

Project Controls

Master Specification

PC-H1 Aboriginal Heritage and Native Title

Document Information

KNet Number:	13581409
Document Version:	5
Document Date:	July 2022

DEPARTMENT FOR
INFRASTRUCTURE
AND TRANSPORT



Government of South Australia

Department for Infrastructure
and Transport

Document Amendment Record

Version	Change Description	Date
1	Initial issue (formerly G52 – Heritage Management and Native Title). Removal of Non-Aboriginal Heritage to PC-H2.	05/03/19
2	Minor word and ordering changes	19/09/19
3	Amendments throughout	August 2020
4	Amendments throughout	August 2021
5	Amendments throughout	July 2022

Document Management

This document is the Property of the Department for Infrastructure and Transport and contains information that is confidential to the Department. It must not be copied or reproduced in any way without the written consent of the Department. This is a controlled document and it will be updated and reissued as approved changes are made.

Contents

Contents	3
PC-H1 Aboriginal Heritage and Native Title	4
1 General	4
2 Contractor's Obligations	4
3 Aboriginal Heritage Risk Management Payments	5
4 Aboriginal Heritage	6
5 Aboriginal Heritage Monitoring During Construction	9
6 Discovery of Sites, Objects or Remains	9
7 Native Title	10
8 Reburial	10
9 Aboriginal Heritage Risk Management Payment Reporting Schedule	11
10 Hold Points	11

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.

Definitions

- 1.4 The following definitions apply to terms used in this Part:

Term	Definition
DPC-AAR	Department of Premier and Cabinet – Aboriginal Affairs and Reconciliation
ILUA	Indigenous Land Use Agreement
NNTT	National Native Title Tribunal
Cwth	Commonwealth
SA	South Australia
GIS	Geographical Information Systems
Guidelines	South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments

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.
- 2.2 The Contractor must ensure that the search area includes the entire project footprint or Works. This includes all land parcels (wholly or partially, for use temporarily or permanently) to enable project construction (such as laydown areas, site compound locations and site access tracks) and delivery.
- 2.3 All assessments must be undertaken by personnel appropriately qualified in these matters and must include the following, as a minimum:
 - a) A map of the area searched and the results of a check of the Register of Aboriginal Sites and Objects maintained by DPC-AAR.
 - b) Identification of the relevant Aboriginal groups/organisations/Traditional Owners that may have an interest in the specific area, as specified by DPC-AAR.
 - c) Identification of the status of any Native Title interests in the area (both claims and determinations).
 - d) Identification of whether an Indigenous Land Use Agreement (ILUA) may apply to the project area and the proposed works, where the State Government or Attorney General are the proponent.
 - e) Create a high level constraints map for the project footprint depicting the following areas:
 - i) The approximate location of DPC-AAR sites,
 - ii) Areas where the National Native Title Tribunal (NNTT) has found that native title exists or co-exists over specific parcels of land (see "Determined Outcomes" on the NNTT website).
- 2.4 A copy of the AAR results, including associated site tables and site cards must be provided to the Principal. These will be kept in a secure and confidential register of information by the Principal.
- 2.5 The Works must be undertaken in accordance with all applicable legislation and documents, including:

- a) Aboriginal Heritage Act 1988 (SA)
 - b) Native Title Act 1993 (Cwth)
 - c) Native Title (SA) Act 1994
 - d) Aboriginal and Torres Strait Island Protection Act 1984 (Cwth); and
 - e) Environment Protection and Biodiversity Conservation Act 1999 (Cwth)
- 2.6 The Contractor's Works must be undertaken to maximise the achievement of the following objectives:
- a) 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, or co-exist, unless otherwise authorised by the Principal.
- 2.7 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**.
- 2.8 The Contractor shall review all previous or preliminary assessments sourced through its own research or provided by the Principal. The Contractor shall then complete a comprehensive Heritage Risk Assessment to meet the requirements under this Specification.
- 2.9 The Contractor, unless advised by the Principal, is responsible for obtaining approvals, permits and authorisations required for the Works. An exception is when the Department is guided to seek advice from the Crown Solicitor's Office (CSO) under Native Title (as per Section 7).
- 2.10 Administer payments for Aboriginal heritage services consistent with the South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments under this Standard Specification.
- 2.11 All maps provided must be highly legible, easily interpreted and produced to a minimum standard as specified below:
- a) include a legend identifying the symbols used to represent features on the map;
 - b) provide a minimum of at least three readily identifiable features as reference points (such as road names, named waterways or other prominent features);
 - c) include a scale shown by a graphic bar or as a unit of measurement (such as 1:200);
 - d) include a prominent arrow indicating which direction is North; and
 - e) include a description of what the map represents.
 - f) ensure mapping utilises industry standard mapping programs and GIS technology.
 - g) for results mapping, it is strongly recommended that areas "cleared for use" are depicted in green, areas "cleared with conditions" are depicted in orange, and areas "not cleared for use" in red.

