



Government  
of South Australia

Department of Water,  
Land and Biodiversity  
Conservation

*River Murray Act 2003*

# Referral Assessment Policy – Special Provision: Heritage



## River Murray Act 2003

# Referral Assessment Policy – Special Provision: Heritage



### Purpose

The Special Provision – Heritage is designed to help guide decision-making for the Minister for the River Murray and the Minister's delegates when assessing referred statutory instruments and applications for authorisations received under the *River Murray Act 2003* that relate to or affect sites, places or objects of heritage significance.

It is not intended to duplicate or replace policies administered by other authorities. An assessment made by the Minister for the River Murray will build

on assessments made by authorities to protect and enhance the river and ensure that the objects and objectives of the River Murray Act are taken into account.

### Background

The River Murray Referral Assessment Policy ensures that decisions meet the Minister's obligations under the River Murray Act and seek to further the objects and objectives for a Healthy River Murray contained in the Act. The policy includes general, special and activity provisions, as shown in figure 1.

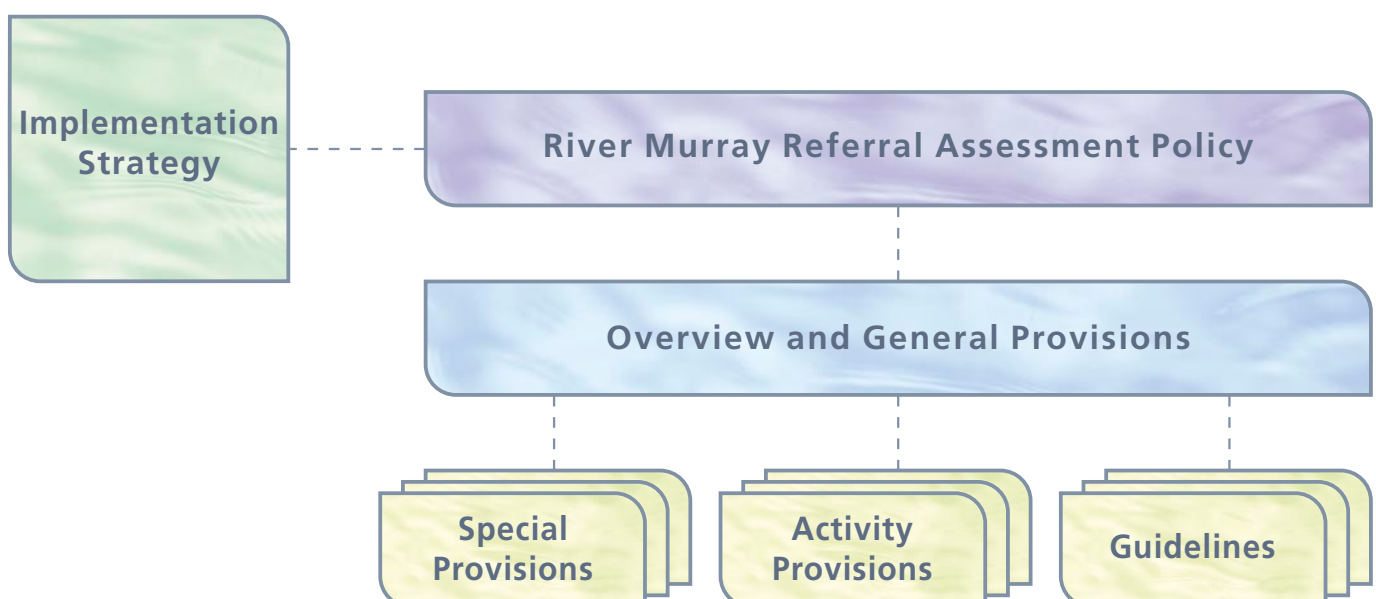


Figure 1: River Murray referral assessment framework

The general provisions apply to all statutory instruments and applications referred to the Minister pursuant to a related operational Act<sup>1</sup>. Special and activity provisions are to be applied in conjunction with the general provisions if relevant to a referred instrument or application.



