10. Native Title and Aboriginal Cultural Heritage

10.1 Overview

The project area is located in the native title claim area of two native title applicants, the Kaurna and the Ramindjeri.

There is the potential that during construction of the duplicated carriageway, damage, disturbance or interference with Aboriginal sites, objects and remains could occur.

The Commissioner of Highways is seeking a Section 23 authorisation under the *Aboriginal Heritage Act 1988* from the Minister for Aboriginal Affairs and Reconciliation for the project.

10.2 Legislative requirements

Table 10.1 summarises key legislation relevant to Native Title and Aboriginal Cultural Heritage.

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Description</th>
<th>Relevance to project</th>
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<tbody>
<tr>
<td><em>Native Title Act 1993</em> (Commonwealth)</td>
<td>Native title has been described by the High Court as the interests and rights of Indigenous inhabitants in land, whether communal, group or individual, possessed under the traditional laws acknowledged by and traditional customs observed by the Indigenous inhabitants</td>
<td>The project corridor falls within the area of land over which there are two native title claims, Kaurna Peoples Native Title Claim (SAD6001/00) and Ramindjeri Peoples Native Title Claim (SAD162/10)</td>
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<tr>
<td><em>Environment Protection and Biodiversity Conservation Act 1999</em> (EPBC Act) (Commonwealth)</td>
<td>Protects places of national cultural and environmental significance from damage and interference by establishing a National Heritage List for places outside of Commonwealth land and a Commonwealth Heritage List for places within Commonwealth land Under the Act, any action that has, or will have or is likely to have, a significant impact on a place of national cultural and/or environmental significance must be referred to the Minister for Sustainability, Environment, Water, Population And Communities for approval</td>
<td>No EPBC listed places are in the project area</td>
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<td><em>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</em> (Commonwealth)</td>
<td>Provides a way for the Australian Minister of Aboriginal Affairs to make declarations for the protection of an Aboriginal site when the Minister is satisfied that under State or Territory law, there is ineffective protection of the place from the threat of injury or desecration. Declarations made under this Act may restrict activities on, and/or access to, an Aboriginal site. This Act is not intended to exclude or limit the operation of a State law that is capable of operating concurrently.</td>
<td>In December 2010, DTEI submitted an application for authorisation under Section 23 of the South Australian <em>Aboriginal Heritage Act 1988</em> for the project corridor.</td>
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</table>
Aboriginal Heritage Act 1988 (South Australia)

Under the Act, all Aboriginal sites, objects and remains that are of significance to Aboriginal tradition, archaeology, anthropology and/or history are protected.

Under Section 23 of the Act, it is an offence to damage, disturb or interfere with an Aboriginal site, objects or remains unless written authorisation from the Minister of Aboriginal Affairs and Reconciliation has been obtained.

DTEI has submitted an application for authorisation under Section 23 of the Act for the project corridor.

10.3 Native title

The Commonwealth Native Title Act 1993 is part of the Commonwealth’s response to the High Court’s decision in Mabo v Queensland (No. 2) and adopts the common law definition of native title, defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal people in land and waters, and that are recognised by common law. These rights may exist over Crown Land but do not exist over validly granted freehold titles.

The Native Title Act recognises the existence of an indigenous land ownership tradition where connections to country have been maintained and where acts of government have not extinguished this connection.

Native title relates to the rights and interests of Aboriginal people in land and waters, according to their traditional laws and customs, where they have maintained a continuous connection with their land or waters. Native title rights may include the possession, use and occupation of traditional country. It can also be the right for native title holders to participate in decisions about how others use their traditional land and waters (National Native Title Tribunal 2000).

Native title may exist in areas where it has not been removed (extinguished) by an act of government, such as:

- vacant Crown land
- public reserves
- some types of pastoral leases
- land held by government agencies
- land held in trust for Aboriginal communities
- any other public or Crown lands.

Native title is likely to have been extinguished on freehold land and road reserves.

The project area is located in the native title claim area of two native title applicants, the Kaurna Peoples Native Title Claim (SAD6001/00) and the Ramindjeri Peoples Native Title Claim (SAD162/10). DTEI has been advised by the Crown Solicitor’s Office that native title has been extinguished in all of the areas of land identified to be affected by the project, and the proposed works may proceed without further regard to native title issues.
10.4 Cultural heritage

10.4.1 Aboriginal Affairs and Reconciliation Division Central Archive

The Central Archive, including the Register of Aboriginal Sites and Objects, is maintained by the Aboriginal Affairs and Reconciliation Division (AARD) of the South Australian Department of the Premier and Cabinet.

A search of AARD’s records for the project area found a number of entries:

- two scarred trees east of Main South Road in the Sturt River Reserve
- an archaeological site north-west of the existing Southern Expressway within Warriparinga
- an archaeological site south of Christie Creek, west of the existing Southern Expressway
- four archaeological sites west of the existing Southern Expressway in a new residential development in the Noarlunga Downs area.

10.5 Effects of the project on existing cultural heritage

The entries in AARD’s records identified as being present in the vicinity of the Southern Expressway corridor were also identified in previous surveys of the road corridor for the existing Southern Expressway. A Section 23 authorisation granted in 1996 for the existing Southern Expressway recorded that many artefacts were removed.

The project is most likely to have an impact on the archaeological site north-west of the Southern Expressway in Warriparinga, the archaeological site south of Christie Creek and the most southern of four archaeological sites west of the existing Southern Expressway at Noarlunga Downs.

10.6 Conclusion

A Section 23 authorisation has been sought under the Aboriginal Heritage Act 1988 to authorise damage, disturbance and interference with Aboriginal sites, objects and remains (as applicable) located in the project area.