

C7559 Terms of Reference for Cultural Heritage Assessment

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1 Introduction

This Terms of Reference (ToR) specifies the appropriate level of assessment by the Contractor for each stage of the *Cultural Heritage Assessment* process, to be completed as part of a concept, planning or business case project.

1.1 Definitions of terms

Term	Definition
CHFA	Cultural Heritage Field Agreement
CHFAR	Cultural Heritage Field Assessment Report
CHMA	Cultural Heritage Management Agreement
CHMP	Cultural Heritage Management Plan
CHRA	Cultural Heritage Risk Assessment
DES	Department of Environment and Science
DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
ToR	Terms of Reference

1.2 Purpose of the Cultural Heritage Assessment

The broad purpose of the *Cultural Heritage Assessment* process is to make an early assessment of actual or potential impacts to cultural heritage by the project, as well as to identify and begin implementing management opportunities. The specific cultural heritage items outlined in Clause 4 of this ToR each provide additional information as the process progresses.

The intended outcome of the *Cultural Heritage Assessment* process is to determine:

1. major constraints and opportunities for planning projects
2. the overall cultural heritage risks associated with the project (which determines the level of future assessment required), and
3. significant cultural heritage management requirements and opportunities.

Not all projects will require each cultural heritage item in Clause 4 to be completed. For example, a Cultural Heritage Risk Assessment (CHRA) is mandatory for every Transport and Main Roads project, but if the CHRA returns a low risk category for both Aboriginal and Historical heritage, then no further assessment is required. However, if the CHRA returns a high risk category for Aboriginal heritage then further assessment is required (i.e. a Cultural Heritage Field Assessment and a Cultural Heritage Management Agreement (CHMA)/Cultural Heritage Management Plan (CHMP)). Each Transport and Main Roads project will be different and it is recommended that the Contractor liaise with the department's District Cultural Heritage Officer or Manager (Cultural Heritage and Native Title) for a prestart discussion:

Manager (Cultural Heritage & Native Title)

Program Management and Delivery

tmr.heritage@tmr.qld.gov.au

1.3 Assessment area

The area to be assessed by the Contractor will include the full project area footprint (including alignment options) as well as a suitably sized buffer zone to allow for ancillary construction impacts and minor scope encroachment. Determination of a suitable buffer zone should also consider surrounding land uses that may impact the project area, for example, broader cultural landscapes, significant landscape features, and intangible heritage places. This area will be referred to as the study area.

1.4 Cultural Heritage Assessment structure

Transport and Main Roads maintains a *Cultural Heritage Policy and Cultural Heritage Process Manual* that outlines the basic structure for any project's Cultural Heritage Assessment process. A copy of the Manual can be requested via the departments District Cultural Heritage Officer or Manager (Cultural Heritage & Native Title) on the [Cultural Heritage Policy and Manual](#) webpage. Appendix A also shows the departmental Cultural Heritage Assessment process.

1.5 Suitably qualified personnel

All Cultural Heritage Assessment work undertaken for the department must be performed by Suitably Qualified and Experienced Personnel.

For the purpose of undertaking cultural heritage work, including cultural heritage risk assessment, a person is considered to be suitably qualified and experienced if they have a minimum of a Bachelor's degree in archaeology, anthropology, cultural heritage management, architecture or equivalent, and minimum of five years' experience in a role conducting cultural heritage work.

Submission of reports must be accompanied by details of the author and supervisor / reviewer, including relevant qualifications and experience.

1.6 Mapping and spatial data

In all instances where this ToR specifies the collection of cultural heritage spatial data, preparation of maps, preparation of spatial datasets and display of spatial co-ordinates, the following requirements apply:

- Consistent with Transport and Main Roads Environment and Cultural Heritage Observation (ECHO) app forms, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) online portal forms and Department of Environment and Science (DES) heritage site types.
- The Standard Australian Government datum is to be used – GDA2020.
- Coordinates are to be displayed as Latitude / Longitude and as grid co-ordinates in the appropriate Map Grid of Australia (MGA) Zone (54, 55 or 56). The MGA Zone used must be noted on every table where co-ordinates are listed.
- Spatial data is to be supplied as .gdb format, however either .shp (ArcGIS) or .tab (MapInfo) is suitable. Ensure all supporting files are also supplied (for example, .prj, .shx, .fix, and .dbf files to accompany shapefiles).