Expert advice should be sought to facilitate high quality responses to referred instruments and applications, and carefully considered to ensure it fulfils the Minister's obligations under the River Murray Act.

The decision-making process does not negate the requirements of any other relevant legislation, in particular for a person to:

- obtain the approval of the Native Vegetation Council to clear native vegetation in accordance with the *Native Vegetation Act 1991* or the *Native Vegetation Regulations 2003*
- ensure that there is no disturbance, damage or interference with Aboriginal sites, objects or remains without an authorisation from the Minister for Aboriginal Affairs and Reconciliation in keeping with the *Aboriginal Heritage Act 1988*
- comply with the requirements of the *Development Act 1993*, *Environment Protection Act 1993*, *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)*, *National Parks and Wildlife Act 1972*, *Heritage Places Act 1993*, *Harbours and Navigation Act 1993* and the *Historic Shipwrecks Act 1981*

- ensure that a right to occupy waterfront Crown land is obtained under the *Crown Lands Act 1929* for minor structures to be sited on Crown land or the bed of the River Murray, and that procedures under the *Native Title Act 1993 (Cwlth)* are complied with, and



- ensure design work and documentation of structures is in accordance with Australian Standards and Codes, SA Water Standards, and applicable South Australian and Australian Government Acts and Regulations. Designs should also conform to contemporary scientific literature and current thinking.

## Provisions

On receipt of a referred application the Minister:

- will require the proponent to demonstrate that each potential impact of a proposed activity will have a neutral or beneficial effect on the River Murray
- may impose conditions to ensure that the activity will have a neutral effect, and
- may impose conditions so that the activity has a beneficial effect, where it is reasonable and practicable to do so.

## What is a neutral or beneficial effect?<sup>2</sup>

An activity has a neutral or beneficial effect on the River Murray when the impacts of the activity are known and understood, and the activity:

- (1) has no potential for adverse impact, or

<sup>1</sup> The powers of the Minister are set out in section 22 of the River Murray Act and also in relevant provisions of the related operational Act under which an application is referred to the Minister.

<sup>2</sup> The concept of neutral or beneficial effect is established in the River Murray Referral Assessment Policy – Overview and General Provisions (DWLBC, 2007) and addressed in detail in the River Murray Neutral or Beneficial Effect Guidelines (DWLBC, 2007).



- (2) will lead to an improvement consistent with the objects and objectives for a healthy River Murray, or
- (3) has potential for adverse impact that would be inconsistent with one or more of the objectives for a healthy River Murray, however -
- (A) the activity would avoid the adverse impact or the risk of impact because of the way it would be undertaken, or
- (B) it is impossible to avoid the adverse impact or potential impact, and
- (i) the adverse impact is not very high (refer to the *River Murray Neutral or Beneficial Effect Guidelines*<sup>3</sup>), and
- (ii) the adverse effects of the activity can be offset<sup>4</sup> by specific cost-effective actions that will benefit the river and can be secured by the imposition of conditions, and
- (iii) the proponent can sufficiently demonstrate (e.g. via the results of an economic viability study and/or business case) that the activity provides:
- (a) significant social or economic benefit to the people of the state, and/or
- (b) a net improvement to the river (for example, where a net improvement will be gained by replacing an existing activity that is having an adverse impact with an activity of lesser impact).

<sup>3</sup> The River Murray Neutral or Beneficial Effect Guidelines (DWLBC 2007).

<sup>4</sup> The concept of an offset is established in the River Murray Act 2003 s22(8)(b) and s42(3)(b), briefly discussed in the River Murray Referral Assessment Policy – Overview and General Provisions (DWLBC 2007) and will be addressed in detail in the River Murray Offsets Guidelines (currently under development by DWLBC).

