

OEP08 Seismic Survey

Heritage Desktop Study and Implications for Development

A Report to Essential Petroleum Resources Limited

by Andrew Long

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Introduction

The following report presents desktop study of known and predicted heritage values for a proposed seismic survey programme near Dartmoor in South West Victoria. The development consists of approximately 10 seismic survey transects in two areas to the east and north east of Dartmoor, intended to target prospective reservoirs in the Waarre Formation. Each survey alignment will be approximately 10-13 km in length (106 km in total), and will have a low impact on the landscape.

The project involved a desktop study only establish any existing heritage constraints and to allow a predictive overview of the archaeological and heritage character of the landscape.

The study region consists of the Follett Plains and the Dundas Tablelands, a series of coastal plains, escarpment and dissected plateaux, located in the south west corner of the State of Victoria. The seismic survey programme will be located in two areas, each occupying approximately 100 km² of landscape;

A. Greenwald – adjacent to the Crawford River 5-10 km east and south east of Dartmoor;

B. Digby - 10 km west of the township in forest on the upper headwaters of the Stokes River.

The seismic survey programme will involve the slashing and clearing of native vegetation along the survey lines, including the possible removal of trees. In addition, the program will involve the vibration of the ground with *vibroseis* trucks, will include three river/creek crossings (either carrying equipment by hand or crossing the waterway with the trucks where a ford is present), and will involve the drilling of a number of 'upholes' (narrow cores some tens of metres deep that are taken to calibrate the sound recording equipment).

As such, the project overall would be considered a low impact activity covering a wide area, however with the potential for localised disturbance to the ground and /or Aboriginal heritage values at limited locations.

These consist of:

- a. the 'upholes', which involve drilling into the ground surface and may impact on archaeological deposits,
- b. vehicle crossings of creek banks, which may unintentional create disturbance to creek banks and any archaeological deposits they may contain, and
- c. impacts to any trees with cultural scars that may potentially obstruct the survey in forested areas.

The potential for impact by the *vibroiseis* trucks has not been established, however it is likely to be slight given the limited, surface nature of the activity.

A full, detailed project description has not been provided by the client to date; the above information has all been provided verbally.

The study has been commissioned as a tool to inform the planning process for the survey programme by Coffey Natural Systems, on behalf of Essential Petroleum Resources Limited, who will be implementing the project. The project will require written consent under Section 138 of the *Petroleum Act* 1998.

This assessment has been undertaken to identify any registered sites of Aboriginal and cultural heritage significance and to verify the results of any prior assessment or legislation that may have implications for the project. In particular, this report seeks to identify any significant archaeological or heritage issues that will constrain the programme and provide an outline of further investigations and associated costs for the future resolution of these issues.

The Study Area

The three proposed drilling sites are located at the interface of the Follett Plains and Dundas Tablelands, between Casterton and Dartmoor, south west Victoria, 35 km north west of Portland. The main physiographic feature of this region is a 30 m high escarpment formed by the Kanawinka and a series of other faults, which now form ranges of low hills dissected by the Glenelg River and its tributaries.

Both survey areas A and B are dominated by the Kanawinka land zone, which is characterised by surface dunes and sheets of acid white sands superimposed over the Miocene limestone and the varied elevated strata of the Dundas Tablelands (Gibbons & Downes 1964, 40-46). The individual survey transects extend across several geomorphic units, including the Glenelg, Kanawinka, Follett, Cobbobboonee, Heywood and Nelson land systems, which are described in detail elsewhere (Gibbons & Downes 1964).

The climate of the study region is generally described as temperate with warm dry summers, predominantly winter rainfall and mild temperatures throughout the year. Average annual rainfall is 71 cm in the Casterton area (LCC 1972, 28; LCC 1996, 19).

The vegetation of this study region is characterised by mixed woodland, open forest and heath. Survey area A is characterised by a patchwork of cleared farmland and bushland, while survey area B is dominated by stringybark forest (*E. baxteri*). Lower lying and riverine areas are characterised by river red gum (*E. camaldulensis*), Swamp gum (*E. ovata*) and Manna gum (*E. viminalis*), amongst other species.

