



Cultural Heritage Management Plan Guidelines

Guidelines under section 143
of the *Aboriginal Heritage Act 2006*



Premier
and Cabinet

Acknowledgement of Country

The Victorian Government acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of Country.

We respectfully acknowledge all First Peoples of Victoria and celebrate their enduring connection to land, skies and waters. We thank First Peoples for their care of Country and contributions to Victorian communities. We honour and pay our respects to First Peoples' Elders past and present.

Image credit

Cover image: Gariwerd (Grampians National Park), Country with shared connection to multiple Traditional Owner groups. Credit Robert Blackburn, courtesy Visit Victoria.

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1. Purpose and background

The Guidelines will help everyone involved in Victoria’s CHMP system navigate their way to better cultural heritage management practice and economic benefits for the private sector and for Victoria. While they are not binding, they assist all participants to better understand CHMP processes.

Since 2007, when the *Aboriginal Heritage Act 2006* (Vic) (the Act) came into force, priorities, methods and knowledge have continued to evolve as the system has grown. Years of field experience by participants across the system has informed which methods for minimising harm we believe to be most effective. Our understanding of Aboriginal cultural heritage in the Victorian landscape has significantly advanced – how should this inform the way we complete CHMPs now? Appreciation for intangible values has increased – how can this be best reflected in CHMP practice and conditions? Sponsors, Registered Aboriginal Parties (RAPs) and Heritage Advisors (HAs) are all operating in a mature system that has grown significantly since 2007.

While significant reforms were implemented in 2016, practices have emerged, such as expansive subsurface testing and salvage demands, which are not always consistent with the intended objectives of the system and which impact its social licence. It is appropriate now to provide guidance supporting greater consistency of approach and process.

In 2024 the Department of Premier and Cabinet (DPC) reviewed the CHMP system and recommended a CHMP sector forum to discuss and agree on improvements. In 2025 CHMP sector participants and decision makers came together at this forum to discuss the potential for new ‘CHMP Guidelines’, setting out shared expectations and guardrails that increase consistency and certainty across what is a constantly evolving field of understanding. The sector came together at a second forum in March 2026, and people provided written submissions with ideas for reform. These Guidelines emerged from those discussions, submissions and other individual and collective exchanges between all sector participants, and from DPC experience as the regulator of the system. DPC has not directly addressed everyone’s suggestions, but participants should see many of their ideas reflected and where not, see reasons why.

The Guidelines’ aim is to help everyone engage with the system efficiently, effectively and fairly. They focus on technical CHMP development and preparation, interactions and conduct. While focused on areas of the state where RAPs have been appointed, they are also intended to operate in non-RAP areas where DPC exercises statutory powers in relation to CHMPs.

Finally, appendices explain some of the newer processes, underlying philosophies and legal justifications, and what should be expected in greater detail.

How do these guidelines improve heritage protection?

This is, of course, the fundamental reason for the Act and its processes [see Purposes and Objectives provisions of the Act, esp. sections 1(a); 3(a), (d)]. The Guidelines seek to improve heritage protection both directly and indirectly.

Directly, these Guidelines seek to:

- elevate RAP engagement earlier in the CHMP process than currently
- focus the most work, time and cost on protecting heritage of high relative significance
- for the first time explicitly ask that intangible heritage values be considered in the CHMP
- allow for the consideration and documentation of the sensitivity of activity areas
- request survey, excavation and salvage strategies be explicitly agreed and documented
- propose Indigenous data agreements to protect sensitive cultural information
- promote CHMP conditions proportionate to cultural heritage significance
- promote less salvage and more targeted excavation, limiting disturbance to heritage.

The Guidelines seek to strengthen the support and legitimacy of the CHMP system among all stakeholders and the general public. By focusing on heritage of high relative significance and improving documentation throughout the system, more trust will be built between the users of the system and there will be a greater appreciation of cultural heritage from everyone. The Guidelines seek to strengthen the importance and role of self-determination in decision-making through measures designed to increase the confidence and support for the CHMP process by all those involved.

The Victorian CHMP system has been in place since 2006 delivering nation leading arrangements for the protection and management of Aboriginal cultural heritage. After 20 years of operation there are opportunities to strengthen the system to ensure it remains robust, effective and well supported for the next 20 years.

Links between specific proposals and the Act's Objectives are indicated in the text where relevant.

How do these guidelines improve timeliness and efficiency of assessment?

The Act has the objective to promote timely and efficient assessments of activities which could harm Aboriginal heritage [see esp. section 3(g)]. As the only objective of the Act specifically about heritage assessment, this is also an explicit primary objective of the CHMP process.

These Guidelines address the timeliness and efficiency of the CHMP system by:

- promoting the early alert of any significant cultural and intangible heritage matters via activity area statements of sensitivity, so they do not become a late and costly consideration or a reason for court action or appeals to the Commonwealth
 - requiring written agreements for standard and complex assessments and salvage to increase certainty and maximise discussion, cooperation and agreement before fieldwork commences
 - requiring explicit and documented reasons for excavating and salvage to ensure best practice
 - noting that the subsurface testing of low-density surface material is not necessary unless reasons are presented and documented on why sub surface material of particular significance is expected
 - requiring CHMP conditions be linked directly to the significance of places, ensuring conditions are proportionate to the cultural value of the places involved
- requiring inductions to be tailored and separated into cultural and site-specific workshops and being clear that when no heritage is found an induction should not be required
 - establishing explicit decision points and offering assistance or dispute resolution for each
 - emphasising salvage as a last resort condition.

The overall intent of the Guidelines is to promote intensive archaeological investigation where it is warranted. While the Guidelines anticipate less complex assessment and salvage, they also contemplate more discussion and negotiation. In some cases, increased certainty about process and the reasons for decisions will create more discussion time and alternative dispute resolution, which supports RAPs desire greater engagement and involvement in CHMP design; This should be balanced by limiting excavation and salvage to maintain the efficiency of the system. DPC regards this trade off as acceptable, reasonable and consistent with the Act's objectives.

2. Principles

- 1 Self-determination and free, prior and informed consent underpin Victoria's CHMP system.
- 2 RAPs, as Traditional Owner representative organisations, are the primary CHMP decision-makers.
- 3 The principal objective of the CHMP system is to protect and manage Aboriginal heritage by avoiding harm.
- 4 The CHMP process supports appropriate investment, land use and development consistent with planning policy and the State Government's strategic objectives.
- 5 Heritage Advisors play the lead role designing the method and approach to heritage work and producing reports of high quality to adequately inform RAPs when considering a CHMP for approval.
- 6 All parties will act in good faith with each other throughout the CHMP process and make use of dispute resolution processes before escalating matters to the Victorian Civil and Administrative Tribunal (VCAT) or the courts, where appropriate.

3. Obligations

These are the minimum obligations for all participants and decision makers in the CHMP process:

- Sponsors, RAPs and HAs will engage with each other in good faith
- Sponsors and HAs will respect RAP expertise and decisions and follow available processes to resolve disputes early and respectfully
- Sponsors and RAPs will respect HA expertise and the advice they provide
- Sponsors and HAs will respect the time reasonably required for RAPs to respond and coordinate CHMP activities, noting that the Act includes timeframe requirements for different steps of the CHMP process
- HAs and RAPs will respect the time pressures and fiscal constraints within which Sponsors must operate
- Sponsors and HAs will engage and consult early, appropriately and thoroughly with RAPs
- Sponsors will engage relevant expertise to provide the best information to inform RAP decisions
- HAs will work to best practice in their respective fields and undertake relevant and regular professional development
- RAPs, HAs and Sponsors will engage with dispute resolution processes fully and in good faith
- Decision makers will be guided by cultural knowledge, best practice research and investigation
- All CHMP participants and decision makers will treat the information provided by each other consistent with relevant laws and principles dealing with the provision, transmission and storage of information – particularly when dealing with Indigenous cultural knowledge and intellectual property.
- Government will effectively, efficiently and fairly regulate the CHMP process so the principles and obligations are achieved
- The Victorian Aboriginal Heritage Council will oversee the operations of RAPs so the principles and obligations are achieved.

4. Guidance summary statements

Aboriginal intangible values relating to a place and cultural landscapes

Physical places and objects are critical for understanding the human past. However, it is the relationship between these places and Traditional Owners which make these places significant in the first place. Where known, and subject to Traditional Owner permissions, cultural heritage management plans should document, integrate and consider the cultural elements which make places significant and factor these into rationales for management conditions.

Cultural heritage significance

CHMP conditions should be explicitly linked to the cultural heritage significance of the Aboriginal cultural heritage which is the subject of the condition.

CHMP role demarcation

Participants in the CHMP process need to be mindful of their own powers, responsibilities, expertise, rights and those of others. RAPs have the power to approve or refuse CHMPs, HAs have the duty to provide Sponsors with their own best possible advice and information, Sponsors are entitled to expect high quality work within reasonable costs and timelines but factor in the possibility that significant Aboriginal cultural heritage may affect delivery.

Isolated and low-density artefact scatters, including dispersed shell midden material in coastal environments

Isolated and low-density stone artefact distributions, and dispersed shell midden material in coastal environments, should be recorded, but in most cases should not require further subsurface investigation and may be managed via conditions and contingencies.

Complex assessment in such cases may still be desirable and reasonable in the development of predictive models, in order to best understand the likely heritage of the activity area. But this should not normally be undertaken to investigate isolated or low-density artefact scatters. Decisions to either proceed to complex assessment, or not, should be reasoned and documented in the CHMP.

CHMP contingencies for the discovery of Aboriginal cultural heritage during the activity

The Aboriginal Heritage Regulations 2018 (the Regulations) require CHMPs to include contingency plans for the discovery of Aboriginal cultural heritage during works. Contingency plans should balance the need to adequately manage and avoid harm to Aboriginal cultural heritage unearthed during



Deen Maar Indigenous Protected Area. Eastern Maar and Gunditjmara Country.

the activity with minimising unnecessary costs and delays to the Sponsor, plus other matters required by section 61 and item 13 of schedule 2 to the Regulations.

Contingency plans should be consistent with DPC's example contingencies published on the First Peoples - State Relations (FPSR) website¹.

RAP Right of Refusal under Section 63(4) on the basis of Section 61 matters

RAPs are empowered under the Act to refuse to approve CHMPs when they are not satisfied the measures proposed are adequate. The RAP should consider the measures themselves and the cultural heritage significance of the Aboriginal heritage to be impacted when making this determination.

Salvage

Salvage should only be a condition of a CHMP when there is no other way (including preservation in situ) to minimise or prevent harm occurring to Aboriginal cultural heritage of particular cultural heritage significance, such as dense deposits of cultural material that includes temporal and contextual features. Salvage must be guided by clear reason and purpose. Salvage solely for the purpose of artefact collection is never an appropriate CHMP condition.

CHMP induction requirements

CHMP inductions should be conducted as two distinct presentations with different purposes in mind. The first is a cultural awareness induction, the second is a site induction. Only inductions necessary for protecting and managing the Aboriginal heritage of the activity area need be included as conditions in a CHMP. Note that an induction should not be required when no heritage has been identified during the assessment.

¹ Appendix 1 of the [Guide to preparing a Cultural Heritage Management Plan](https://www.firstpeoplesrelations.vic.gov.au/cultural-heritage-management-plan-resources-heritage-advisors)
<<https://www.firstpeoplesrelations.vic.gov.au/cultural-heritage-management-plan-resources-heritage-advisors>>




5. CHMP procedures



Moyjil (Point Ritchie). Eastern Maar Country.

Help is available

At every stage of the CHMP process, from before the CHMP begins until its completion, including complying with its conditions, DPC is available to assist. Please contact us if you have any questions, concerns or issues at any stage.

 **Email**

aboriginal.heritage@dpc.vic.gov.au

 **Phone**

1800 762 003

Current practice alternatives

Any of the following steps may be combined for convenience if agreed. For example, meetings to discuss standard and complex assessment plans could be combined into a single meeting if it is recognised early that complex assessment will likely be required after a standard assessment. Meetings to discuss standard and complex assessment results could also be combined with meetings about CHMP conditions. If current CHMP processes work for your agency, DPC does not expect you to adopt these Guidelines word for word. However, DPC does expect all CHMP steps, resolutions and decisions to be clearly documented in the CHMP.

Step 1 – Pre-preparation

Sponsors

Determine if a CHMP is required for a project.

Self-assessment

In most cases, the decision about whether a CHMP is required is clear and is essentially made for Sponsors by the Regulations.

Note also that CHMPs are required when the Minister directs one be prepared (section 48), when an Environment Effects Statement is to be prepared (section 49), and when an impact management plan or comprehensive impact statement is required (section 49A)

As an initial step, consult the **Mapping platform for strategic planning** <<https://ichl.achris.vic.gov.au/stratplan.html>> (the online mapping platform for Strategic Aboriginal Heritage Assessments [SAHAs]). This will alert Sponsors to important cultural heritage landscapes and values and indicate likely impacts.

Key steps:

1. Determine if your activity is an exempt activity. Look at the Regulations Part 2, Division 2. If your activity is described there, it is exempt and you do not need a CHMP.
2. If your activity is not described in Part 2, Division 2, determine if your activity is planned for an area which includes an area of cultural heritage sensitivity. This is defined in Part 2, Division 3 of the Regulations. Look at the mapping resources available on **Aboriginal Cultural Heritage Register and Information System (ACHRIS)** website <<https://achris.vic.gov.au/#/onlinemap>>. Zoom in or type your address and check. Double check with the list of areas in Division 3 of the Regulations. Remember the list in the Regulations is **definitive**, the mapping is **indicative**.
3. If your activity is in an area described in Part 2, Division 3 of the Regulations, determine if it is a listed high impact activity. Look at the list in Part 2, Division 5. If your activity is listed here, then it is a high impact activity.

If your activity is described in **both** Part 2, Divisions 3 and 5, then you must have a CHMP approved before your activity can commence.

If your activity is not described in **either** Divisions 3 or 5, or it is described in Part 2, Division 2, you do not need to do a CHMP.

Sponsors can ask the relevant RAP or RAPs at this stage for their advice – and some of the assessment processes will engage RAP expertise anyway. DPC may assist, but is unable to provide a definitive answer outside the preliminary Aboriginal heritage test (PAHT) process.

Sponsors may also choose to do a CHMP voluntarily. Sponsors might do this to obtain certainty for projects when a CHMP is not required by the Regulations, but an area is known as being sensitive for Aboriginal cultural values. Sponsors may also choose to pursue a voluntary CHMP where their project has a very low risk tolerance, as part of building good relations with a RAP, or building a wider social licence to operate. Note, while doing a CHMP in these circumstances is voluntary, all CHMP conditions are mandatory.

The Guidelines describe a RAP pre-application meeting. Now is the time to decide whether to do that before you decide if a CHMP is needed, or wait until this question is answered. It is more beneficial for larger projects to think about doing this now.

Preliminary Aboriginal heritage test (PAHT)

If a Sponsor is still not sure whether an activity requires a CHMP, they can choose to submit a PAHT to obtain the Department's certification as to whether the Sponsor's assessment that a CHMP is either required or not required is correct. This framework is set out in Part 4, Division 2A of the Act.

PAHTs are essentially statutory due diligence tests. They may involve the same level of research normally undertaken for a due diligence assessment, but the PAHT comes with a statutory certainty not available for due diligence assessments.

PAHTs are certified by DPC, and are regulated, with set fees, steps and forms to complete and lodge. A decision period of 21 days applies.

A PAHT requires a Victorian Aboriginal Heritage Register (VAHR) search, which a Sponsor can only access for their land, but which a HA or a RAP can access more broadly for preparing such assessments as a matter of course. DPC advises engaging a HA (some RAPs also offer this service) to do a PAHT.

While the Act allows a Sponsor to lodge a PAHT themselves, this is not generally advisable. Sponsors may also consult with the relevant RAP or RAPs to assist complete a PAHT. Sponsors can find out more about PAHTs on the [First Peoples State Relations website](https://www.firstpeoplesrelations.vic.gov.au/preliminary-aboriginal-heritage-test) <<https://www.firstpeoplesrelations.vic.gov.au/preliminary-aboriginal-heritage-test>>.

Due diligence assessment

DPC does not recommend due diligence assessments not required by the Act.

Sponsors may engage a HA to conduct a due diligence assessment, however, due diligence assessments are simply advisory. Due diligence assessments carry no regulatory weight, do not follow any specified process, and only serve the purpose requested. They are essentially an informal approach to early heritage assessment. They may be useful as a scoping resource as part of an early environmental due diligence assessment, but may also entail legal risks.

There are no regulated fees or timelines associated with due diligence assessments, as they are not a process regulated by the Act. However, if a survey for Aboriginal cultural heritage is a component of a due diligence assessment, section 34A (which sets out requirements for Aboriginal heritage surveys) **must** be followed.

When engaging a HA to undertake a due diligence assessment, it is important to clearly define its scope, as additional obligations outside the CHMP process (such as section 34A compliance) may apply.

What should Sponsors do when they know they will be preparing a CHMP?

The bigger the proposal, the earlier Sponsors should engage with RAPs and a HA.

Large activities

Sponsors thinking about larger activities such as large-scale residential subdivision development, major infrastructure development, energy development or natural resource development should contact all the relevant RAPs in the area, and/or DPC if no RAP is appointed for the activity area, at the earliest stage of planning a proposal, to organise a pre-application meeting.

For residential developers, infrastructure, energy and natural resource projects, this will be the conceptual and feasibility stages. Engagement is strongly recommended prior to the planning or other permit application and approval stage. While doing feasibility, site analysis, initial design and project pre-application meetings with local government, a pre-application meeting with the RAP is advisable. It may be desirable to engage a HA to assist – noting one may have already been engaged to assist with determining whether a CHMP is needed – but this is not mandatory.

You may also do a RAP pre-application meeting before you determine whether you will do a CHMP.

