



PROCEDURE FOR DETERMINING IF A CULTURAL HERITAGE MANAGEMENT PLAN (CHMP) IS REQUIRED

In 2006, the Victorian Government introduced the Aboriginal Heritage Act 2006. This Act replaces Part 11A of the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the State Archaeological and Aboriginal Relics Preservation Act 1972.

The new Act provides more effective protection of Aboriginal cultural heritage and broadens Aboriginal community involvement in decision making. The Aboriginal Heritage Act 2006 came into force on the 28 May 2007.

There are transitional arrangements for the new Aboriginal Heritage Act 2006. The Aboriginal Heritage Regulations 2007 establishes processes to deal with applications and projects currently in-train before the 28 May 2007.

Any project with a permit issued prior to the 28 May 2007 to commence works does not need a CHMP. If an application for a planning permit was lodged before 28 May 2007 a CHMP is also not required.

This applies for any project except those requiring an Environment Effects Statement. Such projects will require a CHMP to be prepared if works have not commenced on the project.

Exempt activities

The following activities are always exempt from the requirement to prepare a CHMP:

- constructing one or two dwellings;
- buildings and works ancillary to a dwelling;
- services to a dwelling;
- alteration of buildings;
- minor works;
- demolition of a building;
- consolidation of land;
- subdivision of existing building;
- amendments to a statutory authorisation in some instances;

- a jetty for one dwelling;
- works on the sea-bed of Victorian waters; and
- emergency works.

Every Planning Application lodged with Council will be assessed to determine if it meets the exempt criteria. If it does the application will continue to be processed.

If the proposal is not an exempt activity then the **applicant must provide** clear documented proof that they meet the exemptions from the requirement to prepare a CHMP as specified in the Act and Regulations or provide a CHMP.

How does an applicant for a planning permit determine if a CHMP is or is not required?

A CHMP is required for an activity if:

- all or part of the activity area is an **area of cultural heritage sensitivity**, and
- all or part of the activity is a **high impact activity**.

Definitions for an: area of cultural heritage significance; significant ground disturbance; and high impact activity are provided below.

It is the responsibility of the applicant to provide appropriate documentation to justify that a CHMP is not required.

Council will accept as proof that a CHMP is not required if an aboriginal heritage archaeological consultant with appropriate qualifications and experience satisfactory to Council provides the following documentation:

- document signed and dated by an aboriginal heritage archaeological consultant that a CHMP is not required;
- a brief description of the qualifications and experience of the aboriginal heritage archaeological consultant;
- details of the proposed activity including a copy of any plans or other documentation assessed by the aboriginal heritage archaeological consultant;
- identification and photos of the activity area; and • date the site was inspected by the aboriginal heritage archaeological consultant.

Council will accept as an aboriginal heritage archaeological consultant:

- anyone nominated by Aboriginal Affairs Victoria as appropriately qualified and experienced to advise Council on whether a CHMP is or is not required;
- a Cultural Heritage Advisor as approved by Aboriginal Affairs Victoria in accordance with Section 58 of the Aboriginal Heritage Act of 2006 and Schedule 2 Item 3 of the Aboriginal Heritage Regulations 2007; and

- a full member of the Australian Association of Consulting Archaeologists (refer to the AACA website www.aacai.com.au) that is appropriately qualified and experienced to advise Council on whether a CHMP is or is not required.

Alternatively, anyone considered by Council as having the qualifications or experience necessary to provide advice on whether a CHMP is or is not required. To be considered acceptable to Council as an aboriginal heritage archaeological consultant clear documented proof must be provided that the person providing Council with the advice will have appropriate qualifications and experience.

To find an aboriginal heritage archaeological consultant it is suggested that the Yellow Pages web site (www.yellowpages.com.au) be searched under the category, Archaeologist and location, Victoria.

What must be done if a CHMP is required?

If a CHMP is required then the applicant must submit to Council a copy of the approved CHMP in support of the application for planning permit.

If further advice and assistance is required contact Aboriginal Affairs Victoria

Aboriginal Affairs Victoria
Department for Victorian Communities
GPO 2392 Melbourne
Victoria 3001
Phone 1800 762 003 Email: aboriginal.heritage@dvc.vic.gov.au
Aboriginal Affairs Victoria's [Heritage Services](#) web section provides information, forms, guides and support details.