<sup>5</sup> Derived from a variety of sources – no available definition in the current Aboriginal Heritage Act 1988

<sup>6</sup> Aboriginal Heritage Act 1988

## Related Provisions

Other provisions (some are yet to be developed) that address heritage issues are the:

- Aquaculture Activity Provision which addresses the location, development and management of aquaculture operations
- Dwellings Activity Provision which addresses the impacts of residential development
- Vegetation Special Provision which addresses the protection of native and other significant vegetation, and
- Wetlands and Floodplains Special Provision which addresses the protection of wetlands and floodplains connected with the River Murray.

## Definitions

The following definitions apply to the Special Provision - Heritage:

**Aboriginal heritage**<sup>5</sup> includes landscapes and places that are important to Aboriginal people, evidence of Aboriginal occupation and use of the landscape in historic and pre-contact sites, objects of significance and ancestral remains, and non-physical items including Aboriginal oral history, stories and songs, art and dance, languages, connection to country and environmental knowledge.

**Aboriginal site or object** is an area of land or an object that is of significance to Aboriginal tradition, archaeology, anthropology or history<sup>6</sup>. This includes, but is not limited to, those sites and objects registered in the Register of Aboriginal Sites and Objects that is kept and maintained by the Minister for Aboriginal Affairs.



**Activity**<sup>7</sup> includes:

- a) an act carried out on a single occasion, and
- b) a series of acts, and
- c) the storage or possession of anything (including something in liquid or gaseous form).



**Cultural significance**<sup>8</sup> means sites, places or objects with aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects.

**Historic shipwrecks** and **historic relics**<sup>9</sup> are the remains of ships or articles associated with ships that have been situated in territorial waters of the State for 75 years or more, or if younger than 75 years, that have been individually gazetted as such.

**Must** is a requirement of existing law or regulations, which, if ignored, will lead to a legal breach and subsequent compliance action.

**Minor structures** include; boardwalks, boat ramps, causeways, channels, erosion barriers, jetties, piers, landings, mooring posts/piles, pipelines, pontoons, irrigation pumps, pump houses, retaining walls, steps, swing moorings and other similar structures.

**Natural Heritage**<sup>10</sup> means:

- a) natural features consisting of physical and biological formations or groups of such formations, which demonstrate natural significance

- b) geological and physiographical formations and precisely delineated areas that constitute the habitat of indigenous species of animals and plants, which demonstrate natural significance, and/or



- c) natural sites or precisely delineated natural areas that demonstrate natural significance from the point of view of science, conservation or natural beauty.

**Object**<sup>11</sup> means a natural or manufactured object (excluding an Aboriginal object within the meaning of the *Aboriginal Heritage Act 1988*) and includes:

- a) an archaeological artefact, or a geological, palaeontological or speleological specimen, meeting one or more of the criteria in Section 16 of the *Heritage Places Act*, or
- b) an object intrinsically related to the heritage significance of a State Heritage Place or State Heritage Area.

**Place**<sup>12</sup> generally means a site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

In particular reference to State and local heritage places it means:

- a) any site or area, with or without improvements
- b) any land

<sup>7</sup> River Murray Act 2003

<sup>8</sup> Adapted from Australia ICOMOS Burra Charter, 1999

<sup>9</sup> Adapted from the Historic Shipwrecks Act 1981

<sup>10</sup> Australian Natural Heritage Charter

<sup>11</sup> Heritage Places Act 1993

<sup>12</sup> Australia ICOMOS Burra Charter, 1999



- c) any building, structure or other work, whether temporary or permanent or moveable or immovable (including an item or thing that is permanently fixed or moored)
- d) any other location, item or thing that constitutes a place within the State,

and includes –

- e) any fixtures or fittings
- f) any land where a place is situated
- g) any subsurface area, and
- h) any part of a place.