At the RAP pre-application meeting:

- Describe your intentions and concept
- Outline what you hope the proposal will do for the broader community and for the Aboriginal community in particular
- Ask the RAP if there are any important cultural heritage landscapes², major concerns with the concept itself or the likely physical impact on the landscape or other impacts on cultural values
- Refer to the [Mapping platform for strategic planning](https://ichl.achris.vic.gov.au/stratplan.html) <<https://ichl.achris.vic.gov.au/stratplan.html>> (the online mapping platform for SAHAs) and discuss relevant information from any SAHA
- Ask the RAP whether they think the project is likely to require complicated heritage assessment
- Ask the RAP about their capacity to engage and respond, your expectations and wishes, and how you might assist
- Think about harm minimisation strategies now – before the CHMP process begins.

² As identified in any Strategic Aboriginal Heritage Assessment or otherwise known

Small activities

For smaller projects, such as constructing three or more units on a single block or a single industrial development, Sponsors who know they are required to do a CHMP can engage the RAP later, but ideally prior to the planning permit application being submitted. You can also contract a HA to conduct this engagement for you.

What to expect during a CHMP?

Sponsors should expect regular contact with their HA and invitations to join RAP project meetings along the way. DPC encourages Sponsors to attend as many meetings with the RAP as possible. The steps outlined here and in [Figure 2](#), should provide Sponsors an indication of what to expect and when.

RAPs

Often the first time a RAP will be aware of an impending project will be receipt of the Notice of Intent to prepare a CHMP under section 54 of the Act. This is often very late, particularly for larger projects, for the RAP to be effectively engaged and for complex heritage matters to be revealed. A Notice of Intent should ideally be submitted shortly after it becomes clear to a Sponsor that a CHMP will be required, given section 54(2) requires the Notice must be given prior to commencing a CHMP.

RAPs should form formal relationships with their relevant local governments and be ready to accept more questions about proposed developments from local planning authorities. New reforms to the *Planning and Environment Act 1987* will alert RAPs to forthcoming development proposals. RAPs will need to use these to plan for potential engagement with Sponsors.

Engage with Sponsors if pre-application meetings are organised. This is the first and best opportunity for the RAP to outline concerns and broad cultural values and important cultural heritage landscapes to the Sponsor and the HA. Even if a CHMP is not eventually required, it will serve to inform the Sponsor about potential impacts.

HAs

HAs will likely not be aware of any proposed activities potentially engaging the Act until they are contacted by a Sponsor, RAP or local government with questions. HAs should advise Sponsors to attend pre-application meetings particularly if proposed projects are large or complex.

Step 2 - CHMP initiation and desktop assessment

Once a CHMP is determined by the Sponsor as the desired course of action, whether mandated by the Act, Regulations or voluntary, the CHMP process is initiated.

Engaging a Heritage Advisor

Now is the time for the Sponsor to lodge a Notice of Intent to prepare a CHMP (NoI) and engage a HA to commence the CHMP.

Sponsors can find a HA on the [First Peoples State Relations website](https://www.firstpeoplesrelations.vic.gov.au/engage-a-heritage-advisor) <<https://www.firstpeoplesrelations.vic.gov.au/engage-a-heritage-advisor>>. DPC recommends obtaining at least three competitive quotes for your project.

When engaging a HA, in addition to requesting the quotes, include time and cost estimates, and make sure to ask and consider the following:

- Has the HA worked in this area with this RAP before and do they have good professional relations with them?
- Has the HA worked on similar activities in this industry sector before?
- How many CHMPs has the HA had approved and refused?
- How often has the HA had CHMPs approved without resubmissions?
- Does the HA have experience or expertise in assessing impacts on Aboriginal intangible cultural heritage?
- Does the HA have experience with resolving disputes either before or at VCAT?

This can provide the Sponsor with a good indication of the experience, conduct and efficiency of a HA on similar projects within the area.

The Notice of Intent and preliminary Statement of Sensitivity for the activity area

- During the 14-day period for responding to an NoI, the RAP may provide a preliminary Statement of Sensitivity for the activity area (see [Appendix 2](#)).

The purpose of the Statement is to alert Sponsors early to major landscape-scale issues which may impact the conduct of the activity, and which Sponsors can use to plan harm avoidance measures early.

If any information is known about important cultural landscapes within the activity area; is relevant; and divulged by Traditional Owners; this information should be included in the statement. RAPs may refer to any available source material, including internal discussion within the Traditional Owner group or groups represented by the RAP. These sources can include information gathered from oral histories, existing previous studies (if any), such as regional studies, previous CHMPs, SAHAs, Cultural Values Assessments (CVAs) and any other cultural knowledge about the activity area and important cultural heritage landscapes.

- This Statement of Sensitivity does not need to be comprehensive** – DPC expects the HA to examine this source material in detail during the desktop assessment stage required by sections 60 and 61 of the Regulations. It is just to alert the Sponsor to any major cultural heritage values early.
- If no information about the cultural heritage sensitivity of the activity area is known or can be divulged, a preliminary Statement of Sensitivity of the activity area does not need to be provided.

- If prepared, the RAP should include any preliminary Statement of Sensitivity in its response to the Nol.
- The Statement should be placed at the beginning of the CHMP report.
- The Statement is preliminary. It does not present a definitive assessment of the cultural heritage sensitivity of the activity area.
- The Statement should be revisited at the final CHMP conditions meeting at **Step 10**, depending on the nature of information revealed during the CHMP preparation, which may result in a final Statement of Sensitivity to be documented in the CHMP. Any difference between the preliminary Statement and final Statement may also help to assess how well the CHMP revealed and dealt with Aboriginal cultural heritage in the activity area.
- The HA may use the Statement to inform the CHMP assessment methods, prepare and complete the desktop assessment and advise whether to recommend a standard assessment in accordance with the Regulations.

The desktop assessment

- Desktop assessments must be compliant with the Regulations and other relevant guidelines, including each of the matters in regulation 61(1).
- It is suggested that a desktop assessment will involve at least one or more consultation meetings with the RAP, as required, including an initial project inception meeting.
- HAs should discuss with RAPs and Traditional Owners if there are Aboriginal intangible values relating to a place present and whether oral history collection is necessary as part of the preparation of the CHMP.
- Where Aboriginal intangible values relating to a place are apparent (see **Appendix 1**) and are able to be divulged, the first meeting

at **Step 3** should be used to formalise an **Indigenous Data Agreement (IDA)**, consistent with international best practice, which sets out how Traditional Owner information is to be treated both during and after the CHMP. This will cover Traditional Owner knowledge obtained throughout the CHMP. The IDA does not have to be included in the CHMP document unless it deals with matters also which must be considered under section 61.

IDAs do not need to be prepared for every CHMP. RAPs may develop generalised, template documents ahead of time which can be applied where an IDA is desirable.

- The desktop assessment will incorporate knowledge obtained from the RAP about relevant important cultural heritage landscapes in addition to the information available about its archaeological significance. This includes information gathered by any SAHAs and CVAs undertaken in the activity area, as well as any additional cultural information volunteered by the RAP during desktop assessment consultation meetings and the preliminary Statement of Sensitivity.

To be clear, the RAP – and particularly, the Traditional Owners within the RAP – determines what Aboriginal intangible values information can and should be divulged in the CHMP, if any.

CVAs are done by the RAP for various reasons and purposes which may not be appropriate for a CHMP, or may not consider Aboriginal places (including landscapes) or objects. The degree to which CVAs may be useful for a CHMP will depend on the activity and the RAP involved. In relation to Aboriginal places or objects, CVA findings should be incorporated into the CHMP to inform understandings of important cultural heritage landscapes or the sensitivity of the activity area, where the RAP agrees this is appropriate.

Step 3 - Discuss desktop assessment with RA

Once finalised, the desktop assessment results and recommendations should be discussed with the RAP.

- The RAP will at this stage have another opportunity to assess and provide suggested improvements to the desktop assessment. The objective is to reach agreement on the information to be presented and on the question about whether a standard or complex assessment is required.

If the desktop assessment results require a standard assessment, proceed to **Step 4**.

If following the desktop assessment, it is determined a complex assessment will be undertaken for some or all the relevant parts of the activity area without a standard assessment, proceed to **Step 7**

If no further assessment is required and the CHMP will be submitted for approval, proceed to **Step 10**.

- The objective of each CHMP meeting is to reach agreement between the RAP and HA on next steps.

While agreement is desirable, the HA has the responsibility to decide whether to advise the Sponsor a standard or complex assessment should occur, and the Sponsor is responsible for ensuring that the correct assessments occur. This is consistent with section 58 of the Act, which provides the HA with the function of assisting a Sponsor to prepare a CHMP and section 53 of the Act, which requires sponsors to ensure the CHMP is prepared in accordance with the prescribed standards and the assessment activities are compliant. Sponsors and RAPs have the right not to agree with HA advice (see [Appendix 3](#)).

However, DPC does not expect a standard or complex assessment would normally proceed without RAP agreement, considering this would violate Principles 1, 2 and 3 (see [Appendix 9](#)). Whilst it is open for the Sponsor to accept this risk, it should be noted if the CHMP is finalised and submitted for evaluation after the desktop stage, it is understood the RAP may refuse to approve the CHMP if it is not satisfied it is adequate to address section 61 matters (see [Appendix 6](#)).

- If the RAP and HA disagree on the question of whether a standard or complex assessment is required, DPC, and alternative dispute resolution are available to assist (see [Appendix 10](#)).

Step 4 - Prepare and discuss standard assessment program

If it is determined that a standard assessment is required, the HA will prepare a plan for undertaking the standard assessment based on the information gathered by the desktop assessment. The standard assessment plan must comply with regulation 63.

- It is recommended the HA will discuss the plan for undertaking a standard assessment with the RAP at least once as it is being prepared. The RAP will have the opportunity to provide input to the plan during its preparation, and the HA will note RAP priorities for survey locations where they differ from the HA's plan.
- The plan for undertaking a standard assessment will detail a survey strategy and detailed justification for this survey strategy.
- Design of the survey strategy will be in accordance with proper archaeological practice. This will include:
 - Defining a clear survey research purpose and objective
 - Documenting the standard assessment design, which includes the following -
 - Explaining intended survey techniques such as walking, hand auguring and remote sensing³
 - Explaining sampling strategy such as random, systematic, stratified or non-probabilistic (see [Appendix 13](#))
 - Documenting how information about Aboriginal intangible values and cultural values are to be gathered, if necessary and appropriate (e.g. internal gathering of information by Traditional Owners; formal interviews conducted in accordance with proper and ethical anthropological practice)⁴.
- The plan for undertaking a standard assessment should be directed to emphasise the most sensitive areas as defined in the desktop assessment and through RAP consultation.
- The plan for undertaking a standard assessment will document how it is designed to assist the RAP assess section 61 matters, particularly sections 61(a) and (b) of the Act.
- The plan for undertaking a standard assessment should always include provisions for changes to be made and agreed as the assessment progresses, where conditions and circumstances warrant. In practice, this could be reflected by an email agreeing to alterations from the relevant RAP manager.
- The plan for undertaking a standard assessment, and the date agreed, must be included in the CHMP.

³ Such as aerial surveys by drone, use of aerial photography, satellite imaging and LiDAR

⁴ AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (see <https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf>), and/or the Australian Anthropology Society Code of Ethics (see <https://www.aas.asn.au/code-of-ethics>).

Step 5 - Seek agreement about plan for undertaking a standard assessment

Once finalised, the plan for undertaking a standard assessment should be submitted to the RAP.

- The HA will endeavour to obtain the RAP's agreement to the plan at **Step 4**, and the RAP will make every reasonable effort to assist and agree to the plan for undertaking a standard assessment, noting Principle 5.
- The plan for undertaking a standard assessment should incorporate RAP requests where these are consistent with proper archaeological practice and the cultural, archaeological and geomorphological information about the activity area obtained in the desktop assessment.
- Where alterations to the plan for undertaking a standard assessment are made during its progress, these will be documented along with the rationale for the alteration.
- Where the RAP or HA refuses an alteration, this will also be documented, with a rationale.
- If agreement cannot be reached in relation to a plan for undertaking a standard assessment, it is recommended the standard assessment should not commence or continue. The disagreement should be referred to DPC for assistance or to alternative dispute resolution. The standard assessment should then proceed in accordance with advice or the outcomes of the dispute resolution.
- In accordance with Principles 1, 2 and 3, it is appropriate that the Sponsor and HA do not proceed or continue without RAP agreement. Whilst it is open for the Sponsor to accept this risk and continue, it should be noted if the CHMP is finalised and submitted for evaluation after the desktop stage, the RAP may refuse to approve the CHMP if it is not satisfied it is adequate to address section 61 matters. A decision to refuse to approve a CHMP may be challenged later at VCAT, where the rationale for refusing to alter the plan for undertaking a standard assessment will be relevant.

Step 6 - Complete standard assessment

- The standard assessment shall proceed in accordance with the plan for undertaking a standard assessment. The date of commencement should be included in the CHMP.
- The objective of the plan for undertaking a standard assessment is to answer research questions relevant to a CHMP approval decision, document the extent, nature and significance of any Aboriginal cultural heritage discovered, and to determine if a complex assessment is required in accordance with the Regulations.
- Aboriginal places shall be recorded in accordance with VAHR standards and guidelines.

Absolute place extent definition may be unachievable. Place extents are often a compromise integrating theoretical perspectives and field conditions. Given the actual extent of an Aboriginal place is open to interpretation, Aboriginal places can't be 'perfectly' defined in many cases.

- The HA may submit predicted place extents to the VAHR, but only where the HA assesses the predicted extent as very likely (e.g. probability greater than 0.7 - greater than 70% probable). Aboriginal places for which an extent cannot be likely predicted will normally justify complex assessment (subsurface testing).

Predicted and observed place extents should be differentiated in place registration submissions.

Place extent determinations require a clear understanding of relationships between geomorphological and anthropogenic processes.

This work should be done at the desktop stage, but will be informed by survey during the standard assessment. HAs must use professional judgement to determine the density and spatial relationships of cultural material necessary for a specified area to be considered a discrete "place".

Off-site or non-site archaeological approaches⁵ may be adopted for surveying as these may be more suited to answering questions about past human activity patterns when confronted with unbounded, low-density distributions of artefacts and associated material. These approaches must also account for surface redistribution of material and geomorphological processes acting both temporally and spatially. Predictive models for standard and complex assessment and conclusions about human activity patterns will not be useful unless these adequately account for geomorphological and other taphonomic processes (see [Appendix 12](#)).

- The VAHR will consider likely predicted place extents to be confirmed place extents for the purposes of registration. For clarification, please refer to the [Standards for Recording Victorian Aboriginal Heritage Places and Objects](#) < <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-heritage-register>>. The VAHR will require justifications for predicted place extents, so correspondence with the VAHR should be expected. However, the balance of any doubt shall be in favour of the HA, noting Principle 5.

⁵ Off-site or non-site archaeology is a research approach focusing on analysing continuous, low-density distribution of artefacts across a landscape, rather than focusing on demarcating and investigating discrete 'sites'. By recording individual artefacts (point plotting) across a region, this method interrogates spatial relationships and human behaviour at a landscape level, reducing bias from arbitrary site boundary definitions.

- Any relevant assessment of Aboriginal intangible values in relation to a place may be conducted at this step, if necessary, and documented in accordance with any IDA.
- Note [Appendix 4](#) regarding low density artefact scatters and diffuse coastal shell scatters, and that a complex assessment is not usually required if only these place types are located by the desktop or standard assessment. It is already known that a low density of stone artefacts extends across much of Victoria including below the surface, and these can generally be appropriately managed through conditions and contingencies.

Complex assessment in such a scenario can and should still occur, however, if there are sound archaeological or cultural reasons for predicting likely (again, probability greater than 0.7) intact stratified cultural deposits underneath the surface. Complex assessment can also be an agreed recommendation in circumstances where no surface material is discovered by standard assessment (see example in [Appendix 4](#)). These Guidelines simply request reasons to be explicit and documented in the CHMP.

Reasons for **not** recommending proceeding to complex assessment in this scenario should be documented, as should the reasons for recommending proceeding to complex assessment.

- While agreement with the RAP is desirable, the HA has the responsibility to decide whether to advise the Sponsor a complex assessment should or must occur, consistent with section 58 (see [Appendix 2](#)). RAPs may not agree with this advice.

However, DPC does not expect a complex assessment to proceed without RAP agreement, considering this would violate Principles 1, 2 and 3. Also note if the CHMP is finalised and submitted for evaluation after the standard stage, the RAP may refuse to approve the CHMP if it is not satisfied it is adequate to address section 61 matters.

- If the RAP and HA disagree on the question of whether a complex assessment is required, DPC and alternative dispute resolution are available to assist.

Step 7 - Prepare and discuss complex assessment program

If it is determined that a complex assessment is required, the HA will prepare a plan for undertaking the complex assessment based on the information gathered by the desktop and standard assessments, and to ensure compliance with regulation 65.

- It is recommended that the HA discuss the plan for undertaking a complex assessment with the RAP at least once as it is being prepared. The RAP will have the opportunity to contribute to the plan during its preparation, and the HA will note RAP priorities for excavation and testing locations where they differ from the HA's.
- The plan for undertaking a complex assessment will detail an excavation strategy and justification for this excavation strategy.
- The plan for undertaking a complex assessment should always include provisions for changes to be made and agreed as the assessment progresses, where conditions and circumstances warrant. This may be reflected in an email agreeing to alterations from the relevant RAP manager.
- Design of the excavation strategy will be in accordance with proper archaeological practice. This will include:
 - Defining clear excavation research purposes and objectives
 - Documenting the complex assessment design, which includes the following -
 - Explaining intended excavation locations
 - Explaining sampling strategy such as random, systematic, stratified or non-probabilistic
 - Explaining post excavation research plan and custodial arrangements
 - Explaining reporting process.
- The excavation strategy should be directed to emphasise the most sensitive areas as defined in the desktop and standard assessments, through RAP consultation and predictive modelling.
- The plan for undertaking a complex assessment will document how it is designed to assist the RAP assess section 61 matters, particularly sections 61(a) and (b).
- The plan for undertaking a complex assessment, and the date agreed (if agreement is reached), should be included in the CHMP.