Scope of Prior Assessment

There has been no prior assessment of the two survey areas (A & B) for this project, and a very limited number of localised studies undertaken in the broader Dartmoor-Rigby area (Ellender 1988; Cusack 1999; HCA 2001), which have resulted in minor survey coverage within the project region. Of these, Ellender (1988) and HCA (2001) have included survey coverage within survey area A. Further to the north and east in the Casterton-Merino area, various studies undertaken on behalf of Glenelg Water (Feldman 2003; 2004; 2005a; 2005b) provide some additional comparative data.

Existing Heritage Listings

The following register sources were checked for existing heritage listings (both statutory and non-statutory) relating to the three options under consideration:

- Register of the National Estate: - No listings
- National Heritage List: - No listings
- Commonwealth Heritage List: - No listings
- Victorian Aboriginal Heritage Inventory System (VAHIS) –

AAV 7122-0014 – a diffuse artefact scatter located close to the Crawford River in survey area A (E 529050 N 5801627).

- Victorian Aboriginal Places Register – No listings
- Victorian Heritage Register: - No listings
- Victorian Heritage Inventory: - No listings
- Shire of Glenelg Planning Scheme: - No listings
- National Trust of Australia (Victoria) (non-statutory) – No listings

As such, there is a possibility of constraint through the location of an Aboriginal heritage sites (AAV 7122-0014) located within survey area A.

Predicted Aboriginal Heritage Issues

Although they are limited in number and scope, previous research projects in region (Ellender 1988; Cusack 1999; HCA 2001; Feldman 2003; 2004; 2005a; 2005b) have determined that Aboriginal heritage sites occur in close proximity to significant waterways, in particular the Crawford River and its tributaries, along which four artefact scatters (AAV 7121-294; AAV 7122-7, 8 & 14) and a scarred tree (AAV 7122-2) have been recorded in the region of survey area A.

There has been no previous field evaluation or research undertaken in the vicinity of survey area, though a diffuse scatter of quartz artefacts (AAV 7122-11) was identified 5 km to the north. This isolated find was located on flat plain at a distance from a

water source, indicating that the drainage pattern does not entirely dominate the distribution of Aboriginal heritage sites.

In conclusion, there is comparatively little conclusive information about the location, extent and significance of Aboriginal heritage site in regard to the project area, though it has been demonstrated that artefact scatters and scarred trees do occur in this landscape.

The potential for human burials within the proposed seismic survey lines is a low risk, but this must nevertheless be considered within survey management procedures.

Predicted European Heritage Issues

The historical archaeological potential of the proposed survey areas is considered to be *limited*, though it should be pointed out that there is very limited information available. While historical structures or landscape elements may occur throughout rural and forested landscape of the study region, none have been identified to date within the subject land. There are no known nodes of early pastoral activity within the survey areas, and the agricultural development of the region is likely to have occurred at a later stage (cf. post-World War 1), so the risk to significant historical sites is very low.

Aboriginal Stakeholders

It is important to note that ‘cultural heritage significance’ as defined in the *Aboriginal Heritage Act 2006* includes ‘(a) archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance’, and (b) significance in accordance with Aboriginal tradition’. All Aboriginal heritage sites are protected equally under this legislation, irrespective of significance, and consultants and development proponents are required to seek the views of Aboriginal heritage stakeholders (or Registered Aboriginal Parties [RAPs], as defined in the Act) regarding whether Aboriginal heritage sites may be disturbed in accordance with that significance.

The Gunditj Mirring is the approved RAP in relation to the project area.

Implications for Development

All Aboriginal sites in Victoria are now protected by the State *Aboriginal Heritage Act 2006*, and the responsibility rests with the proponent of a development to demonstrate that due care and diligence have been taken to identify and avoid impacts to archaeological sites through construction works.

A key component of this Act will be Cultural Heritage Management Plans (CHMPs), which will be required under certain circumstances for high impact activities that require *statutory authorisation* (see Appendix 1).

Using the Aboriginal Heritage Regulations 2007 it is possible to determine whether a variation to the development plan will trigger a CHMP as a pre-requisite for planning approval.