**River Murray**<sup>13</sup> means the:

- a) River Murray system – the main stem and all anabranches, tributaries, floodplains, wetlands and estuaries that are in any way connected or associated with the river and related beds, banks and shores, and
- b) Natural resources of the River Murray, being:
  - i. soil, groundwater and surface water, air, vegetation, animals and ecosystems connected or associated with the River Murray system,
  - ii. cultural heritage and natural heritage, and amenity and geological values, connected or associated with the River Murray system, and
  - iii. minerals and other substances, and facilities, that are subject to the operation of a Mining Act and are such that activities undertaken in relation to them may have an impact on the River Murray.

<sup>13</sup> River Murray Act 2003

<sup>14</sup> Heritage Places Act 1993

<sup>15</sup> Heritage Places Act 1993

<sup>16</sup> Adapted from Heritage Places Act 1993

**Should** indicates a recommended practice or manner of carrying out an activity.

### **South Australian Heritage**

**Register**<sup>14</sup> lists State Heritage Places and related objects of State significance entered under the *Heritage Places Act 1993*.

As a central point of reference, it also records:

- a) local heritage places designated by a Development Plan
- b) local heritage zones and policy areas designated by a Development Plan
- c) places within the State entered in any register of places of natural or historic significance kept under the law of the Commonwealth (e.g. the Register of the National Estate, the Commonwealth Heritage List, National Heritage List and declared World Heritage Properties)
- d) State Heritage Areas, and
- e) Heritage Agreements made under the *Heritage Places Act 1993*.

**State Heritage Area**<sup>15</sup> means an area established as a State Heritage Area by a Development Plan or by designation under the *South Australian Heritage Act 1978*.

**State Heritage Place**<sup>16</sup> means:

- a) a place entered, either as a provisional or confirmed entry, in the South Australian Heritage Register under Part 4 of the *Heritage Places Act 1993*
- b) a place within an area established as a State Heritage Area, or
- c) a place taken to be entered in the Register under Schedule 1 of the *Heritage Places Act 1993* (as enacted on the commencement of that Act).



## Value of Heritage

The protection of heritage values is identified in the *River Murray Act Implementation Strategy* as one of the four priorities in achieving the objects and objectives for a healthy River Murray contained in the Act.



Several South Australian Acts provide for the protection of heritage sites, places and objects including the *Development Act 1993*, the *Aboriginal Heritage Act 1988*, the *Heritage Places Act 1993*, the *Native Title Act 1994* (South Australia), and the *Historic Shipwrecks Act 1981*. The *River Murray Act* uses the existing 'one-stop shop' mechanism established under the *Development Act* for the referral of individual applications under the *Heritage Places Act* and the *Historic Shipwrecks Act* in River Murray Protection Areas pursuant to provisions listed in Schedule 8 of the *Development Regulations*. Under these provisions, development applications in River Murray Protection Areas that may impact on heritage matters are referred to the Minister for the River Murray. The Minister has power of direction over the protection of heritage matters but is required to carefully consider advice received from the relevant bodies. In addition, there are items and sites (i.e. particular landmarks or buildings) of heritage importance along the river that are not protected by legislation but are nonetheless important to preserving the river's history. Where this is the case, the Minister may make provisions for their preservation and interpretation.

This document applies to sites, places or objects of natural and cultural heritage value, such as Aboriginal sites and objects, historic vistas, significant landscape features and built heritage as well as access to important sites, that are important to communities.

Such places and objects provide us with cultural and physical links to the past and may provide a better understanding of Aboriginal and other cultures and the natural environment. Respect for Aboriginal heritage contributes to the wellbeing of Aboriginal people and enriches the community as a whole.



Heritage can contribute to sustainable economic development by providing landmarks and tourism drawcards in urban centres and regional areas. Heritage places also attract people and investment to towns and cities by enhancing their liveability. In turn, retaining and restoring existing places provides environmental benefits through reducing demolition waste and raw materials associated with new development.

