

The Aboriginal Heritage Act and the Planning Permit Process

May 2023

The ***Aboriginal Heritage Act 2006*** (the AH Act) provides for the protection and management of Victoria's Aboriginal cultural heritage including processes linked to the Victorian planning system.

This practice note explains the provisions of the AH Act that affect the planning permit process, including:

- **cultural heritage management plans (management plans)**
- **the role of Registered Aboriginal Parties and the role of local government**
- **the effect of management plans on planning permit applications**
- **enforcing management plans.**

Cultural heritage management plans

Clause 15.03-2 of the planning scheme sets out policies for the protection and conservation of places of Aboriginal cultural heritage significance through the planning system. This includes ensuring that permit approvals align with recommendations of any cultural heritage management plan approved under the AH Act.

A responsible authority must check whether a management plan is required prior to determining a planning permit application.

If a management plan is required, the responsible authority cannot issue a planning permit until it receives a copy of the approved management plan from the applicant.

Under the AH Act:

- a planning permit is referred to as a 'statutory authorisation'
- an applicant is referred to as a 'sponsor'

A planning permit cannot be granted for an activity that is inconsistent with an approved management plan – refer to section 52(3) of the AH Act.

A request to rezone land does not trigger a requirement to prepare a management plan.

A preliminary cultural heritage assessment is strongly recommended at this stage to identify constraints and opportunities that may assist in the rezoning of land.

When is a management plan required?

The sponsor is responsible for establishing whether their project requires a management plan.

A management plan is required for a proposed development if:

- the proposal is listed as a high impact activity that will cause significant ground disturbance **and** is in an area of cultural heritage sensitivity, defined by the [Aboriginal Heritage Regulations 2018](#) (the AH Regulations)
- directed by the Minister for Aboriginal Affairs
- the activity requires an environmental effects statement
- an impact management plan or comprehensive impact statement is required
- the Secretary to the Department of Premier and Cabinet determines that it is required.

Management plans can also be prepared voluntarily.

High impact activities

High impact activities are uses specified in the AH Regulations Part 2, Division 5, that will cause significant ground disturbance.

High impact activities include but are not limited to:

- subdivisions of 3 or more lots
- the construction of 3 or more dwellings
- constructing roads with a length exceeding 100 metre
- bicycle and walking tracks with a length exceeding 500 metre
- industrial development.

If the proposed activity is not a listed high impact activity it does **not** trigger a management plan.

The regulations may also exempt activities or operations from all or any of the AH Act provisions. Refer to Part 2, Division 2 of the AH Regulations for a list of exempt activities and operations.

Areas of cultural heritage sensitivity

Areas of cultural heritage sensitivity are specified in the AH Regulations Part 2, Division 3.

They include:

- registered cultural heritage places
- named waterways
- coastal land
- parks
- stony rises
- volcanic cones

- caves
- dunes
- land within specified distances of these areas.

To understand why areas of cultural heritage sensitivity are defined and where they are located, go to the [Cultural heritage sensitivity](#) page on the First Peoples – State Relations website includes an [online map](#).

Councils can work with the heritage services branch of First Peoples – State Relations and Registered Aboriginal Parties to refine the sensitivity mapping to reflect conditions and land use history. Updated maps can be included in Schedule 1 to the AH Regulations and take precedence over the statewide map.

What to include in a management plan

A management plan is a written report that assesses the nature of any Aboriginal cultural heritage present in an activity area.

An assessment may include:

- background research
- consultation
- field survey
- excavation.

Management plans must focus on minimising harm to cultural heritage or managing any unavoidable impacts (section 61 of the AH Act).

They deal with:

- cultural heritage identified during the assessment
- areas where further heritage may be discovered during works
- provide agreed processes for managing cultural heritage uncovered during works.

Who prepares the management plan?

The sponsor is responsible for preparing a management plan and must engage a heritage advisor to assist with the preparation of the plan.

A list of heritage advisors is available on the [First Peoples - State Relations](#) website.

The role of Registered Aboriginal Parties

A Registered Aboriginal Party that nominates to evaluate a management plan may also:

- participate in the assessment of the area to determine the nature of cultural heritage present
- consult with the sponsor on proposed cultural heritage management recommendations.

A Registered Aboriginal Party can only refuse to approve a management plan on the cultural heritage management grounds listed under section 61 of the AH Act, or if it has not been prepared in accordance with the prescribed standards.

The sponsor may apply to VCAT for review of a Registered Aboriginal Party decision not to approve a management plan (section 116 of the AH Act).

VCAT can approve, amend or refuse a management plan. The local council is not required to be involved in this process.

More information about the Registered Aboriginal Parties is available on the [Victorian Aboriginal Heritage Council](#) website and on the [First Peoples - State Relations](#) website.

What if other Aboriginal people object?

Only Registered Aboriginal Parties or the Secretary, Department of Premier and Cabinet can approve or refuse a management plan. If a Registered Aboriginal Party or the Secretary is the sponsor, the Victorian Aboriginal Heritage Council evaluates the management plan. If there is more than one party, both have the same standing and are both able to evaluate the management plan.

Other Aboriginal people or organisations have the same standing as any other potential objectors to a planning permit application.

Amendments to existing planning permits

Amendments to planning permits are statutory authorisations for which a management plan may be required. An assessment of whether the proposed activity is a high impact activity on land of cultural heritage sensitivity, that has not been subject to significant ground disturbance, is required.

However, amendments to planning permits where there is already an approved management plan in place do not trigger an additional management plan if the amendments are consistent with the approved plan.

Amending an approved management plan

A cultural heritage management plan may be amended if, in the opinion of the relevant authority, it is a minor amendment to the plan (section 66A of the AH Act).

An approved cultural heritage management plan cannot be amended 5 years or more after first being approved.

Enforcing a management plan

Once a management plan is approved, the recommendations become compliance requirements. Most Registered Aboriginal Parties have aboriginal heritage officers who undertake compliance inspections as required by management plan conditions and other compliance activities.

Any suspected breaches are reported to the enforcement and compliance branch of First Peoples - State Relations, who are responsible for:

- investigating any reported suspected breaches
- reporting non-compliance of management plan conditions
- directing audits into the contravention of a management plan.

Responsible authorities must ensure that activities authorised by a planning permit are consistent with the approved management plan.

Cultural heritage management plans and the permit process

- **Step 1:** An applicant proposes an activity that requires a planning permit, for example, a large subdivision in a coastal area, and applies to the responsible authority for a planning permit.
- **Step 2:** If the applicant requires an approved management plan, the responsible authority notifies them that a management plan is required, with reference to the triggers outlined in the AH Regulations.

If the applicant provides an approved management plan with the application, go to step 7.
- **Step 3:** The applicant advises the relevant Registered Aboriginal Party or Parties for the area and engages a heritage advisor.
- **Step 4:** A management plan is prepared by the applicant, with the assistance of a heritage advisor. Registered Aboriginal Parties may participate in this process.
- **Step 5:** The Registered Aboriginal Parties approve or reject the management plan.
- **Step 6:** The applicant submits the approved management plan to the responsible authority.
- **Step 7:** The responsible authority determines the planning permit application. The statutory time limit for assessing the planning permit application does not commence until the approved management plan has been received. The responsible authority must not grant a planning permit if the proposed development is inconsistent with the approved management plan.

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