Assessment of the Proposed Activity according to the Aboriginal Heritage Regulations 2007

When is a cultural heritage management plan required?

A CHMP is required for an activity if (Regulation 6)-

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

Is the activity area an area of cultural heritage sensitivity?

There are several areas of cultural heritage sensitivity within the proposed areas (see map), as defined in Division 3 of the Aboriginal Heritage Regulations 2007.

These are as follows:

22 Registered cultural heritage places

- (1) A registered cultural heritage place is an area of cultural heritage sensitivity.
- (2) Subject to subregulation (3), land within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity.
- (3) If part of the land within 50 metres of a registered cultural heritage place has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

23 Waterways

- (1) Subject to subregulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.
- (2) If part of a waterway or part of the land within 200 metres of a waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

Where *waterway* means—

- (a) a river, creek, stream or watercourse the name of which is registered under the *Geographic Place Names Act 1998*; or
- (b) a natural channel the name of which is registered under the *Geographic Place Names Act 1998* in which water regularly flows, whether or not the flow is continuous; or
- (c) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression

- on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
- (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) of the *Water Act* 1989 to be a lake, lagoon, swamp or marsh; or
- (d) land which is regularly or intermittently covered by water from a waterway as described in paragraph (a), (b) or (c) but does not include—
 - (i) any artificial channel or work which diverts water away from such a waterway; or
 - (ii) an area covered by the floodwaters of a waterway; or
 - (iii) an area, other than the waterway, designated on a planning scheme as being a floodway or liable to flooding or as being subject to inundation; or
- (e) if any land described in paragraph (d) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.

It is noted that a number of small swamps occur in the survey areas, which are classed as waterways.

Is the activity a high impact activity?

Regulation 48 – Activities requiring earth resource authorisations

An activity is a high impact activity if it is an activity—

- (a) for which an earth resource authorisation is required before the activity may be carried out; and
- (b) that would result in significant ground disturbance.

According to Regulation 4, ‘significant ground disturbance’ means disturbance of -

- a. the top soil or surface rock layer of the ground; or
- b. a waterway –

by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.

As written consent for the activity is required under Section 138 of the *Petroleum Act* 1998, seismic survey for gas or oil is an activity that requires an earth resource authorisation.

As outlined above, the drilling of ‘upholes’ and disturbance to banks at creek crossings may result in ground disturbance within a localised area, however it is unclear whether this meets the definition of significant ground disturbance outlined in the Regulations above. In addition the removal of vegetation also has the potential to harm Aboriginal cultural heritage.

As such the project is considered to be a low impact activity, though selected components may be considered high impact activities, as defined in Division 5 of the Regulations.

Irrespective of these definitions, some activities associated with seismic survey have the potential to ‘harm’ archaeological heritage sites, and as such there is some potential risk to Aboriginal cultural heritage posed by the project, though only one location (E 529050 N 5801627) has been registered as an Aboriginal heritage site (AAV 7922-14) to date.

According to Regulation 68, the proposed development of the subject land would individually constitute a *large-size activity*, in relation to the prescribed review fees for CHMPs.

Will a cultural heritage management plan be required for development on the subject land?

According to the criteria and definitions listed above, the Department of Primary Industries (DPI) *may* require the proponent to lodge a CHMP as part of an application for planning approval for the survey, unless the following can be put forward as mitigating factors;

1. creeks are to be crossed with no ground disturbance with 200m of the water course.
2. upholes are not to be drilled in areas of cultural heritage sensitivity (see Map).

In addition, all mature native trees to be removed (if any) must be inspected for evidence of Aboriginal scarring. No Aboriginal scarred trees are to be removed without a cultural heritage permit (CHP), as per Section 36 of the Aboriginal Heritage Act 2006.

While the final determination will be undertaken by DPI and AAV officers, it is apparent that the regulations may not require a *mandatory* CHMP in accordance with section 46 of the *Aboriginal Heritage Act* 2006, or a CHP, if the above conditions can be satisfied.

