

Project Controls

Master Specification

PC-H1 Aboriginal Heritage and Native Title

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PC-H1 Aboriginal Heritage and Native Title

1 General

- 1.1 This Standard Specification sets out the minimum Aboriginal Heritage and Native Title requirements for the Works under the Contract.
- 1.2 For the purpose of this Part, the 'Works' can be activities associated with planning, design, supply, construction, maintenance, management or operation as defined by the Contract.
- 1.3 Where readily available and accessible to the Principal, previous or preliminary assessments will be provided to the Contractor.

2 Contractor's Obligations

- 2.1 The Contractor shall ensure all Aboriginal heritage, Native Title and related land use assessments, necessary for the execution of the Works, are undertaken. These must include the following:
 - a) A map of the area searched and the results of a check of the Register of Aboriginal Sites and Objects.
 - b) Identification of the relevant Aboriginal representative body/bodies for the area.
 - c) Identification of the status of any Native Title interests in the area, and whether an Indigenous Land Use Agreement (ILUA) may apply to the project area and the proposed works.
- 2.2 A copy of the AAR results, associated site tables and site cards must be provided to the Principal. This will be kept in a confidential register of information by the Principal.
- 2.3 The Works must be undertaken in accordance with all applicable legislation and documents, including:
 - a) Aboriginal Heritage Act 1988 (SA);
 - b) Aboriginal and Torres Strait Island Protection Act 1984 (Cwth).
 - c) Environment Protection and Biodiversity Conservation Act 1999 (Cwth); and
 - d) Native Title Act 1993 (Cwth).
- 2.4 The Contractor's Works must be undertaken to maximise the achievement of the following objectives:
 - a) protect and avoid damage, disturbance and / or interference to Aboriginal archaeological / anthropological sites, objects or remains; and
 - b) avoid works that impact areas where Native Title has been determined to exist, unless otherwise authorised by the Native Title Act 1994.
- 2.5 Notwithstanding the above, the Contractor may propose an approach that does not conform to the requirements of this Standard Specification. The Contractor shall obtain the Principal's approval to adopt the proposed approach, which shall constitute a **Hold Point**.
- 2.6 The Contractor shall review all previous or preliminary assessments sourced through its own research or provided by the Principal to determine, and undertake, all necessary updates to the assessments or determine if they meet the requirements under this Specification. If not completed previously by the Contractor or the Principal, the Contractor shall undertake an Aboriginal Heritage Risk Assessment.
- 2.7 The Contractor, unless advised by the Principal, is responsible for obtaining any approvals, permits and authorisations required for the Works.
- 2.8 All works providing payments for Aboriginal heritage services shall comply with Clause 3: South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments under this Standard Specification.

3 Aboriginal Heritage Risk Management Payments to Aboriginal Representatives

- 3.1 The Contractor shall comply with requirements the South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments (the Guidelines), including payment for meeting attendance, monitoring, surveys, excavation, salvage, and reburial work.
- 3.2 In accordance with the Guidelines, the Principal is required to obtain concurrence from the Attorney General for any payments for Aboriginal representatives.
- 3.3 To enable the Principal to obtain concurrence from the Attorney-General the Contractor, unless otherwise advised by the Principal, shall prepare documentation to seek concurrence for heritage risk management payments (using the Department's template provided) for submission by the Principal to the Attorney-General.
- 3.4 Submission of the documentation to the Principal will constitute a **Hold Point**. The Contractor must allow at least 8-10 weeks for approval where heritage payments are in accordance with the Guidelines. Where heritage payments or activities are outside those specified by the Guidelines additional timeframes (e.g. up to 6 months) may be required.
- 3.5 The Contractor shall not agree to any terms and conditions, or make any payments (whether direct or indirect), in relation to the engagement of Aboriginal organisation(s) and / or traditional owners for heritage services without prior approval from the Principal and concurrence from the Attorney-General.
- 3.6 Where approval has been granted by the Attorney-General, the Contractor will be responsible for:
 - a) organising the engagement of the Aboriginal group(s) or representatives in relation to heritage matters. The Principal will assist with these negotiations where appropriate;
 - b) providing all necessary support to Aboriginal group(s) or representatives to undertake the services required including, but not limited to, safety inductions and provision of relevant equipment (if not otherwise provided);
 - c) organising complete payment of the Aboriginal group(s) or representatives in accordance with the rates approved by the Attorney-General and the Principal;
 - d) maintaining adequate records of payments, attendance, individual timesheets, and invoices; and
 - e) providing a written report of survey / monitoring results, recommendations and Aboriginal Heritage Risk Management Payments including signed timesheets at completion or when requested by the Principal.

