

Companion guide to completing the ACHLMA Approved Form



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Introduction

An Aboriginal Cultural Heritage Land Management Agreement (ACHLMA) is a voluntary agreement between a Registered Aboriginal Party (RAP) and a public land manager (PLM), as defined in the *Aboriginal Heritage Act 2006*. The success of an ACHLMA is based on the foundations of a strong and genuine working relationship between the two parties.

An ACHLMA must be presented in the Approved Form. This has been designed to be completed easily while ensuring the required information for a legal agreement is captured. This companion guide provides further information and things to consider when completing the Schedules of the Approved Form.

The contents of the Schedules are negotiable and allow conditions, obligations and accountabilities for both parties to be identified and agreed upon. Changes can be made to the Approved Form, where required. The changes must be agreed upon by the negotiating parties and written approval given by the Secretary. Any amended format must still comply with the Prescribed Standards.

In the Approved Form, Clauses highlighted in:

* **Blue** are optional, depending on who the parties to the agreement are and what the content of the agreement is, or signify matters which are to be completed by negotiation.
* **Orange** are locations where information is required to be inserted into the text.
* **Green** text provides examples.

***Asterisks*** indicate a defined term in the ‘Definitions and Interpretation’ clause of the Approved Form.

The Approved Form has been developed to ensure it meets the specific requirements of an agreement. The need for the parties to engage legal advice is solely the decision of the parties. However, it is not necessary for the successful preparation and implementation of an ACHLMA.

Parties to the ACHLMA

Once the ACHLMA has been finalised, an appropriate representative from each party must sign the Approved Form. The appropriate representative can be determined as the person who will assume responsibility for compliance with the Schedules of the agreement.

The contact names and details for this representative must be documented in the Information Table.

Schedule 1: Agreement Area

The Agreement Area may be large or small, a single defined area or multiple defined areas, covering discrete land parcels within the appointed RAP area. The Agreement Area can be revised at any time after lodging the ACHLMA, using the amendment process.

Where a PLM does not undertake any land management activities in an area, this area may be excluded from the Agreement Area.

The description of the Agreement Area should include:

* The geographical context
* A list of prominent structures, natural features (such as waterways or mountain ranges) and infrastructure (such as roads, tracks or recreation areas)
* Cadastral information for the Agreement Area

At least one map of the Agreement Area must be included and should show the boundaries of the Agreement Area and the geographical context.

**Quality of maps**

All maps must conform to the Victorian Aboriginal Heritage Register Spatial Data guidelines, <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-07/Guide-to-Lodging-Spatial-Data-in-the-Victorian-Aboriginal-Heritage-Register.docx>

Maps and spatial information should be submitted as geographically referenced electronic data files (e.g. Shapefiles).

The following points should also be considered when preparing maps for the ACHLMA:

* Be of sufficient quality to clearly identify the Agreement Area and the Aboriginal cultural heritage within the area
* Include a prominent North arrow
* Include a scale bar using standard cartographic formats
* Geo-reference at least three readily identifiable features, e.g. road intersections, river crossings, or other prominent features, within or near the Agreement Area
* Include any other noticeable prominent natural features and structures
* Include cadastral information
* Identify the local government area/s.

Restricted access areas and areas of exclusion

There may be locations within the Agreement Area that the RAP identifies of high cultural significance. These may be specified in an ACHLMA as locations where no or limited works are allowed, or where particular methodologies for undertaking certain activities must be used. These locations might be specified in the maps and described in the ACHLMA as:

* Exclusion zones (no activity allowed)
* Restricted access zones (only certain activities allowed)
* RAP access only areas

Schedule 2: Aboriginal cultural heritage assessment

**Aboriginal cultural heritage assessment**

A written report detailing the method and results of the Aboriginal cultural heritage assessment, including subsurface testing (if any), must be included in this Schedule. The level of assessment to be undertaken in the preparation of the ACHLMA is indicated in the NOI. At a minimum, a desktop assessment must be completed.