The protection, restoration and enhancement of sites, places and objects of natural and cultural heritage in the Murray-Darling Basin is important to the sustainable management of the River Murray, playing an essential role in:

- sustaining Aboriginal culture, which continues to be a cornerstone of Aboriginal family and community life<sup>17</sup>
- providing the whole community with a knowledge of the history of human occupation and activity in the area
- providing a desirable environment for people to work and play
- contributing to economic activity through tourism
- maintaining the enjoyment and social wellbeing of communities (Aboriginal and non-Aboriginal) that use the river for recreational pursuits

<sup>17</sup> Doing it Right policy on Aboriginal Affairs



- maintaining the economic wellbeing of those who rely on the heritage values of the river for their livelihood, and
- maintaining cultural wealth and associated opportunities for future generations.

Key threats to heritage values include:

- lack of information, awareness and respect
- environmental degradation
- urban development pressures
- abandonment of older structures because of changing technology and new markets or products
- degradation of landscape and amenity values of the river
- degradation of local heritage places
- degradation of State Heritage Places
- degradation of significant archaeological sites and artefacts
- degradation of historic shipwrecks and relics
- damage, disturbance or interference with Aboriginal sites, objects or remains as defined by the Aboriginal Heritage Act 1988
- denial of access by traditional owners to the river as a result of private ownership, fencing and development, and
- decision-making that does not include Aboriginal people and others.

## Provisions and Principles

The provisions below have been designed to result in a neutral impact on the natural and cultural resources of the River Murray. They represent the minimum standards required to achieve the objectives of the River Murray Act. Proponents are strongly encouraged to undertake actions above and beyond these principles to achieve a beneficial effect for the river environs.

### Provision 1 (General)

An activity involving heritage sites, places or objects should not harm the River Murray in any of the following ways:

- loss/decline of protected, threatened and endangered species<sup>18</sup>
- loss/decline of ecologically valuable habitat
- loss/decline of key vegetation associations
- incursions of exotic plants and animals (including aquatic pests)
- erosion
- rising groundwater and dryland salinity
- adverse interruption of physical and ecological processes
- decline in water quality
- degraded landscape or amenity values, and
- damage to, disturbance of or interference with Aboriginal sites, objects or remains without authorisation of the Minister for Aboriginal Affairs and Reconciliation.

<sup>18</sup> Listed under the National Parks and Wildlife Act 1972





## Principles

- 1.1 Activities involving heritage sites, places or objects that may lead to actual or likely Very High Adverse Impact<sup>19</sup> on the River Murray should be avoided and may be refused.
- 1.2 Activities involving heritage sites, places or objects that may lead to actual or likely Low-High Adverse Impact<sup>8</sup> on the River Murray should be avoided through negotiation and modification of the proposal and the imposition of relevant conditions.
- 1.3 Activities involving heritage sites, places or objects that may lead to actual or likely Adverse Impact on the River Murray that is unavoidable should only proceed where:
- the activity will not lead to actual or likely Very High Adverse Impact on the River Murray; and
  - the adverse effects of the activity can be offset<sup>20</sup> by specific cost effective actions that will benefit the river and can be secured by the imposition of conditions; and
  - the proponent can sufficiently demonstrate (e.g. via the results of an economic viability study and/or business case) that the activity provides:
    - significant social or economic benefit to the people of the State; and/or
    - a net improvement to the River Murray. (For example, where a net improvement will be gained by replacing an existing activity that is having an adverse impact, with an activity of lesser impact).

## Provision 2 (Heritage Protection – General)

Sites, places and objects of Aboriginal and non-Aboriginal heritage should be conserved and protected.

