aboriginal cultural heritage.

5.2 Process for Works Not Requiring a Cultural Heritage Management Plan



While a formal cultural heritage management plan is not required for works in this category, it is still necessary to ensure that proper process is followed so that any impacts to cultural heritage are avoided or, where that is not possible, minimised and appropriately authorised.

Voluntary Cultural Heritage Management Plans

In some cases where a cultural heritage management plan is not technically required by the *Aboriginal Heritage Act*, it may still be beneficial for VicRoads to prepare a voluntary cultural heritage management plan for a project.

The benefits of a voluntary plan include the development of a clear cultural heritage management process for the entire project area and the elimination of the need to obtain a cultural heritage permit each time Aboriginal cultural heritage is disturbed.

Step 1 Determine the Need for a Cultural Heritage Assessment

While the need for a cultural heritage assessment for any project is dependent on the character of the impacted area (eg. the amount of past disturbance and development activity on the land) it is generally advisable that an assessment be carried out in relation to all projects outside the existing road formation. If you are unsure of whether or not a cultural heritage assessment is required further advice can be obtained from VicRoads Environmental Services department.

If it is decided that a cultural heritage assessment is not necessary for a particular project it is important that the VicRoads Project or Region responsible documents the reasons for that decision. In such a case the Project or Region can proceed to implementation (see Section 5.3 of these Guidelines), but will still need to obtain a cultural heritage permit for any impacts on cultural heritage identified during construction.

Step 2 Undertake the Cultural Heritage Assessment

NB. This section is not relevant to projects where it has been decided that a cultural heritage assessment is not required (see Step 1 above).

Information on the process in relation to the level and content of assessment required can be found in Step 2 of Section 5.1 from p.25 of these Guidelines.

Permits to Undertake Cultural Heritage Investigations

Where a cultural heritage management plan is not required for a project, a cultural heritage permit is needed under the *Aboriginal Heritage Act* to allow a person to disturb or excavate any land for the purpose of uncovering or discovering Aboriginal cultural heritage, or carry out scientific research on an Aboriginal place or remove an Aboriginal object from that place for the purpose of that research (see Step 4.2 below for more details on this permit process). An approved form for the application for this permit (which must be accompanied by the prescribed fee of 8 fee units) can be found on the VicRoads Environmental Management Toolkit.

In addition, the *Heritage Act* specifies that a heritage consultant must lodge a statutory Survey Notification Form with Heritage Victoria prior to conducting a non-Aboriginal cultural heritage field assessment. To facilitate an investigation that will result in disturbance to a historic site (eg. through sub-surface testing (see Step 2.6 of Section 5.1 of these Guidelines)), the heritage consultant should also obtain permits from Heritage Victoria for places on the Heritage Register and consents from Heritage Victoria for sites or places on the Heritage Inventory (see Step 4.3 below for more details on this permit process).

It will normally be the cultural heritage consultant's responsibility to obtain these permits and should be a requirement of the task brief.

Step 3 Evaluation of Potential Impacts on Cultural Heritage

The cultural heritage assessment should provide details of all cultural heritage values present in the relevant project area, allowing the Project or Region to evaluate potential impacts and develop appropriate management processes and initiatives for cultural heritage sites and places. The cultural heritage consultant and VicRoads should assess both direct impacts (ie. those caused by road construction and maintenance) and indirect impacts (ie. those that occur as a result of road operation). Examples of indirect impacts can include increased visitor access to areas containing sites or erosion of cultural heritage sites outside the road reserve as a result of road drainage.

Consideration must also be given to the landscape and environmental context of cultural heritage sites and the relationship of different elements in the landscape. Indigenous people have a historical and spiritual relationship with the land that entails an obligation to manage and protect the environment. Thus, for Indigenous Australians, impacts on cultural heritage sites and places cannot be considered in isolation from impacts on the land. The same relationship should also be considered for non-Aboriginal buildings, places, structures or cultural heritage sites and their landscape context.