- The method used to derive the spatial data needs to be specified and the level of accuracy noted, including the specifications of the equipment utilised to obtain the spatial data.
- Maps, figures, plans and aerial photos should include:
 - north points
 - GPS datum identifier
 - legend
 - labelled points / sites
 - data source and date
 - scale
 - at least three points of reference, and
 - a location key if necessary, where multiple photos / maps / plans / figures are spread along a route.

2 Legislative review

The *Cultural Heritage Assessment* process, specifically the Cultural Heritage Risk Assessment stage, shall consider implications for the proposed project options in relation to major Commonwealth and State cultural heritage legislative requirements and triggers. A legislative review shall be undertaken to determine:

- permits, approvals, agreements and/or plans required under Commonwealth, State and where applicable, local legislation
- non-statutory approvals requirements (such as Transport and Main Roads Archaeological Discovery Protocol) as well as applicable self-assessable guidelines and codes (in accordance with State policy) that may also be applicable to the project
- other obligations required for compliance with legislation, and
- the potential for offsets to be triggered by the project.

The scope of the legislative review shall cover:

- Pre-construction investigations (for example, geotechnical, soil testing)
- Legislation related to design issues, and
- Legislation potentially related to construction activities and operations – these may be hypothetical as the construction methodology will be as determined by the Construction Contractor. The intent of identifying potential construction-related legislation and approvals is to ensure Transport and Main Roads executes its responsibility for ensuring the contractor has the appropriate approvals at the time of the Environmental Management Plan (Construction) review.

Where major or severe legislative triggers are identified, a summary shall be provided in the CHRA that identifies the:

- Act or Regulation
- Approval / Obligation / Requirement

- regulatory authority
- possible actions to avoid the trigger
- actions to be undertaken to address the trigger (including additional information requirements, surveys), and
- impact to the project (cost, time, political, reputation).

Where there are likely to be significant commitments that extend past project finalisation, these must be identified within the CHRA to ensure sufficient funding is available. Commitments may include ongoing maintenance of sites for a period of time. Where further information is required to determine whether a permit, approval or obligation applies, then the Contractor is required to document likely costs and timeframes for approvals.

3 Standard Transport and Main Roads templates

Transport and Main Roads maintains a suite of standard Cultural Heritage templates for use as part of the *Cultural Heritage Assessment* process, including:

- Risk Assessment template
- Field Assessment template
- Cultural Heritage Field and Management Agreements, and
- Management Plans (CHFA/CHMA/CHMPs).

These form part of the department's Cultural Heritage Management System.

The Contractor will use these templates for work under this ToR. Templates can be adapted, but should form the basis for any Cultural Heritage work on departmental projects.

Templates can be obtained by contacting the Transport and Main Roads Project Manager, District Cultural Heritage Officer or Manager (Cultural Heritage & Native Title), tmr.heritage@tmr.qld.gov.au.

4 Cultural Heritage Assessment Requirements

4.1 Cultural Heritage Risk Assessment

Where stipulated in the Functional Specification or Technical Brief, the Contractor will deliver a completed Cultural Heritage Risk Assessment on the Transport and Main Roads template. The CHRA must include:

- A completed assessment of the project works against the *Aboriginal Cultural Heritage Act 2003* (ACHA 2003) Duty of Care Guidelines to determine whether the project is a Category 1, 2, 3, 4 or 5 activity. The completion of a Site inspection of the study area is mandatory during the CHRA stage to determine the presence or absence of any features of residual cultural heritage significance (for example as per a Category 4 activity). Liaise with the Transport and Main Roads Project Manager and District Cultural Heritage Officer to ensure that land access is in place prior to any Site inspection.
- Identify and provide contact details of the Aboriginal Party(ies) for the project area as per the ACHA 2003. Use the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register and/or contact the Cultural Heritage Unit, DSDSATSIP for the most accurate and up-to-date contact details.