### Principles

- 2.1 The precautionary principle applies to avoiding activities that might cause harm to heritage.
- 2.2 Any applications for activities that may have an impact on a site, place or object of heritage significance must be referred to the relevant expert for advice.
- 2.3 Management agreements (under the River Murray Act) should be used where appropriate to preserve, conserve, manage, enhance or re-establish sites, places or objects of Aboriginal or non-Aboriginal heritage.
- 2.4 Applications for activities that are not identified through the referral process as having an impact on heritage still have an obligation under the law to report any sites, objects or places of heritage significance that are found during the course of development.
- 2.5 Protection and conservation of sites, places and objects of heritage significance are provided for by the relevant legislation (i.e. Development Act 1993, Aboriginal Heritage Act 1988, Heritage Places Act 1993 and Historic Shipwrecks Act 1981) but do not have to be limited to those requirements.

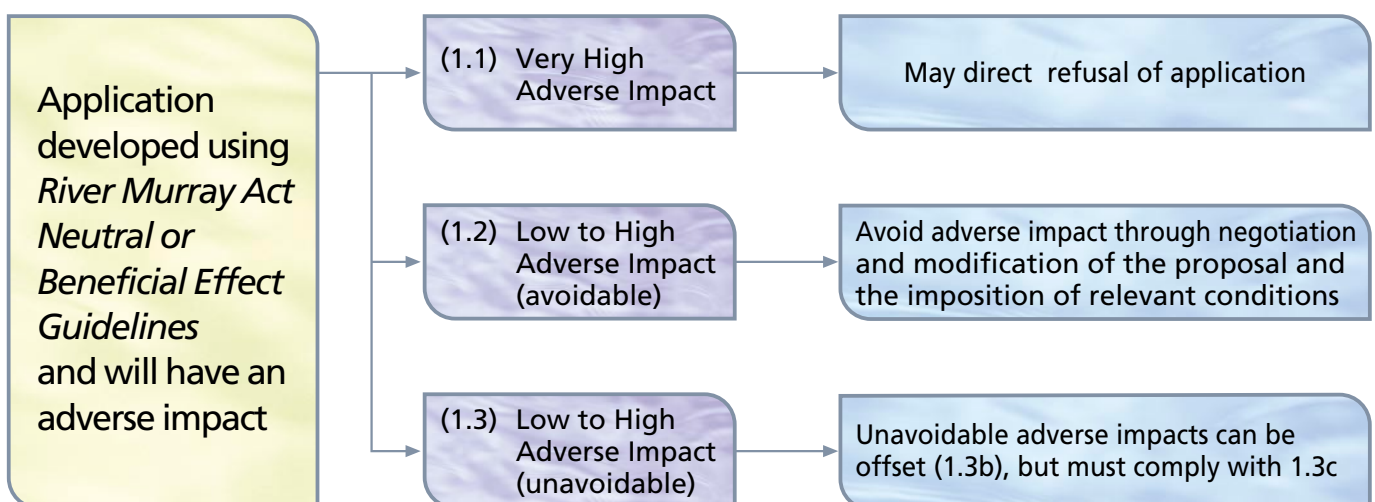


Figure 2: Principles 1.1-1.3 flow diagram

<sup>19</sup> Refer to the River Murray Act Neutral-Beneficial Effect Guidelines

<sup>20</sup> Refer to the River Murray Offsets Framework (Refer to the General Provisions until the Offsets Framework is available)

2.6 In addition to protection provided for by relevant legislation, the Minister for the River Murray may take other actions to protect and conserve places and objects of heritage significance. This may include setting conditions, entering into agreements, applying for an entry on a legislative register or any other means practicable.

3.3 Any consultation with Aboriginal people should give consideration to their particular needs and be guided by the memorandum of understanding between the Murray Lower Darling Rivers Indigenous Nations and the Murray-Darling Basin Commission.



### Provision 3 (Aboriginal heritage)

The physical fabric, settings, uses and associations that create or embody the cultural significance of sites and objects of Aboriginal heritage significance should be conserved and protected.