Definition of an Area of Cultural Heritage Sensitivity

Division 3 of the regulations defines an area of cultural heritage sensitivity as an area in which Aboriginal cultural heritage is, or is likely to be present, which has not already been subject to **significant ground disturbance**. These areas are:

- Registered Aboriginal cultural heritage places (and within 50 metres);
- named waterways (and within 200m);
- certain prior waterways (and within 200m);
- certain ancient lakes (and within 200m);
- declared Ramsar wetlands (and within 200m);
- coastal Crown land;
- coastal land within 200m of high water mark;
- parks (defined by the National Parks Act);
- high plains areas;
- the Koo Wee Rup plain;
- particular greenstone outcrops;

- Stony Rises of the Mt Eccles, Mt Napier and Mt Rouse lava flows;
- volcanic cones of western Victoria;
- caves;
- lunettes (crescent shaped dunes adjacent to existing and prior lakes and swamps);
- dunes; and
- sand sheets (specifically the 'Cranbourne Sands').

If the proposed activity will not affect any of these areas, it does not require a CHMP.

Definition of significant ground disturbance

Disturbance of the topsoil or surface rock layer of the ground or a waterway by machinery in the course of grading, excavating, deep ripping (60cm or deeper), digging or dredging. Any other disturbance is not significant ground disturbance.

Other forms of ploughing than deep ripping, for example, are not significant ground disturbance despite disturbing the ground.

Definition of a high impact activity

A high impact activity is an activity that is likely to harm Aboriginal cultural heritage. These activities listed in the regulations include:

- changes in land use – for specified purposes where a planning permit is required;
- buildings and works for specified uses, if they are a change from the current land use, and if they result in significant ground disturbance (refer below to Section 43 of the regulations for a comprehensive list);
- an activity requiring an earth resource authorisation (such as mining or quarrying);
- extraction or removal of sand if extraction results in significant ground disturbance (even if an earth resource authorisation is not required);
- extraction or removal of loose stone on agricultural land on the Victorian Volcanic Plain – on land which has not been cultivated, for the purpose of pasture enhancement;
- constructing specified items of infrastructure if it results in significant ground disturbance (refer below to Section 44 of the regulations for a comprehensive list);
- constructing a dam - if a licence is required under section 67(1A) of the Water Act 1989;
- dwellings – constructing, or carrying out works for three or more dwellings on a lot;
- timber production – if over 40 hectares and a permit is required under a planning scheme and it will cause significant ground disturbance;

- subdivision – into three or more lots for dwellings (if three or more lots are less than 8 ha), or two or more lots for industry;
- alpine resort – constructing a building or carrying out works in an Alpine resort; and
- searching for stone – if it will cause significant ground disturbance.

If the proposed activity is not on the above list then a CHMP is not required.

Section 43 of the regulations (buildings and works for specified uses)

- (1) The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works—
- (a) would result in significant ground disturbance; and
 - (b) is for or associated with the use of the land for any one or more of the following purposes –
 - (i) aquaculture;
 - (ii) a camping and caravan park;
 - (iii) a car park;
 - (iv) a cemetery;
 - (v) a child care centre;
 - (vi) a corrective institution;
 - (vii) a crematorium;
 - (viii) an education centre;
 - (ix) an emergency services facility;
 - (x) a freeway service centre;
 - (xi) a hospital;
 - (xii) an industry;
 - (xiii) intensive animal husbandry;
 - (xiv) a major sports and recreation facility;
 - (xv) a minor sports and recreation facility;
 - (xvi) a motor racing track;
 - (xvii) a place of assembly;
 - (xviii) a pleasure boat facility;
 - (xix) a research centre;
 - (xx) a retail premises;
 - (xxi) a service station;
 - (xxii) a transport terminal;
 - (xxiii) a utility installation, other than a telecommunications facility;
 - (xxiv) a veterinary centre;
 - (xxv) a warehouse; and
 - (xxvi) land used to generate electricity, including a wind energy facility.
- (2) The terms used in subregulation (1)(b) have the same meanings as they have in the VPP.

- (3) Despite subregulation (1), the construction of a building or the construction or carrying out of works on land is not a high impact activity if it is for or associated with a purpose for which the land was being lawfully used immediately before the commencement day.

Section 44 of the regulations (constructing specified items of infrastructure)

- (1) The construction of any one or more of the following is a high impact activity if the construction would result in significant ground disturbance—
- (a) an airfield;
 - (b) a bicycle track;
 - (c) a helipad;
 - (d) rail infrastructure;
 - (e) a road;
 - (f) a walking track in a park; and
 - (g) a telecommunications line consisting of an underground cable or duct with a length exceeding 500 metres.
- (2) In this regulation, ***telecommunications line*** has the same meaning as in the VPP.