If the proposed works will have no impact on identified cultural heritage sites and places, or on areas of potential archaeological sensitivity, then the VicRoads Project or Region can proceed to implementation (see Section 5.3 of these Guidelines). However, it is important to note that in such a case VicRoads will still need to obtain a cultural heritage permit for any impacts on cultural heritage identified during construction.

Step 4 Development of Cultural Heritage Management Processes and Application for Cultural Heritage Permits

Step 4.1 Develop Cultural Heritage Management Protocols (where relevant)

Just as early consultation is important, it is also crucial at this stage to commence the development of any other agreements or protocols that may be required to facilitate efficient and effective cultural heritage management on the project. This can include anything from the development of site identification protocols to agreements on the level of and process for community involvement in the cultural heritage management process.

The development of such an agreement requires on-going liaison between VicRoads and key cultural heritage stakeholders.

Examples of cultural heritage protocols and agreements are available through VicRoads Environmental Management Toolkit. However it is important to remember that each project is different and will generally require an individual solution.

Step 4.2 Apply for Aboriginal Cultural Heritage Permits

Step 4.2A Aboriginal Heritage Act

If the proposed works will, or are likely to, harm Aboriginal cultural heritage, VicRoads must apply to the Secretary to the Department of Planning and Community Development for a permit under the *Aboriginal Heritage Act* to authorise that harm.

The approved form for this permit application, which must be accompanied by the prescribed fee, can be found on VicRoads Environmental Management Toolkit.

Before determining the application the Secretary must give a copy of the application to each registered Aboriginal party for the relevant area. Within 30 days of receiving a copy of the application, a registered Aboriginal party may advise the Secretary in writing that it:

- Does not object to the granting of the cultural heritage permit;
- Does not object if the cultural heritage permit is subject to the conditions specified by the registered Aboriginal party; or
- Objects to the granting of the cultural heritage permit on any specified ground.

Any conditions specified may include a condition that something be done to the satisfaction of the registered Aboriginal party, but can not include a condition that the applicant pay or give money or money's worth to the registered Aboriginal party.

Before giving written advice to the Secretary the registered Aboriginal party may request further information from the applicant, and may ask the occupier of the relevant land for permission to inspect the land to determine the likely impact on the Aboriginal cultural heritage of the activity for which the permit is sought.

Once the written advice from the registered Aboriginal parties (if any) is received from the Secretary, or if the 30 days expires without this advice being produced, the Secretary must decide to grant the cultural heritage permit or refuse to grant it.

If, within the 30 day period, a registered Aboriginal party objects to the granting of the cultural heritage permit, the Secretary cannot grant it.

Unfortunately no specific timeframe is outlined in the *Aboriginal Heritage Act* for cases where there is no registered Aboriginal party.

The key factors to be considered in making a decision to grant or refuse a permit include:

- The nature of the Aboriginal cultural heritage;
- The impact, or likely impact, of the activity on the Aboriginal cultural heritage; and
- The extent to which the harm to the Aboriginal cultural heritage could be minimised.

In deciding to grant a permit the Secretary may include any condition he or she considers appropriate.

High Significance Sites

Registered Aboriginal parties are not obliged to recommend that the Secretary to the Department of Planning and Community Development grant consents to disturb sites and, certainly in the case of burial sites and significant scarred trees, are generally reluctant to do so. Do not assume that a recommendation in a consultant's report for removal of an Aboriginal cultural heritage site constitutes approval by the Indigenous community.

VicRoads should always attempt to avoid significant sites and, where this is not possible, aim to minimise impacts. Cultural heritage permits should only be applied for if there is no practical alternative but to impact on the site.

In applying for an Aboriginal cultural heritage permit under the *Aboriginal Heritage Act* it is usually helpful to discuss the issue with the relevant registered Aboriginal party for the area. These discussions should be conducted by the Business Area Manager or a senior representative of the business area directly with the community representatives.