4 Aboriginal Heritage

- 4.1 The Contractor must engage a suitably qualified Archaeologist / Heritage specialist, and where required a suitably qualified Anthropologist, to undertake all works under this Specification.

Risk Assessment

- 4.2 If being undertaken by the Contractor as per requirements of Clause 2.6, the Aboriginal Heritage Risk Assessment will include a qualitative risk analysis for the works to evaluate the risk of encountering and / or damaging, disturbing and interfering with Aboriginal archaeological / anthropological sites, objects or remains.
- 4.3 The Risk Assessment must consider, as a minimum:
 - a) Outcomes of a search of the State Government's Register of Aboriginal Sites or Objects. A copy of the search output must be provided to the Principal.
 - b) The project location.
 - c) Current and previous land use.
 - d) Soil profile, nearby waterways and past heritage surveys (if any).

- 4.4 The Risk Assessment shall include advice on the requirement for any approvals, permits and authorisations required for the work and, based on the risk, advice for undertaking further work under this Standard Specification.
- 4.5 Advice may include recommendations for engagement with Aboriginal organisation(s) and / or traditional owners; undertaking survey(s); preparation of Aboriginal Cultural Heritage Management Plan; applications for authorisation(s) under the Aboriginal Heritage Act 1988, development of a Heritage Agreement, and any other measures considered reasonable to manage Aboriginal sites, objects and / or remains.
- 4.6 Notwithstanding the above, the Contractor may propose an approach that does not conform to these requirements. The Contractor shall obtain the Principal's approval to adopt the proposed approach.
- 4.7 If the level of risk varies across the project area, this should be clearly indicated on a map, and justified in the body of the report.
- 4.8 Submission of the Risk Assessment and the Contractor's proposal to undertake further work under this Clause, and / or in addition to, will constitute a **Hold Point**. Further work under Clause 4 will be subject to the approval of the Principal.

Aboriginal Heritage Survey(s)

- 4.9 Aboriginal heritage survey(s) shall be undertaken in accordance with the Department's Cultural Heritage Guideline and/or standard industry practice and where applicable, requirements of relevant Indigenous Land Use Agreement(s).
- 4.10 Aboriginal heritage surveys shall assess all anthropological and archaeological values of a given area (and any specifics included in a relevant Indigenous Land Use Agreement) and involve the appropriate Aboriginal organisations, representatives and / or traditional owners for the area.
- 4.11 Where it is necessary to consult with Aboriginal organisation(s) and / or traditional owners, the Contractor will be responsible for engagement (including payment) and consultation and shall follow process outlined in Clause 3.
- 4.12 The Aboriginal heritage survey must assess the impact of the proposed works on any known or identified Aboriginal sites, objects or remains, as defined under the Aboriginal Heritage Act 1988.
- 4.13 The Aboriginal heritage survey must also assess the risk of encountering and / or damaging, disturbing and interfering any unidentified Aboriginal sites, objects or remains, as defined under the Aboriginal Heritage Act 1988.

Aboriginal Heritage Survey Report

- 4.14 If a survey is undertaken by the Contractor, it shall prepare an Aboriginal Heritage Survey Report. The survey report can be provided as a standalone report or as an amendment to the risk assessment.
- 4.15 The methodology utilised for the Aboriginal heritage survey must be described in the report. The coverage of the survey area, and the effectiveness of the survey must also be stated.
- 4.16 The survey report must provide advice on the requirement for any consultation, approvals, permits, authorisations required for the work, further work under this Standard Specification. Recommendations may address the need for further engagement with Aboriginal organisation(s) and / or traditional owners; preparation of Aboriginal Cultural Heritage Management Plan; applications for authorisation(s) under the Aboriginal Heritage Act 1988 and any other measures considered reasonable and recommended to manage Aboriginal sites, objects and / or remains.
- 4.17 The Aboriginal heritage survey report must meet industry standards and be valid in its accuracy and recommendations for at least 5 years. Mapping information and shape files/kmz must be submitted with the report clearly indicating areas that are referenced in the report as cleared for works, requiring monitoring, or areas that are not cleared or have changed location due to on ground survey (i.e. realignment of roads, access tracks, new pits etc).
- 4.18 The following is the suggested report structure:
 - a) Cover and Title Page

- b) Executive Summary
 - c) Table of Contents
 - d) Introduction
 - e) Project Description
 - f) Background Information
 - g) Extent and Nature of Project Area
 - h) Documentation of Consultation
 - i) Field Investigation Methodology
 - j) Coverage and Effectiveness
 - k) Survey Results
 - l) Aboriginal Cultural Heritage/Values Identified
 - m) Aboriginal Cultural Heritage Significance
 - n) Summary
 - o) Risk Management Analysis
 - p) Recommendations and Considerations
 - q) Conservation and Management
 - r) Maps
 - s) References
 - t) Appendices
- 4.19 Approval of the Aboriginal heritage survey report by the Principal will constitute a **Hold Point**. Approval of further work recommended in the report (and as per Clause 4) will also constitute a **Hold Point**.