**Aboriginal cultural heritage in the Agreement Area**

For all Aboriginal cultural heritage within the Agreement Area, the description must be consistent with the VAHR registration and include:

* The VAHR number and name
* Place components
* Any information the RAP would like to include (including oral history)

Previously unrecorded Aboriginal cultural heritage, identified during the preparation of the ACHLMA, must be registered on the VAHR prior to the lodgement and commencement of the ACHLMA. The description of the Aboriginal cultural heritage must be consistent in the ACHLMA and with the VAHR.

If the condition of a registered Aboriginal place has changed since the initial recording, new information has become available or apparent, or the place cannot be located during the assessment, parties must update the existing site record(s) on ACHRIS.

Schedule 3: Land Management Activities

All land management activities permitted by the ACHLMA must be specified in Schedule 3. Their inclusion in Schedule 3 allow these activities to be undertaken for the term of the ACHLMA, unless otherwise specified.

Parties must establish agreed methodologies for the land management activities. Indevising the land management activities, parties may also consider how land management activities could be an opportunity to directly engage Traditional Owners to implement. For example, the RAP may have a natural resource management team who could undertake certain land management activities.

Land management activities permissible under an ACHLMA may be subject to conditions. These conditions must be detailed in Schedule 5.

The description of each land management activity listed in Schedule 3 should be in plain English and must include the following:

***Description of activity***

* The name of the land management activity and all of its component actions
* How the activity will be undertaken including clear details of the methodology(ies)
(where there is more than one possible methodology, each agreed methodology should be included in the description – where activity methodologies / programs are governed by policy or legislation, these can be attached as an appendix)
* If known, the location of the activity within the Agreement Area should be included and may be illustrated with a map

***Description of any ancillary works***

Details of **any other works** to be undertaken in order to carry out the specified land management activity. For example:

* The use of vehicle and access tracks
* Parking, turning circles, off road use of vehicles and machinery
* Loading areas, storage, stockpiles and set down areas for equipment and/or gravel / fill / spoil
* Soil and/or water monitoring and testing

***Description of likely impact on the land***

An indication of the likely impact (with reference to the depth and area of ground disturbance) on the land and the Aboriginal cultural heritage (as applicable).

**What types of land management activities can be included?**

Any land management activity, that does not constitute a ‘High Impact Activity’ as defined in the Regulations, may be included. ACHLMAs are designed to facilitate ongoing, routine land management activities. These activities might include:

* Activities related to bushfire prevention (including planned burning and recovery)
* Road and track maintenance (including vehicle, walking and cycling tracks)
* General parkland maintenance (including erection of signage, fencing, etc.)
* Erosion control works
* Pest plant and animal management (e.g. blackberry removal and rabbit control works)
* Planting and revegetation

**Appendix 1** provides a table of example land management activities.

**Machinery and hand-held tools**

Where land management activities require the use of machinery, it may be useful to determine how, what type and when certain machinery is allowed to be used for particular activities in the ACHLMA. The following examples might be relevant:

* Motorised auger for planting tubestock
* Post hole driver for fencing or bollard installation
* Ride-on or push mowers for cutting grass
* Small bobcat with rubber wheels for cleaning road culverts
* Chainsaw for lopping tree branches

**Who will undertake the land management activities?**

Where possible, the activity description should detail who will undertake the land management activities. If the works is to be completed by a third party (e.g. Landcare, other not-for profit or community groups, or contractors / subcontractors), they must undertake the land management activities in accordance with the Agreement. Third party involvement in an ACHLMA must be agreed upon by the parties during the negotiations and clearly described.

It may be prudent to include a process for ensuring any third-parties undertaking works under the ACHLMA are appropriated inducted to the requirements of the agreement, in Schedule 5.

**Protective works at Aboriginal places**

Activities may be undertaken to protect and conserve Aboriginal cultural heritage places, landscapes and other areas of significance, these may include:

* Installation of protective fencing around an Aboriginal place
* Cleaning / protective sealing of rock art
* Stabilisation / caring for a scarred tree
* Planting, weed or pest control Aboriginal place extent

Schedule 4: Payments

The details of any payments required to be made under the ACHLMA need to be detailed clearly in this Schedule. Terms, frequency and rates should be considered and recorded. Payments may be set-up as an annual fee, fee for service throughout the ACHLMA, or in another agreed upon arrangement (e.g. RAP permit fee multiplied by no of permits potentially not required due to the ACHLMA plus 10% to allow for contingencies and to ensure Traditional Owners are not disadvantaged).