Step 4.2B National Heritage List

In cases where VicRoads is likely to have a significant impact on the Aboriginal heritage values of a place on the National Heritage List it will be necessary to refer the project to the Australian Government Minister for the

Environment under the *Environment Protection and Biodiversity Conservation Act*.

Step 4.3 Apply for Non-Aboriginal Cultural Heritage Permits

Step 4.3A Victorian Heritage Register

Permits under the *Heritage Act* to impact any cultural heritage sites or places on the Victorian Heritage Register are required from the Executive Director of Heritage Victoria. The approved form for this permit application, which must be accompanied by the prescribed fee, can be found on VicRoads Environmental Management Toolkit.

Upon receiving an application from VicRoads to impact a site on the Victorian Heritage Register, the Executive Director will generally publish a local notice, giving anyone with an interest in the site an opportunity to make submissions on the application.

In determining such an application the Executive Director must consider:

- The extent to which the application, if approved, would affect the cultural heritage significance of the registered place or object;
- The extent to which the application, if refused, would affect the reasonable or economic use of the registered place or object;
- Any submissions made in relation to the application;
- The extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to carry out a statutory duty specified in the application; and
- Any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.

After considering the application the Executive Director may determine to issue the permit, issue the permit on any terms and

conditions he or she thinks fit, or refuse to grant the permit.

The Executive Director must determine an application within 60 days after its receipt, unless the Heritage Council, on the application of the Executive Director, has extended that period by a further period of up to 60 days.

Step 4.3B Victorian Heritage Inventory

Consents under the *Heritage Act* to impact any cultural heritage sites or places on the Victorian Heritage Inventory are required from the Executive Director of Heritage Victoria. The approved form for this permit application, which must be accompanied by the prescribed fee, can be found on VicRoads Environmental Management Toolkit.

A consent is not required to remove sites, structures or places which have been assigned a 'D' classification by Heritage Victoria.

In issuing such a consent the Executive Director must consider:

- Any relevant anthropological, archaeological, ethnographic or historical research; and
- The potential of the relic or site to contribute to such knowledge.

After considering the application the Executive Director may determine to issue the consent, issue the consent on any terms and conditions he or she thinks fit, or refuse to grant the consent.

While no timeframes are provided in the *Heritage Act* for the granting these consents, they are generally approved in around 10 working days.

Step 4.3C Local Heritage Overlays

VicRoads will need to apply to the relevant Local Council for a planning permit under the *Planning and Environment Act* to impact on any site or place protected by a Heritage

Overlay in a Local Government Planning Scheme.

The timeframe for the approval of these permits is dependent on requirements for referrals and giving notice, but will normally take at least 14 days.

Step 4.3D National Heritage List and Commonwealth Heritage List

In cases where VicRoads is likely to have a significant impact on the national heritage values of a place on the National Heritage List, the Commonwealth heritage values of a place on the Commonwealth Heritage List or the heritage values of any place in a Commonwealth area (including places on the Register of the National Estate) it will be necessary to refer the project to the Australian Government Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act*.

Step 5 Resolution of Cultural Heritage Permit Disputes

Step 5.1 Disputes Regarding Aboriginal Cultural Heritage Permits

Where the Secretary to the Department of Planning and Community Development refuses to grant an Aboriginal cultural heritage permit to VicRoads, or imposes a condition on a cultural heritage permit that VicRoads objects to, VicRoads can apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of that decision.

This application for review must be made within 28 days after the later of:

- The day on which the decision to refuse to grant the permit, or to impose the condition, is made; or
- If VicRoads requests a statement of reasons for the decision under the *Victorian Civil and Administrative Tribunal Act*, the day on which the statement of reasons is given to VicRoads

or VicRoads is informed under s.46(5) of that Act that a statement of reasons will not be given.

On any such application VCAT may make an order that the cultural heritage permit must be granted, the cultural heritage permit must not be granted, or the cultural heritage permit must or must not include a specified condition.