Recommendations and Contingences

At the current point there are no definite Aboriginal issues to be considered in relation to the proposed survey, however it is important to establish the precise location of high impact components in relation to areas of cultural heritage sensitivity. If it can be demonstrated that no high impact activities will occur in areas of cultural heritage sensitivity, a mandatory CHMP will not be required, however there will remain a low

risk of harm where these upholes are drilled and mature trees removed outside of the areas of cultural heritage sensitivity.

Any risk of unlawful Aboriginal heritage site disturbance could be entirely eliminated by undertaking a *voluntary* CHMP for the project, which would ensure that appropriate contingency arrangements are in place as a precautionary measure during implementation, should an Aboriginal heritage site be identified during clearance works at this site.

AAV 7922-14 (E 529050 N 5801627) must be avoided by the seismic survey.

This measure is entirely at the discretion of Essential Petroleum Resources Limited. An alternative measure would be to adopt appropriate Aboriginal heritage management procedures for use during construction that would ensure that basic legal obligations to report and protect Aboriginal heritage sites are met (Appendix 2).

This desktop study does not constitute a CHMP as defined in Division 1 of the *Aboriginal Heritage Act* 2006.

There are currently no known European heritage issues associated with the project, though there has been very limited research in this area. It is however considered that no further evaluation is required given the absence of historical settlement and other activity nodes in the survey areas and the overall low impact of the activity.

If a historical archaeological site is identified during the seismic programme, it should be avoided without impact and reported to the Heritage Registrar, Heritage Victoria on 03 9637 9773.

References

- Cusack, J. 1999. Warnambool Area EIS: A report on Archaeological Surveys at the Woodlawn Quarry, Codrington, the Cyprus Hill Quarry, Yambuk and the Cowans Lane Quarry, Nirranda East, Victoria. Unpublished report to Paul Crowe.
- Ellender, I. 1988. The State Electricity Commission 275KV Transmission Line Between Heywood and the South Australian Border – Archaeological Survey. Unpublished report to SEC.
- Feldman, R. 2003. Tullich Borefield, Casterton. Cultural Heritage Assessment. Unpublished report to Glenelg Region Water Authority.
- Feldman, R. 2004. Sandford-Merino Pipeline. Cultural Heritage Assessment. Unpublished report to Glenelg Region Water Authority.
- Feldman, R. 2005a. Sandford-Merino Pipeline. Archaeological Sub-surface Testing Programme. Unpublished report to Glenelg Region Water Authority.
- Feldman, R. 2005b. Sandford-Casterton Pipeline. Archaeological Survey and Sub-surface Testing Programme. Unpublished report to Glenelg Region Water Authority.
- Heritage Consulting Australia. 2001. Southern Gas Pipeline (Victorian Section) Cultural Heritage Assessment. Unpublished report to NSR Environmental Consultants P/L and GPU Australia Ltd.

APPENDIX 1

CURRENT STATUTORY REGULATIONS

(as of 10th January, 2008)

Aboriginal Heritage Act 2007 (Victoria)

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Commonwealth)

Heritage Act 1995

Australian Heritage Commission Act 1975

Heritage Overlay of Local Government Planning Schemes, *Planning and Environment Act 1987*

Australian Heritage Council Act 2003

Environment Protection and Biodiversity Conservation Act 1999

The Aboriginal Heritage Act 2006

It should be noted that new Victorian legislation for Aboriginal heritage protection (the *Aboriginal Heritage Act* 2006) passed through State Parliament on May 9th 2006, and commenced operation on May 28th 2007.

The new act will continue to provide blanket protection for all Aboriginal heritage sites, places or items in Victoria, however the mechanisms by which Aboriginal heritage values are assessed, managed and protected will change.