3 Aboriginal Heritage Risk Management Payments

- 3.1 The Contractor must comply with the requirements of the South Australian Government's Guidelines for Aboriginal Heritage Risk Management Payments or the "Guidelines", which specifies the rates of payment for meeting attendance, monitoring, surveys, disbursements and heritage associated tasks.
- 3.2 The Contractor is not authorised to 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 that are inconsistent with the Guidelines. To do so will be at the cost of the Contractor.
- 3.3 The Contractor is responsible for:
- a) liaising with 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, travel to and from location, safety inductions and provision of relevant equipment/PPE (if not otherwise provided);
- c) organising and administering payments to 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, disbursement, receipts, attendance, individual timesheets, and invoices. Signed timesheets may be requested at completion of work or any time when required by the Principal
- e) providing a written report of survey / monitoring results, with recommendations for the effective management of the area for the duration of project.
- f) providing quarterly financial reporting (using the Department's template provided) to the Principal detailing the financial information related to the commission of Aboriginal heritage services as described in the Guidelines (see Reporting Schedule in Section 9).

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.
- 4.2 It is strongly recommended that this specialist is prequalified with DIT for provision of these services. Where this cannot occur the permission of the Principal must be sought and adequate provision of evidence demonstrating proof of expertise and qualifications is necessary.

Risk Assessment

- 4.3 If being undertaken by the Contractor as per requirements of Section 2, the Aboriginal Heritage Risk Assessment will include a qualitative risk analysis for the project works and an evaluation of the risk of encountering and / or damaging, disturbing, and interfering with Aboriginal archaeological / anthropological sites, objects or remains.
- 4.4 The Risk Assessment must consider, as a minimum:
 - a) Outcomes of a search of the State Government's Register of Aboriginal Sites and 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 and nearby waterways.
 - e) Past heritage surveys and reports (if any). If no previous heritage surveys or reports are available for the project area this is to be noted by the Contractor.
- 4.5 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.
- 4.6 Advice may include recommendations for engagement with Aboriginal organisation(s) and / or Traditional Owners; undertaking survey(s); preparation of a Cultural Heritage Management Plan (CHMP); 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.
- 4.7 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.
- 4.8 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.
- 4.9 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)

- 4.10 Aboriginal heritage survey(s) shall be undertaken in accordance with standard industry practice (e.g. Burke, Morrison, and Smith. 2017. The Archaeologists Field Handbook 2nd Ed.) and where applicable, requirements of relevant Indigenous Land Use Agreement(s).
- 4.11 Aboriginal heritage surveys shall assess the 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.
- 4.12 Where it is necessary to consult with Aboriginal organisation(s) and / or Traditional Owners, the Contractor will be responsible for engagement and payment for consultation and shall follow the process outlined in Section 3.
- 4.13 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.
- 4.14 The Aboriginal heritage survey must also assess the risk of encountering and / or damaging, disturbing and interfering with any previously unknown Aboriginal sites, objects or remains, as defined under the Aboriginal Heritage Act 1988.

Aboriginal Heritage Survey Report

- 4.15 If a survey is undertaken by the Contractor, an Aboriginal Heritage Survey Report must be provided. The survey report can be provided as a standalone report or as an amendment to a previous desktop assessment.
- 4.16 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.
- 4.17 The Aboriginal heritage survey report must meet industry standards and be valid in its accuracy and recommendations for at least 5 years.
- 4.18 Mapping information and shape files must be submitted with the report clearly indicating areas that are referenced in the report. It is suggested that areas are identified as “cleared for use”, “not cleared for use” or “cleared with conditions” i.e. requires monitoring. Where possible, map alternative that allow for the avoidance of heritage values (i.e. realignment of roads, access tracks).
- 4.19 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) Survey Results (including coverage and effectiveness)
 - k) Aboriginal Cultural Heritage/Values Identified
 - l) Aboriginal Cultural Heritage Significance
 - m) Summary of Results and Values
 - n) Risk Management Analysis
 - o) Recommendations and Considerations
 - p) Conservation and Management

- q) Maps
 - r) References
 - s) Appendices
- 4.20 The survey report must provide advice on the requirement for any consultation, approvals, permits and authorisations required for further work under this Standard Specification. Recommendations may address the need for further engagement with Aboriginal organisation(s) and / or Traditional Owners; preparation of a CHMP; 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.
- 4.21 The Contractor will provide a draft of the survey report and allow up to 14 days for one round of reviews and edits from the Principal. 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 4.8) will also constitute a **Hold Point**.
- 4.22 Any payments to Aboriginal representatives/groups for participation in the heritage survey shall be in accordance with the requirements of the Guidelines.