- Search the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register and provide details of any registered sites within 100 m of the study area.
- Identify and provide details on any previous cultural heritage assessments conducted within or in the vicinity of the study area.
- Search the Queensland Heritage Register and provide details of any place(s) within 100 m of the study area.
- Search the Australian Heritage Database and provide details any place(s) within or in the vicinity of the study area.
- Search the Australian National Shipwreck Database and provide details of any place(s) within or in the vicinity of the study area.
- Search the National Trust Heritage Register and provide details of any place(s) within or in the vicinity of the study area.
- Search the relevant local council(s') local heritage register and provide details of any place(s) within or in the vicinity of the study area.
- Provide advice on the level of risk of the project in relation to:
 - Aboriginal and/or Torres Strait Islander Heritage, and
 - Historical/European and Natural Heritage.
- Provide advice on whether further heritage field assessment is required and make recommendations for the scope of the assessment (see Clause 4.2).

4.2 Cultural Heritage Field Assessment

Where stipulated in the Functional Specification / Technical Brief or ordered by the Principal after review of the initial CHRA, the Contractor will conduct a Field Assessment of Aboriginal or Torres Strait Islander Heritage and/or Field Assessment of Historical / European Heritage as per the below requirements.

4.2.1 Aboriginal or Torres Strait Islander Heritage Field Assessment

The Contractor will:

- Notify the Aboriginal Party(ies) for the project area of the proposed works and invite them to participate in a comprehensive survey of the area, using the Transport and Main Roads Notification Letter template. Also notify the Transport and Main Roads Project Manager and District Cultural Heritage Officer that this is occurring, when and any other relevant details.
- Liaise with key representatives from the Aboriginal Party(ies) to organise logistical requirements for the field assessment and conduct the field assessment. Notify the Transport and Main Roads District Cultural Heritage Officer of timeframes and invite to field assessment. Liaise with the Transport and Main Roads Project Manager and District Cultural Heritage Officer to ensure that land access is in place prior to an field assessment commencing (Note: The Transport and Main Roads Cultural Heritage Officer will organise payment of the Aboriginal Party(ies) as per Engineering Policy EP173 *Procurement and Payments Policy for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers under the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003*).

- Complete a Cultural Heritage Field Assessment Log Book, including sign-off by Aboriginal Party(ies). The Log Book is best completed in the field with the representatives during the field assessment.
- Complete a Cultural Heritage Field Assessment Report (CHFAR) after the field assessment, including key findings and recommendations (see Clause 4.3), and
- Provide CHFAR to the Transport and Main Roads Project Manager and District Cultural Heritage Officer, allowing a two week period for review.

4.2.2 Historical / European Heritage Field Assessment

The Contractor will:

- Liaise with the Transport and Main Roads Project Manager and District Cultural Heritage Officer to ensure that land access is in place prior to an field assessment commencing.
- For a Historical / European heritage site already on a register (e.g. the Queensland Heritage Register or Australian Heritage Database), visit the site, conduct detailed photographic recording of all site elements and produce a site plan showing significant heritage elements, property boundaries and other key landscape features. If available, concept project designs should be overlaid on the plan to show potential impacts to the heritage site. Draft a short report explaining what assessment that has occurred and key recommendations. The recommendations should include whether approval from a regulatory agency is required (see Clause 4.4).
- For a Historical / European heritage site that is not currently on any register but was identified during the CHRA site inspection (for example a new discovery), visit the site and conduct an assessment in accordance with the Transport and Main Roads Archaeological Discovery Protocol. Note, some assessment maybe required after the field assessment (for example, archival research). Draft a short report explaining what assessment that has occurred and the recommendation. The recommendation should explain whether the site is local heritage and therefore no notification to DES required, or explain why the site is of State heritage value and that notification to DES is required (see Clause 4.4). DES's Assessing cultural heritage significance: Using the cultural heritage criteria guideline should be used to explain why the site is of State heritage value.