The main aspects of the new Act in relation to the development process are as follows:

- An *Aboriginal Heritage Council* (AHC) has been appointed by the Minister, Aboriginal Affairs Victoria, made up of 11 Victorian Aboriginal people.
- Aboriginal community groups with traditional interests in cultural heritage are to apply to the AHC for registration as a *Registered Aboriginal Party* (RAP). RAPs will have the role of endorsing *Cultural Heritage Management Plans* (CHMP) within a given area of interest. There may be two or more RAPs for an area, provided it does not hinder the operation of the legislation.
- Under Section 48, a developer ('sponsor') may be required to submit a CHMP before the issue of a statutory authority by local government or other agency ('decision maker'). A CHMP must be registered with the Secretary, Victorian Communities (AAV), and all relevant RAPs notified in writing. If an RAP does not respond, AAV will act in lieu. A CHMP will contain details of research, field evaluation, consultation and management provisions in regard to the Aboriginal heritage of an area at risk from a development. A *Cultural Heritage Advisor* must be appointed to assist in the preparation of a CHMP. It is the role of an RAP to approve a CHMP if it meets prescribed standards.
- A CHMP will not be considered approved unless it has been approved by all relevant RAPs.

The regulations accompanying the Act specify when a CHMP will be required by law, and prescribe minimum standards for the preparation of a CHMP (Section 53). The approved form for CHMPs specifies the format in which a CHMP should be prepared by a sponsor in order to comply with the Act and the Regulations, and is an approved form under section 190 of the Act. The regulations have not been finalised to date, but their draft content has not been issued to stakeholders.

Other provisions of the Act include *Cultural Heritage Permits* (Section 36), as required for other works affecting Aboriginal heritage sites, *Cultural Heritage Agreements* (Section 68), in respect to land containing an Aboriginal heritage site, *Inspectors* (Part 11) appointed to enforce the Act, *Cultural Heritage Audits* (Section 80) to be ordered by the Secretary in relation to compliance with a CHMP and a VCAT appeals procedure.

The Aboriginal Heritage Regulations 2007 outline the criteria for determining when a CHMP is required (Part 2), standards for the preparation of a CHMP (Part 3) and Cultural Heritage Agreements (Part 4) and fees payable under the Act (Part 5).

For More Information Contact:

Aboriginal Affairs Victoria
GPO 2392V
Melbourne, VIC 3001
Ph: 1300 888 544
Fax: 03 9208 3292
Website: www.dvc.vic.gov.au/aav.htm

Victorian Historical Cultural Heritage Legislation

The following sections outline the legislative constraints placed on the project by the presence of registered historical archaeological sites and historical places within the study area.

Places on the Victorian Heritage Inventory and Victorian Heritage Register

This section outlines issues specifically relating to the *Heritage Act* 1995 with regard to the archaeological record, and does not deal with wider heritage planning issues.

All archaeological sites in Victoria are protected under the provisions of the *Heritage Act*, irrespective of significance (*Heritage Act* 1995 s.127). The Victorian Heritage Inventory consists of a list of known archaeological sites and places of generally less than State significance, and does not imply any limit in legal protection or Heritage Victoria's management interest for as yet unidentified archaeological sites. It should be noted that places of State significance may be contained within the Heritage Inventory, although these places have not yet been nominated for inclusion on the Victorian Heritage Register.

Any works affecting sites listed on the Victorian Heritage Inventory must proceed through a consent process in consultation with Heritage Victoria. The Consent process for an application to damage an item listed on the Heritage Inventory consists of three, and potentially four distinct stages. It should be noted that Stage 1 outlined below is not in itself a statutory obligation, but provides a framework within which Heritage Victoria can assess the potential impact of an application made under the *Heritage Act* 1995. It should be noted that it is an offence to excavate, damage or disturb relics and sites regardless of their inclusion on the Heritage Inventory.

- *Stage 1: Desktop Assessment / Predictive Modelling* – the basic purpose of this stage, is to provide information regarding the potential archaeological values of a location or site, and outline a process which enables the effective management of these values. The usual structure of this stage comprises a background history of the site, which is then utilised to assess its archaeological potential and provide predictive statements in terms of preservation, significance and location of archaeological materials within the site.
- *Stage 2: Consent to Excavate (Testing the Predictive Model)* – On completion of the desktop assessment, any location with predicted archaeological values will require at least one stage of excavation to determine the full character, extent, preservation and significance of archaeological deposits. This will provide quantified field data that will enable Heritage Victoria to effectively assess an application for Consent to Damage.