Before reaching a final decision VCAT must consider any matter that the Secretary was required to consider when making the decision in respect of which the application is made, and any matter that a relevant registered Aboriginal party properly considered when deciding to object or not to be object to the grant of the permit or to require that a condition be included in the permit.

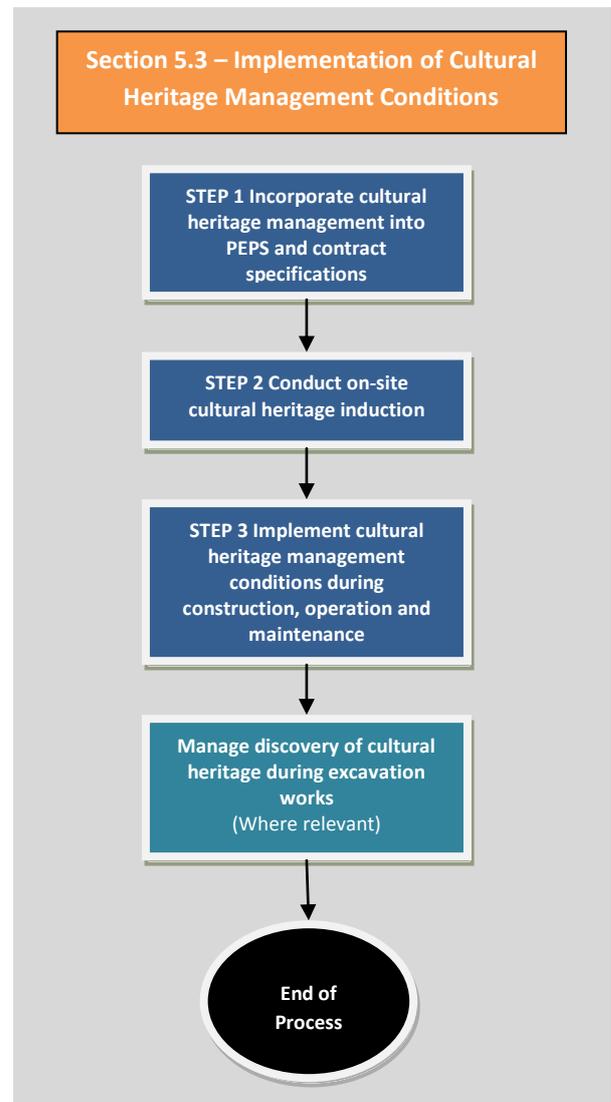
Step 5.2 Disputes Regarding Non-Aboriginal Cultural Heritage Permits

Where the Executive Director of Heritage Victoria refuses to grant a cultural heritage permit to VicRoads to impact on a site on the Victorian Heritage Register, or imposes a condition on a cultural heritage permit that VicRoads objects to, VicRoads can appeal that determination to the Victorian Heritage Council.

This appeal must be lodged in writing within 60 days of the permit being issued or the notice of refusal being given. The Heritage Council then has a further 60 days to determine the appeal.

After considering the appeal and conducting a hearing (if any), the Heritage Council may grant the permit with or without conditions, confirm the decision of the Executive Director, or vary the conditions on the permit.

5.3 Implementation of Cultural Heritage Management Conditions



Step 1 Incorporate Cultural Heritage Management Conditions into the PEPS and Contract Specification

The cultural heritage assessment report, cultural heritage management plan or cultural heritage permit conditions may specify that certain mitigation measures be undertaken in relation to the preferred road option during the pre-construction, construction, road operation and road maintenance stages of the project. Any such arrangements should be

incorporated into the Project Environmental Protection Strategy (PEPS).

The VicRoads Project or Region should also ensure that all stakeholder comments have been received prior to developing the PEPS and that those comments are incorporated into the Strategy where relevant.

It is important to ensure that any cultural heritage requirements specified are also, where relevant, included in the contract specification for the proposed works.

Step 2 Conduct an On-site Cultural Heritage Induction

Where relevant a cultural heritage induction session should be conducted with the contractor's staff to inform them of work programs, requirements and restrictions in relation to cultural heritage.

