

## Chapter 8

# Cultural values assessment



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It was concluded that, with implementation of the Cultural Heritage Management Plan (CHMP) (CHMP 17816) and its associated management conditions, potential impact known Aboriginal cultural heritage would be negligible and on unknown Aboriginal places low to moderate (i.e., impacts would not be significant) as the likelihood of encountering unknown Aboriginal cultural heritage either onshore or offshore is highly unlikely.



It was noted in the ACH EES study (and draft CHMP) that no oral history information specifically relating to the activity area was able to be determined in consultation with the Wadawurrung Traditional Owners Aboriginal Corporation (WTOAC) Registered Aboriginal Party (RAP) as part of the meetings undertaken for the CHMP. In June 2021, during a Technical Reference Group (TRG) meeting for the EES, a representative from WTOAC provided some oral history information relating to the broader Corio Bay region and surrounding areas beyond the project activity area. It was indicated that 4,000 to 5,000 years ago Corio Bay was a grassland and that Cowies Creek and the Barwon River traversed (now) Corio Bay. In addition, it was indicated that there is oral history information, as well as historical information, that Corio Bay could be traversed between Point Lillias and Point Henry and indicated that the mid-Holocene change in sea level was evidenced by extensive fish traps at Point Wilson and Point Lillias, which may extend into offshore contexts.

The Inquiry and Advisory Committee (IAC) acknowledged that during relevant consultations, WTOAC had not identified any relevant intangible values (IAC Report No. 1, section 17.4 (v)). However, the IAC recommended that a cultural values assessment be undertaken to identify intangible values that could be affected by the project, both onshore and offshore in Corio Bay to inform an updated CHMP. The IAC considered that, subject to the outcomes of the further assessments, the project would not impact on any known Aboriginal cultural heritage values and the potential impacts on unknown Aboriginal cultural heritage values could be managed by the updated CHMP and its associated management conditions (IAC Report No. 1, section 17.4 v)).

Subsequent to the issue of the IAC findings, the TRG advised that the CHMP can only be used for managing intangible cultural values in certain circumstances.

Unlike the process for obtaining an approved CHMP, which is required by law for certain activities, the process for undertaking a cultural values assessment to identify Aboriginal intangible heritage is not prescribed by the *Aboriginal Heritage Act 2006* (the Act) and Aboriginal Heritage Regulations 2018.

A CHMP provides conditions for the mitigation or minimisation of harm to Aboriginal Places but does not manage potential effects to Aboriginal intangible heritage as defined in the Act. Sometimes Aboriginal intangible heritage has a strong connection to Country, and this is where there can be a connection between intangible heritage and Aboriginal Places. In these cases, if there is sufficient information to ensure provisions of the Act are satisfied, these values can be incorporated as a component of an Aboriginal Place registration.

As the Cultural Values Assessment (CVA) is still in preparation, and the values which may be described are unknown, it is not possible at this point to ascertain whether management of these unknown values could be managed through the CHMP or by other measures.

This chapter provides an update on preparation of the CVA sponsored by Viva Energy and being undertaken by WTOAC in response to Recommendation 12 in Table 1 of the Minister for Planning's Directions (Minister's Directions) for the project Supplementary Statement. It also outlines a proposed approach whereby the outcomes of the CVA, when finalised by WTOAC, can be the subject of further process and ongoing collaboration between Viva Energy and WTOAC.



A summary of the supplementary underwater Aboriginal cultural archaeological assessment, that has been undertaken to assess offshore (submerged) Aboriginal cultural heritage values in response to Recommendation 12 of the Minister’s Directions is presented in supplementary statement Chapter 7. As the cultural values assessment is ongoing, Chapter 7 addresses impacts to tangible cultural heritage only, as addressed in Supplementary Technical Report E: *Underwater Aboriginal cultural archaeological assessment*.

## 8.1 Methodology

### 8.1.1 Minister’s Direction

**Table 8-1** of the Minister’s Directions consolidates the recommendations for further work to inform the Supplementary Statement. The Minister’s Direction relevant to the CVA is presented in **Table 8-1** below.

**Table 8-1** Minister’s Direction relevant to the cultural values assessment

Recommendation	Description	Section addressed
Recommendation 12	Undertake a cultural values assessment to identify intangible values relevant to the project (both onshore and offshore in Corio Bay) and an underwater Aboriginal cultural archaeological assessment for the proposed dredging areas to inform an updated cultural heritage management plan. Review and update mitigation measures and incorporated document to include any necessary changes to implement the updated cultural heritage management plan (CHMP) when approved	<b>Section 8.3</b>

Wadawurrung Traditional Owners Aboriginal Corporation (WTOAC) has been sponsored by Viva Energy to undertake a CVA in order to fulfil the requirement of Recommendation 12 of the Minister’s Directions to identify intangible values relevant to the project (both onshore and offshore in Corio Bay).

Prior to commencement an initial meeting between Viva Energy and WTOAC was held in May 2023 to discuss the process, scope and timeline for the CVA.

An on-country meeting between Viva Energy and a representative from WTOAC was held in October 2023 to present the preliminary findings of the field survey undertaken by WTOAC.

In February 2024, a presentation on the CVA was given to the Technical Reference Group (TRG) by a representative from WTOAC.

Consultation with WTOAC is ongoing and recommendations resulting from the CVA in relation to identified values relevant to the project will inform an updated CHMP.



## 8.2 Summary of the Aboriginal cultural heritage EES study

A summary of the ACH EES study is provided in Section 7.2 of Chapter 7.