Step 8 – Seek agreement about plan for undertaking a complex assessment

- The HA will endeavour to obtain the RAP's agreement to the plan for undertaking a complex assessment at [Step 7](#) and the RAP will make every reasonable effort to assist and agree to the plan for undertaking a complex assessment, noting Principle 5. This may include incorporating RAP requests where these are consistent with proper archaeological practice and the cultural, archaeological and geomorphological information about the activity area.
- Where alterations to the plan for undertaking a complex assessment are made, these will be documented along with the rationale for the alteration.
- Where the RAP or HA refuses an alteration, this will be documented, with a rationale.
- Where a disagreement arises in relation to a plan for undertaking a complex assessment, this may be referred to DPC for assistance.
- If agreement cannot be reached, it is recommended that a complex assessment should not commence, and the matter should be referred to DPC or to an alternative dispute resolution process (see [Appendix 10](#)). The complex assessment should only then proceed in accordance with advice or the outcomes of the dispute resolution.

Despite nothing in the Act preventing a CHMP from proceeding in the case where there is no agreed complex assessment plan, it is open for the Sponsor to accept this risk and continue, it should be noted this would be contrary to Principles 1, 2 and 3. In addition, it is in the best interests of the Sponsor and HA not to proceed without RAP agreement as the RAP may refuse the CHMP. A decision to refuse to approve a CHMP may be challenged later at VCAT, where the rationale for refusing to alter the plan for undertaking a complex assessment may be relevant.

- The plan for undertaking a complex assessment, and the date agreed, should be included in the CHMP.

Step 9 - Complete complex assessment

The complex assessment shall proceed in accordance with the plan for undertaking a complex assessment. The date of commencement should be included in the CHMP.

- Excavations commenced in an activity area are not required in respect of an area to which the standard assessment applied if the activity will not harm Aboriginal cultural heritage in that area, consistent with regulation 64(2). Instead, such excavations should be halted at the limit of the physical impact of the activity, and the extent, nature and significance of the Aboriginal place should be interpreted using the best available and non-invasive expertise and knowledge.

There will be times when ceasing excavation at the above limits is either not practical or not consistent with proper archaeological practice. For example, if a significant Aboriginal cultural heritage feature extends from within an impact footprint to outside that impact footprint, excavation of that feature should continue (but not beyond the boundary of the activity area) until the information gathered is sufficient to support fully informed cultural heritage management decisions. Excavation in these cases should continue at the discretion of the HA.
- Excavations commenced within an activity area may not lawfully be able to continue beyond that activity area. Instead, such excavations should be halted at the activity area boundary, and the extent, nature and significance of the Aboriginal place should be interpreted using the best available and non-invasive expertise and knowledge. While excavations may cease at the boundary of the activity area, the determination and registration of the Aboriginal place extent can extend beyond the activity area.
- The text at [Step 6](#), regarding determining place extents also applies here. Absolute place extents may not be able to be determined. Predicted place extents shall be submitted to the VAHR as if the place extent has been physically confirmed.
- The VAHR will consider predicted place extents to be confirmed place extents for the purposes of registration. The VAHR will require justifications for predicted place extents. The VAHR will consider 'very likely' predicted place extents to be confirmed place extents for the purposes of registration. Please refer to the [Standards for Recording Victorian Aboriginal Heritage Places and Objects](#) <<https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-heritage-register>> for clarification. The VAHR will require justifications for predicted place extents, and this will be based on the Standards. However, the balance of any doubt shall be in favour of the HA, noting Principle 5.
- Any relevant assessment of Aboriginal intangible values in relation to a place may be conducted at this step in accordance with any IDA.

Step 10 - Completing CHMP conditions

A final CHMP meeting should occur with the RAP to discuss and seek to agree CHMP conditions, including contingencies, induction and salvage conditions, where appropriate.

- Once desktop, standard or complex assessment has been finished to the stage where informed cultural heritage management decisions are achievable and proper cultural heritage management objectives have been fulfilled, the HA will assist the Sponsor to prepare CHMP conditions for the Sponsor to follow before, during and after development activity.
- Appropriate contingencies will also be prepared and documented as conditions (see [Appendix 5](#)).
- It is preferable for conditions to be developed first by the Sponsor and the HA for presentation to the RAP. This will aid documenting history and any alterations, increase accountability of all actors and help with dispute resolution. However, the Sponsor and the HA may prefer to develop conditions jointly with the RAP. Either way, the RAP must be presented with an opportunity to review and influence the conditions in accordance with section 62(4) (b) of the Act.
- Each CHMP condition is to be linked explicitly to a Statement of Significance for the Aboriginal place which is the subject of that condition (see [Appendix 2](#)).
- Individual Statements of Significance should lead the Place Description in the CHMP.
- The Sponsor has the responsibility to make the final decision on CHMP conditions to be put to the RAP for approval, on the understanding the RAP may refuse to approve a CHMP if it is not satisfied they are adequate for the purposes of section 61 of the Act.
- Once finalised, conditions should be incorporated into the final CHMP.
- If disagreement arise in relation to preparing conditions, DPC may assist and/or alternative dispute resolution may be used.
- Any salvage strategy related to a proposed salvage condition is to be presented and discussed with the RAP at this stage, before the CHMP is approved (see [Step 11](#)). Note, the salvage strategy does not need to include costs or timing, as this may need to be negotiated later, after CHMP approval, along with any salvage conduct agreement (see [Appendices 7 and 11](#)). However, the Sponsor should obtain indicative advice on costings before proposing the condition. If salvage is not proposed, proceed to [Step 12](#).

Individual statements of significance for each Aboriginal place

- An individual Statement of Significance should be documented for every Aboriginal place located within the activity area. Again, these will involve discussion between HA and RAP, and incorporate all information gathered during the CHMP assessment and any cultural knowledge able to be imparted by the RAP about that place.

Activity area statement of sensitivity

- The preliminary Statement of Sensitivity provided with the response to the NoI at [Step 2](#), if any, should be discussed and any revised or new Statement should be added to the CHMP. This will aid in reviewing the effectiveness of the CHMP assessment and its method in revealing and managing cultural heritage values not foreshadowed by the preliminary Statement of Sensitivity.

Step 11 - Agree on salvage strategy (if applicable)

- If salvage is proposed as a CHMP condition, a detailed Salvage Strategy should be a part of this condition documented in the CHMP, developed by the HA and presented to the RAP for input at **Step 10**.
- The RAP will have the opportunity to provide input into the proposed Salvage Strategy and either approve or refuse the condition as part of its determination about the entire CHMP. Other than under exceptional circumstances, RAPs should not recommend salvage where a Sponsor and HA have not proposed it as a CHMP condition.
- All salvage condition proposals are to be fully discussed with the RAP at **Step 10**.
- If the RAP determines that post CHMP salvage should not occur or is not necessary, such salvage cannot occur. Indeed, under such circumstances it is likely the RAP will indicate it will refuse to approve the CHMP.
- If the HA does not recommend post-CHMP salvage and the RAP disagrees, such disagreement may be referred to DPC or to alternative dispute resolution for further examination.

RAPs are empowered to refuse to approve CHMPs presented for evaluation which do not include salvage conditions, where the RAP is not satisfied the CHMP adequately address the matters in section 61, including sections 61(b) and (c). Such refusals may be challenged at VCAT, where reasons for and against salvage will be examined independently.

The Salvage Strategy

- The Salvage Strategy should contain at least the following:
 - a detailed justification and research question to be addressed
 - indicative timing, start and finish dates (as best as possible)
 - indicative RAP participation, timing and personnel (as best as possible)
 - a detailed salvage method, including the proportion of the Aboriginal place to salvage, the sampling strategy and justification for this sampling strategy
 - a material recovery recording and documentation process
 - a detailed management plan for recovered cultural material
 - indicative costs (as best as possible).

The Salvage Report

- All post-CHMP salvage operations must be documented by a detailed Salvage Report, which must be lodged with the VAHR within 30 days of completion of all components of the salvage program.
- The Salvage Report should contain all the listed requirements of the **Salvage Strategy**, plus:
 - a full archaeological catalogue of artefacts recovered, including spatial context
 - salvage method and any deviations from the method as indicated in the Salvage Strategy
 - detailed justification for scale of salvage completed
 - details of disposition of recovered material
 - actual days worked and number of personnel
 - signature of RAP and Sponsor certifying the salvage was completed to their satisfaction.



Buchan Munji (Buchan Caves), Gunaikurnai Country.
Image credit: Ben Savage, courtesy Visit Victoria.

Step 12 - Agree CHMP conditions and submit CHMP for approval

Where the Sponsor, HA and RAP cannot agree on the CHMP conditions, DPC assistance is available. It is advisable this be used at this point, as this is the final opportunity to resolve such disagreement before the CHMP is submitted for approval.



Post CHMP approval

Step 13 - Conduct inductions

- Where the CHMP assessment does not identify any Aboriginal cultural heritage an induction should not normally be required (see [Appendix 8](#)).
- A **cultural awareness induction** may be required on large sites with considerable compliance conditions, for site managers and the Sponsor to promote the importance of implementing conditions. A cultural awareness induction should only be conducted once per activity, and the presentation should include the following:
 - A telling of Country according to the Traditional Owners – a description of the area and its environment, resources and traditional use
 - Why the area is culturally important to the Traditional Owners
 - The history of the Traditional Owners in their own words emphasising post-colonial events and relationships to the present day.
- A **site induction** may be required for personnel undertaking ground disturbing works where adherence to specific CHMP conditions is required, or where existing Aboriginal cultural heritage registered in the activity area raises the possibility that further unexpected cultural material may be encountered during works. Site inductions should be conducted once per activity area. The site induction should include the following:
 - How the activity impacts Aboriginal cultural heritage both generally and at that work site
 - What measures have been agreed to minimise harm to Aboriginal cultural heritage
 - Detailing specific CHMP conditions – an explanation of what workers can and cannot do while onsite as stipulated in the CHMP



Budj Bim, Gunditjmara Country.

Image credit: Cameron Murray/Assemble Agency, courtesy Tourism Australia/Visit Victoria.

- Typical Aboriginal cultural heritage found in the activity area and its surrounds, including photographs – enough to enable the layperson to identify Aboriginal cultural heritage which may trigger CHMP contingencies
- What workers should do if they uncover something notifiable – stop work if safe, who to notify, etc.
- The CHMP contingencies, especially as they pertain to Aboriginal Ancestral Remains
- Identifying who from the RAP is likely to be onsite at any given time, implementing specific conditions for example
- Expectations for good faith relations onsite – an interactive discussion.

Who conducts the CHMP Induction?

It is best practice for the relevant RAP or Traditional Owner group to conduct and present the induction, at Sponsor expense. Sometimes a HA may be of assistance for technical matters.

When is the CHMP induction conducted?

The CHMP Induction should be conducted at any time between the approval of the CHMP and the commencement of works on site, or as otherwise required by the CHMP.

Most activities should only require a single cultural awareness induction and a single site induction, and these should be combined where possible. Some very large projects over multiple worksites or activity areas may require more than one site induction; one for each worksite. Where multiple inductions are required, recorded inductions and inductions as part of existing overarching induction material for new workers, should be agreed to, and should be reflected in the associated CHMP condition.

Who should be inducted?

- Any personnel undertaking ground disturbing works should attend both inductions.
- Support staff, project management staff and senior executives may attend inductions, but are not required to attend.
- The Sponsor is responsible for collecting attendance information.
- It is suggested that personnel should only be required to attend the cultural awareness induction presentation once per activity per RAP area.
- If personnel are required to be on worksites across different RAP areas for the same activity, it is suggested practice for those personnel to attend one cultural awareness induction per RAP area per activity.



The requirement relating to multiple worksites within the same RAP area applies in this scenario.

- The Sponsor is responsible for keeping records ensuring all relevant personnel have been appropriately inducted.

How may CHMP inductions be conducted?

- RAPs may conduct CHMP inductions in person or may design stock induction presentations for virtual delivery.
- Where site inductions need to be repeated or held many times, recorded induction material or an online induction should be developed and included with other site induction material.

- RAPs may develop and communicate inductions in any appropriate way if the outlined limitations are met. DPC suggests RAPs develop video material to distribute to small and medium project proponents, and reserve live presentations for large activities and complex CHMP conditions.

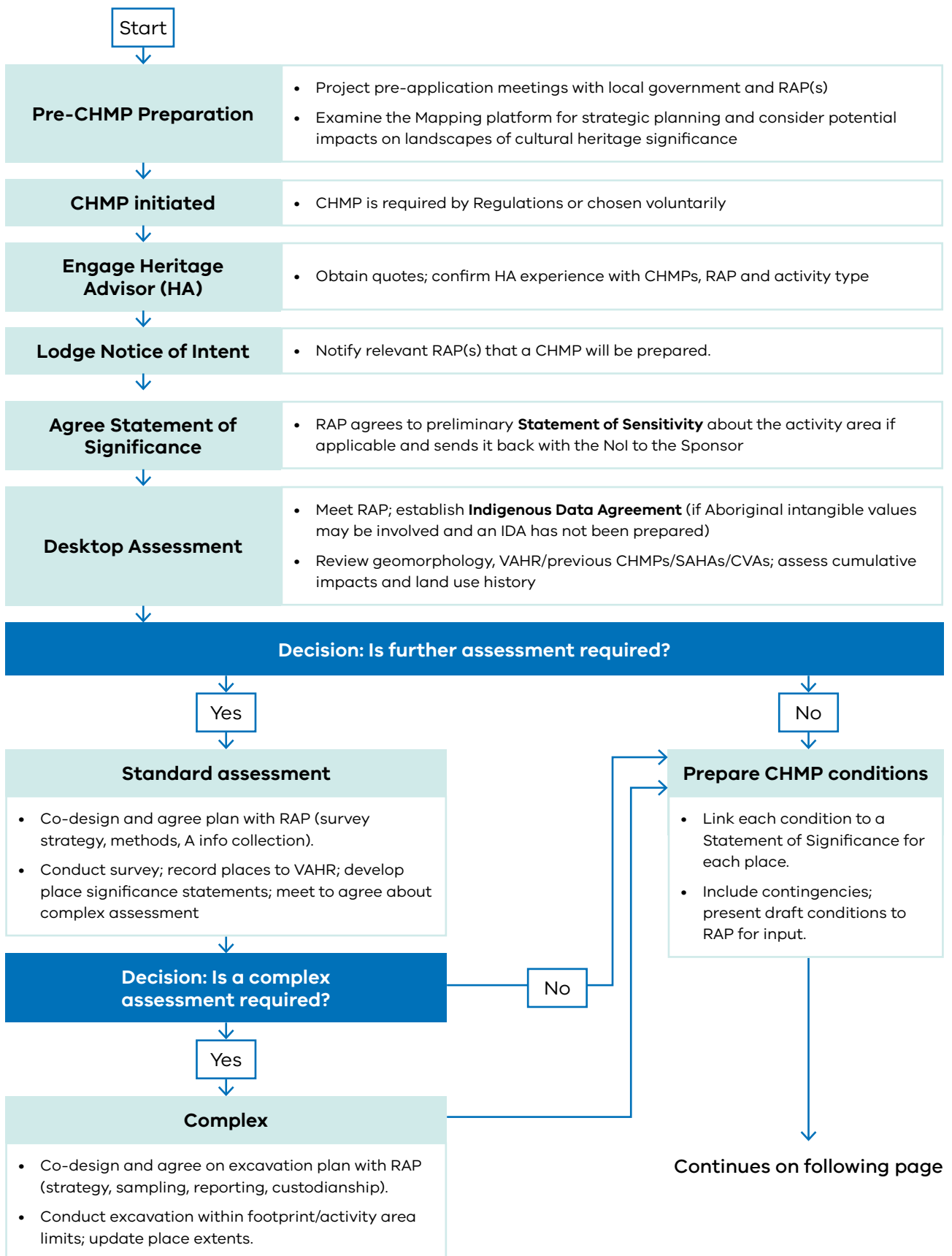
How much do CHMP inductions cost?

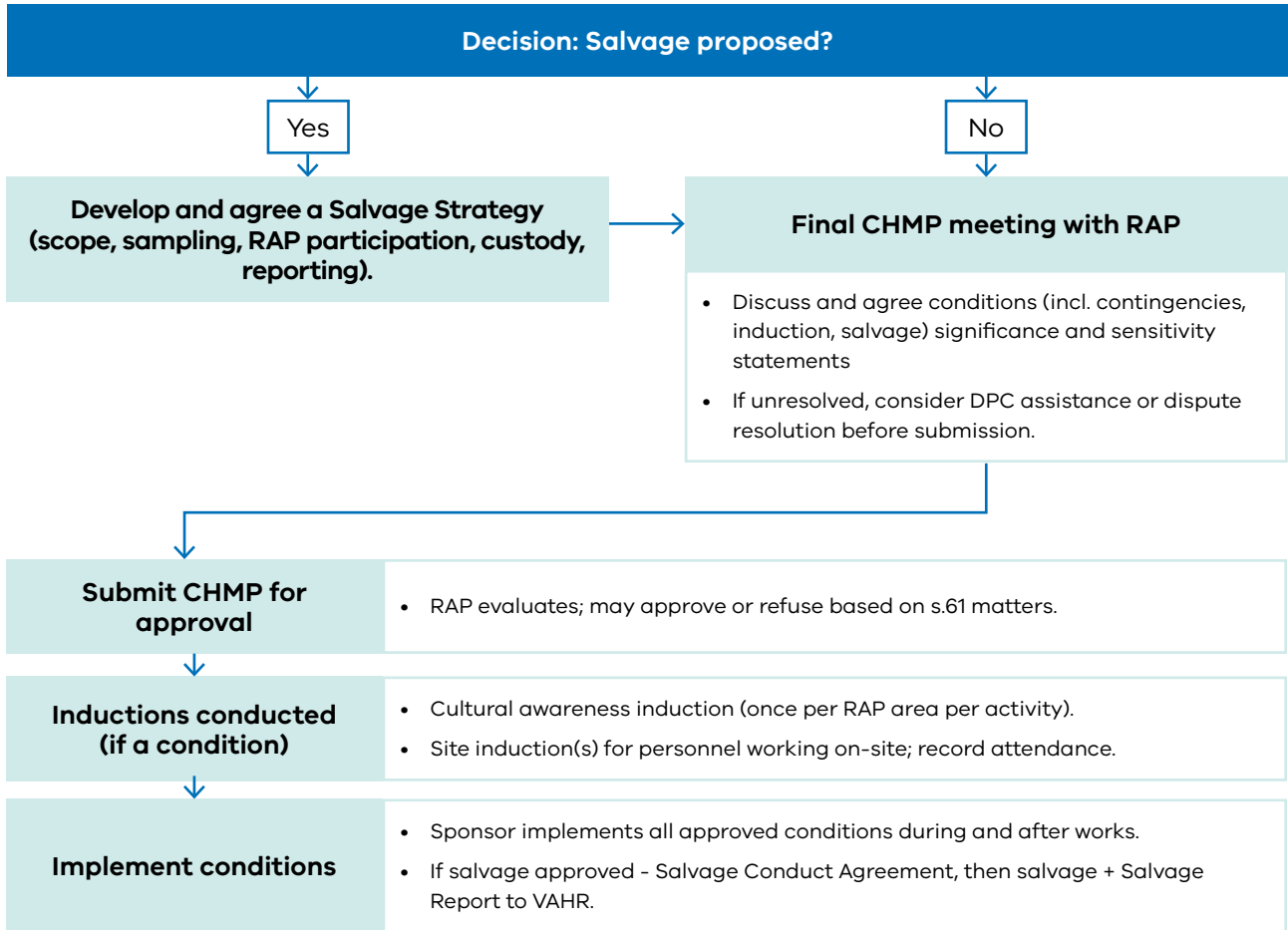
A CHMP induction cost is set by the RAP or Traditional Owner group. It is expected these costs will be reasonable and fair, and reflect the resources required to deliver them.