Paid services may include, for example:

* Undertaking desktop assessments
* Undertaking and participating in site inspections
* Undertaking cultural heritage management actions
* Scheduled consultation regarding a works program
* Time taken for the submission of relevant forms to the VAHR.

**Tracking payments**

It may be useful to document the payment schedule alongside activities or works, detailing the obligations of both parties and timing for payments.

Schedule 5: Cultural heritage management actions (conditions)

Cultural heritage management actions form the conditional component of the ACHLMA. Cultural heritage management actions must detail in plain English what steps are required to be undertaken by the PLM, RAP or any other person before, during or after land management activities.

A Guide to Drafting Enforceable Conditions and Contingencies can be found on the First Peoples – State Relations website, <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-09/Guide_for_Drafting_Enforceable_Conditions_and_Contingency_Plans.docx> .

**Developing Cultural Heritage Management Actions**

When developing cultural heritage management actions, or conditions, priority should be given to avoiding harm to Aboriginal places, or areas where Aboriginal cultural heritage is likely to occur. If avoidance is not possible, measures that minimise harm must then be considered.

Cultural heritage management actions can be developed for general application, place specific protection and management, to guide methodological approaches or to manage areas where no previous investigations for Aboriginal cultural heritage has been undertaken.

Below are some possible considerations for developing these different types of approaches to cultural heritage management actions to avoid or minimise harm.

**Communicating the content and conditions of the ACHLMA**

Compiling the relevant information that explains what activities are permissible under the ACHLMA and the associated conditions could be achieved in a variety of ways. Some examples include:

* Development of a booklet
* incorporating the relevant ACHLMA content into operational guides
* a handbook

These could be easily distributed between the RAP and PLM, or to any third parties working under the ACHLMA.

**General Conditions**

General conditions can be developed to ensure that parties and contractors are clear about relevant information in the ACHLMA.

Examples of general conditions that could be included in an ACHLMA:

***Before Activity***

* Aboriginal cultural heritage induction; which may include information on the nature, extent and locations of known Aboriginal cultural heritage in the Agreement Area, information on contingency protocols
* Processes for communication of the contents, conditions and contingencies of the ACHLMA
* Induction for the methodologies established by the ACHLMA

***During Activity***

* Contingency plans

***After Activity***

* Requirements to remove all pegs, flagging tape and barriers used to mark the presence / extent of an Aboriginal Place (if any)
* Submission of relevant documents (e.g. updating ACHRIS for any newly recorded Aboriginal places or place edits)

**Conditions for protection and management**

Conditions may be developed specifically to protect and manage Aboriginal cultural heritage or areas where Aboriginal cultural heritage is likely to occur. Therefore, it is important that there is a solid understanding of the nature and extent of Aboriginal places in the Agreement Area to ensure appropriate measures are in place to avoid, or minimise, harm.

These conditions could be employed to protect Aboriginal cultural heritage where an activity might be in close proximity to a known Aboriginal place, and / or where an activity may have an impact on an area where Aboriginal cultural heritage is likely to occur. Conditions may identify actions that must be undertaken before, during or after activities commence, for example:

***Before Activity***

Avoiding harm

* Actions to ensure no activities take place within the extent of an Aboriginal place and / or an area where Aboriginal cultural heritage is likely to occur (e.g. installation of protective fencing / clear boundary markers, within which no activities are permitted to take place)
* Strategies to communicate specific information of where areas to avoid are well known and understood by parties and contractors

Minimising harm

* Actions that reduce impact to an Aboriginal place, such as, covering the area with a protective layer prior to commencing the activity (e.g. geofrabric or equivalent)
* Establishing ‘No Go Zones’ using temporary barriers or fencing that minimise harm

***After Activity***

* Actions to ensure all Aboriginal cultural heritage is appropriately recorded and documented
* Ensure all VAHR forms are submitted to the VAHR

**Methodological Conditions**

Methodological conditions can be developed to establish approaches for executing activities in ways that avoid or minimise harm. They may incorporate cultural practices or approaches. These types of conditions may establish methods to minimise impact to the ground surface, or to keep to areas that have previously been disturbed. Adjustments to current methodologies may include altering the type of vehicle, machinery or tools used; establishment of equipment set down areas.

