

MELBOURNE METRO RAIL PROJECT ENVIRONMENT EFFECTS STATEMENT
INQUIRY AND ADVISORY COMMITTEE

MMRA TECHNICAL NOTE

TECHNICAL NOTE NUMBER: 034

DATE: 19 August 2016

PRECINCT: All Precincts

EES/MAP BOOK REFERENCE: EES Chapter 15; Technical Appendix K –
Aboriginal Cultural Heritage

SUBJECT: Aboriginal cultural heritage

Response to Section 9 of the ‘Preliminary
Matters and Further Information’ Request.

NOTE:

1. This Technical Note responds to the matters identified in Section 9 of the ‘Preliminary and Further Information’ request made by the IAC on 25 July 2016 (**Request**).
2. For ease of reference, this Technical Note adopts the topic headings set out in the Request and reproduces the relevant ‘references’ and ‘requests’ prior to setting out MMRA’s response.

9.1 EES Evaluation Objective

(i) Reference

The draft EES evaluation objective for Cultural Heritage is “To avoid or minimise adverse effects on Aboriginal and historical cultural heritage values”, and further states “The project is consistent with the draft EES evaluation objective as a CHMP is being undertaken for Melbourne Metro” (p31 of Technical Appendix K).

Technical Appendix K Aboriginal Cultural Heritage states that generally (p24):

For the construction of stations, portals and other structures near the ground surface, as well as disturbance within construction work areas, the potential to destroy, reduce or intrude upon Aboriginal heritage is largely unknown.

In relation to specific precincts, the EES states “works would have the potential to adversely impact on the unknown Aboriginal cultural heritage values” (at p32, 47, 50 and 53 in relation to Domain Station to the Eastern Portal, and precincts 5, 6 and 7).

Further at p56, in relation to Precinct 8 the EES states:

The following works would have the potential to adversely impact on one previously unknown Aboriginal Place within this precinct during the construction phase of Melbourne Metro:

Construction work site at South Yarra Siding Reserve.

(ii) Request

The IAC requests clarification on:

- 45. why it is said that the EES objective is met if the impacts are largely unknown, particularly as precinct specific sections state that the Project may have adverse impacts.*

MMRA Response:

3. Impacts to previously unrecorded Aboriginal cultural heritage remain largely unknown at the above precincts due to the inability for test excavation to take place (due to the presence of buildings, roadways, etc.), and the poor ground surface visibility present during field survey. As such, it is not possible to know if there are any Aboriginal Places left intact at these sites, although the likelihood is generally considered low across the project due to the legacy of extensive urban development.
4. In order to minimise harm to any unknown Aboriginal cultural heritage across the entire project corridor, the Cultural Heritage Management Plan (CHMP) has provided a list of recommendations and contingencies that will provide for the protection, recording and salvage (if required) of any Aboriginal cultural material identified during works. The recommendations and contingencies in the CHMP are subject to review by the Secretary to the Department of Premier and Cabinet as part of the CHMP approvals process under the *Aboriginal Heritage Act 2006*.
5. The recommendations in the CHMP include:
 - a. An unexpected finds policy for any Aboriginal cultural heritage material discovered during works
 - b. Salvage works to be completed at sites such as the South Yarra Siding Reserve, where ground surface impacts may occur to a newly identified Aboriginal Place. This will ensure the site is recorded appropriately, and cultural material is curated properly.
 - c. Salvage excavation to occur at Tom’s Block, as this could not be excavated during the CHMP process

- d. Recommendations for the identification of Aboriginal cultural material during historical archaeological excavations. The potential for Aboriginal cultural material to be present within the CBD is largely restricted to areas that also contain historical archaeological potential.
- e. The application of these management recommendations and contingencies will minimise any adverse impacts to Aboriginal cultural heritage as a result of the construction of the project. This will ensure that the EES objective is met.

9.2 Potential impacts

(i) Reference

The Scoping requirements require the following action:

Assess potential effects of the project on identified sites or places of ACH with due regard for relative levels of significance and possible impact pathways, including vibration.

The EES describes risk pathways for AH001 to AH007 as “partial disturbance or complete removal”, “disturbance/removal”, “complete removal”.

(ii) Request

The IAC requests clarification on:

- 46. *whether the potential for impact pathways, other than direct disturbance or removal, such as through vibration, have been included in the identified risk pathways AH001 to AH007.*

MMRA Response:

- 6. Vibration was not included as an identified risk pathway. The potential for vibration to impact or affect Aboriginal cultural heritage in the activity area was assessed as a very low risk due to the following factors:
 - There are no Aboriginal built structures (such as stone arrangements), nor any scarred trees within the project boundary, which might be susceptible to impacts from vibration.
 - The nature of the potential Aboriginal archaeology within the project area (e.g. sub-surface artefact scatters), is such that it is extremely unlikely that vibration will cause any impact (direct or indirect) to Aboriginal Places or objects, whether known or unknown. This is because vibration would not shift/alter the location of artefact scatters, shell middens, etc. to any discernible degree, so that harm to any site is unlikely.