## 8.3 Update on the cultural values assessment

The CVA being prepared by WTOAC in response to Recommendation 12 of the Minister's Directions for the Supplementary Statement is in progress. It is recognised the process necessarily requires time and consideration without undue pressure or timelines. It involves knowledge being shared with various persons, and through means including engagement with a broader group of Traditional Owners, and particularly Elders. The respect for this timeline, while also progressing the Supplementary Statement has been the subject of ongoing discussions between Viva Energy, WTOAC, FP-SR and Department of Transport and Planning (DTP).

As CVAs are not a mechanism of the *Aboriginal Heritage Act 2006* (the Act) and may identify values beyond those associated with Aboriginal Places as defined by the Act, consideration is being given as to how the outcomes of CVAs can be incorporated into the environmental assessment process, values protected, and how that protection may be assured through the implementation phase.

The *Aboriginal Heritage Act 2006* (the Act) and Aboriginal Heritage Regulations 2018 provide for protection of Aboriginal Places which have associated intangible values. These values can be managed through a cultural heritage management plan (CHMP). If a CVA identifies broader cultural values which are not associated with an Aboriginal Place, these values need to be managed outside of the CHMP process. A study area for a CVA is often necessarily broad, however, the activity area defined by the Sponsor for the CHMP reflects the impact footprint of the project. Aboriginal Places located outside the defined activity area cannot be managed by the CHMP. As such, the CHMP cannot be used to protect intangible cultural values not associated with an Aboriginal Place or for values which are outside the CHMP activity area.

As the CVA is still in preparation, an agreed set of pathways for any potentially impacted value has not yet been established by WTOAC and FPSR.

Viva Energy has expressed an ongoing commitment to working collaboratively with WTOAC and FPSR

to have regard for the outcomes of the CVA when they become available, and how those outcomes can be given effect. As there is potential that the CVA outcomes may not be available within the Supplementary Statement timeframes, recent discussions have centred on identifying a mechanism for a firm commitment being made by all parties to collaborate on the CVA outcomes to achieve an acceptable outcome.

It is also acknowledged that intangible cultural values extend beyond project boundaries and may relate to wider landscapes and seascapes. As such, Viva Energy is committed to collaborating with WTOAC to assess potential impacts of the project on intangible values, and to identifying appropriate mitigation measures in relation to these impacts.

## 8.4 Proposed approach to implementation of mitigation measures

Recent discussions involving WTOAC, FPSR, DTP and Viva Energy have focused on identifying an appropriate mechanism to enable future collaboration between Viva Energy and WTOAC to avoid or mitigate potential impacts on intangible cultural values as the project progresses through the Supplementary Statement process and beyond. Further, the discussions have considered how some certainty can be provided to WTOAC and regulatory authorities that intangible cultural values will be the subject of ongoing deliberations as the impact assessment process progresses, and while the CVA is finalised by WTOAC.

On the basis that the CVA being prepared by WTOAC is still in progress, and that potential mitigation measures will need to be the subject of ongoing collaboration, Viva Energy has made several commitments which have been incorporated into the project Environmental Management Framework (EMF) as a clear demonstration of an ongoing commitment to collaborating with WTOAC to achieve appropriate outcomes.

This proposed approach provides certainty to WTOAC and regulatory authorities on the basis that the draft Planning Scheme Amendment (PSA) for the project has been amended to include a condition that the project EMF is prepared to the satisfaction of the Minister for Planning as reflected in Clause 4.6.1 below from the draft PSA Incorporated Document.

*4.6.1 Prior to the commencement of development (excluding preparatory buildings and works under Clause 4.10.1), an Environmental Management Framework (EMF) must be prepared to the satisfaction of the Minister for Planning, in consultation with the Council.*

Once the Supplementary Statement assessment process is completed, and assuming a favourable Minister's assessment for the project, it is the intention of Viva Energy to submit the project EMF, which includes all proposed mitigation measures including those proposed for intangible values, to the Minister for Planning to satisfy the conditions of the draft PSA Incorporated Document. Incorporation of the EMF into conditions of the draft PSA gives statutory effect to the mitigation measures proposed by Viva Energy and provides certainty to WTOAC and regulatory agencies that intangible heritage considerations will be collaboratively addressed as part of the secondary approvals after conclusion of the Supplementary Statement assessment process.

### 8.5 Commitments

In accordance with Recommendation 12 of the Minister's Directions, the following commitments have been made by Viva Energy and incorporated into the project Environmental Management Framework (EMF), to include a process for ongoing collaboration with WTOAC in assessing potential impacts on intangible cultural values.

#### MM- AH02 Cultural values assessment

Viva Energy will continue to collaborate with WTOAC in preparation of the cultural values assessment (CVA) and provide support for implementation of appropriate outcomes and recommendations relevant to the project.

#### MM- AH03 Cultural values

If the CVA identifies potential impacts of the project on land and sea country cultural values, Viva Energy will collaborate with WTOAC and FPSR to identify and adopt appropriate measures to avoid or mitigate impacts of the project on cultural values.

### 8.6 Conclusion

To address Recommendation 12 of the Minister's Directions, WTOAC was sponsored by Viva Energy to complete a CVA which is in preparation. As outlined in this chapter, Viva Energy has proposed a process which will allow for consideration of the CVA outcomes when the CVA becomes available, while still enabling the Supplementary Statement assessment process to progress. The process, which incorporates proposed commitments for intangible cultural values to be included in the project EMF which must be approved by the Minister for Planning as a condition of the draft PSA Incorporated Document. The process provides certainty to WTOAC and regulatory agencies that intangible cultural values will be the subject of ongoing collaboration and consideration between Viva Energy and WTOAC.