Authorisations under the Aboriginal Heritage Act 1988

- 4.23 The Contractor, unless advised by the Principal, must obtain any authorisation(s) required under the Aboriginal Heritage Act 1988 for the works.
- 4.24 The Contractor shall prepare the application(s) and all associated documentation to obtain the authorisation(s).
- 4.25 Submission of the draft application(s) and associated documentation will constitute a **Hold Point**.
- 4.26 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.
- 4.27 The Contractor shall provide a copy of any authorisation, and amendments, to the Principal within 7 days of receipt.
- 4.28 The Contractor must comply with all requirements / conditions of authorisation(s) granted under the Aboriginal Heritage Act 1988.

Cultural Heritage Management Plan

- 4.29 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).
- 4.30 The Contractor will be responsible for consulting with relevant Aboriginal group(s) regarding the CHMP and obtaining their endorsement, where required.

- 4.31 Any payments to Aboriginal representatives/groups shall be in accordance with the requirements of the Guidelines.
- 4.32 Mapping information and shape files must be submitted with the CHMP 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 following preparation of the CHMP.
- 4.33 Submission of the draft and endorsed CHMP 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 activities in areas identified as having high potential or risk, or as otherwise agreed in a CHMP for the Works or as stipulated in any authorisation. Aboriginal representatives shall be engaged in accordance with Section 3. The Principal will assist with negotiations where appropriate.
- 5.3 Any payments to Aboriginal representatives/groups shall be in accordance with the requirements of the Guidelines.
- 5.4 Where the above applies, the Contractor shall ensure:
 - a) the appropriate number of Aboriginal heritage monitors, as outlined in the Guidelines for Aboriginal Heritage Risk Management Payments, has been requested for all ground disturbing works within the identified monitoring areas;
 - b) 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
 - c) Aboriginal representatives 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 refer to the Environment and Technical Manual, Aboriginal Sites, Objects and Ancestral Remains Discovery Procedure.
 - a) immediately stop works and isolate / bunt off the site providing a 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 Principal's Aboriginal Objects, Sites and Remains Flow Chart.
- 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 is responsible for ensuring the area is appropriately recorded by a heritage specialist for the purposes 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 the Guidelines.
- 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 the Principal.
- 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 must ensure that the search area includes the entire project footprint. This includes all land parcels (wholly or partially, temporarily or permanently required) to enable the construction (such as laydown areas, site compound locations and site access tracks).
- 7.2 The Contractor shall undertake an assessment and identify the Native Title status of all land that may be impacted within the project footprint.
- 7.3 Areas within the project footprint where the National Native Title Tribunal (NNTT) indicates that native title exists or co-exists over specific parcels of land must be clearly identified (see “Determined Outcome” on the NNTT website).
- 7.4 As a minimum, the assessment shall determine the following:
 - a) If the land subject to a Native Title Claim
 - b) If the land subject to a Federal Court Native Title Determination
 - c) Where either of the above exists, identify the relevant Registered Native Title Body Corporates (RNTBC) and legal representatives.
 - d) If 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?
 - e) Provide mapping to indicate the Native Title outcomes (exists, co-exists, extinguished, otherwise) of the project area. Include adjacent land parcels with Native Title implications and identify these as a high-level constraint.
- 7.5 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.
- 7.6 If required, the Principal will undertake the notification process under the Native Title Act 1993.
- 7.7 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:
 - a) obtain any authorisation(s) required under the Aboriginal Heritage Act 1988 and or the Burials and Cremations Act 2013 for the works.
 - b) liaise with and provide support and assistance to the relevant government agency; and
 - c) 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 the Guidelines.

9 Aboriginal Heritage Risk Management Payment Reporting Schedule

- 9.1 Provide the required financial information to DPTI.TPPDTechnicalServices@sa.gov.au as specified in Table PC-H1 9-1.

Table PC-H1 9-1 Reporting Dates

Financial Quarters	Reporting Due Date
1 Jan – 31 Mar	8 April
1 April – 30 June	8 July
1 July – 30 Sept	8 October
1 Oct – 31 Dec	8 January

10 Hold Points

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

Table PC-H1 10-1 Hold Points

Document Ref.	Hold Point	Response Time
2.7	Proposal of an approach not conforming to this standard specification	10 Working Days
4.9	Aboriginal Heritage Risk Management Assessment and the Contractor's proposal to undertake further work	10 Working Days
4.21	Approval of the Draft Heritage Survey Report	10 Working Days
4.22	Approval of further work recommended in the Heritage survey report	10 Working Days
4.26	Approval documentation under the Aboriginal Heritage Act	20 Working Days
4.34	Cultural Heritage Management Plan	20 Working Days
7.7	Provision of documentation for Native Title clarification	20 Working Days