Step 14 - Implement conditions

The Sponsor is responsible for conducting the activity and implementing CHMP conditions, including salvage, as agreed.

Figure 1. Simplified CHMP Process Chart







6. Appendices

Appendix 1: Aboriginal intangible values in relation to a place and cultural landscapes

Physical places and objects are critical for understanding the human past. However, it is the relationship between these places and Traditional Owners which make these places significant in the first place.

Where known, and subject to Traditional Owner permissions, cultural heritage management plans should document, integrate and consider the cultural elements which make places significant and factor these into rationales for management conditions.

These Guidelines are issued consistent with sections 1(a) and (c); 3(a) and (k) of the Act.

Note: Separate Guidelines will be developed with RAPs relating to the gathering and use of Aboriginal intangible heritage (AIH) (as defined by section 79B of the Act), consistent with guidelines already issued relating to data collection, storage options, safety, best practices, free, prior and informed consent uses and data sovereignty for strategic Aboriginal heritage assessments and other heritage projects¹. Each RAP will likely have different needs. In the meantime, these Guidelines should be followed.

Background

The Aboriginal cultural heritage management and protection system in Victoria has prioritised protecting the physical remains of Aboriginal activity over intangible values for over 50 years. This is largely due the influence of archaeology on early legislation, the emphasis of early archaeology and cultural heritage management practice on portable objects, collecting, analysis and curation, and the more obvious damage done to physical Aboriginal places by development.

In recent years the emphasis on material culture in cultural heritage management has extended to more explicitly include the need to protect cultural values and knowledge – that is, intangible heritage values – associated with Aboriginal places and material culture. However, this extension is not reflected adequately in CHMP regulations as they stand, or in common practice.

As a result, and given intangible values are often a component of cultural heritage significance, CHMPs – particularly over large areas – are often failing to fully consider the cultural heritage significance of the Aboriginal places – particularly landscapes and entire activity areas – they seek to protect and manage. This is contrary to the intent of the Act and the CHMP system.

Why consider Aboriginal intangible values?

Cultural heritage significance is intrinsic to the definition of an Aboriginal place. Cultural heritage significance includes Aboriginal intangible values relating to a place, which can also be harmed by a physical activity – because the activity physically impacts the place associated with Aboriginal intangible values. Aboriginal intangible values associated with cultural landscapes are more readily identified and protected by the CHMP process (compared with language, art or unique cultural knowledge, for example) mainly because it deals with physical places and harm. An example of this is the destruction of Aboriginal places where rituals are known to have occurred.

¹ <https://www.firstpeoplesrelations.vic.gov.au/protecting-aboriginal-intangible-heritage>

These places may not contain physical evidence of that use but may be known within relevant Traditional Owner groups as being ritual places. A proposed activity may destroy these places, causing physical harm.

However, activities may also cause intangible harm to Aboriginal intangible values relating to a place. The Aboriginal intangible values of an Aboriginal place which relies on water flows to maintain women's wellbeing, for example, could be damaged by a proposed development for a dam. The dam may not physically harm Aboriginal cultural heritage, but the prevention of the action of water flowing may have a direct impact on the health of the people of that land because according to tradition, it is the flowing of the water itself which sustains women's health. In this example, the harm caused would not be physical (to the landscape), but intangible.

It is critical for CHMPs to consider and mitigate the impact of activities on Aboriginal intangible values relating to a place, where these values are identified as a relevant matter. First, because understanding Aboriginal intangible values relating to a place is often necessary to fully understand the cultural heritage significance of a place and therefore to determine the adequacy of CHMP conditions associated with that place. Second, because failure to do so interferes with Aboriginal rights, and has and will continue to lead to costly and lengthy legal disputes and appeals for Commonwealth intervention.

Given cultural heritage significance is recognised as integral to determining the adequacy of CHMP conditions it is imperative Aboriginal intangible values relating to a place are documented in CHMPs where necessary and appropriate as justification for individual management conditions.

Cultural Values Assessments and CHMPs

Cultural Values Assessments (CVAs) have been introduced to capture considerations beyond the CHMP process conventional focus on physical heritage and discrete Aboriginal places.

CVAs cannot be required by RAPs as a separate study where a CHMP is planned for an activity area. Where there are likely to be cultural values associated with an activity area, the assessment of cultural values normally undertaken within a CVA should form part of the CHMP, either as part of the desktop or standard assessment. Conversely, CVAs should be prepared with incorporation into future CHMPs in mind for Aboriginal intangible values relating to cultural landscapes and Aboriginal places.

The results of CVAs should be integrated into CHMPs where appropriate because CHMPs are supposed to interrogate the cultural heritage significance of Aboriginal places and activity areas – which includes Aboriginal intangible values relating to a place and those associated with cultural landscapes.

Aboriginal intangible values relating to a place, cultural landscapes and the Regulations

The Act recognises areas without physical Aboriginal cultural heritage, but with cultural heritage significance, as Aboriginal places (see section 5). These places are already required to be registered on the VAHR.

The definition of "cultural heritage significance" in section 4 of the Act – including "archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance; and significance in accordance with Aboriginal tradition" – is broad, and it is particularly important to ensure that the full extent of values is properly accounted for in understanding the Aboriginal cultural heritage of an activity area.

This means that CHMPs may be inadequate if they do not seek to understand the full cultural heritage significance of Aboriginal cultural heritage and explicitly include that understanding in devising their conditions.

CHMPs which fail to consider these values may be more likely to be the subject of legal disputes and Commonwealth intervention.

It is notable that in recent years, all matters in Victoria which ended up in the courts, or were subject to Commonwealth applications, were related to intangible values and the failure of cultural heritage management decisions to adequately interrogate and consider Aboriginal intangible values relating to a place or to an activity area.

While the Regulations require the collection of information relating to the past use of the landscape, the collection and review of oral history is optional in the Regulations [see regulations 61(2); 63(2); and 65(2)]. HAs should discuss with RAPs and Traditional Owners if there are Aboriginal intangible values relating to a place present and whether oral history collection is necessary as part of the preparation of the CHMP.

This collection and review may be done at any stage of the preparation of a CHMP, although as discussed, is more appropriate at the standard or complex assessment phases (Steps 6 and 9).

The intent of these Guidelines is consistent with the findings of the Supreme Court of Victoria², that a consideration of cultural heritage significance, in addition and separately to Aboriginal cultural heritage – is an integral part of considering the adequacy of CHMP conditions.

How to gather information about Aboriginal intangible values relating to a place

Traditional Owners and qualified anthropologists may be able to gather information about Aboriginal intangible values relating to a place from relevant and amenable traditional knowledge holders; however, such expertise may not be readily available.

Example 1: Aboriginal intangible values relating to an Aboriginal cultural landscape

In this example, a coastal area is to be physically impacted by pipeline development. No archaeological material exists in the area, however during the course of CHMP preparation it becomes evident that there are significant and enduring stories associated with Ancestral spiritual figures in the cultural tradition of the Traditional Owners attached to the landscape and features therein.

Schedule 2, item 11 of the Regulations currently requires CHMPs to include a “statement of the cultural heritage significance of that Aboriginal cultural heritage”. However, the lack of a mandatory requirement to obtain oral testimony, and the consequent lack of relevant expertise, means that important information about the cultural heritage significance of that Aboriginal cultural landscape may not be gathered. This will then be neglected when considering adequate management conditions.

The RAP will likely then refuse to approve the CHMP. If an appeal process ends up being heard in the Supreme Court, given precedent, this may impact the outcome of the appeal. This is because the findings in that case clarified that understanding cultural heritage significance – which includes Aboriginal intangible values relating to a place – is critical to forming adequate CHMP conditions

The RAP is also more likely to request Commonwealth intervention in such a case. This course of action remains available via the declaration provisions of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*³.

2 Thorpe v Head, Transport for Victoria & Ors [2021] VSC 750 (23 November 2021) para 84: “Understanding the significance of an Aboriginal place is important in devising its adequate protection.”, https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2021/750.html?context=1;query=thorpe;mask_path=au/cases/vic/VSC

3 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* Division 1, Part II

Example 2: Aboriginal intangible values associated with an Aboriginal cultural landscape which is not to be physically harmed by an activity

In this example, the same Aboriginal cultural landscape is not going to be physically impacted by the construction of the pipeline.

However, the pipeline activity area includes a future exclusion zone which extends into the offshore component of the Aboriginal cultural landscape. This will limit the ability for Traditional Owners to observe cultural practices which ensure favourable fishing stock for Traditional Owners. In addition, the offshore section of the pipeline will bisect the culturally significant area, which extends offshore. This interrupts a songline running through the offshore area to a culturally important island, which disrupts the cultural and natural effect of the stories – also related to increasing fish stocks.

Again, the CHMP would be required to include a statement of the cultural heritage significance of the Aboriginal cultural landscape, but the same limitations outlined in Example 1 apply. Added to this is the fact the cultural landscape is not going to be physically impacted by the development (other than the sea bed under the seascape), meaning CHMP conditions will likely ignore the consequent impacts outlined above, instead focusing on the physical impact of the activity.

The likely result would be inadequate CHMP conditions, conflict between Traditional Owners and stakeholders reliant on the pipeline, refusal of the CHMP and potential court action and Commonwealth intervention.

The following steps may be followed when collecting information about Aboriginal intangible values relating to a place:

- Early engagement with RAPs
- Develop an Indigenous Data Agreement, if one has not already been developed, about gathering and treating cultural information consistent with internationally accepted principles relating to Indigenous cultural and intellectual property rights⁴
- Determine who within the RAP or broader Traditional Owner group/s may hold relevant traditional knowledge
- Determine if a discussion about this knowledge is possible
- Determine who will conduct these discussions and record this knowledge, and how. This may be a member or members of the Traditional Owner group, the RAP or a suitably qualified professional anthropologist approved by the Traditional Owner group to conduct this work
- Meet with the informant/s
- Agree with the informant/s how the information will be gathered and treated
- Conduct interviews in accordance with the agreement
- Agree with the informant/s what elements of the information, if any, may be documented in the CHMP.

⁴ Good places to start include <https://indigenouknowledge.unimelb.edu.au/about-us/charter-for-research-with-indigenous-knowledge-holders>; <https://aiatsis.gov.au/research/ethical-research/code-ethics>; [CARE Principles for Indigenous Data Governance](#) <https://www.rd-alliance.org/wp-content/uploads/2024/03/CARE20Principles20for20Indigenous20Data20Governance_OnePageers_FINAL20Sept2006202019.pdf>

Secret and prohibited knowledge

It is up to a RAP to determine arrangements with relevant Traditional Owner knowledge holders it represents about if and how knowledge is to be transmitted or communicated outside the Traditional Owner group, including sensitive or prohibited knowledge about cultural heritage significance relating to Aboriginal places in CHMPs. This approach is consistent with section 151(3)(c) of the Act specifically and with the principle of Indigenous self-determination generally.

Some RAPs represent Traditional Owners who already have their own culturally appropriate procedures for gathering and imparting traditional knowledge outside the group. These should be respected and followed by HAs and Sponsors in the CHMP process.

Individual knowledge holders, or in their absence, RAPs, must be solely responsible for determining whether Aboriginal intangible values information, or extracts able to be publicly shared, can be documented in the CHMP.

DPC does not require culturally forbidden information to be shared outside culturally sanctioned individuals. However, if Traditional Owners wish for a particular cultural landscape or other Aboriginal intangible values relating to a place to be protected from development impacts, or harm minimised, a certain level of information will be required to be divulged – enough to at least properly inform CHMP conditions. This may include, for example, an extent plan and individual statements from traditional knowledge holders, or a statement from the RAP, that Aboriginal intangible values relating to a place of cultural heritage significance is known and is related to an area and will be impacted by the proposed activity.

Procedures adopted by RAPs, HAs and associated specialists should have as an objective to limit the amount of information Aboriginal people need to give about significant Aboriginal intangible values relating to a place to that which ensures its protection and avoids or minimises damage or desecration.

It is important to note secret or sensitive information does not need to be documented in the CHMP for it to be relevant to CHMP conditions. General statements may be documented in the CHMP with reasons kept within the Traditional Owner group.

For example: an area including a known ceremonial ground will be impacted by a proposed activity. The CHMP could note the extent of this Aboriginal place and that it is culturally sensitive before documenting appropriate conditions. The RAP would then be in a position to determine if those conditions are adequate to its satisfaction given both the knowledge it holds privately and the information documented in the CHMP. This protects sensitive or prohibited information from unauthorised use.

Traditional knowledge outside of RAP knowledge

DPC is cognisant It is not expected that CHMPs will consider Aboriginal intangible values relating to a place in this circumstance.

In other cases, traditional knowledge may be disputed among Traditional Owners or between Traditional Owners and RAPs. DPC is also aware that relevant traditional knowledge holders may not be affiliated officially with RAPs. In these circumstances, HAs should take all reasonable steps to ensure that relevant traditional knowledge is considered appropriately, including if this means consulting with such traditional knowledge holders. This is consistent with *Australian Archaeological Association Code of Ethics* clause 2.5⁵, where “communities of concern” may include Traditional Owners who are not officially affiliated with a RAP. Note this does not impact the RAP’s statutory role of determining CHMPs, and it is also consistent with the Act’s purpose at section 1(b)⁶ and objective at section 3(b)⁷.

5 <https://australianarchaeologicalassociation.com.au/governance/code-of-ethics/>

6 “to empower Traditional Owners as protectors of their cultural heritage on behalf of Aboriginal people and all other peoples”

7 “to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage”

Appendix 2: Cultural Heritage significance

CHMP conditions should be explicitly linked to the cultural heritage significance of the Aboriginal cultural heritage which is the subject of the condition.

RAPs are meant to consider the cultural heritage significance of Aboriginal cultural heritage when determining if they are satisfied that a CHMP condition is adequate to avoid or minimise harm (this point is evident in the Act and reinforced in Supreme Court findings⁸). This is a key consideration for the RAP when deciding to approve or refuse to approve a CHMP under sections 63(4) and 61 of the Act.

The Act states all Aboriginal heritage must be significant, by definition (see section 4 definition of “Aboriginal object” and section 5 definition of “Aboriginal place”). But the Act does not say all heritage is equally significant. This is what the CHMP process is designed to determine, and differential significance is intended to be reflected in proportionate CHMP conditions. This is consistent with Traditional Owner management and protection practices. Greater restrictions and conditions are placed on Aboriginal ancestral remains locations than they do on isolated artefacts. This indicates differentiating significance is already common practice.

Understandings of differential cultural heritage significance are also accepted in the broader population. This may not seem important, but if the CHMP system is to maintain legitimacy and its social licence more broadly, decisions about CHMP conditions should also be cognisant of general public expectations regarding proportionality. The general public, for example, may not understand if more time and cost is required to protect an isolated artefact than a rock art site, which then will erode confidence in the Act.

The link between significance and CHMP conditions

Some feedback received during consultation on these Guidelines questioned the link between significance and CHMP conditions. This link is supported by The Act and Supreme Court findings.

In determining the fact of an Aboriginal place, the Traditional Owners must ascribe it cultural heritage significance – otherwise it will not meet the definition of Aboriginal place.

⁸ https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2021/750.html?context=1;query=thorpe;mask_path=au/cases/vic/VSC, see esp. para 84

Section 61 requires a RAP, when evaluating a CHMP, to consider whether an activity will be conducted in a way that avoids or minimises harm, and specific measures related to these two objectives. Note the Act does not separate the tasks in the CHMP of determining whether a place is an Aboriginal place, and the measures required to manage that place. This means that determining and assessing the significance of an Aboriginal place is intrinsic to considering the conditions which should be adequate to the satisfaction of the RAP for avoiding and minimising harm.

This can also be illustrated by the following negative example: if relative significance was not a consideration when devising CHMP conditions, this would result in significance being dismissed as a factor when determining appropriate CHMP conditions. A RAP could not then refuse to approve a CHMP on the basis that no CHMP conditions would be adequate to its satisfaction to avoid or minimise harm because of the exceptional cultural heritage significance of the Aboriginal place in question.

For example: at present, a CHMP for a mine proposal which would require the destruction of an important cultural landmark such as Mt William north of Melbourne could be refused on the grounds that no CHMP conditions could be proposed which would be adequate to the satisfaction of a RAP⁹ to avoid or minimise harm, given the exceptional cultural heritage significance of this Aboriginal landscape relative to other Aboriginal cultural heritage and the Aboriginal places within it. If significance was not a factor in assessing CHMP conditions, this refusal option would not be available to the RAP – contrary to the Act (and the advice detailed in [Appendix 6](#)).