A Consent to Excavate must be made using a pro forma application with supporting documentation (usually the desktop assessment report) outlining the area of impact, purpose of the investigation, proposed methodology and the details of qualified personnel undertaking the investigation. A \$225 fee applies to each application. The application must be signed by the proponent of the proposed works, as well as the land owner / designated manager *and* occupier of the site. One month minimum is usually required to enable the assessment of the application and issuing of a consent.

In processing a Consent to Excavate, Heritage Victoria must consider the likely costs of conserving any artefacts that are uncovered during excavation. Heritage Victoria will calculate a conservation bond based on the scale and the scope of the works, in comparison to the predicted type, density and preservation of artefacts. This bond must be paid in advance by the proponent in order to validate the Consent. On completion of the project, Heritage Victoria will return any unused funds, less 15% administrative costs. Artefact conservation bonds required for test excavations at this stage are generally in the order of \$6000-\$7000, however this may vary should on ground indications suggest that more funds should be allocated.

- Stage 3: Consent to Damage/Destroy (Subject to Controlled Archaeological Excavation) – A Consent to Damage/Destroy will legally allow the specified works to proceed, providing the conditions of the Consent are adequately addressed. The precise conditions will vary, however they can typically stipulate:
 1. Preservation of Archaeological information
 2. Controlled archaeological excavation of specified areas.
 3. Archaeological monitoring of specified areas (termed a ‘Watching Brief’).
 4. A full written report of all archaeological investigations including an inventory of artefacts, as well as copies of all field documentation.
 5. That the works may be open to inspection at any time by Heritage Victoria.

Consent to Damage will only be granted if sufficient information has been presented to Heritage Victoria that the proposed development no longer poses a threat to significant archaeological fabric or deposits.

The application procedure and likely conditions are as per Stage 2, though the conservation bond will be higher, reflecting the expanded nature of the works. Unused funds from Stage 2 may be rolled over into this second bond.

A Consent to Damage/Destroy must be made using a pro forma application with supporting documentation outlining the area of impact (generally speaking this will comprise the report detailing the results of the testing phase), the nature of the works and the details of qualified personnel involved in the investigation. A fee of either \$420 or \$635 applies to each application, depending on the percentage of the site to be damaged. The application must be signed by the proponent of the proposed works, as well as both the land owner / designated manager *and* occupier of the site. Allow four weeks for processing, though generally applications are approved in a shorter period of time.

An application for Consent to Damage/Destroy that is not supported by adequate documentation, or does not address all the issues of concern to Heritage Victoria, may be processed as a Consent to Excavate only, with the requirement for a further consent application to be made following the completion and adequate documentation of any archaeological works.

Depending on the results of the Stage 2 test excavation, additional conditions may be placed on the Consent outlining requirements for detailed analysis of the artefacts and the interpretation of the results in a wider public arena.

A violation of a condition in a Consent to Excavate or Damage could result in the Consent being withdrawn, potentially resulting in a fine of up to \$10,000 per offence committed in breach of the legislation, levied on a daily basis.

‘D’ Listed Sites

As discussed above the Victorian Heritage Inventory serves primarily as a listing of historical archaeological sites. All sites listed on the Inventory are afforded formal legislative protection. In the past a wide variety of historical sites and places have been listed on the Inventory, not all of which are demonstrably archaeological in nature. The absence of an archaeological component may be due to a number of factors. The nature of the historical activities carried out at a specific location may not have been conducive to the development of archaeological deposits, or later activities may have substantially removed most of the archaeological evidence relating to the earlier occupation of the site. In the latter case it may be more appropriate to evaluate and record the place through architectural, historical or other specialist methods as opposed to strictly archaeological methods.