Authorisations under the Aboriginal Heritage Act 1988

- 4.20 The Contractor, unless advised by the Principal, must obtain any authorisation(s) required under the Aboriginal Heritage Act 1988 for the works.
- 4.21 The Contractor shall prepare the application(s) and all associated documentation to obtain the authorisation(s).
- 4.22 Submission of the draft application(s) and associated documentation will constitute a **Hold Point**.
- 4.23 The Contractor, unless advised by the Principal, is responsible for managing the application and authorisation process including the lodgement of the application(s) and associated documentation to the relevant authority to seek authorisation(s). This includes undertaking any other additional work/tasks required to seek the authorisation(s), including liaising with and providing support and assistance to the relevant government agency; and attendance and presentation at consultation meeting(s). The Principal shall assist where required.
- 4.24 The Contractor shall provide a copy of any authorisation, and amendments, to the Principal within 7 days of receipt.
- 4.25 The Contractor must comply with all requirements / conditions of authorisation(s) granted under the Aboriginal Heritage Act 1988.

Cultural Heritage Management Plan

- 4.26 The Contractor, unless advised by the Principal, must develop a Cultural Heritage Management Plan (CHMP) that includes:
- a) An introduction and intention of the Plan;
 - b) Contractors, roles and responsibilities (incl. contact details);

- c) Monitoring guidelines (incl. engagement protocol and requirements regarding role, qualifications, PPE, insurances, etc.); and
 - d) Clear management measures to apply in case of discoveries of Aboriginal sites, objects and remains if identified – Discovery Protocols.
 - e) Clear instructions around protective measures to be applied either temporarily or permanently to manage both known sites, and new discoveries.
 - f) Recommendations for the management, storage, and repatriation of Aboriginal sites, objects and remains (incl. analysis / testing).
- 4.27 The Contractor will be responsible for consulting with relevant Aboriginal group(s) regarding the CHMP and obtaining their endorsement, where required.
- 4.28 Submission of the draft and endorsed Cultural Heritage Management Plan and associated mapping will constitute a **Hold Point**.

5 Aboriginal Heritage Monitoring During Construction

- 5.1 Unless otherwise specified in an authorisation under the Aboriginal Heritage Act, the Contractor shall ensure that all personnel are made aware of their obligations under the Aboriginal Heritage Act 1988.
- 5.2 The Contractor, unless advised by the Principal, shall engage Aboriginal representatives from the relevant Aboriginal organisation(s) to monitor construction activities in areas identified in risk assessments / surveys as having high potential or risk, or as otherwise agreed in a CHMP for the Works or as stipulated in any authorisation. The Principal will assist with negotiations where appropriate.
- 5.3 Where the above applies, the Contractor shall ensure:
- a) the appropriate number of Aboriginal heritage monitors has been requested for all ground disturbing works within the identified monitoring areas;
 - b) there are two Aboriginal heritage monitors while ground disturbing works are conducted in the area where monitoring is required;
 - c) that if ground disturbance is occurring in multiple areas along the alignment, the maximum distance two monitors can be shared between ground disturbance points is to be no more than 500 m; and
 - d) that Aboriginal Monitors understand their obligations under the Work, Health and Safety Act 2012 and provide copies of applicable Construction Industry Cards (i.e. White Card) or undertake necessary training prior to commencing monitoring works on site.

