

# Project Controls

## Master Specification

## PC-H1 Aboriginal Heritage and Native Title

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1	Initial issue (formerly G52 – Heritage Management and Native Title). Removal of Non-Aboriginal Heritage to PC-H2.	5/3/2019	

## Document Management

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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 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 must ensure all Aboriginal heritage assessments, necessary for the execution of the Works, are undertaken.
- 2.2 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 Islander Act 2005;
  - c) Environment Protection and Biodiversity Conservation Act 1999; and
  - d) Native Title Act 1994 (SA).
- 2.3 The Contractor's Works must be undertaken to maximise the achievement of the following objectives:
  - a) protect and avoid damage, disturbance and / or interface to Aboriginal archaeological / anthropological sites, objects or remains; and
  - b) avoid works that impact areas where native title has been determined not to be extinguished, unless otherwise authorised by the Native Title Act 1994.
- 2.4 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**.
- 2.5 The Contractor shall review all previous or preliminary assessments provided by the Principal to determine, and undertake, all necessary updates to the assessments or if they meet the requirements under this Standard Specification.
- 2.6 If not completed previously by the Contractor or the Principal, the Contractor shall undertake a Heritage Risk Assessment, which addresses both Aboriginal and non-Aboriginal heritage.
- 2.7 The Contractor is responsible for obtaining any approvals, permits, authorisations required for the Works.
- 2.8 All works providing payments for Aboriginal heritage services shall comply with Clause 3 "Engagement with Aboriginal Group(s)" under this Standard Specification.

### 3 Engagement with Aboriginal Group(s)

- 3.1 The Contractor shall comply with requirements the South Australian Government's Guidelines for Aboriginal Heritage Payments, including attendance and payment for meeting attendance, surveys and monitoring.
- 3.2 In accordance with the Guidelines the Principal is required to obtain concurrence from the Attorney General for any payments in accordance with South Australian Government guidelines.

- 3.3 To enable the Principal to obtain concurrence from the Attorney-General the Contractor shall prepare documentation required to seek concurrence for heritage payments (using the DPTI 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 8-12 weeks for approval.
- 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 matters (e.g meetings, surveys or monitoring of ground disturbing works) 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;
  - b) providing all necessary support to Aboriginal group(s) or representatives to undertake the services required including, but not limited to, safety inductions;
  - c) organising complete payment of the Aboriginal group(s) or representatives in accordance with the rates concurred by the Attorney-General; and
  - d) providing a written report of survey / monitoring results and recommendations including signed timesheets 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 Standard Specification.

### Risk Assessment

- 4.2 A qualitative risk analysis shall be undertaken 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, the project location; current and previous land use, soil profile; nearby waterways; past heritage surveys (if any); outcomes of a search of the State Government's Central Archive of Registered Aboriginal Sites or Objects.
- 4.4 The Risk Assessment shall include advice on the requirement for any approvals, permits, authorisations required for the work and, based on the risk, advice for undertaking further work under this Standard Specification (i.e. 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) and any other measures considered reasonable to manage Aboriginal sites, objects and / or remains.
- 4.5 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)

- 4.6 Aboriginal heritage survey(s) shall be undertaken in accordance with DPTI's Cultural Heritage Guideline, standard industry practice and where applicable, requirements of relevant Indigenous Land Use Agreement(s).
- 4.7 Aboriginal heritage surveys shall assess all anthropological and archaeological issues) and involve appropriate Aboriginal representatives, groups and / or Tribal Owners.
- 4.8 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 4 "Engagement with Aboriginal Group(s)".

- 4.9 The Aboriginal heritage survey must assess the impact of the work on any Aboriginal site(s) as defined under the Aboriginal Heritage Act 1988 and assess the risk of encountering and / or damaging, disturbing and interfering with Aboriginal archaeological / anthropological sites, objects or remains.
- 4.10 The Aboriginal heritage survey must be documented and can be provided as a standalone report or as an amendment to the risk assessment.
- 4.11 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 (i.e. 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.
- 4.12 Submission of the Aboriginal heritage survey report and the Contractor's proposal to undertake further work under Clause 4 will constitute a **Hold Point**. Further work under Clause 4 will be subject to the approval of the Principal.