In order to allow the Inventory to function as intended, as a listing of archaeological sites, Heritage Victoria and the Heritage Council have undertaken to remove sites that do not have a readily apparent archaeological component from the Inventory. Sites which fall into this category have been given a 'D' listing as opposed to the customary 'H' listing. The 'D' listing of sites applies equally to newly recorded sites and to sites registered prior to the implementation of the 'D' list category. In addition, sites formerly listed as 'H' sites but which have undergone legislatively compliant archaeological investigations including a Consent to Damage/Destroy are given a 'D' listing as and when all archaeological components of the site have been removed or destroyed. The 'D' listing is therefore intended as a Heritage Victoria maintained database of site locations, which do not have a clearly identifiable archaeological component.

The main implications of the 'D' listing in terms of cultural heritage management relate primarily to the absence of a requirement to obtain a consent to undertake works that will affect these sites. As such works affecting 'D' listed sites can take place without the involvement of or consultation with Heritage Victoria. However, as discussed above all archaeological materials are protected under the terms of the *Heritage Act* 1995, and should any archaeological materials be exposed in the location of a 'D' listed site these materials are automatically afforded full legislative protection. In this event Heritage Victoria should be notified and a consent process initiated.

Sites and Places listed on the Register of the National Estate

The Australian Heritage Council maintains a listing of sites and places, the Register of the National Estate, considered to be of national or greater significance. Places listed include natural, indigenous and historic places. While places listed can be under private, state or institutional ownership only the Commonwealth is legislatively restricted in the activities it can take out in relation to listed places.

Section 30 of the *Australian Heritage Council Act* 2003, prohibits the Commonwealth Government from undertaking any action or works which would adversely affect a place in the Register, unless no feasible and prudent alternatives exist. The restrictions thus placed on the Commonwealth may affect the decisions of other government or business organisations where a Commonwealth decision is required.

Sites and Places on Local Government Planning Scheme Heritage Overlays.

The Heritage Overlays of Local Government Planning Schemes, under the *Planning and Environment Act* 1987, list a wide variety of places and sites considered to have either intrinsic heritage significance or contributory significance within the local government area.

The primary purpose of the Heritage Overlay of Local Government Planning Schemes is to implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies, to conserve and enhance heritage places of natural or cultural significance, to conserve and enhance those elements which contribute to the significance of heritage places, to ensure that development does not adversely affect the significance of heritage places, and to conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The requirements of heritage overlays apply to heritage places specified in the heritage overlay schedules. A heritage place includes both the listed heritage item and its associated land. Places listed on the heritage overlay may require permits for a variety of works impacting on either their fabric or appearance.

A permit is required to:

- Subdivide or consolidate land.
- Demolish or remove a building.

- Construct a building.
- Externally alter a building by structural work, rendering, sandblasting or in any other way.
- Construct or carry out works.
- Construct or display a sign.
- Externally paint a building if the schedule to this overlay identifies the heritage place as one where external paint controls apply.
- Externally paint an unpainted surface.
- Externally paint a building if the painting constitutes an advertisement.
- Internally alter a building if the schedule to this overlay identifies the heritage place as one where internal alteration controls apply.
- Remove, destroy, prune or lop a tree if the schedule to this overlay identifies the heritage place as one where tree controls apply.

Applications for permits for works such as these must be submitted to the relevant local government authority.

Sites and Places listed on the Register of the National Trust

The National Trust is a non-legislative body that maintains a listing of places and sites of local, state and national significance. The listing of a place by the National Trust does not constitute legislative protection for that place although the Trust is an active advocate for the inclusion of places of appropriate significance being listed by relevant legislative bodies, in the case of places of State significance this comprises the Heritage Council, and in the case of places of local significance the relevant local government authority.

Environment Protection and Biodiversity Conservation Act 1999

While most of the new cultural heritage obligations under the EPBC Act relate to the activities of Commonwealth Government departments and agencies it is an offence for any person (including VicRoads) to take an action that has, will have or is likely to result in a significant impact on:

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

APPENDIX 2

SUGGESTED PROCEDURE

IN THE EVENT

AN ABORIGINAL HERITAGE SITE

IS IDENTIFIED

DURING CONSTRUCTION

A. Management of Aboriginal Cultural Heritage Found During Works

If Aboriginal places or objects found during works the following steps must be applied:

- The person who identified the find will immediately notify the person in charge of the activity.
- The person in charge of the activity must then suspend any relevant works at the location of the discovery and within 5 m of the relevant site extent and isolate the find via the installation of safety webbing, or other suitable barrier and the material to remain *in situ*.
- Works may continue outside of the 5 m barrier.
- The person in charge of works must notify the Cultural Heritage Advisor (CHA) and the Secretary (AAV) of the find within 24 hours of the discovery.
- The CHA must notify the RAP(s) or other agreed Aboriginal stakeholder(s) within 24 hours of the discovery and invite RAP(s) or other agreed Aboriginal stakeholder(s) to inspect the find.
- Within 24 hours of notification, a CHA is to attend the site and evaluate the find to determine if it is part of an already known site or should be registered as a new site and to update and/or complete site records as appropriate and advise on possible management strategies.
- Enable RAP(s) or other agreed Aboriginal stakeholder(s) to inspect site within 24 hours of notification and remove/rebury any cultural heritage material found.
- Within a period not exceeding three (3) working days the Sponsor, in consultation with the CHA, RAP or other agreed Aboriginal stakeholder, shall, if necessary, apply for a Cultural Heritage Permit (CHP) in accordance with Section 36 of the *Aboriginal Heritage Act 2006*.
- If a CHP application is lodged, works may only recommence within the area of exclusion following the issue of a CHP and compliance with any conditions.
 - When the appropriate protective measures have been taken;
 - Where the relevant Aboriginal cultural heritage records have been updated and/or completed;

In the case of the discovery of human remains, separate procedures relating to the discovery of human skeletal remains must be adhered to (see below).

B. Custody and Management of Aboriginal Cultural Heritage Recovered

- Any Aboriginal cultural heritage recovered or salvaged from the activity area remains the property of the RAP(s) or other agreed Aboriginal stakeholder(s). Any such recovery or salvage will be agreed to and overseen by a RAP(s) or other agreed Aboriginal stakeholder representative(s). In any such instance it will be the responsibility of the Cultural Heritage Advisor to:
 - Catalogue the Aboriginal cultural heritage;

- Label and package the Aboriginal cultural heritage with reference to provenance; and
- With the RAP(s) or other agreed Aboriginal stakeholder(s), arrange storage of the Aboriginal cultural heritage in a secure location together with copies of the catalogue and assessment documentation.

C. The Management of the Discovery of Human Remains

Although this evaluation has determined that there is only a low risk of impacting an Aboriginal burial during the implementation of the activity, given the nature of the landforms and archaeological deposits within the activity area, it is nevertheless an extremely important consideration of any development.

The following steps must be taken if any suspected human remains are found in the activity area:

1. Discovery:

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

2. Notification:

- Once suspected human skeletal remains have been found, the Coroners Office and the Victoria Police must be notified immediately;
- If there is reasonable grounds to believe that the remains could be Aboriginal, the DSE Emergency Co-ordination Centre must be immediately notified on 1300 888 544; and
- All details of the location and nature of the human remains must be provided to the relevant authorities.
- If it is confirmed by these authorities that the discovered remains are Aboriginal skeletal remains, the person responsible for the activity must report the existence of the human remains to the Secretary, Department of Victorian Communities in accordance with s.17 of the *Aboriginal Heritage Act 2006*.

3. Impact Mitigation or Salvage:

- The Secretary, after taking reasonable steps to consult with any Aboriginal person or body with an interest in the Aboriginal human remains, will determine the appropriate course of action as required by s.18(2)(b) of the Act.
- An appropriate impact mitigation or salvage strategy as determined by the Secretary must be implemented (this will depend on the circumstances in which the remains were found, the number of burials found and the type of burials and the outcome of consultation with any Aboriginal person or body).
- While opportunities to avoid impacting on a burial that may be discovered during the activity may be limited, it is important to explore opportunities to minimise disturbance to the remains through unnecessary exposure or disinterment.

4. Curation and further analysis:

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

5. Reburial:

- Any reburial site(s) must be fully documented by an experienced and qualified archaeologist, clearly marked and all details provided to AAV;
- Appropriate management measures must be implemented to ensure that the remains are not disturbed in the future.