6 Discovery of Sites, Objects or Remains

- 6.1 If, at any time, an Aboriginal site, object or remain(s) is uncovered, the Contractor shall:
- a) immediately stop works and isolate / bunt off the site providing a 5-10 meter perimeter to ensure that no disturbance occurs within the isolated area;
 - b) follow the conditions of a granted authorisation(s) and CHMP(s); and / or (if these do not exist)
 - c) follow the Department's Aboriginal Objects, Sites and Remains Flow Chart. In this chart the role of the Department's representative is replaced with the Contractor's personnel; and
 - d) follow the heritage management requirements of any relevant Indigenous Land Use Agreement (ILUA).
- 6.2 The Contractor shall immediately notify the Principal following the discovery or of any suspected or actual Aboriginal sites, objects or remains.
- 6.3 The Contractor shall provide any services / items for the management or any identified Aboriginal sites, objects or remains.
- 6.4 The Contractor will archaeologically record the discovery for the purpose of reporting the site to Department of the Premier and Cabinet, Aboriginal Affairs and Reconciliation (DPC AAR), as

- specified by section 20 of the Aboriginal Heritage Act 1988. A copy of the documentation and shape files of the location shall be provided to the Principal.
- 6.5 The Contractor shall undertake any assessments and obtain any approvals, permits, authorisations required to continue with the Works.
- 6.6 The Contractor shall undertake negotiations, in good faith, and implement requirements / recommendations on the management of any identified Aboriginal sites, objects or remains with relevant Aboriginal organisation(s) and / or Traditional Owners and the relevant government agency. The Principal will assist with the negotiations where required.
- 6.7 Any payments to Aboriginal representatives/groups shall be in accordance with the requirements of Clause 3.
- 6.8 The Contractor shall ensure compliance with the requirements of the Aboriginal Heritage Act 1988 and not recommence work in the affected area until any authorisation have been obtained, conditions implemented and clearance has been provided by a suitably qualified archaeologist / anthropologist.
- 6.9 Where not required by legislation, the Contractor shall meet any reasonable requirements of Aboriginal organisations / Traditional Owners in relation to the heritage impact.

7 Native Title

- 7.1 The Contractor shall undertake an assessment to identify the Native Title status of land that may be impacted by the Project including land that may need to be acquired (wholly or partially).
- 7.2 As a minimum, the assessment shall determine the following:
- Is the land subject to a Native Title Claim?
 - Is the land subject to a Federal Court Native Title Determination?
 - Where either of the above exists, identify the relevant Registered Native Title Body Corporates (RNTBC) or legal representatives.
 - Is the land subject to an Indigenous Land Use Agreement (ILUA) and (if known) are there any parameters within the ILUA that may apply to the project?
 - Is there evidence to indicate that Native Title has been extinguished?
- 7.3 The Contractor shall also provide the Principal with all necessary information regarding the land (e.g. plans, project details, parcel identifiers, etc.) to enable the Principal to seek Crown advice and confirm the Contractor's preliminary assessment findings regarding Native Title.
- 7.4 If required, the Principal will undertake the notification process under the Native Title Act 1994.
- 7.5 Provision of the above information will constitute a **Hold Point**. The Contractor shall allow at least 3 months for clarification and notification activities to occur. No works are to occur on parcels of land where Native Title is affected, unless approved by the Principal.

8 Reburial

- 8.1 Upon approval of the Principal, the Contractor shall engage Aboriginal representatives from the relevant Aboriginal organisation(s) to reinter Aboriginal ancestral remains.
- 8.2 Upon approval of the Principal, the Contractor shall:
- obtain any authorisation(s) required under the Aboriginal Heritage Act 1988 and or the Burials and Cremations Act 2013 for the works.
 - liaise with and provide support and assistance to the relevant government agency; and
 - attend and present at consultation meeting(s).
- 8.3 The Principal will assist with the above activities where required.
- 8.4 The Contractor shall engage a suitably qualified archaeologist(s) to archaeologically record the reburial site for the purpose of reporting to DPC-AAR, as specified by section 20 of the Aboriginal

Heritage Act 1988. A copy of the documentation and shape files of the location will be provided to the Principal.

- 8.5 Any payments to Aboriginal representatives/groups shall be in accordance with the requirements of Clause 3 'Aboriginal Heritage Risk Payments to Aboriginal Representatives or Groups'.

9 Hold Points

- 9.1 The following is a summary of Hold Points referenced in this Part:

Table PC-H1 9-1 Hold Points

Document Ref.	Hold Point	Response Time
2.5	Proposal of an approach not conforming to this standard specification	10 Working Days
3.4	Documentation seeking heritage payment approval	12 Weeks
4.8	Aboriginal Heritage Risk Assessment and the Contractor's proposal to undertake further work	10 Working Days
4.19	Approval of the Heritage survey report	10 Working Days
4.19	Approval of further work recommended in the Heritage survey report	10 Working Days
4.22	Approval documentation under the Aboriginal Heritage Act	6-12 Months
4.28	Cultural Heritage Management Plan	10 Working Days
7.4	Provision of documentation for Native Title clarification	3 Months