#### Principles

3.1 To ensure protection of Aboriginal heritage, any application to the Minister for the River Murray that involves:

- a) earthworks that cause major disturbance to land or to the bed or subsoil under waters
- b) the division of an allotment into four or more sub-allotments, and
- c) the grant of fee simple or a leasehold interest (including an easement)

must be referred to the Aboriginal Heritage Branch, Department of the Premier and Cabinet (DPC), for advice.

3.2 If an activity is identified as potentially causing damage, disturbance or interference with an Aboriginal site or object, the proponent should be encouraged to discuss it with the Aboriginal Heritage Branch, DPC, and should consider applying for an authorisation under section 23 of the Aboriginal Heritage Act 1988.

### Provision 4 (Non-Aboriginal heritage)

The physical fabric, settings, uses and associations that create or embody the cultural significance of places and objects of non-Aboriginal heritage significance should be conserved and protected.

#### Principles

4.1 Any applications made to the Minister for the River Murray that:

- a) directly affect a State Heritage Place
- b) are adjacent to a State Heritage Place, or
- c) in the opinion of the Heritage Branch, Department for Environment and Heritage (DEH), are deemed to materially affect the context in which a State Heritage Place is situated

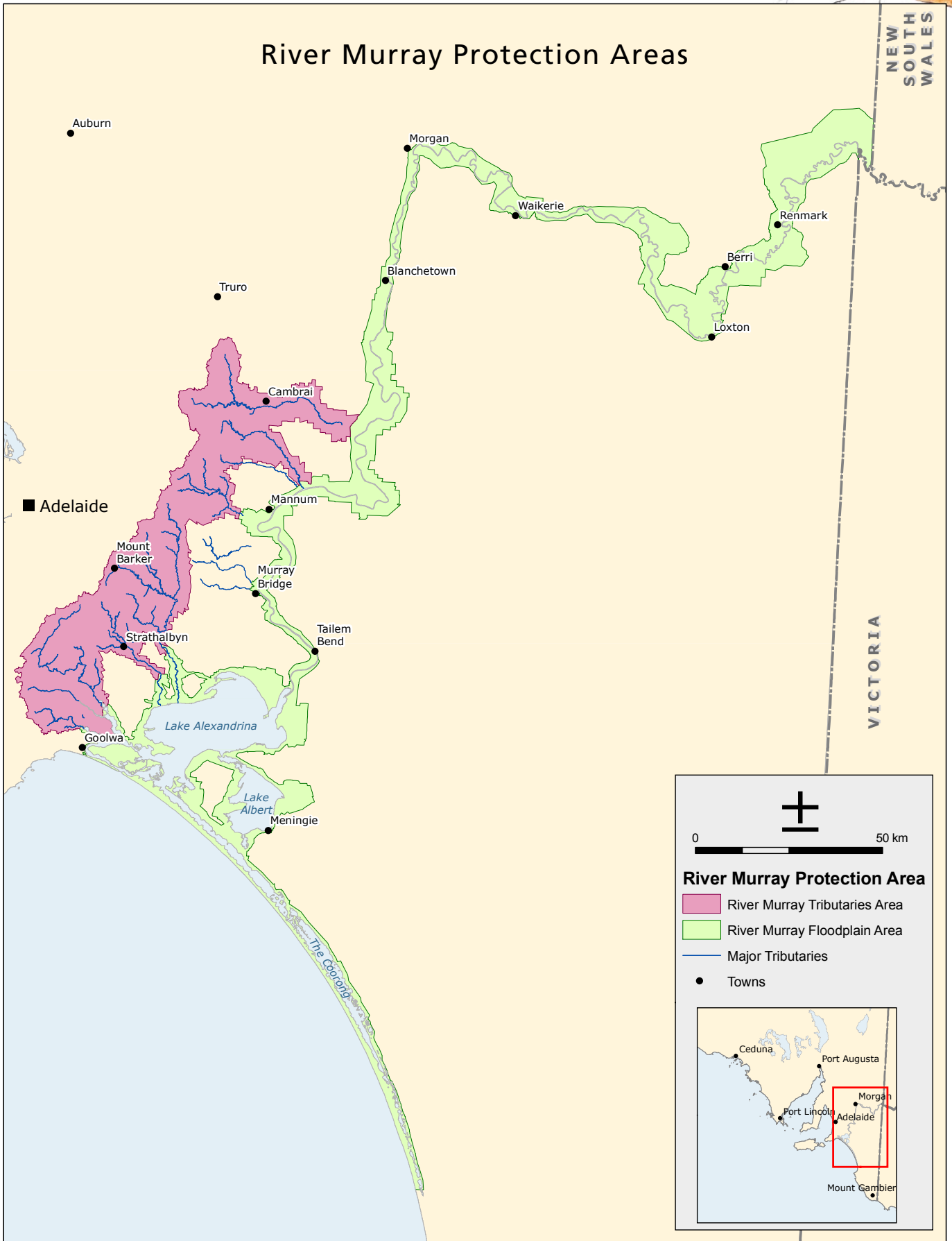
must be referred to the Heritage Branch, DEH, for advice. If the referring authority (DWLBC) is not sure whether the application is adjacent to or deemed to affect a site, it also should contact the Heritage Branch for advice.