At least one representative of any relevant Indigenous stakeholder groups should take part in conducting the induction.

As a part of this process it is generally appropriate during the pre-construction stage to hold an initial meeting, preferably on-site, with relevant cultural heritage stakeholders (including Indigenous community representatives, and representatives of government agencies if necessary) to indicate the proposed timing for works and to discuss how relevant cultural heritage management initiatives and processes will be implemented.

Step 3 Implement Cultural Heritage Management Conditions

Step 3.1 Implementation of Conditions during Construction

Construction management recommendations should be implemented in accordance with the PEPS. It is critical that cultural heritage management actions specified in approved

cultural heritage management plan, cultural heritage permit conditions or developed agreements or protocols are diligently implemented.

Ideally VicRoads should take measures to protect and manage cultural heritage items or places of significance prior to the commencement of roadwork projects.

As identified in Step 3.1 of Section 5.1 on p.33 of these Guidelines, the following measures can be undertaken in relation to the identification of cultural heritage sites and places within the road corridor during the construction stage of the project:

Salvage works: These can include detailed excavation and collection of cultural heritage artefacts that will be destroyed by construction, or the detailed recording of buildings, ruins or structures. Salvage works should be conducted well in advance of construction to allow time for any unforeseen circumstances, such as the identification during the salvage process of a highly significant cultural heritage site requiring detailed investigation.



Salvage excavations are conducted to gather data from sites with scientific significance before they are destroyed by development. (TerraCulture Image Bank.)



VicRoads, contractor and Aboriginal representatives during on-site monitoring on the Pakenham Bypass. (VicRoads Image Bank.)

Monitoring: The main reason for monitoring is to prevent the accidental destruction of any significant cultural heritage sites and places during the course of road construction. Monitoring involves the observation by cultural heritage monitors, under the supervision of a qualified heritage consultant, of excavation works connected with the road construction in archaeologically sensitive areas of land that are likely to contain cultural heritage sites, but which have not been subject to detailed sub-surface testing during the planning process. This can include monitoring the stripping of soil by smaller machinery prior to road construction, or monitoring excavation by road construction machinery. For safety reasons and for improved sampling efficiency, it is highly desirable to strip areas selected for monitoring with small earth-moving machinery in advance of road construction, rather than heavy equipment.

Interpretation and recognition initiatives: These are designed to interpret or re-interpret some aspect of Aboriginal or non-Aboriginal history that has been disturbed or destroyed by road construction. The choice of the interpretation strategy to be implemented depends on the nature of the project area and the cultural heritage values involved, and on local community preferences. Strategies for interpretation of cultural heritage values in the context of a road project may include:

- Using interpretive signage;
- Providing place names for road features and rest stops that reflect Aboriginal or non-Aboriginal historical and cultural associations with an area; or
- Reinstating cultural materials from a cultural heritage site.

More information on interpretation and recognition initiatives can be found in *VicRoads Cultural Heritage Recognition and Interpretation Guidelines 2008*.



This scarred tree was salvaged during construction and reinstated in the Taugurong Country Rest Area on the Goulburn Valley Highway near Mangalore. (TerraCulture Image Bank.)

Step 3.2 Discovery of Cultural Heritage Sites during Construction

If a suspected cultural heritage site is discovered during construction all works in the immediate vicinity must stop, and the site should be managed in accordance with any processes outlined in the cultural heritage management plan, cultural heritage protocol or cultural heritage permit conditions for the project.

If an action occurs during the course of road works that results in damage to or the destruction of a cultural heritage site or place, and an appropriate approval has not been obtained to authorise that impact, VicRoads may be liable for prosecution. For this reason it is crucial that VicRoads negotiate with relevant approval authorities and stakeholders to determine an appropriate course of action.

If VicRoads or its contractors discover an Aboriginal place or object they must report the discovery to the Secretary to the Department of Planning and Community Development as soon as is practicable unless, at the time of making the discovery, they had reasonable cause to believe that the Victorian Aboriginal Heritage Register already contained a record of the place or object. The site manager should also notify VicRoads Environmental Services department and any relevant registered Aboriginal parties.