## Authorisations under the Aboriginal Heritage Act 1988

- 4.13 The Contractor must obtain any authorisation(s) required under the Aboriginal Heritage Act 1988 for the Works.
- 4.14 The Contractor must prepare the application(s) and all associated documentation to obtain the authorisation(s).
- 4.15 Submission of the draft application(s) and associated documentation will constitute a **Hold Point**.
- 4.16 The Contractor 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) and undertaking any other additional work required to seek the authorisation(s). Additional tasks may include, but are not limited to: 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.
- 4.17 The Contractor must comply with all requirements / conditions of authorisation(s) granted under the Aboriginal Heritage Act 1988.

## Cultural Heritage Management Plan

- 4.18 The Contractor must develop a Cultural Heritage Management Plan that includes:
- introduction and intention of the Plan;
  - Contractors, roles and responsibilities (incl. contact details);
  - monitoring guidelines (incl. engagement protocol and requirements regarding role, qualifications, PPE, insurances, etc.); and
  - management of ground disturbance and discovery protocol (incl. inductions, protection measures for registered sites, new site discovery (incl. analysis / testing and repatriation).
- 4.19 The Contractor will be responsible for consulting with relevant Aboriginal group(s) regarding the Cultural Heritage Management Plan and obtaining their endorsement, where required.
- 4.20 Submission of the draft and endorsed Cultural Heritage Management Plan 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 and the Aboriginal and Torres Strait Island Protection Act 1984 (Cth).

- 5.2 The Contractor shall engage Aboriginal representatives from the local community to monitor construction activities for heritage impacts in areas identified in risk assessments / surveys identified as high risk or as otherwise agreed in a Cultural Heritage Management Plan for the Works or stipulated in any authorisation.
- 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 at least two Aboriginal heritage monitors while ground disturbing works are conducted in the monitoring areas; and
  - 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.

## 6 Discovery of sites, objects or remains

- 6.1 If, at any time, an Aboriginal site, object or remain(s) are uncovered, the Contractor shall:
- a) immediately stop works and isolate / bunt off the site and ensure that no disturbance occurs within the isolated area;
  - b) follow the conditions of a granted authorisation(s) and the Cultural Heritage Management Plan(s); and / or (if these do not exist)
  - c) follow the DPTI Aboriginal Objects, Sites and Remains Flow Chart. In this chart the role of the DPTI 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 shall undertake any assessments and obtain any approvals, permits, authorisations required to continue with the Works.
- 6.5 The Contractor shall undertake negotiations, in good faith, and implement requirements / recommendations on the management of any identified Aboriginal Objects, Sites and Remains with relevant Aboriginal organisation(s) and / or Traditional Owners and the relevant government agency. The Principal will assist with the negotiations where required.
- 6.6 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.
- 6.7 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 provide the Principal will all necessary information (e.g. plans, project details, Certificate of Title references, etc.) to enable the Principal to undertake searches of the National Native Title Tribunal to determine existence of Native Title on land within the Works area.
- 7.2 If existence of Native Title is unclear, the Principal will obtain advice on the implications of the project on Native Title and advise if any land affected by the project is subject to the Native Title Act 199 or any Indigenous Land Use Agreements. If Native Title is affected, the Principal will undertake any required notification process under the Native Title Act 1994.

- 7.3 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.

## 8 Hold Points

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

Document Ref.	Hold Point	Response Time
2.4	Proposal of an approach not conforming to this standard specification	10 working days
3.4	Documentation seeking heritage payment approval	12 weeks
4.5	Aboriginal Heritage Risk Assessment and the Contractor's proposal to undertake further work	10 working days
4.12	Heritage survey report and advice on determinations and approvals	10 working days
4.15	Approval documentation under the Aboriginal Heritage Act	6-12 months
4.20	Cultural Heritage Management Plan	10 working days
7.3	Provision of documentation for Native Title clarification	3 months