- 4.2 In the case of a State Heritage Place that is designated as a place of archaeological significance under Section 14 of the Heritage Places Act 1993, a permit from the Heritage Branch, DEH, is required for any excavation or disturbance whatsoever, or to remove any archaeological artefacts whether on or below the surface. A permit is also required to damage, destroy or dispose of an artefact originating from such a place, even if it was removed before the place was registered.
- 4.3 Excavation or disturbance of land anywhere in South Australia for purpose of searching for or recovering archaeological artefacts of heritage significance requires a permit from the Heritage Branch, DEH, whether or not the place is a State Heritage Place. In addition, excavation of any kind (including trenching for services, excavating for footings and so on) requires a permit where it is known or there is reasonable cause to expect significant archaeological artefacts are likely to be encountered.
- 4.4 If archaeological artefacts are discovered in the course of any routine non-archaeological excavation, and are likely to be of State significance, work in the vicinity must cease and the Heritage Branch, DEH, notified of its location. Work affecting the deposit must not recommence without Heritage Branch approval. Responses to development applications should highlight this principle on the response to applicants.
- 4.5 Any referrals of applications made to the Minister for the River Murray that are:
- within 500 metres of an historic shipwreck or historic relic within the meaning of the Historic Shipwrecks Act 1981
  - in the River Murray, or
  - on the banks of the River Murray,
- must be referred to the Heritage Branch of DEH for advice to ensure that the proposed activity does not harm historic shipwrecks or relics. For information about historic shipwrecks, historic relics or the South Australian Register of Historic Shipwrecks, contact the Heritage Branch, DEH.
- 4.6 Any activity that will potentially cause damage, disturb or interfere with a historic shipwreck or historic relic requires a permit from the Heritage Branch, DEH.
- 4.7 Where development involves or affects underwater environments it may be appropriate to require a survey of the area to identify any shipwreck remains, sites of cultural heritage significance or associated artefacts, particularly when evidence of shipwrecks is known.
- 4.8 Any equipment or technique that is used in an underwater environment should be appropriate to the environment (depth and visibility of the water, type of bottom) and the type of site(s). This could include the use of remote-sensing equipment and/or a visual examination by divers.



APPENDIX A



**DISCLAIMER**

The Department of Water, Land and Biodiversity Conservation, its employees and servants do not warrant or make any representation regarding the use, or results of use of the information contained herein as to its correctness, accuracy, currency or otherwise. The Department of Water, Land and Biodiversity Conservation, its employees and servants expressly disclaim all liability or responsibility to any person using the information or advice contained herein.