Similarly, Heritage Victoria should be notified immediately in the case of discovery of non-Aboriginal heritage sites.

Discovery of Human Remains during Construction

If suspected human remains are discovered during construction works:

- Immediately stop all excavation in the immediate vicinity. Do not touch or otherwise interfere with the remains, other than to safeguard them from further disturbance.
- In accordance with the requirements of the *Coroners Act*, immediately contact the local office of Victoria Police or the State Coroner's Office (ph: 9684 4444) to inform them of the discovery.
- If there are reasonable grounds to suspect that the remains are Aboriginal, the location and nature of the discovery should, as soon as is practicable, be reported to the Secretary to the Department of Planning and Community Development through the Department of Sustainability and Environment's Emergency Coordination Centre (ph: 1300 888 544). Once notified of the discovery the Secretary will then advise on the appropriate course of action to be taken in relation to the Aboriginal human remains. All relevant Indigenous stakeholders should also be informed.
- Do not contact the media. Indiscriminate media coverage of Aboriginal burials may offend Indigenous people and is often contrary to their traditional beliefs.

Step 3.3 Implementation of Conditions during Operation

Post-construction cultural heritage management initiatives and actions specified in approved cultural heritage management plans, cultural heritage permit conditions or

developed agreements and protocols (eg. ongoing site protection measures) should be included in any hand-over documentation prepared on the completion of construction. These initiatives and actions should also be included in any Roadside Conservation Management Plans that are developed for the area.

Again, it is important that VicRoads is careful with any information relating to the location of significant sites and places.

Step 3.4 Implementation of Conditions during Maintenance

It is important that cultural heritage objects and places located within Victoria's road reservations are not adversely impacted during road maintenance.

In cases where road maintenance activities involve excavation, specific ground disturbance and/or tree removal (types of works that are generally likely to impact on cultural heritage) the process steps outlined in these Guidelines should be followed. In such cases it is important to identify whether any cultural heritage objects and places will be impacted by the proposed maintenance activities and then, if so, either develop management processes and initiatives, or apply for the appropriate cultural heritage permits.

In cases where road maintenance activities do not involve these types of works a cultural heritage assessment will generally not be required. However, it will still be important to comply with the requirements of any Roadside Conservation Management Plans for the area to ensure that any previously identified cultural heritage objects and places are protected.

6. CULTURAL HERITAGE PROTECTION AND ENFORCEMENT

While this section of the Guidelines deals predominantly with enforcement mechanisms under the *Aboriginal Heritage Act*, it should be noted that inspectors appointed under the *Heritage Act* have similar investigatory powers in relation to suspected contraventions.

Although there is no specific statutory power in relation to audits and stop orders under the *Heritage Act*, contraventions can be prosecuted in the courts and a range of orders can be made to stop activity that is in breach of the Act, to repair and damage or to make other compensation for the impact of any illegal activity.

6.1 Penalties

Any breach by VicRoads or its contractors of the provisions of the *Aboriginal Heritage Act* or the *Heritage Act*, either through unauthorised disturbance of heritage values or by a contravention of an administrative requirement, will render the organisation potentially liable to large penalties.

Under the *Aboriginal Heritage Act* a person is guilty of an offence if they knowingly do an act that harms Aboriginal cultural heritage, and at the time the act was done they knew, or were reckless or negligent as to whether, the thing harmed was Aboriginal cultural heritage. The penalty for this offence ranges from 3,000 penalty units for negligent conduct up to 10,000 penalty units (ie. over \$1 million) for knowingly causing harm.

A penalty of 6,000 penalty units applies in cases where a person knowingly does an act that is likely to harm Aboriginal cultural heritage, and at the time the act was done they knew that the act was likely to harm Aboriginal cultural heritage.