Methodological conditions may look like the following examples:

* Ensuring materials and equipment are brought to and from the works area, with designated set-down areas.
* Ensuring all vehicles use existing road / tracks / parking areas
* Altering the activity methodology / equipment used for all / part of activity:
	+ using hand tools where possible (e.g. pedestrian weed spraying; Hamilton planters)
	+ adjust location of a component of activity (e.g. alignment of a section of track).

**Areas where there is limited information on Aboriginal cultural heritage places**

The Aboriginal cultural heritage assessment may identify areas within the Agreement Area where there is little information or no recorded Aboriginal cultural heritage. In some cases, it may be difficult to determine the sensitivity of these areas and therefore, to determine how best to avoid or minimise harm. Conditions may be developed for these areas to include opportunities for identifying Aboriginal cultural heritage prior to activities taking place, following which harm avoidance / minimisation actions can then be discussed and undertaken. The processes for managing any identified cultural heritage will need to be outlined in the condition or refer to contingence processes. Any previously unrecorded cultural heritage must be registered on ACHRIS.

Some examples that may be considered as part of a condition:

***Before Activity:***

* Walking along a track prior to road grading to identify Aboriginal cultural heritage

***After Activity:***

* Ensure relevant forms and information are submitted to the VAHR
* Maintain a log of Aboriginal cultural heritage actions and outcomes for review purposes.

**Keeping track**

Cultural heritage management actions can vary in content, nature and accountability requirements. To assist with keeping track of requirements, a table may be prepared showing all of the activities and their components: what needs to be done; when it needs to be done; by whom; and how.

Schedule 6: Consultation

This documents the planned communication through the implementation, progress and operation of the ACHLMA. The consultation schedule should consider the frequency of meetings, expected attendees and may relate to, for example:

* current and upcoming plans for land management activities:
	+ especially in situations where activities may be undertaken as a revolving program, such as seasonal plans or funding for particular activities
* types of land management activities and the effectiveness of the Aboriginal cultural heritage management actions
* proposed amendments to the terms and content of the ACHLMA
* consultation and sitting fees.

Schedule 7: Other Matters

This Schedule details any other matters agreed to between the parties; this can include details of the intention and objectives of the ACHLMA as agreed to by the parties. The items detailed in this Schedule do not necessarily carry compliance requirements, unless they are included in Schedule 5.

**Examples of Other Matters**

**Contemporary cultural practices and Aboriginal Intangible Heritage**

Contemporary cultural practices can be integrated into land management activities and other use of Aboriginal intangible heritage, including interaction facilitated by an Intangible Heritage Agreement.

**Provision to engage RAP Natural Resource Management / Green Teams**

Where one exists, parties can agree to engage the RAP Natural Resource Management or Green Team to undertake or assist with particular land management activities.

**Protecting and managing other values**

Where natural or environmental values are present within the Agreement Area, conditions can be written to avoid or minimise harm to these areas.

**Interpretation and information (signage, advertising, internet)**

Agreeing to information that can be published on signage and in other mediums, and how information will be presented.

**Implementation of Reconciliation Action Plans and Aboriginal Inclusion Plans**

Providing for Traditional Owner involvement and a joint approach to the long term planning and implementing of land management activities and plans.

**Whole of community approach and educational opportunities**

ACHLMAs have the potential to provide educational opportunities to the wider community, especially where Aboriginal cultural heritage is present.

*Example: Inviting Elders and community members out on site where Aboriginal cultural heritage is present, providing an opportunity for people to share knowledge on Country, as well as involving the broader community.*

**Community use of Agreement Area**

Consider how the community use and experience the Agreement Area. Community consultation for use of areas of public land can be a practical way of obtaining feedback. For example, conducting a community meeting or opinion survey.

**Other legislative requirements**

Ensuring compliance with other legislation, including permits from other regulatory bodies where needed. For example, where work is being undertaken along waterways, a ‘Works on Waterway permit’ might be required from the Catchment Management Authority to undertake the activity.

**Activity demonstration or showcase**

ACHLMAs provide the opportunity for certain activities or actions to be showcased or demonstrated to other groups, including schools and the community.