9.3 Design, mitigation and management options

(i) Reference

The EES Scoping Requirements require:

Design or other available measures that could substantially reduce and/or mitigate the risk of significant effects and measures that are proposed to manage those environmental effects still expected to occur

Specifically in relation to cultural heritage the EES Scoping Requirements state:

Describe and evaluate proposed design, management or site protection measures which could avoid or mitigate potential adverse effects on Aboriginal cultural heritage' and 'describe the principles for developing measures to mitigate and manage residual effects on Aboriginal cultural heritage within the framework of a draft CHMP.

The EES states at p31:

The project is consistent with draft EES evaluation objective as a CHMP is being undertaken for Melbourne Metro. The CHMP would identify any Aboriginal cultural heritage values within the activity area so that recommendations for the minimisation of impacts to these can be provided ... The CHMP would also provide contingency plans for the discovery of Aboriginal cultural heritage material during investigation and construction works.

(ii) Request

The IAC requests clarification on:

- 47. the proposed or available measures to reduce or mitigate risk of significant effects and the principles for developing measures to mitigate and manage residual effects within the framework of a draft CHMP*
- 48. how the CHMP will reduce the consequence of impacts for risks AH001, AH004 and AH006*
- 49. the progress of the CHMP and when it will be available*

MMRA Response:

7. Section 61 of the *Aboriginal Heritage Act 2006* states that when seeking approval of a CHMP, the following conditions need to be considered:
 - a) Whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage.
 - b) If it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal cultural heritage, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage.
 - c) Any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity.

- d) Any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity.
 - e) Requirements relating to the custody and management of Aboriginal cultural heritage during the course of the activity.
8. Avoidance of harm is always the most preferable measure and generally includes design changes or the buffering of works from Aboriginal cultural heritage with a physical barrier in order to meet this objective.
 9. Where avoidance is not possible, measures to minimise harm need to be addressed. These can include:
 - a) Salvage of impact areas with excavations designed to recover sub-surface Aboriginal cultural material, and provision of an analysis of any salvaged material to compensate for having destroyed all or part of an Aboriginal Place
 - b) Collection of Aboriginal cultural material
 - c) Reburial of Aboriginal cultural material collected at a location not likely to be impacted in the future, at the conclusion of the project.
 10. The CHMP is proposed for submission to the Secretary to the Department of Premier and Cabinet in late 2016 to early 2017.
 11. The CHMP management recommendations are currently being drafted. However, these management recommendations do not currently have the endorsement of the relevant Aboriginal stakeholder groups. Future consultation is planned to discuss and finalise these recommendations.
 12. Release of the draft management recommendations prior to the completion of the consultation would compromise this process. However, a summary of the anticipated tenor of these recommendations has been provided below:
 - a) **General Recommendations:** states the general requirements for the project to be compliant with the CHMP (eg, a copy of the CHMP to be kept on site, salvage excavations must be done in accordance with proper archaeological practice).
 - b) **Management recommendation 1 – Cultural heritage awareness training:** requires that cultural heritage awareness training is completed for personnel working on ground disturbing works in order to educate personnel in identifying Aboriginal cultural material during construction.
 - c) **Management recommendation 2 – Salvage of Aboriginal cultural heritage material:** provides for the salvage and collection of Aboriginal cultural material discovered and likely to be impacted by the project.

- d) **Management recommendation 3 – King’s Domain Reburial:** provides for the protection of the King’s Domain Reburial site.
 - e) **Management recommendation 4 – Historical excavation:** provides management recommendations in the event that Aboriginal cultural heritage material is discovered during historical archaeological excavations for the project.
 - f) **Management recommendation 5 – Artefact repatriation:** requires the repatriation of Aboriginal cultural material discovered as a result of the project.
 - g) **Contingencies:** outlines the procedures and protocols for the discovery of any unexpected Aboriginal cultural heritage material (including skeletal remains). Also provides avenues for the Sponsor to ensure compliance with the CHMP.
13. While it is impossible to know if the project will impact on any unknown Aboriginal cultural heritage, the management recommendations above provide contingencies for the discovery of any unexpected cultural material (including processes for the reporting of skeletal remain finds). Once the contingencies are enacted, the discovery of any new Aboriginal Places will be managed in accordance with the *Aboriginal Heritage Act 2006*. This might mean salvage of artefacts, or avoidance of any further disturbance to the site through alteration of construction methodology.
14. The above management recommendations and contingencies provide confidence that construction activities will be conducted in a manner that is more likely to identify any unknown Aboriginal cultural heritage and implement the appropriate management protocols. In so doing, it contributes to a greater level of knowledge of the processes required to respond to such a find, thereby reducing the magnitude (and hence consequences) of the potential impacts. In response to request 48, the following key management measures are proposed in the CHMP:
- AH001 (Removal and/or installation of underground services) – The unexpected finds policies and procedures
 - AH004 (Construction of Melbourne Metro- impacts to unknown skeletal remains) – The skeletal remains procedure
 - AH006 (Construction of Melbourne Metro – damage to intangible cultural heritage) – Through the identification and management of any intangible values, which is determined through consultation with the relevant Aboriginal stakeholder groups

CORRESPONDENCE:

No correspondence.

ATTACHMENTS:

No attachments.