Under the *Heritage Act* a person is guilty of an offence if they remove, demolish, damage, despoil, develop or excavate a heritage place or object. The penalty for this offence is 4,800 penalty units in the case of a site on the Victorian Heritage Register, and 1,200 penalty units for a site on the Victorian Heritage Inventory.

In addition to pecuniary penalties, the Court may also order the repair or restoration of any cultural heritage or associated items, or the rehabilitation of relevant land.

6.2 Cultural Heritage Audits

Under the *Aboriginal Heritage Act*, the Minister for Aboriginal Affairs may order a cultural heritage audit to be carried out if, on the advice of the Secretary to the Department of Planning and Community Development, the Aboriginal Heritage Council or an inspector, the Minister reasonably believes that:

- VicRoads or its contractor has contravened, or likely to contravene, the recommendations in an approved cultural heritage management plan or a condition of a cultural heritage permit; or
- The impact on Aboriginal cultural heritage of an activity to which an approved cultural heritage management plan or a cultural heritage permit applies will be greater than that determined at the time the plan was approved or the permit granted.

A cultural heritage audit is an assessment of the impact of an activity on Aboriginal cultural heritage. The Minister must give notice of a decision to order a cultural heritage audit to VicRoads and each relevant registered Aboriginal party, and, in ordering a

cultural heritage audit, must specify the matters to be addressed by the audit and the period within which the audit is to be completed.

If the Minister orders a cultural heritage audit, he or she must also issue a stop order (see Section 6.3) to VicRoads or its contractor requiring them to immediately stop the activity to which the audit relates.

An inspector who conducts, or directs the conduct of, a cultural heritage audit must give a written report of the findings to the Minister.

If the Minister approves the audit report, he or she must give notice of that approval to any registered Aboriginal party for the relevant area, and to VicRoads (as the sponsor of an approved cultural heritage management plan or holder of a cultural heritage permit).

6.3 Stop Orders

The Minister for Aboriginal Affairs or an inspector may issue a stop order under the *Aboriginal Heritage Act* to VicRoads or its contractor if:

- They are carrying out, or proposing to carry out an activity; and
- The Minister or inspector is satisfied that there are reasonable grounds for believing that the carrying out of the activity is harming, or is likely to harm, Aboriginal cultural heritage, and the Aboriginal cultural heritage could not be properly protected unless a stop order is issued.

A stop order may require VicRoads or its contractor to immediately stop, or prohibit them from starting, the activity specified in the order. A person is guilty of an offence under the Act if the person engages in any conduct that the person knows is conduct that contravenes the stop order.

Unless it is revoked sooner, a stop order operates from the time it is issued until the end of 30 days or the time specified in the order, whichever is earlier. The exception to this is a stop order issued in relation to a cultural heritage audit (see Section 6.2), in which case the order operates until the report of the audit is approved by the Minister.

Before a stop order ceases to operate, the Minister may extend it once only for a further period of up to 14 days.

6.4 Protection Declarations

On the application of the Aboriginal Heritage Council, a registered Aboriginal party, or on his or her own initiative the Minister may make interim or ongoing protection declarations under the *Aboriginal Heritage Act* in relation to an Aboriginal place or object if the Minister is satisfied that it is appropriate, having regard to the importance of maintaining the relationship between Indigenous people and the place or object, that an interim or ongoing protection declaration be made.

An interim protection order operates for 3 months from the time it is made or the period specified in the declaration, whichever is earlier. Before an interim protection declaration ceases to operate, the Minister may extend it once only for a further period of up to 3 months, and may amend or revoke the declaration at any time on the application of the Aboriginal Heritage Council, a registered Aboriginal party or on his or her own initiative.

A person is guilty of an offence under the Act if the person engages in conduct that contravenes a protection order and at the time of engaging in the conduct the person knew of the existence of the declaration, or was reckless as the existence of the declaration.