This link is best illustrated by a recent Supreme Court case, which is a finding not limited to that particular case, but one referring to CHMPs generally:

A cultural heritage management plan performs two interrelated tasks – identification and protection. The process does not separate the two. The statutory scheme provides for consultation with Traditional Owners in the preparation of any plan and at least at first instance, for the traditional custodians (through the statutory mechanism of RAPs) to evaluate whether the sponsored plan is sufficient to be approved. That approval necessarily considers the adequacy of both tasks – identification and protection – placing primary decision making in the hands of Aboriginal people. **Understanding the significance of an Aboriginal place is important in devising its adequate protection. There are inextricable links between the identification of Aboriginal places, the significance that is accorded to them and the adequacy of measures to be adopted to avoid harm¹⁰.**

⁹ Setting aside for the moment there is no RAP for Gariwerd – this is an example only

¹⁰ https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2021/750.html?context=1;query=thorpe;mask_path=au/cases/vic/VSC, see esp. para 84

If an Aboriginal Place is significant for culturally secret or prohibited reasons

An Aboriginal place should have knowable cultural heritage significance for it to be an Aboriginal place as determined by section 5 of the Act.

Because the cultural heritage significance of an Aboriginal place, as determined by relevant Aboriginal people, is fundamental to its legal definition as an Aboriginal place, the fact of its cultural heritage significance is intended by the Act to be knowable to relevant people. Otherwise, there can be no proof of, or ability to objectively establish, the fact that an Aboriginal place exists, and therefore no reason for any CHMP conditions regarding that place.

This is different from the reasons why an Aboriginal place is significant – which may be prohibited knowledge outside certain knowledge holders.

It is sufficient in such cases to at least identify a discrete Aboriginal place as “culturally significant for sensitive reasons” (for example), in order for a CHMP to provide adequate conditions for that place’s management and protection (see discussion in [Appendix 1](#) about **Secret and prohibited knowledge**). It is not necessary for the CHMP to document why an Aboriginal place is significant if those reasons are secret or prohibited, but it is necessary for the CHMP to document the fact that an Aboriginal place is significant, and to whom.

Significance “thresholding”

The Act, Regulations and Guidelines do not impose defined CHMP conditions for certain Aboriginal places, or places of certain significance levels (thresholding), because there are exceptions which need to be dealt with flexibly. For example, not all low-density artefact distributions (LDADs) are of equal significance, and many indicate other places of much higher significance nearby. Some isolated artefacts, like ground edged axes, are considered more significant than discarded stone flakes which are a byproduct of tool making. These would generally require more stringent CHMP conditions. In the same way, mandatory prescribed thresholds might impose more stringent conditions for low significance places when they are not needed. Prescribed thresholds would not allow enough flexibility and individual cultural heritage discussion in the field and may result in complex and inappropriate conditions.

Despite possibly creating more certainty for developers, imposing statutory significance thresholding might also hinder Traditional Owner rights to determine cultural heritage significance. This is another reason why the Act does not do this.

Significance also changes with the passage of time. For example, once-common Aboriginal places become rare with cumulative development impact, and rarity can add significance. This is another reason why the Act does not impose significance thresholds.

The flexible approach adopted by the Act intends for Sponsors to develop CHMP conditions appropriate to the individual CHMP. These Guidelines retain this approach while providing suggested guardrails to reduce uncertainty.

One issue is that dispersed low density stone material, for example, is far more likely to have a greater impact on proposed development activity – being spread over large areas – than an art site, for example, which is discrete. The Sponsor is then locked into intensive and costly cultural heritage management conditions for a large-scale and often unbounded Aboriginal place, when the conditions for managing that place need not be so intensive when considering the relative cultural heritage significance of both places. The Guidelines acknowledge such distributions are culturally significant while seeking to redirect the priority for practical protection and management towards places of higher relative cultural heritage significance.

This goes to some specific feedback received during consultation on these Guidelines. The Guidelines do not seek to “reinterpret” section 5. LDADs are still Aboriginal places for the purpose of the Act. What the Guidelines seek is for the management of LDADs to be proportional to their cultural heritage significance, and for management conditions to be explicitly justified and documented.

RAPs are ultimately responsible for determining cultural heritage significance. While these Guidelines do not develop thresholds and set CHMP conditions associated with such thresholds, they do provide a suggested approach as a starting point.

Statements of significance, relative significance and cultural landscapes

Emphasising relative significance elevates the need to think about Aboriginal cultural heritage at the landscape scale. SAHAs are of particular relevance here – especially important cultural heritage landscapes and other cultural landscape values documented in the SAHA.

It also requires emphasising in situ conservation strategies over salvaging material. This requires RAPs and HAs to turn their minds to considering whether it is more beneficial to leave cultural features intact and incorporated as features within projects where possible, rather than excavate them – a “conservation first” strategy.

It also requires Sponsors to think about how they can better incorporate Aboriginal heritage into their project designs, rather than treat it as a “problem” that requires collection, removal and disposal.

Focusing on landscapes also necessitates considering the cumulative impact of development at a regional scale and how this should influence individual CHMP conditions as well as considerations of significance.

Guidelines about significance are intended mainly to achieve objectives in sections 3(a), (b) and (g) of the Act. These Guidelines call for early RAP engagement to discuss and develop significance statements not only of the activity area, which incorporates Indigenous knowledge, and important cultural heritage landscapes, but also of individual places. This is designed to have a twofold effect of increasing Traditional Owner input into explicit documenting of significance, and to make the subsequent CHMP process more efficient by identifying early areas within the activity area for focussed work.

The following table presents one example of significance thresholding and likely conditions and outcomes. This is only published for the purpose of enlightening Sponsors and HAs about estimated costs and time of preparing a CHMP and complying with its conditions.

CHMP conditions should be reasonable and practical but also need to be flexible to account for heritage in different environments subject to different proposed development impacts.

If a RAP develops its own broad thresholds, the RAP should make this freely available to any Sponsor and HA engaging in work in their RAP area.

Table 1: Significance assessment table

Cultural	Archaeological/ Other	Typical Condition/Outcome
Low	Low	<ul style="list-style-type: none"> Full development, contingencies only, no post CHMP salvage
Low	Medium	<ul style="list-style-type: none"> Full development, minor sample collected, contingencies apply, no post CHMP salvage
Medium	Low	<ul style="list-style-type: none"> Full development, minor sample collected, contingencies apply, no post CHMP salvage
Medium	Medium	<ul style="list-style-type: none"> Partial development, harm avoidance dictates development design, statistically significant sample collected, no post CHMP salvage
Low	High	<ul style="list-style-type: none"> Full or partial preservation, harm avoidance dictates development design, statistically significant sample collected, post CHMP salvage of impacted heritage only
High	Low	<ul style="list-style-type: none"> Full or representative sample preservation, harm avoidance dictates development design, statistically significant sample collected, post CHMP salvage of relevant portion of impacted heritage to address research questions only where necessary
Medium	High	<ul style="list-style-type: none"> Full or representative sample preservation, harm avoidance dictates development design, statistically significant sample collected, post CHMP salvage of relevant portion of impacted heritage to address research questions only where necessary
High	Medium	<ul style="list-style-type: none"> Full or representative sample preservation, harm avoidance dictates development design, statistically significant sample collected, post CHMP salvage of relevant portion of impacted heritage to address research questions only where necessary
High	High	<ul style="list-style-type: none"> No, or very limited, development

Appendix 3: CHMP role demarcation

Participants in the CHMP process need to be mindful of their own powers, responsibilities, expertise and rights and those of others. RAPs have the power to approve or refuse CHMPs; HAs have the duty to provide Sponsors with their own best possible advice and information; and Sponsors are entitled to expect high quality work within reasonable costs and timelines but factor in the possibility that significant Aboriginal cultural heritage may affect delivery.

Background

DPC and these Guidelines promote active and good faith cooperation and collaboration between all parties in the CHMP system.

Section **CHMP procedures** of the Guidelines describes various points at which agreements between HAs and RAPs should be negotiated and mutually approved. The difference from current practice encouraged by these Guidelines is that such cooperation and agreement-making should be made explicit in the CHMP.

By outlining the different roles of each party DPC is not intending to discourage collaborative CHMP work. DPC is responding to current concerns and disagreements caused by confusion and misunderstanding about statutory and professional roles. We believe clarifying these roles will help avert such confusion and disagreements.

The Act intentionally demarcates powers and roles for RAPs and HAs in the CHMP system. In several cases, this is done to protect parties from the perception of, or actual, conflict influencing statutory decisions.

These Guidelines do not seek to reduce the role of RAPs in the CHMP process. They clarify existing roles as written in the Act.

It is critical to remember that section 58 of the Act provides the HA with the statutory role of assisting a Sponsor prepare a CHMP. This is intentional as it may give rise to conflict between the RAP's role as decision maker and the RAP's role as participant in the assessment.

Section 59 states the RAP must use reasonable efforts to cooperate with the Sponsor in the preparation of the CHMP. Section 60 states the RAP may consult with the Sponsor in relation to the CHMP assessment and conditions, and participate in the conduct of the assessment.

Section 148(d) provides RAPs the statutory function of evaluating CHMPs for approval or refusal.

Section 148(fa) provides RAPs the statutory function of providing general heritage advice.

The Act does not ascribe RAPs a role, other than co-operation, in preparing CHMPs. This is the role of the Sponsor with the assistance of the HA.

But it should be remembered the Act describes the minimum requirement. RAPs have agency in determining what advice they provide to guide the CHMP process, and in making final decisions, and Sponsors and HAs are free to ask RAPs to go beyond what the Act states as minimum.

RAPs have the right to be fully informed about the cultural heritage to be impacted and have the power to make decisions about if or how their heritage is to be impacted. RAPs, as the parties responsible for determining Aboriginal places, their significance and adequate CHMP conditions, have the role of informing the Sponsor, either directly or through the HA, about these matters.

HAs have the primary role of assisting the Sponsor to prepare the CHMP, usually providing expert advice to the Sponsor about appropriate CHMP research design and method, directing and conducting the fieldwork, and producing the CHMP report according to the Regulations. HAs, as part of their statutory role of assisting prepare a CHMP under section 58, are also able to engage with and advise the RAP about the cultural heritage in the activity area.

Good faith

Good faith is discussed in [Appendix 9](#), Principle 6.

Heritage Advisor conduct

DPC has separately published [Code of Conduct for Heritage Advisors](https://www.firstpeoplesrelations.vic.gov.au/code-conduct-heritage-advisors) <<https://www.firstpeoplesrelations.vic.gov.au/code-conduct-heritage-advisors>>. HA members of the Australian Association of Consulting Archaeologists (AACAI) have both a Code of Ethics and a complaints procedure. Members of the Australian Archaeological Association (AAA) are also bound by a Code of Ethics.

Other relevant professionals who may be contracted by the Sponsor, such as anthropologists and historians, will be covered

Critical CHMP decision points and who is responsible

The Act and Regulations already prescribe minimum standards for CHMPs. These Guidelines also step out the CHMP Procedures at Steps 1-12 and in [Figure 1](#).

Here, these Guidelines focus on assisting HAs and RAPs negotiate through the different decision points by describing who has the primary responsibility for making decisions.

In assisting the Sponsor, HAs are responsible for considering

- Whether to advise the Sponsor to proceed from a desktop to a standard assessment
- Whether to advise the Sponsor to proceed from a standard to complex assessment
- The method to be used for each of the three types of assessment. Includes:
 - Determining and discussing with the RAP the CHMP research design at desktop, plan for undertaking a standard assessment and plan for undertaking a complex assessment stages
 - Preparing and discussing with the RAP the desktop assessment
 - Negotiating, preparing and discussing with the RAP any CHMP Conduct Agreements and Indigenous Data Agreements (which do not need to be documented in the CHMP) where these have not already been prepared
 - Preparing and discussing with the RAP the plan for undertaking a standard assessment
 - Determining if physical Aboriginal cultural heritage has the necessary diagnostic archaeological characteristics of Aboriginal cultural heritage
 - Determining and discussing with the RAP the method to be used to record and research the Aboriginal cultural heritage
 - Defining and discussing with the RAP the boundaries of Aboriginal places
 - Completing and submitting to the VAHR relevant records
 - Preparing and discussing with the RAP the plan for undertaking a complex assessment
 - Preparing and discussing with the RAP CHMP conditions
 - Ensuring statements of cultural significance are obtained and documented for each Aboriginal place in the activity area

- Advising the Sponsor and discussing with the RAP the need or otherwise for post-CHMP salvage
- Preparing and discussing with the RAP the salvage strategy
- Preparing and submitting salvage reports
- Consulting with the RAP as appropriate.
- Salvage method, if salvage is a condition of a CHMP
- Advice for the Sponsor throughout the CHMP process
- Whether a dispute should be escalated for assistance / dispute resolution.

While the HA has the responsibility to advise on the final decision on items A-D, the RAP must be consulted about these decisions and availed the opportunity to provide advice.

DPC is available to discuss any disagreements about these decisions.

In preparation of the CHMP, RAPs are responsible for

- The statement of sensitivity for the activity area to be submitted with the response to the Nol
- Relevant cultural information to be shared and published in the CHMP (consistent with the Indigenous Data Agreement)
- Relevant information from any CVA to be added to the CHMP
- How Aboriginal intangible values relating to a place and cultural information is to be treated in the CHMP
- The method and delivery of CHMP inductions
- With the HA, CHMP Conduct Agreements, if required, at standard and complex assessment stages and for salvage. These do not need to be included in the CHMP.
- Cultural heritage significance statements for each example of Aboriginal cultural heritage found in the activity area

- How physical cultural material should be treated post collection in the plan for undertaking a standard assessment, post excavation in the plan for undertaking a complex assessment, and post salvage in the salvage strategy
- What advice it needs to provide to the HA to assist the desktop, standard and complex assessment and any items listed at **CHMP procedures**, Steps 1-12.
- Whether proposed CHMP conditions are adequate to its satisfaction [in accordance with section 63(4) of the Act]
- Whether post-CHMP salvage is to be a condition of a CHMP, after considering HA advice
- Whether a CHMP should be approved or refused
- Whether a dispute should be escalated for assistance or dispute resolution.

Sponsors are responsible for:

- Commencing a CHMP
- Determining the activity area and activity description
- Engaging directly with RAPs early
- Contracting relevant HA expertise
- Determining who needs to be inducted
- Deciding whether to accept HA advice to proceed through the CHMP steps
- Deciding whether to agree to CHMP conditions proposed by the HA
- Complying with CHMP conditions
- Deciding whether a dispute during the CHMP should be escalated for dispute resolution
- Deciding whether to refer a CHMP refusal to VCAT.

DPC is responsible for

- Assisting everyone through the CHMP process
- Maintaining the statutory system to ensure the objectives of the Act are met
- Providing guidelines, practice notes and other guidance material
- Maintaining the VAHR to ensure high quality information is available to HAs and RAPs
- Providing dispute resolution assistance as indicated in these Guidelines
- Being a model evaluator and decision maker in circumstances where a RAP is not the evaluator
- Consulting and engaging with Traditional Owners, HAs and Sponsors about CHMPs when it is the decision maker
- Maintaining the list of HAs.

Example scenario 1:

After conducting a standard assessment, no Aboriginal cultural heritage is found within an activity area. The HA recommends to the Sponsor that the CHMP does not need to go beyond the standard assessment level.

However, at the standard assessment meeting, the RAP notes that on similar landforms within a couple of kilometres of the activity area, subsurface and high density stratified cultural material has been commonly found when testing has occurred. It provides examples. It further notes the surface visibility was low during the survey. The RAP disagrees with the HA and suggests the HA advise the Sponsor that a complex assessment is needed involving targeted subsurface assessment governed by a robust predictive model.

The HA and Sponsor review the evidence presented by the RAP and agree. The advice the HA provides to the Sponsor is changed and preparation for a complex assessment begins.

Alternatively, the Sponsor disagrees and either a) notifies DPC, where the RAP evidence will be tested and considered and a way forward recommended; or b) proceeds to lodge the CHMP, despite the RAP's opinion. The RAP refuses to approve the CHMP because it is not satisfied it can decide about whether section 61 matters are adequate. The Sponsor is then free to lodge a dispute at VCAT, where the RAP decision will be reviewed.

Example scenario 2:

After conducting a standard assessment, no Aboriginal cultural heritage is found within an activity area. The HA recommends to the Sponsor that the CHMP does not need to go beyond the standard assessment level.

However, at the standard assessment meeting, the RAP demands subsurface testing be done because it has a blanket policy of subsurface testing where no heritage is found on the surface, just in case something is found.

The HA presents evidence demonstrating that heritage is highly unlikely to be found given similar landforms within a couple of kilometres of the activity area which were tested and yielded no additional cultural material, and any unexpected finds can be appropriately dealt with by contingency conditions. Further, the HA points out the blanket policy is not appropriate in this case because it would require unnecessary and costly work.

The RAP accepts the evidence, and the HA recommends to the Sponsor the CHMP be lodged for evaluation at standard stage.

Alternatively, the RAP disagrees and either a) notifies DPC, where the HA evidence will be tested and considered and a way forward recommended; or b) the Sponsor lodges the CHMP despite RAP protest. The RAP refuses to approve the CHMP because it is not satisfied it can decide about whether section 61 matters are adequate. The Sponsor is free to lodge a dispute at VCAT, where the RAP decision will be reviewed.

Heritage Advisors and RAP Heritage Experts

Some RAPs employ qualified heritage professionals on staff to provide archaeological advice to the RAP, Sponsor and HA during a CHMP. These personnel are also governed by their relevant professional codes of ethics, and in most cases will also be governed by DPC's Code. RAP heritage experts may be a useful resource both for HAs and RAPs to provide important advice about Aboriginal cultural heritage, research design and appropriate CHMP conditions. Ideally, all RAPs should either employ such experts directly or have access to them as needed. RAPs are also able to ask DPC heritage officers for assistance.

However, it is important to remember RAP heritage experts are the RAP, not the HA, for the purposes of the Act and these Guidelines. The above role demarcation therefore applies equally to RAP heritage experts – while they may participate in the conduct of assessments and advise Sponsors about the development of a CHMP, they have no statutory role, other than co-operation, in preparing or drafting a CHMP.

