

## 12. Aboriginal cultural heritage and native title

### 12.1 Overview

The study area is part of a highly built up urban environment with very little evidence remaining of the original topography, vegetation or geology. Both the eastern and western verges of South Road have been extensively modified and are heavily built up with industrial buildings such as warehouses and car yards. Towards the Wingfield end of the alignment, a drainage channel and culvert runs along the eastern verge.

### 12.2 Legislative requirements

Table 12.1 summarises key legislation relevant to Aboriginal cultural heritage and native title.

**Table 12.1 Relevant legislation (Aboriginal cultural heritage and native title)**

Legislation	Description	Relevance to project
<i>Aboriginal Heritage Act 1988 (SA)</i>	<p>Any Aboriginal site, object or remains, whether previously recorded or not, is protected under the Aboriginal Heritage Act. The Act provides the following definition of an Aboriginal site in Section 3.</p> <p>'Aboriginal Site' means an area of land            (a) That is of significance according to Aboriginal tradition; or            (b) That is of significance according to Aboriginal archaeology, anthropology or history.</p> <p>It is an offence under Section 23 of the <i>Aboriginal Heritage Act 1988</i> to damage, disturb or interfere with an Aboriginal site, objects or remains unless written authorisation from the Minister for Aboriginal Affairs and Reconciliation has been obtained</p>	Where there is potential for Aboriginal sites to be uncovered during construction, monitoring will be undertaken where natural soil will be disturbed.
<i>Environment Protection &amp; Biodiversity Conservation Act 1999 (EPBC Act) (Cwlth)</i>	The EPBC Act (amended 2003) 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 EPBC Act any action that has, 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 the Environment for approval. The EPBC Act sets out a procedure for obtaining approval, which may include the need to prepare an environmental impact statement for the proposed action (an action is defined in section 523 to include a project, development, an undertaking or an activity or series of activities).	There are no EPBC listed sites in the study area.
<i>Native Title Act 1993 (Cwlth)</i>	The Native Title Act recognises the existence of an Aboriginal land ownership tradition where connections to country have been maintained and where acts of government have not extinguished this connection.	The South Road Superway is within the claimed native title lands of the Kaurna Peoples Native Title Claim (SAD6001/00). Under the Native Title Act, consultation must be undertaken in accordance with the Act if any land subject to Native Title is to be affected.

## 12.3 Existing cultural heritage

### 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. The Central Archive is a record of previously recorded Aboriginal sites in South Australia, and is a mechanism whereby Aboriginal sites can be identified on a parcel of land prior to activities on this land.

There are no registered sites of Aboriginal Cultural heritage in the study area; however, there are sites recorded north of the study area.

### SA Museum Database

The South Australian Museum Database records information on the nature of a heritage item, how it came into the collection, from what location and when it was acquired. The database was searched using Wingfield and Adelaide Plains as search criteria. The search returned six results, predominantly Aboriginal skeletal remains.

### Archaeological and anthropological background

The proposed South Road Superway is located within the traditional lands of the Kurna Aboriginal people (Edwards 1972; Tindale 1974). In pre-colonial times, more than 20 Kurna local clans occupied the plains from Crystal Brook in the north to Cape Jervis in the south. There were large scale summer gatherings and ceremonial progressions along the coastline as well as, fishing, meeting and trading with visitors from other tribes, and following and celebrating the journeys of creation of Ancestors of the Dreaming such as Tjirbruki (Tindale 1987). During the winter months, the Kurna moved inland to more sheltered locations in the Mount Lofty Ranges foothills (Tindale 1987) and in villages along the coastal streams.

The northern Adelaide plains and coast provided an environment offering a diverse range of high resource value habitats to the Kurna including open grasslands, densely wooded alluvial wetlands and water courses such as the Gawler River and Smith Creek

### 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 the common law. These rights may exist over Crown Land but do not exist over land held as freehold title.

The *Native Title Act 1993* 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.

DTEI will seek legal advice from the Crown Solicitor's Office as to whether native title has been extinguished on lands to be acquired for the project.

The study area is within the claimed native title lands of the *Kaurna Native Title Claim* (SAD6001/00). Under the *Native Title Act 1993*, consultation must occur in accordance with the Act. The claim, lodged with the National Native Title Tribunal in 2000, extends from the Fleurieu Peninsula to the Southern Flinders Ranges.

## 12.4 Effects of the project on existing cultural heritage

The project does not affect any previously recorded Aboriginal cultural heritage sites.

## 12.5 Mitigation measures to minimise effects

### Principles adopted to minimise effects

General principles adopted to minimise the effect of the South Road Superway Project on Aboriginal cultural heritage may include:

- reviewing Aboriginal cultural heritage issues to ensure Aboriginal heritage issues are considered during all project phases
- developing a cultural heritage management plan to manage scattered artefact and Aboriginal heritage sites that may be found
- ongoing consultation and liaison with the Kaurna community representatives and native title claimants during pre-construction and construction phases of the project
- if relevant, preparing detailed site plans showing areas that must not be disturbed
- engaging Kaurna community representatives to monitor earthworks in locations where it is deemed there is a higher potential for earthworks to uncover an Aboriginal site, object or remains or in areas of undisturbed soils
- immediately stopping all works within the vicinity of a suspected Aboriginal cultural heritage site, object or burial.

### 12.5.1 Measures adopted to minimise effects during construction

If a suspected site is discovered, the advice of an archaeologist will need to be sought and the Kaurna community and AARD advised. If human skeletal remains are found, they will be reported to the nearest police station. If the remains are suspected to be of Aboriginal origin, the Kaurna community and AARD will be consulted and specific management measures will be developed in accordance with the *Aboriginal Heritage Act 1988*.

## 12.6 Conclusion

It is planned to undertake ongoing consultation and liaison with the Kaurna community representatives and to develop a cultural heritage management plan to manage any artefacts or Aboriginal sites. If a suspected site is discovered, the advice of an archaeologist will be sought and AARD advised. Aboriginal cultural heritage management requirements for the project will be included in the project environmental management plan.