REFERENCES

- Aboriginal Affairs Victoria, *Guidelines for to Preparing Cultural Heritage Management Plans* (2007)
- Australian Heritage Commission, *Ask First: A Guide to Respecting Aboriginal Heritage Places and Values* (2002)
- Austroroads, *Guide to Heritage Bridge Management* (2001)
- VicRoads, *Community Participation Strategies and Guidelines* (1997)
- VicRoads, *Cultural Heritage Recognition and Interpretation Guidelines* (2007)
- VicRoads, *Environmental Management Guidelines* (2006)
- VicRoads, *Native Title Guidelines* (2003)
- VicRoads, *Environmental Management Toolkit* (Internal Intranet System)



VicRoads and State Government staff taking part in a cultural heritage training course. (VicRoads Image Bank.)

APPENDIX 1

CULTURAL HERITAGE MANAGEMENT PLAN CONTENT SUMMARY

All cultural heritage management plans must be in the approved form and must include the information outlined below.

A standard layout for cultural heritage management plans, and guidelines for their preparation, can be found on VicRoads Environmental Management Toolkit.

Part 1 – Administration

- The name of the proponent (ie. VicRoads);
- The name of the owner or occupier of the activity area (if this is not VicRoads);
- The name of the cultural heritage advisor engaged, and a brief description of their qualifications and experience;
- A statement about whether the plan was voluntarily prepared, required by the Regulations, required by the Minister or required because an Environment Effects Statement is also required for the project (NB. If the plan was required by the Regulations it must also include a statement of the reasons why the Regulations required the plan);
- Details of relevant registered Aboriginal parties, including the name of each relevant registered Aboriginal party for the activity area, whether a registered Aboriginal party has elected to evaluate the plan and, if so, the name of the representatives appointed by that party and the functions carried out by those representatives; and
- A copy of the notices given in relation to the preparation of the plan (see Step 1 of Section 5.1).

Part 2 – Overview of activity

- A detailed description of the activity setting out the nature and extent of the activity and any ancillary works associated with the activity, and the likely impact of the activity on the surface of the land and buried former land surfaces; and
- A detailed description of the activity area, including a map in the approved form indicating the location of the activity area, the municipal district in which the area is located and the prominent structures and works in, and natural features of, the activity area.

Part 3 – Results of cultural heritage assessment

- A description of the method by which the cultural heritage present in the activity area was assessed, including:
 - The names of the persons involved in the assessment;
 - Details of the methodology used in the assessment;
 - Details of the reasonable efforts made by VicRoads to consult with any relevant registered Aboriginal parties;
 - A summary of any information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the activity area;
 - An accurate transcript of any oral information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the activity area (if the person who provided the information consents); and
 - Details of any obstacles encountered in completing the assessment.
- Details of any subsurface testing and excavation, including:
 - The method used for subsurface testing or excavation;
 - The location of subsurface testing or excavation pits or transects, including transect start and end points;
 - The names of persons taking part in the subsurface testing or excavation and those responsible for its supervision;
 - Any physical or other obstacles to the carrying out of the subsurface testing or excavation; and
 - The results of the subsurface testing or excavation including the results of radiometric dating.

- A detailed description of any cultural heritage found in the activity area, including:
 - The registration number of that cultural heritage on the relevant heritage register;
 - A full cadastral description of the land where that cultural heritage is located;
 - A statement of the cultural heritage significance of that cultural heritage;
 - A concise map or maps of the activity area which shows the location of that cultural heritage;
 - A detailed plan of each heritage place found in the activity area; and
 - Photographs or digital images of that cultural heritage.

Part 4 – Cultural heritage management

- A statement of how the avoidance and/or minimisation of harm to cultural heritage, the management of cultural heritage during and after the activity, and contingency planning were considered in preparing the cultural heritage management plan; and
- Contingency plans for the following:
 - The management and custody of cultural heritage during and after the activity, including heritage found during the activity;
 - The notification, in accordance with the Act, of the discovery of cultural heritage during the carrying out of the activity;
 - 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; and
 - Reviewing compliance with the cultural heritage management plan and mechanisms for remedying non-compliance.