4.3 Cultural Heritage Agreements

Where stipulated in the Functional Specification / Technical Brief or ordered by the Principal after review of the initial CHRA and Field Assessment process, the Contractor will draft either a Cultural Heritage Field Agreement, Management Agreement or Management Plan with the Aboriginal Party(ies), on the department's behalf (Note: only one of these is required per project, not all three – the department will stipulate which one is required). The Transport and Main Roads Project Manager and District Cultural Heritage Officer should be involved in key decision making steps, particularly where potential issues with the Aboriginal Party(ies) may be involved.

4.3.1 Cultural Heritage Field Agreement

Utilising the Transport and Main Roads CHFA template, the Contractor will draft an agreement based on the results of the CHRA and Aboriginal or Torres Strait Islander Heritage Field Assessment and negotiate with the Aboriginal Party(ies) to have it signed off. Preferably the CHFA would be drafted and signed in the field as part of the Field Assessment (see Clause 4.2.1). Where this is not

practicable, the Contractor may organise a workshop with the Aboriginal Party(ies) with prior approval from the department and the District Cultural Heritage Officer. The Transport and Main Roads Project Manager and District Cultural Heritage Officer must be invited. (Note: The Transport and Main Roads Cultural Heritage Officer will organise payment of the Aboriginal Party(ies) as per Engineering Policy EP173 *Procurement and Payments Policy for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers under the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003*).

4.3.2 Cultural Heritage Management Agreement

Utilising the Transport and Main Roads CHMA template, the Contractor will draft an agreement based on the results of the CHRA and Aboriginal or Torres Strait Islander Heritage Field Assessment and negotiate with the Aboriginal Party(ies) to have it signed off. For a CHMA, it is expected that the Contractor will organise one or more workshops with the Aboriginal Party(ies). The Transport and Main Roads Project Manager and District Cultural Heritage Officer must be invited. (Note: The Transport and Main Roads Cultural Heritage Officer will organise payment of the Aboriginal Party(ies) as per Engineering Policy EP173 *Procurement and Payments Policy for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers under the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003*).

4.3.3 Cultural Heritage Management Plan

Where Transport and Main Roads requests the Contractor to draft a CHMP, the Contractor will manage the process as per Part 7 of the *Aboriginal Cultural Heritage Act 2003*. This will include issuing written notices, public notices, endorsing parties, managing the consultation period, drafting a plan using the Transport and Main Roads CHMP template based on results of the CHRA and Field Assessment and organising meetings with the Aboriginal Party(ies). A key objective is to have the CHMP signed off by the Aboriginal Party and submitted to DSDSATSIP for approval. The Transport and Main Roads Project Manager and District Cultural Heritage Officer must be included in any key decision making steps and invited to meetings (Note: The Transport and Main Roads Cultural Heritage Officer will organise payment of the Aboriginal Party(ies) as per Engineering Policy EP173 *Procurement and Payments Policy for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers under the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003*).

4.4 Historical / European Heritage Approvals

Where stipulated in the Functional Specification / Technical Brief or ordered by the Principal after review of the initial Cultural Heritage Risk Assessment and Field Assessment process, the Contractor will manage the process for any required Historical / European heritage approvals, and:

- keep the Transport and Main Roads Project Manager and District Cultural Heritage Officer informed of progress at all times, including being Cc'ed on key correspondence
- organise pre-lodgement meeting with the relevant regulatory agency(ies) and Transport and Main Roads representatives
- draft and collate application documentation, including any further assessments required
- liaise with any Transport and Main Roads and external stakeholders (e.g. designers, community members) to ensure that required inputs are included
- allow Transport and Main Roads to review application package prior to submission

- submit approved application to regulatory agency(ies), and
- manage and respond to any Request For Information (RFIs) from agency(ies).

4.5 Contract Documentation

Where stipulated in the Functional Specification / Technical Brief or ordered by the Principal, the Contractor will assist in drafting the Construction Contract documentation (e.g. MRTS51.1 *Environmental Management* Technical Specification Annexure, or the Scope of Works and Technical Criteria (SWTC)). The Contractor will ensure that all key requirements and outcomes from the earlier Cultural Heritage Assessment stages are included in the documentation. The key objective is to ensure that Transport and Main Roads Construction Contractor is aware of all legal requirements, their obligations and achieve compliance.

Appendix A – Cultural Heritage Assessment Process