Appendix 4: Isolated and low-density artefact distributions and dispersed shell midden material in coastal environments

Isolated and low-density stone artefact distributions, and dispersed shell midden material in coastal environments, should be recorded, but in most cases should not require further subsurface investigation and may be managed via contingencies.

Complex assessment in such cases can still be desirable and reasonable, however, depending on the specific factors of each CHMP. Decisions to either proceed to complex assessment or not should be reasoned and documented in the CHMP.

Background

A low density of stone artefacts covers much of Victoria. Similarly, the dispersed remains of midden material can be found across much of Victoria's coastal environs. They are not generally indicative of any unique or specific heritage significance.

This is not a statement about the cultural significance of widespread artefactual or residual stone and coastal shell material, which is determined by Traditional Owners. It is a statement about its overall heritage significance relative to Aboriginal places which are intact or are examples of Aboriginal places where discrete events occurred. This goes to their practical treatment in the CHMP process relative to other Aboriginal heritage types, not to their absolute cultural value.

This requires thinking about treating low density material (such as LDADs) differently from other Aboriginal places at several points in the CHMP process – research and assessment design; collection and salvage strategies; and CHMP conditions.

The low density of these materials means the cost to obtain meaningful information from detailed complex studies is often prohibitive for little informational gain. Pursuing a complete record and collection of every artefact present on a project basis is usually impractical and does not necessarily add to our knowledge or appreciation of Aboriginal use of the landscape. However, it is important to continue recording locations and samples of this material by surface survey, as doing so can increase this understanding cumulatively over large areas, notwithstanding geomorphological and other taphonomic impacts on artefact displacement¹¹.

Guidelines in this section are intended mainly to achieve the objective in section 3(g) of the Act, but also contribute to the objective in section 3(a). By focusing intensive CHMP work on places of higher relative significance, DPC expects CHMP processes will be more timely and efficient, and also concentrate effort and resources on these places over work on heritage of lower relative significance.

¹¹ AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research <<https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf>>, and/or the Australian Anthropology Society Code of Ethics <<https://www.aas.asn.au/code-of-ethics>>.

Low density artefact distributions and scatters and CHMP method

If after either a desktop or standard assessment only low-density artefact scatters are discovered, a complex assessment is likely not required in accordance with the Act. Low densities of artefacts or dispersed shell midden material in a coastal context alone do not generally justify complex assessment or archaeological salvage by excavation. These can usually be appropriately managed via CHMP conditions and contingencies dealing with finds during an activity.

This is consistent with regulation 64. Regulation 64 requires a complex assessment when Aboriginal cultural heritage is or is likely to be present and it is not possible to identify the extent, nature and significance of the heritage without excavating. The presence of low-density material indicates Aboriginal heritage is present. However, if surface survey only finds such material, it may be possible to determine its nature and significance if the survey determines it is not likely that additional or different material is present subsurface. Its extent may be determined by reference to surface features and geomorphological research.

However, if the RAP or HA demonstrates particular features which warrant more intensive management, such as a particular cultural significance associated with intangible values, cumulative impact or regional rarity, low-density material may require further investigation to properly understand these features. Similarly, if landforms known to have significant subsurface deposits without surface indicators are present in the activity area, complex assessment may be justified.

Reasons for either proceeding to complex assessment or not in this circumstance must be documented in the CHMP.

The extent, nature and significance of low-density artefact scatters do not normally require investigation by complex assessment

Following a standard assessment, it may be possible that low densities of artefacts will be found in a subsurface context. Appropriate conditions and contingencies should normally be sufficient to manage this material if satisfactory to the RAP.

Complex investigation should only be undertaken where needed to define the extent, nature and significance of dense stratified deposits of cultural material.

Dense stratified deposits of cultural material can often only be investigated using subsurface investigation, such as is required in a complex assessment, meeting the requirements of regulation 64(1)(b). In contrast, low densities of artefacts are not generally indicative of particular cultural heritage significance. Complex assessment is not normally required to investigate the extent, nature or significance of low-density artefact scatters, as their extent and nature at minimum can usually be determined by surface survey.

Example case study 1:

A CHMP for a proposed residential development for Melton discovered two LDADs during a standard CHMP assessment. No other Aboriginal cultural heritage was located, and the HA determined that it was likely the extent, nature and significance of this heritage within the activity area was reasonably established by the evidence uncovered. Therefore, Regulation 64(1) was not invoked, and a complex assessment was not required.

No other Aboriginal cultural heritage exists within the activity area. No complex assessment was needed.

The LDADs were recorded and details submitted to the VAHR. Two artefacts were collected as these were to be impacted by the activity, and the RAP were keen to add these artefacts to their keeping place. Three were left in situ as they were not to be impacted but were flagged to indicate areas to avoid during the activity.

The remainder of the LDADs will be destroyed by the development activity and/or managed by contingencies. Associated documentation will be stored by the RAP in its keeping place, along with the artefacts retained. Relevant provenance information will be submitted to the VAHR as a record edit. The Sponsor, with the RAP, will ensure accessible information about the activity area and the material collected is available. Artefact location point data will contribute to future predictive modelling in the region.

Example case study 2:

A CHMP for a proposed residential development in Cranbourne discovered no surface cultural material during a standard CHMP assessment. However, the location of the activity area, being above known Pleistocene landforms, and the low surface visibility of the activity area during the survey, presented sound cultural heritage management reasons for proceeding to subsurface testing. Therefore, Regulation 64(1) was invoked [heritage likely to be present under subsection (a), but not able to be assessed by survey only per subsection (b)], and a complex assessment was required.

The reasons for proceeding to complex assessment in this case were documented clearly in the CHMP.

Specific suggested universal CHMP conditions for low-density scatters

- Whenever an isolated artefact or low-density, dispersed scatter is revealed during CHMP preparation, the following universal CHMP conditions may be used, linked to the nature and extent of the scatter (if any):
 - Artefact locations will be mapped
 - A representative sample of artefacts (to a maximum of 100 per square kilometre) will be collected and appropriately stored. Ongoing custody and/or recorded reburial shall follow.
 - Contingencies may be developed to manage discoveries during the activity.
- If the above universal conditions are employed, the reasons why subsurface investigation was not recommended should be agreed by the HA and RAP and documented in the CHMP.
- Where demonstrable reasons exist because of archaeological and/or cultural knowledge to progress to a complex assessment, the HA and RAP will determine appropriate cultural heritage management and CHMP conditions as for artefact scatters. Demonstrable reasons may include rare material or type of exceptional cultural significance (e.g. sacred object) or known regular occurrences of subsurface material in similar local landforms, which may require specific conditions.
- In cases where standard assessment only discovers LDADs or low density, dispersed cultural material, and subsequent complex assessment is recommended, reasons for this should be agreed by the HA and RAP and documented in the CHMP.

Appendix 5: CHMP contingencies for the discovery of Aboriginal cultural heritage during the activity

The Aboriginal Heritage Regulations 2018 (the Regulations) require CHMPs to include contingency plans for the discovery of Aboriginal cultural heritage during works. Contingency plans should balance the need to adequately manage and avoid harm to Aboriginal cultural heritage unearthed during the activity with minimising unnecessary costs and delays to the Sponsor.

Contingency plans should be consistent with DPC's example contingencies published on the FPSR website¹².

Background

What are contingency plans?

Contingency plans are developed to deal with disputes, delays and other obstacles that may affect the conduct of the activity. Schedule 2, item 13 of the Regulations requires CHMPs to include contingency plans addressing the matters outlined in Section 61 of the Act. This includes contingencies for the discovery of Aboriginal cultural heritage during works.

Why is Aboriginal cultural heritage sometimes unearthed during development?

A low density of stone artefacts covers Victoria, including below the current surface. Even when the best expertise is employed to predict and investigate areas where Aboriginal cultural heritage is most likely to occur, it cannot be 100 percent correct every time. Complex assessment methods ordinarily consist of a sampling strategy based on predictive modelling, where parts of the activity area likely to include Aboriginal cultural heritage are investigated through sub-surface excavation. Accordingly, Aboriginal cultural heritage will occasionally be unearthed during the activity following CHMP approval.

Contingencies for both expected and unexpected Aboriginal cultural heritage

There will be circumstances where it is expected that unrecorded Aboriginal cultural heritage of low relative significance will be present in the activity area and impacted by the activity. For example, the CHMP assessment may determine a low density of stone artefacts is likely to exist across an activity area, but additional subsurface work is not needed to better inform the understanding of the nature or significance of that heritage, and an informed CHMP decision can be made without this work. Given the assessment is unlikely to have recorded every stone artefact in the activity area, it is expected this type of Aboriginal cultural heritage will be uncovered by the activity.

Conversely, there may be occasions where Aboriginal cultural heritage is unexpectedly unearthed during the activity. Using the example described above, uncovering a shell midden or stratified stone artefact scatter would not be expected, given the results of the assessment.

Accordingly, CHMP contingencies should account for both scenarios, with different approaches for expected and unexpected discoveries.

¹² <https://www.firstpeoplesrelations.vic.gov.au/cultural-heritage-management-plan-resources-heritage-advisors#guides-templates-and-checklists>

In circumstances where the discoveries are expected and are consistent with the nature, extent and significance of Aboriginal cultural heritage in the activity area, contingencies should be simple and efficient, focusing on recording the objects and allowing the activity to proceed.

Contingencies for unexpected discoveries will need to be more general however still clear enough to provide for specific actions.

For example, a CHMP is conducted and approved which does not identify any scarred trees within a lightly wooded activity area for which a 55 hectare pine plantation is proposed. An agreed contingency is that if a suspected scarred tree is discovered during works, works will cease and the area will be taped off until the tree can be inspected by the HA with one RAP representative with relevant expertise and knowledge. This is an example of an unexpected contingency given the activity area was surveyed for scarred trees and none were located.

Contingency plans should ensure Aboriginal cultural heritage is properly managed without unreasonably delaying the activity

The CHMP process requires that the Aboriginal cultural heritage of an activity area and the proposed impacts are understood before any planning approvals are issued. This supports good heritage outcomes while also minimising delays, which become costly once the activity has already commenced. Accordingly, contingency plans should balance the need to adequately manage Aboriginal cultural heritage unearthed during the activity and avoid harm with minimising costs and delays to the Sponsor.

Accordingly, the guidelines for extent determination during the CHMP assessment are also relevant here. That is, pursuing a complete record of every artefact present on a project basis is usually impractical and does not add to our knowledge or appreciation of Aboriginal use of the landscape.

When should archaeological salvage be included in a contingency plan?

Archaeological salvage is irreversibly destructive, time consuming, expensive and often not fit for purpose. It should not be considered routine and should only be acceptable in limited circumstances. Archaeological salvage would generally only be appropriate where unexpected Aboriginal cultural heritage of high relative significance is uncovered.

Guidance

What should be included in contingency plans for the discovery of Aboriginal cultural heritage during the activity?

DPC has published advice for the preparing enforceable contingency plans. This advice recommends contingency plans are prepared using the 'SMART' principle:

- Specific
- Measurable
- Achievable, agreed upon, and attainable
- Reasonable and relevant; and
- Time-bound.

The published advice also includes example contingency plans for the discovery of ancestral remains and secret or sacred objects, as well as expected and unexpected discoveries of Aboriginal cultural heritage. Contingency plans for the management of Aboriginal cultural heritage found during an activity should be consistent with these example contingencies.

Appendix 6: RAP right of refusal under sections 61 and 63(4)

RAPs are empowered under the Act to refuse to approve CHMPs when they are not satisfied the measures proposed are adequate. The RAP should consider the measures themselves and the cultural heritage significance of the Aboriginal heritage to be impacted when making this determination.

Background

DPC distributed guidelines in 2021 about when a RAP can refuse to approve a cultural heritage management plan. This advice has not changed, and we refer people to those guidelines for reference.

The following seeks to assist RAPs in making decisions about approving or refusing CHMPs with reference to the 2021 guidelines.

When can a RAP refuse to approve a CHMP?

RAPs are empowered to decide whether to approve or refuse to approve CHMPs in accordance with sections 61 and 63 of the Act.

The Act presents two circumstances in which a CHMP may be refused by a RAP:

1. If a CHMP does not meet the minimum standards as set out in the Aboriginal Heritage Regulations, a RAP must refuse to approve a CHMP [Sections 53 and 63(3) of the Act]. In this case, the RAP has no discretion.
2. If a RAP is not satisfied the CHMP adequately addresses one or more of the matters listed in section 61 [Section 63(4)] a RAP may refuse to approve a CHMP. In this case, the RAP has discretion.

It is the clear intention of Parliament that a RAP may refuse to approve a CHMP “if it is not satisfied that the plan adequately addresses one or more of the listed matters in clause 61” (Explanatory Memorandum, 2006, cl 63).

How should a RAP determine whether to approve or refuse a CHMP?

RAPs should seek their own advice and use their own internal decision-making processes when evaluating a CHMP for approval. Generally, however, the following Guidelines may be useful to assist.

Sections 61 and 63(4) of the Act

- The RAP should consider each matter under section 61 and can refuse to approve the CHMP if not satisfied the CHMP adequately addresses any of these matters [see section 63(4)]. So, when assessing whether the CHMP should be approved, the RAP should consider whether it is satisfied the plan adequately addresses the following main questions:
 - Whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage?
 - If avoidance of harm does not appear possible, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage?
 - Are there:
 - specific measures required to manage Aboriginal cultural heritage that is likely to be affected by the activity;
 - contingency plans required relating to disputes, delays and other obstacles that might affect the conduct of the activity; and

- requirements relating to custody and management of Aboriginal cultural heritage during the course of the activity?
- If measures, contingency plans or requirements related to custody and management of cultural heritage are required but are not provided as set out in section 61(d) or (e) – then this may be a basis to refuse to approve the CHMP. The same applies if the RAP is not satisfied the measures, contingencies or requirements relating to the custody and management of cultural heritage proposed are adequate.
- When assessing the matters in section 61(a) and (b), a RAP may be assisted by answering the following questions:
 - What is the activity and will the activity cause harm to Aboriginal cultural heritage?
 - Is it possible to avoid harm when conducting the activity?
 - If so, have measures to avoid the harm been included in the proposed CHMP?
 - Is the RAP satisfied that the proposed measures adequately address the matters in section 61?
 - If not, the RAP may refuse to approve the proposed CHMP on the basis that they are not satisfied the matter in section 61(a) has been adequately addressed.
 - If it does not appear possible to avoid harm when conducting the activity, can the harm to Aboriginal cultural heritage be minimised?
 - If the harm can be minimised, does the proposed CHMP contain specific harm minimisation measures, and are they adequate to the RAPs satisfaction?
 - If the harm cannot be minimised, this is a factor for the RAP in considering whether to approve the proposed CHMP. Again, the RAP may not be satisfied the matter in section 61(b) has been adequately addressed.

- In considering the adequacy of any measures proposed (conditions), the RAP should also take account of the significance of the heritage to be affected.

Minimising harm - making reasonable decisions

The potential for VCAT to review a decision to refuse a CHMP means that a RAP should be able to justify – logically and reasonably – why a CHMP does not adequately minimise harm to Aboriginal cultural heritage. VCAT will independently consider all the evidence available about the nature of the Aboriginal cultural heritage, how impacts were assessed in the CHMP, the level of harm to that Aboriginal heritage and what measures can be put in place to avoid or minimise harm. After considering the evidence, if a RAP decision is not reasonable or logical, then VCAT can overturn that decision and approve the CHMP in the same form or with amendments. It is critical for RAPs, then, to be able to demonstrate that decisions to refuse to approve a CHMP are reasonable and logical.

There might be different reasonable and logical reasons, such as:

- If the measures themselves proposed to minimise harm are unsatisfactory to the RAP. For example, the removal and salvage of three-quarters of a shell midden might not be satisfactory when half of the midden could reasonably be left intact and in place.
- If the activity cannot be conducted in a way that minimises harm to Aboriginal cultural heritage. For example, if the activity cannot be conducted without partially destroying a rock shelter containing rare and significant Aboriginal art and material objects. Under this circumstance, it would be reasonable to argue that it is not possible for the proposed measure to minimise damage or desecration (as examples of “harm”) to the satisfaction of the RAP.

- If the measures proposed are unsatisfactory given the cultural heritage significance of the heritage to be impacted. For example, if an activity cannot be conducted without partially destroying a rock shelter containing rare and culturally important rock art. Under this circumstance, the RAP may reasonably argue that no harm minimisation measures would be adequate to its satisfaction given the cultural significance of the rock shelter.

Note that harm may lawfully be caused to Aboriginal cultural heritage if actions causing harm are in accordance with a CHMP [per section 29(a)(i) of the Act]. The key consideration under section 61(b) of the Act is whether the activity will be conducted in such a way that minimises harm to the satisfaction of the RAP.

The Sponsor and RAP evaluating a CHMP must make every reasonable effort to reach agreement on the matters set out in section 61 [see section 62(4)].

It is important to remember a RAP does not have to accept arguments made by a Sponsor or HA that the RAP should be satisfied that the CHMP adequately minimises harm.

The RAP should seek its own independent legal advice on the likelihood of VCAT overturning a CHMP decision, and materials required to support the RAP's decision.

Aboriginal cultural heritage significance - how should this be considered in CHMP decisions?

RAPs are empowered with making decisions about CHMPs based on a combination of their understanding of the Aboriginal cultural heritage significance of heritage proposed to be harmed, and their opinion of the expert archaeological evidence and harm minimisation measures proposed by the HA in the CHMP.

The significance of an Aboriginal place is important in determining its adequate protection and adequate harm minimisation measures. This is why significance is critical for a RAP when considering the adequacy of the measures proposed at [Step 12](#).

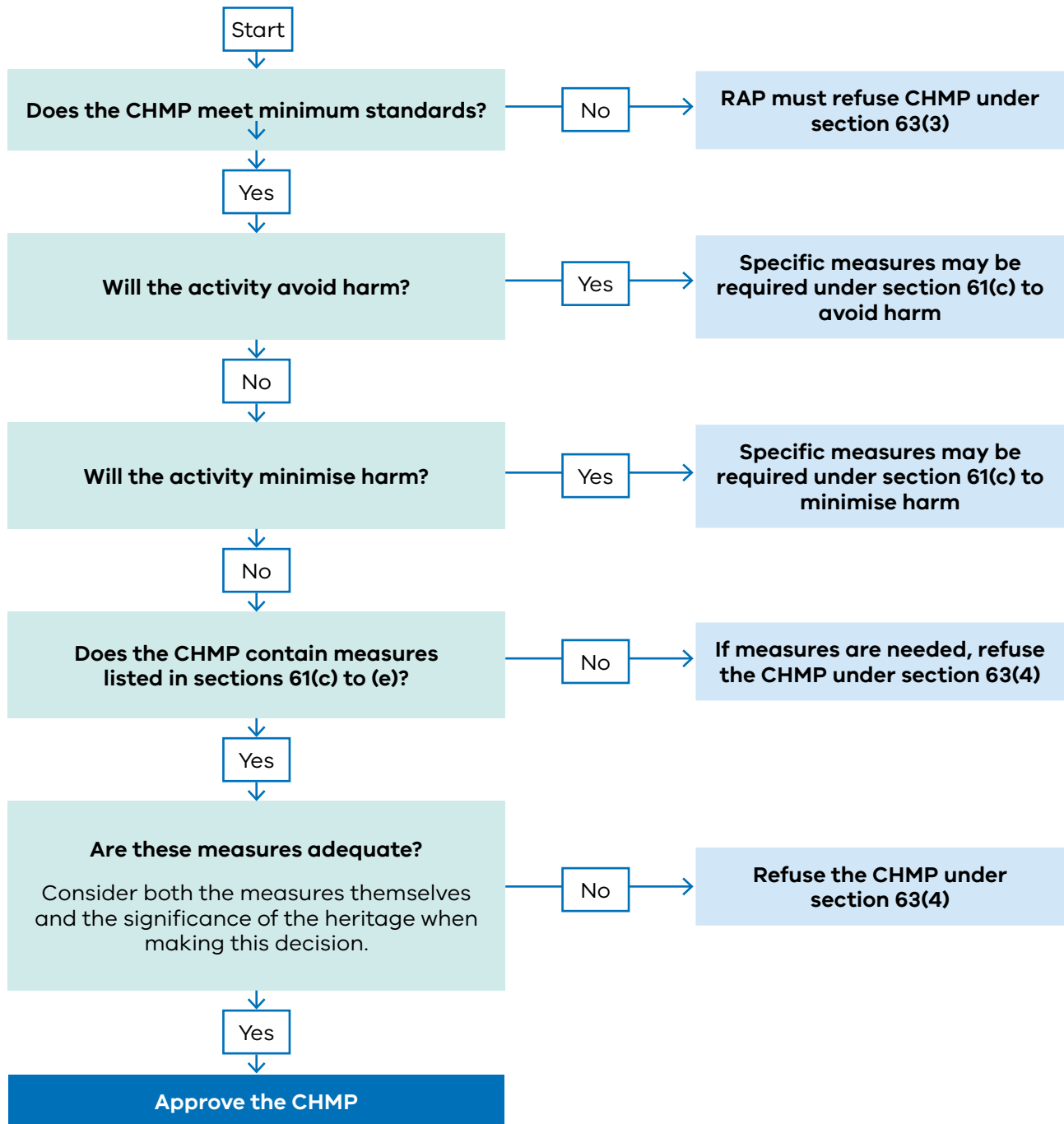
The HA is expected to assist with informing the Sponsor and RAP about the archaeological significance of heritage to be impacted by a proposed activity. The RAP is expected, in turn, to inform the Sponsor and HA about the cultural significance of the activity area and the heritage to be impacted. Bringing the skills and expertise of the HAs and RAPs together should enable conditions to be developed that avoid and/or minimise harm to both archaeological and cultural significance.

Can a RAP refuse to approve a CHMP outright because an activity will harm heritage?

Not without first considering the matters required to refuse a CHMP.

The Act provides a process for negotiating and considering harm avoidance and minimisation measures. This is why it steps into a decision-making framework based on rigorous assessment of cultural heritage management proposals. The key consideration under section 61(b) and (c) of the Act is whether the activity will be conducted in such a way that minimises harm and, even if so, are the measures proposed in the CHMP for managing Aboriginal heritage satisfactory in the opinion of the RAP. If the RAP is not satisfied the measures proposed are adequate given the circumstances and/or the significance of the heritage, then the CHMP can be refused. However, the CHMP consideration process must be engaged first before coming to this conclusion.

Figure 2: Simplified CHMP decision-making flow chart for RAPs



Appendix 7: Salvage

Salvage should only be a condition of a CHMP when there is no other way (including preservation in situ) to minimise or prevent harm occurring to Aboriginal cultural heritage of particular cultural heritage significance, such as dense deposits of cultural material that includes temporal and contextual features. Salvage must be guided by clear reason and purpose. Salvage solely for the purpose of artefact collection is never an appropriate CHMP condition.

These Guidelines comply with sections 1(a); 42(1)(b)(ii); 61(a) and (b) of the Act.

Victoria's Aboriginal cultural heritage protection and management regime prioritises harm avoidance and minimisation. In such a system, in situ conservation should be prioritised. Archaeological salvage should only ever be a last resort. Salvage is irreversibly destructive, time consuming, expensive and often not fit for purpose. It should not be considered routine and should only be acceptable in limited circumstances.

Despite this, currently salvage is routinely included as a CHMP condition. In addition, when salvage is a CHMP condition, it can be excessive.

Salvage harms Aboriginal cultural heritage often unnecessarily, and raises costs and delays to complete approved land use activities. These costs are passed on to end consumers.

It is best practice that salvage is only valid as a harm minimisation condition if the destruction of heritage is offset by the quality of information gained from that heritage before it is destroyed or removed. The gathering of information is the harm minimisation in this case. Despite this, salvage is often not providing adequate cultural heritage information about the heritage salvaged to justify its cost and time, or to justify its use as a harm minimisation strategy in satisfaction of section 61(b) of the Act.

These Guidelines aim to ensure salvage excavation is appropriate considering the objectives of the Act and the specific circumstances of an activity.

In situ conservation

Cultural heritage management is a balance between protecting heritage in place, and collecting and "rescuing" representative samples. Extremes of either should be avoided.

In situ conservation of Aboriginal cultural heritage should be the first consideration for CHMP conditions. This can most often be achieved through incorporating Aboriginal cultural heritage into project design, such as open spaces or adapting infrastructure to incorporate Aboriginal values. Where in situ conservation is inappropriate, impractical or impossible, and the significance of the Aboriginal cultural heritage warrants it, collection or salvage may then be considered. If heritage is widespread then a representative sample only – not the entire assemblage – should be collected.

Preserving Aboriginal cultural heritage without artefact collection

The cultural heritage significance of an Aboriginal place may be preserved and transmitted to future generations without preserving its material culture. This is done by incorporating information about that heritage into the development itself. This happens regularly in non-Indigenous heritage preservation. For example, new buildings may display plaques with photographs depicting past use of the site, or even incorporate past material culture into their construction. They may be named for past people, buildings or uses. The architectural form of a new building may reflect past historical values associated with that place. In these ways, the history of a place is preserved through transmitting its information and cultural values, rather than its material culture.

Examples also exist in Indigenous cultural heritage management. New suburbs can incorporate Aboriginal stories in park design and landscaping, local public art, street names, and interactive storytelling. The new West Gate Tunnel includes elements such as entrances and exhaust vents incorporating designs inspired by Aboriginal canoes and eel traps, transmitting knowledge about Aboriginal use of that area. The Level Crossing Removal Project is doing similar, such as at Karrum Karrum Bridge. In New South Wales, the Department of Planning incorporates a “Connecting with Country” framework that seeks to “support connection to Country in built environment projects in greater detail¹³.” At the precinct scale, this means considering and reflecting connections between Aboriginal places, preserving and incorporating sight lines and travel routes.

There are ways to preserve the Aboriginal cultural heritage significance and values of places without collecting or salvaging all, or even most, of its physical remains.

Defining “salvage” and limiting its use

Salvage is an archaeological technique. Therefore, its appropriateness should be guided primarily by technical experts. RAPs must have input both into salvage justification and design, and can decide to accept or refuse expert advice about whether salvage is appropriate in each case.

When is salvage appropriate as a CHMP condition?

Salvage may be an appropriate CHMP condition in the following circumstances:

- When there is no other way (including preservation in situ) to minimise or prevent harm occurring to known significant Aboriginal heritage, such as dense deposits of cultural material that include temporal and contextual features, rare, or highly culturally significant examples of Aboriginal places in the context of a particular landscape.

¹³ <https://www.planning.nsw.gov.au/sites/default/files/2023-10/connecting-with-country.pdf>

- When complex assessment (excavation or subsurface testing) is impossible and/or impractical and it is likely, based on desktop, standard and/or related complex assessment results, that significant Aboriginal cultural heritage, such as dense deposits of cultural material that include temporal and contextual features, will be damaged or destroyed by development activity.

When is salvage NOT appropriate?

Salvage must never do more damage to Aboriginal cultural heritage than the proposed activity.

100 percent salvage for investigative or speculative reasons is never appropriate.

Salvage is NOT appropriate as a precautionary or exploratory measure.

These are objectives of complex assessment – proper and considered archaeological test excavation, recovery and documentation.

Salvage may be a recommendation resulting from complex assessment, where extending that complex assessment is not possible and/or practical, but it is not a substitute for it.

In this way, salvage should rarely, if ever, be a condition arising from desktop or standard CHMPs.

Salvage is not appropriate as an artefact collection exercise.

Salvage is not a valid CHMP condition where only LDADs or isolated artefacts are discovered by a standard assessment. If the HA determines such places may represent more significant Aboriginal cultural heritage such as dense deposits of cultural material that include temporal and contextual features, then that is an exception which would warrant complex assessment at that stage, not post-CHMP salvage.

Appendix 8: CHMP induction requirements

CHMP inductions should be conducted as two distinct presentations with different purposes in mind. The first is a cultural awareness induction, the second is a site induction. Only inductions necessary for protecting and managing the Aboriginal heritage of the activity area need be included as conditions in a CHMP.

Note that an induction should not be required when no heritage has been identified during the assessment.

What is an induction and what topics should it cover?

Inductions are important for informing relevant personnel about the importance to Aboriginal people of the area in which they are working. They are also critical to inform relevant personnel about site-specific requirements in place to protect Aboriginal cultural heritage during an activity.

CHMP inductions communicate information about the Aboriginal heritage of an area and specific restrictions and requirements for people working onsite to protect Aboriginal cultural heritage during works. CHMP inductions are usually a condition of a CHMP where there is Aboriginal cultural heritage in the activity area, which requires adherence to conditions to protect.

See [Step 13](#) for more information about conducting inductions.

Appendix 9: Explanation of principles

Principle 1: Self-determination and Free, Prior and Informed Consent

The principles of self-determination and free, prior and informed consent (FPIC) are already enshrined in Victoria's Aboriginal heritage protection and management system.

These principles are widely accepted globally. They are embedded within the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) particularly in the context of development projects (see esp. Article 32.2). Australia is a signatory to the Declaration.

FPIC, in relation to land use and development, at its basic level says that Indigenous peoples have the right to be consulted with the objective of obtaining their consent¹⁴ about what impacts proposed development projects will have on their lands, territories and resources (see Article 32.2 of UNDRIP). They have the right to be consulted before development projects are approved, free of interference, coercion or influence. They have the right to make decisions fully informed by their own cultural knowledge and the best information about proposed projects available to proponents, governments and relevant experts. They have the right to make decisions and to be consulted as self-determined organised and structured groups, noting the right to self-determination is a collective, not an individual, right.

The CHMP system empowers RAPs to make decisions in their own way, according to their own cultural ethics and organisational requirements, **free** of government or other interference. Section 46 of the Act stipulates that not only consultation, but CHMP decisions must be made **prior** to development approvals being granted. The CHMP system is designed to empower RAPs to make **informed** decisions incorporating their cultural knowledge and the best available research and data from HAs. Early engagement with RAPs is also essential to this principle.

These Guidelines are intended to assist RAPs to make informed decisions, not to limit decisions. To be clear, as an example, Guidelines relating to LDADs still permit complex assessment should RAPs or HAs have good reason to proceed. The Guidelines do not limit RAP discretion to request complex assessment. The Guidelines do request reasons to be documented for either proceeding or not proceeding to complex assessment where only LDADs are found by standard assessment.

Article 32.3 of UNDRIP also requires governments to provide appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impacts. The Victorian Government's CHMP system aligns with this obligation under UNDRIP.

Principles of Indigenous data sovereignty should also be upheld throughout the CHMP process when dealing with Indigenous cultural information (See [Appendix 1](#))

¹⁴ <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

Note this means consultation must occur with the objective of obtaining consent. It does not mean consent must be obtained. Note that section 52 of the Act, however, goes further than Article 32.2, by requiring CHMPs to be approved for certain activities before they can proceed. See Article 19 for similar wording.

For contrast, see wording of Article 29.2: "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent." Unlike Articles 32.2 and 19, article 29.2 requires consent to be obtained first. Article 10 is another example of this latter wording.

The Act elevates Indigenous rights consistent with UNDRIP, but Government also must consider the rights of others and legislate where rights may compete. Note that Article 46 of UNDRIP states Indigenous self-determination is not absolute – and is subject to the laws of the nation [Article 46(2) – “The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations.”]. This is also consistent with several articles of the UN Charter itself, which seeks to preserve the integrity and internal unity of sovereign states. It is the role of the State to legislate when different rights compete, such as the right for Aboriginal Victorians to enjoy their culture and maintain their relationship with the land; and the right of everyone to use their private property (see for example the *Charter of Human Rights and Responsibilities Act 2006*, sections 19 and 20). This is why the State legislates to protect Aboriginal cultural heritage – it is an area where Indigenous rights engage with other human rights – a complex interaction which requires laws to be managed effectively. The Act exists in this space to regulate interactions between people exercising legitimate, but sometimes competing, human rights.

Principle 2: Empowering RAPs to make decisions

This principle emphasises the position of RAPs in the CHMP process as decision makers on behalf of Traditional Owners.

With the Act’s passage in 2006, the Victorian Government determined that Aboriginal people should be empowered to make decisions about their heritage, and that Aboriginal Victorians, via the Victorian Aboriginal Heritage Council, should be decision-makers about which Aboriginal people are to be so empowered. This followed earlier Commonwealth legislation which also uniquely granted decision-making power to Victorian Aboriginal organisations from 1987. In 2016, this principle was further refined to emphasise Traditional Owners as primary decision makers.

The appointed RAPs, as representative Traditional Owners organisations, have the cultural obligation to protect Country. The CHMP system reinforces this obligation by empowering RAPs to approve or deny applications to cause harm to their heritage. Where harm is agreed to be necessary through the CHMP process, the CHMP system empowers RAPs to allow or minimise that harm¹⁵.

This is a difficult obligation, as Traditional Owners are often required to consider allowing harm to occur for appropriate development to proceed. The primary purpose of the CHMP is to make the burden of this obligation as light as possible. This principle requires Sponsors and HAs to ensure their involvement and work is directed fully informing RAPs of all relevant information, gathered through best practice research and investigation, so RAPs can make fully informed decisions.

¹⁵ *Aboriginal Heritage Act*, section 63

Principle 3: CHMPs will first, avoid harm

The Act prioritises avoiding harm to Aboriginal places in the first instance, and minimising harm second. This principle forms a basic principle for conducting CHMPs. It should be noted this is not only a principle, but a requirement for consideration under section 61 of the Act. CHMP conditions which are not adequate in avoiding harm to the satisfaction of the RAP are grounds for refusing to approve a CHMP under section 63(4).

This principle encourages participants and decision makers to emphasise finding solutions through the CHMP process to achieve this principle as the primary consideration. All CHMP conditions should be informed by this principle.

Principle 4: CHMPs support appropriate investment and development

The Victorian Government has priorities for housing, infrastructure, energy, agricultural and mineral development necessary for the future of the State and its people. Victoria is also committed to sustainable development, which is well-defined and generally understood to mean “development that meets the needs of current generations without compromising the ability of future generations to meet their needs.”¹⁶ Included in this is the concept of the precautionary principle: “lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage”¹⁷.

“Environment” in this context includes cultural heritage aspects of the environment – consistent with the definition of environment in section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (EPBC Act).

Measures adopted to prevent or mitigate harm should also be cost-effective. These are accepted definitions not only in Victoria (see for example section 2A(2)(g) of the *Mineral Resources (Sustainable Development) Act 1990*); but nationally (see for example section 391(2) of the EPBC Act) and internationally (see for example the 2030 Agenda for Sustainable Development). Principle 4 should be read in this context.

Significant domestic court cases¹⁸ have determined the appropriate application of the precautionary principle to decision making in Australia in certain circumstances. DPC uses the term “appropriate” with this in mind as a principle to guide decision-making.

These cases have found the decision maker must consider the threat of harm, not the actual occurrence of harm. This harm must be serious or irreversible, and this assessment must be backed up by scientific evidence. Threats to be assessed “include direct, indirect, secondary, and long-term threats, as well as the incremental or cumulative impacts of multiple repeated Guidance or decisions”¹⁹. Because of the varied nature of threats, a range of experts, stakeholders and rights holders must be consulted.

Decision makers must also understand that “uncertainty” applies to the nature and scope of the threats, and information about the many factors influencing threats must be considered²⁰.

16 [UN Brundtland Commission](https://www.un.org/en/academic-impact/sustainability) <<https://www.un.org/en/academic-impact/sustainability>>

17 [UN Global Compact Principle 7](https://unglobalcompact.org/what-is-gc/mission/principles/principle-7) <<https://unglobalcompact.org/what-is-gc/mission/principles/principle-7>>

18 *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 67 NSWLR 256; *Bob Brown Foundation Inc v Minister for the Environment (No 2)* [2022] FCA 873

19 *Bob Brown Foundation Inc v Minister for the Environment (No 2)* [2022] FCA 873 (25 July 2022) <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2022/873.html?context=1;query=bob%20brown;mask_path=au/cases/cth/FCA> See paragraphs 19-24

20 *Ibid* paragraphs 27, 28

Invoking the precautionary principle also does not require that full scientific certainty about threats be achieved before development can occur. There is a point at which a decision maker should be satisfied with the information gathered to adequately apply the precautionary principle and make an appropriate decision.

This point does not require full certainty, but an educated and informed assessment. Further, measures (e.g. CHMP conditions imposed) to prevent or mitigate harm should not exceed what is appropriate and necessary to achieve the desired outcome.

In the Victorian CHMP context, this means that measures taken to prevent or minimise harm should be:

- Proportional to the cultural heritage significance of the Aboriginal place²¹; and
- Proportional to the potential threat to that place from the activity.

Information provided to the decision maker by the HA needs to be sufficient to enable the decision maker to decide whether the conditions proposed are adequate to their satisfaction. Conditions proposed by the HA and RAP should not be onerous and should be based on their expert assessment of the known and likely threats, the significance of the heritage and a full examination and assessment of alternatives – including “no development” and “full development” options.

Principle 5: Heritage Advisor role and high quality CHMPs

HAs will approach their role with professionalism and use all available and appropriate expertise to produce high quality CHMPs. At minimum, this is necessary to fulfil Principles 1 and 2. At the same time, it is expected that HA advice regarding CHMP preparation methods will be respected and followed, unless there are sound methodological or specific cultural reasons not to do so. The Guidelines outline how this is achieved through explicit, iterative and staged discussion and agreement. HAs have the unique statutory role of assisting Sponsors to prepare CHMPs under section 58 of the Act. Other heritage experts, including those employed by a RAP, can also contribute to CHMP research design. These RAP experts can help the HA to develop appropriate CHMP methods to gather necessary information. But the system places the HA as ultimately responsible for their own advice about appropriate methods to assist the Sponsor prepare the CHMP (See Appendix 3).

There will at times be methodological disagreements between HAs and RAPs. Disagreements should be limited to disputes about the adequacy of a proposed research method proposed to help a RAP make an informed decision on section 61 matters. Where there are intractable disagreements about CHMP method, the matter should be referred to DPC in the first instance.

²¹ Thorpe v Head, Transport for Victoria & Ors [2021] VSC 750 (23 November 2021) para 84: “Understanding the significance of an Aboriginal place is important in devising its adequate protection.”

Principle 6: Good faith

The Act only explicitly requires RAPs to act in good faith (section 149), and where a RAP has been found not to have acted in good faith its registration may be suspended or revoked (section 156). The Act is explicit only about the good faith of RAPs because RAPs are statutory decision makers in the system; rather than just participants, applicants or experts; and RAP decisions carry greater consequence, obligation and therefore, requirements for accountability. However, other sections also impose duties on Sponsors related to good faith - e.g. section 59 regarding Sponsor efforts to consult with a RAP and section 62(4) regarding reaching agreement on section 61 matters.

The Act does not explicitly define "good faith". Generally, it means dealing with other parties honestly, without "hidden agendas". It means, for example, not intentionally undermining the benefits of an agreement for other parties.

DPC suggests the following interrelated concepts may be considered to comprise good faith in general terms:

1. **Cooperation** – All parties should do everything necessary so that other parties benefit – the RAP by retaining or enhancing heritage values either physically or through other means; the Sponsor by limiting expense and delay.
2. **Reasonableness** – when preparing and finalising a CHMP, due process must be followed including fairness and justice. The use (or abuse) of power imbalances is unfair and beyond "good faith". The "informed" aspect of FPIC is closely related to "reasonableness" in that RAPs should have equal and full information when making decisions.
3. **Proper purpose** – Honesty. Deceptive acts are examples of "bad faith". For a CHMP to achieve optimal outcomes, everyone must be honest in their dealings with each other.

4. **Legitimate interest** – consideration of the other party's interests is critical. This means all parties acknowledge other parties have legitimate interests and are obliged to consider these interests when preparing a CHMP.

"Good faith" may sometimes be compromised by the nature of the CHMP system. CHMPs are not contracts or agreements in the generally understood sense, which is where the concept of "good faith" is generally applied. CHMPs are statutory approvals, which intentionally ascribe differential power to RAPs, because as Traditional Owner representative organisations, they have particular rights to make decisions about their cultural heritage. This is normal – all statutory approval systems ascribe greater power to decision-makers. However, this power differential places greater importance on RAPs (and DPC in non-RAP areas) acting with "reasonableness" and observing due process when making decisions. This is a responsibility of all decision-makers, including Government.

What sets the CHMP system apart from many other statutory approvals is that the decision makers themselves – the RAPs – are at risk of experiencing a direct, irretrievable and personal loss through their decision-making. That is, when they approve a CHMP, they risk losing irreplaceable elements of their cultural heritage. Many other types of statutory decisions made by other decision-makers, including governments, do not impact the inherent rights and interests, nor deeply held cultural values, of those individual decision-makers. This means it is especially critical for Sponsors to consider the "legitimate interests" and "cooperation" aspects of "good faith".

Parties should seek their own independent legal advice on how to demonstrate good faith. It is expected that all parties, when confronted with a dispute, will use dispute resolution assistance or services either provided by DPC or independently before lodging formal legal action. This should occur in relation to disputes arising both during CHMP preparation and evaluation.

Appendix 10: Dispute resolution and assistance

There are essentially three broad contexts within which a dispute may arise in the CHMP process.

1. During the preparation of the CHMP
2. During the evaluation of a CHMP by a RAP
3. After the refusal of a CHMP

Disputes occurring during the preparation of a CHMP, or at any of the steps outlined above can arise. There are a range of options Sponsors, RAPs and HAs can consider for assistance.

Where there are disagreements regarding what is required under DPC's guidelines, practice notes and other guidance, any parties to such disagreements can seek assistance and clarification from DPC in the first instance. DPC regularly assists parties to resolve complex CHMP questions and problems, particularly when HAs or Sponsors question proposed methods or conditions, such as complex assessment intensity or salvage requirements.

Where disputes may be about the conduct of a HA, DPC's **Code of Conduct for Heritage Advisors (the Code)** <<https://www.firstpeoplesrelations.vic.gov.au/code-conduct-heritage-advisors>> and its complementing complaints process may be able to assist. The online, opt-in **Heritage Advisor List** <<https://www.firstpeoplesrelations.vic.gov.au/heritage-advisor-list>> that DPC administers a list of all HAs who have opted to sign the Code and gives details HAs provide about their professional memberships.

Note also many HAs are members of professional associations which have their own member complaint processes (including Australian Association of Consulting Archaeologists, Professional Historians Association and Australian Anthropological Society). Where there are serious concerns about the professional conduct of a HA who is a member of one of those associations, RAPs or Sponsors should pursue those complaint avenues.

Complaints about the conduct of a RAP may be referred to the Victorian Aboriginal Heritage Council (VAHC), which has its own complaints process²².

Disputes relating to the evaluation of a CHMP by a RAP before the RAP has made its decision may fall under the alternative dispute resolution (ADR) provisions in subdivision 1, division 1, of Part 8 of the Act. This Part allows a Sponsor or RAP to refer a dispute relating to the evaluation of a CHMP for which approval is sought under section 62 of the Act to the Chair of the VAHC (note that section 111 of the Act provides that disputes arising in relation to evaluation of a plan for which approval is sought from the Council or Secretary under section 65 or 66 are NOT disputes for the purpose of the alternative dispute resolution section). The Chair can then arrange for mediation or another form of ADR, including preliminary assistance in the form of advice on rights and obligations. The Chair has 30 days to arrange this, but must not arrange it if they reasonably believe resolution by ADR is unlikely. All parties share the costs of ADR in proportions as agreed, or if they cannot agree, then in equal shares (see sections 113 and 114 of the Act).

²² <https://www.aboriginalheritagecouncil.vic.gov.au/complaints-against-registered-aboriginal-parties>

Other dispute resolution options

Any of the previously mentioned types of disputes may also be referred directly to other services providing ADR. There is no requirement, for example, to use the provisions of the Act regarding disputes during evaluation by first referring them to the VAHC. Other avenues include:

- **Dispute Settlement Centre of Victoria** <<https://www.disputes.vic.gov.au/>> provides dispute assistance including mediation for a range of disputes
- **Victorian Bar** <<https://www.vicbar.com.au/Web/Contents/Alternative-Dispute-Resolution/Alternative-Dispute-Resolution.aspx>> provides access to processes involving negotiation, mediation, conciliation, and arbitration (see). Examples are:
 - **The Victorian Commercial Arbitration Scheme** <https://www.vicbar.com.au/Web/Contents/Alternative-Dispute-Resolution/Victorian-Commercial-Arbitration-Scheme/Victorian_Commercial_Arbitration_Scheme> may be appropriate for commercial disputes.
 - **Expert Determination** <<https://www.vicbar.com.au/Web/Contents/Alternative-Dispute-Resolution/Expert-Determination>>, whereby a dispute is referred to an independent expert in the field to provide a binding resolution on the parties. Note, a CHMP conduct agreement (see Appendix 11) may include a provision requiring disputes to be resolved in this manner. Otherwise, expert determination may be entered into by agreement after a dispute.
 - **Mediation** <<https://www.vicbar.com.au/Web/Contents/Alternative-Dispute-Resolution/Mediation>> by barrister may also be an option for.

All parties are of course able to refer the disputes to the courts. Serious conduct matters should be reported to the police.

Disputes about a CHMP refusal may be pursued before VCAT, which has its own preliminary mediation and ADR process which usually occur before a dispute progresses to a full hearing. When VCAT hears a dispute in relation to the Act, Part 1A of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* requires the matter to be heard by a member with sound knowledge and experience in Aboriginal cultural heritage, or at least one such member if the Tribunal is made up of 2 people, or at least 2 such members if the Tribunal is made up of 3 or more members.

In hearings reviewing the refusal of a CHMP, VCAT may approve the CHMP, refuse the CHMP or approve the CHMP with its own conditions. VCAT essentially steps into the shoes of the decision-maker, with the authority to make a binding decision. However, a VCAT decision may be appealed to the courts.

Appendix 11: Agreements about CHMP conduct

Agreements about the conduct of parties undertaking CHMP work may be useful to enter into ahead of CHMP fieldwork, and may be either single documents governing the entirety of a CHMP, or broken into the CHMP stages. Such agreements may cover the way in which a CHMP undertakes work under section 60. While it may be preferable for parties to enter into such agreements before undertaking any CHMP work, it is a matter between the relevant parties on whether to enter into such agreements. A party (whether it be a RAP, Sponsor or HA) can choose whether to enter into the agreements or not.

Universal agreement templates or contracts may be developed and published by each RAP as corporate documents, to provide additional certainty ahead of time to Sponsors and HAs about how a RAP prefers CHMPs and post CHMP works in its area to be conducted. These could be varied depending on the CHMP with mutual agreement. It is not necessary to develop bespoke conduct agreements for each CHMP if standard conduct agreements are in place and acceptable to all parties.

CHMP conduct agreements do not need to be included in the CHMP.

The following are suggested additional steps if the above is not the case.

Standard assessment conduct agreement

This is intended to cover practical procedures to apply while working onsite.

A CHMP conduct agreement may include the following:

- Expected daily hours of work for HAs and RAPs
- Agreed fees for RAP services, including meeting fees, survey supervision and participation fees and excavation supervision and participation fees (and any other fees as stipulated by the parties)
- Expectations for communication and responding to requests
- Minimum daily rates where work is impacted by weather
- Minimum RAP personnel required for work to commence and continue
- When/if work can continue without RAP attendance
- Agreed fieldwork dates
- Agreed meeting dates, venues, required personnel and times, along with fee schedules
- RAP personnel experience requirements for standard and complex assessment work
- Failure to implement agreement contingencies

DPC does not consider CHMP conduct agreement matters legitimate grounds on their own for refusing to approve a CHMP, and these do not need to be documented in the CHMP.

Dispute resolution options are available to resolve matters.

Complex assessment conduct agreement

This should mirror the approach described in previous section (**Standard assessment conduct agreement**). That conduct agreement should provide a ready template for this one.

Salvage conduct agreement

If archaeological salvage is a proposed condition of the CHMP, and subject to the agreement of all parties, a Salvage Conduct Agreement should be agreed after the CHMP is approved and before salvage work commences.

A Salvage Conduct Agreement should include the following:

- Expected daily hours of work for HAs and RAPs
- Agreed fees for RAP services, including meeting fees, salvage supervision and participation fees (and any other fees as stipulated by the parties)
- Expectations for communication and responding to requests
- Minimum daily rates where work is impacted by weather
- Minimum RAP personnel required for work to commence and continue
- When work can continue without RAP attendance
- Agreed fieldwork dates
- Agreed meeting dates, venues, required personnel and times, along with fee schedules
- RAP personnel experience requirements
- Failure to implement agreement contingencies.

Note the Salvage Strategy should be agreed before the CHMP has been approved, so it can be attached to the CHMP conditions. However, the Salvage Conduct Agreement may be agreed after the CHMP has been approved, so as not to create a potential obstacle to CHMP approval or to development scheduling. A Salvage Strategy should not include the matters covered in the Salvage conduct agreement.

DPC does not consider Salvage Conduct Agreement matters legitimate grounds on their own for refusing to approve a CHMP.

Appendix 12: Predictive modelling

“Predictive modelling” is used throughout these Guidelines to refer to work done prior to and during cultural heritage assessment by survey and excavation to map areas more likely to contain Aboriginal cultural heritage and to plan sampling strategies to guide the archaeological sampling of landscapes to test the predictive model.

Predictive models are expected to be developed and/or adopted before, and tested by, fieldwork during CHMPs. They are expected to form part of, and be documented within, plans for standard and complex assessment and salvage.

Why emphasise predictive modelling in CHMPs?

The object of predictive modelling is to identify high-potential areas for Aboriginal cultural heritage material, reduce development risks and guide archaeological field surveys and excavation strategies. The major benefits from its application include time and cost savings from better-targeted standard and complex assessments, and better efficiency in locating Aboriginal cultural heritage.

Predictive modelling v predictive place extent mapping

These are not the same thing, although may use similar logic and method.

DPC expects HAs to cease surveying and excavating Aboriginal places once their extent, nature and significance can be adequately determined, except when proper archaeological practice would be violated.

If a HA can determine the likely extent of an Aboriginal place from partial survey or excavation, and its significance and nature are also able to be established at that stage of investigation, neither the Regulations nor DPC require additional work on that place.

Mapping of the likely extent of that place should be possible at that stage, and the logic and reasons for that mapped predicted extent should be documented along with the place registration and documented in the CHMP.

Source data for predictive models

These include SAHA mapping, Aboriginal cultural heritage registry information system (ACHRIS) mapping, previous CHMPs and previous research. Environmental mapping data should also be used. Mathematical and machine predictive models should be enhanced by traditional knowledge obtained directly from Traditional Owners and RAPs, and from CVAs.

How should predictive modelling be done?

Predictive modelling ranges from simple judgmental weighting of selected variables, to more advanced methods like regression, classification, Bayesian statistics and other machine learning algorithms. Variables analysed may include soil type, terrain attributes, proximity to water and traditional knowledge to identify patterns associated with known places.

DPC expects HAs and RAPs to use their professional judgement when selecting suitable predictive modelling approaches, work together to adopt and adapt predictive models relevant to individual CHMPs, and document these in plans for standard and complex assessment and salvage work.

Testing and documenting predictive models

All archaeological fieldwork, including cultural heritage management fieldwork, should be testing predictive models and documenting results against those models.

Documenting field results against predictive modelling in CHMPs is critical for informing future CHMPs. This includes submitting spatial data in digital form. The more this work is done and documented, the more efficient future CHMPs will be. It will also help alleviate challenges with predictive modelling such as bias, changing landscapes and accuracy.

Examples can be seen at [Academia website](https://www.academia.edu/42333934/SAA_Webinar_An_Introduction_to_Archaeological_Predictive_Modeling)
<https://www.academia.edu/42333934/SAA_Webinar_An_Introduction_to_Archaeological_Predictive_Modeling>

Appendix 13: Sampling strategies for archaeological surveys

These Guidelines mention three different types of sampling strategies which may be employed to plan CHMP standard assessments (surveys) and to test predictive models when probabilistic sampling strategies are required (e.g. in the absence of known Aboriginal places in an activity area).

The following provides a brief explanation of each, with the understanding that other survey methods are available; and with the expectation that all HAs know and understand these methodologies and how to best employ them.

Random sampling

This method includes **simple random sampling** – where an activity area is gridded and random grid squares selected by a random number generator are surveyed. Other variants include **cluster sampling** – which involves dividing an activity area into random subunits and selecting some for survey.

Random sampling methods are designed to ensure statistical probability is used to predict site locations, reducing the potential for bias in archaeological findings.

Systematic sampling

This method places grid squares evenly across an activity area, and grid squares are selected for surveying at regular intervals. This allows for a selected percentage of an activity area to be sampled, again eliminating bias. **Transect sampling** is another example of systematic sampling which employs regularly spaced lines across the activity area instead of grid squares.

Systematic sampling helps to avoid the “clustering” of sample grid squares which may result from random sampling, and is often easier to implement in the field.

Stratified sampling

Also called **stratified random sampling**, this method combines both the random and systematic sampling to divide an activity area into smaller regularly spaced regions and then randomly sampling chosen grid squares within each region. An activity area may be divided into different landform zones (strata) and assigned proportionate sample units (so, for example, if a 10% sample is desired, then 2 hectares of a 20-hectare river terrace and 3 hectares of a 30-hectare floodplain might be selected for survey). These smaller subsets are selected at random for surveying. Another variation is **stratified unaligned systematic sampling**, which involves gridding out an area but starting at a random point within a grid square.

Stratified sampling may be employed to focus resources on areas of higher potential while still checking other areas. It ensures artefacts in low-density zones are not entirely missed, which can happen with pure random sampling.

Non-probabilistic sampling

This method is employed when Aboriginal place locations or likely locations within an activity area are already known prior to survey, and concentrates on those areas. This can be informed by prior discoveries and information about cultural values or Aboriginal intangible values relating to a place obtained from Traditional Owners prior to standard assessment.

Examples of sampling strategies can be seen at [website](https://la.utexas.edu/users/denbow/labs/survey.htm) <https://la.utexas.edu/users/denbow/labs/survey.htm>

