



HASTINGS
Technology Metals Limited

APPENDIX 7



YANGIBANA RARE EARTHS PROJECT

Cultural Heritage Management Plan

DOCUMENT NO. YGB-XX-XXX-XXX-XXX-XXX-XXXX

REVISION HISTORY

Revision	Date	Issued for	Prepared By	Reviewed By	Approved By
E	28/3/2019	Implementation committee review	Lara Jefferson	Kenneth Chew	Lara Jefferson

The contents of this document are proprietary and produced for the exclusive benefit of Hastings Technology Metals Limited.

No part of this document may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior written approval of Hastings Technology Metals Limited.

All copies are uncontrolled

CHANGE HISTORY

Revision	Date	Change Description	Updated by
A		Draft for internal review by Davies and Davies	Lara Jefferson
B		Incorporate internal review comments	Lara Jefferson
C		Updated for the public advertisement of Environmental Review Document	Lara Jefferson
D		Submissions from the Department of the Environment and Energy (DoEE) public advertisement of Environmental Review Document	Lara Jefferson
E		Incorporate consideration of additional review comments from the DoEE	Lara Jefferson

TABLE OF CONTENTS

1.	INTRODUCTION	4
1.1	OVERVIEW	4
1.2	OBJECTIVES	4
1.3	SCOPE	5
	1.3.1 Archaeological sites:	5
	1.3.2 Ethnographic sites:	6
1.4	LEGISLATION	6
1.5	RELEVANT DOCUMENTATION	7
2.	BACKGROUND	7
2.1	DESKTOP REVIEW	7
2.2	SURVEY FINDINGS	8
3.	MANAGEMENT	8
3.1	RISK ASSESSMENT	8
3.2	MITIGATION	9
	3.2.1 Protection of Known Indigenous Sites	9
	3.2.2 Protection of Unknown Heritage Sites	10
	3.2.3 River and Creek Values	11
	3.2.4 Skeletal/Ancestral Remains	13
	3.2.5 Decommissioning and Closure	13
4.	MONITORING	14
4.1	WORKS IN CLOSE PROXIMITY TO HERITAGE SITES	14
4.2	HERITAGE SITES	14
5.	REPORTING	14
5.1	SURVEY OUTCOMES	14
5.2	UNAUTHORISED DISTURBANCE TO A HERITAGE SITE	15
6.	REVIEW	15

LIST OF FIGURES

Figure 3-1: Windarra pool	12
---------------------------------	----

1. INTRODUCTION

1.1 OVERVIEW

Hastings Technology Metals Limited (Hastings) intends to develop, construct and operate the Yangibana Rare Earths Project (the Project), located in the upper Gascoyne Region on Wanna Station, approximately 270 km northeast of Carnarvon. Rare earth products will be mined and processed with a feed of up to one million tonnes per annum (mtpa) to refine the rare earth oxides. The product is then transported to port by truck, where it will then be exported overseas via ship. The Project footprint will consist of:

- Open cut pits and associated waste rock landforms
- Processing plant
- Three tailings landforms and an evaporation pond
- Administration offices, and workshops, sheds and storage facilities
- ANFO and magazine facility
- Power facilities including solar farm and diesel gensets
- Camp, waste water treatment plant, borefield and airstrip
- Access road, tracks, laydown areas and carparks
- Water pipelines

The Project will have a fly-in/fly-out workforce of approximately 200 people, including contractors.

The development and implementation of a Cultural Heritage Management Plan (CHMP) is a requirement under State and Commonwealth legislation for the development of the Project.

This CHMP outlines management and monitoring requirements associated with the design, construction and operation activities of the Project. Specifically, potential impacts to Aboriginal cultural heritage are managed and risks are mitigated as detailed in this CHMP.

Key users of this document will be traditional owners, Hastings management, staff and contractors. Through the CHMP, Hastings will ensure that all employees and contractors in the construction phase of the Project are fully aware of their obligations under Commonwealth and State legislation, to avoid and minimise impacts on indigenous cultural heritage. The CHMP will be regularly revised and updated as the Project moves into operations.

The Project area is subject to the Thin-Mah Warianga, Tharrikari, Jiwarli (WC2016/003) Native Title Claim and Hastings acknowledges this group as the primary indigenous people with potential rights and interests in the Project Area and surrounds.

1.2 OBJECTIVES

The CHMP demonstrates Hastings commitment to ensuring that the Project's activities do not impact on significant cultural heritage values, where possible, and that risks are managed and mitigated. The CHMP sets out a formal framework for the protection of cultural heritage.

The objectives of the CHMP are to:

- Ensure changes to the biological and physical environment resulting from the Project do not adversely affect cultural associations with the area;
- Communicate the importance of Aboriginal heritage to our workforce and that of our contractors;
- Comply with relevant Aboriginal heritage legislation; and
- Ensure that sites of Aboriginal significance are not disturbed, if possible until actions are undertaken through consultation with relevant Traditional Owners and in accordance with the law.

1.3 SCOPE

This CHMP covers all activities that Hastings will undertake to develop, construct and operate the Project and provides Hastings staff and its contractors with a framework for heritage management. The CHMP will be monitored and overseen by the Hastings management team. An assigned Hastings manager will have primary responsibility for the implementation of the CHMP and will oversee the delivery of on-ground heritage activities and monitoring.

This CHMP has been developed to provide Hastings with the necessary direction to implement the company's heritage policy in regard to cultural heritage management. The CHMP formalises and guides the management of all cultural heritage matters within the mining tenements comprising the Project area. These matters consist of archaeological and ethnographic sites including, but not limited to:

1.3.1 Archaeological sites:

Places where material cultural remains associated with past Aboriginal land use are present;

Structure: This is a generic label used to describe a range of archaeological features including what have been interpreted as lizard 'habitats', hunting blinds and stone arrangements.

Fish traps: Often stone structures constructed in tidal ocean, river and estuary environments and inland drainage features.

Modified Trees: These are trees that show evidence of having been carved or scarred for the purpose of creating territorial markers, the extraction of raw material for the production of items of material culture (such as bowls or shields).

Painting: Aboriginal paintings were probably undertaken on a wide variety of media, but are best known from rock shelters, caves and overhangs where they are protected from the detrimental effects of the weather. A wide variety of motifs, including anthropomorphic, animal and geometric figures were used; stencilled objects are also common.

Engraving: These are places at which designs have been carved, pecked or abraded into a rock surface.

Grinding patches/grooves: Grinding patches/grooves generally take the form of circular smooth depressions found on rocky exposures. These features are thought to represent activities relating to the production of food.

Quarry: These sites can take several forms. In most cases they comprise surface hardstone exposures, which were exploited as a raw material for the manufacture of stone artefacts. Ochre and other mineral pigments were also exploited, usually being mined from naturally occurring deposits.

Artefact Scatters: Stone artefact scatters are the most common archaeological component represented throughout Western Australia. In most cases they comprise a surface scatter of stone artefacts, although a sub-surface component may also be present, particularly in depositional environments such as those found in the coastal and sub-coastal areas. Such deposits are particularly significant in terms of the potential afforded for dating the site and examining change over time.

Middens: Such sites consist of scatters of humanly deposited shell, usually with a stratified component.

1.3.2 Ethnographic sites:

Places of spiritual importance and significance to Aboriginal peoples;

Ethnographic sites: places of importance to Aboriginal people (for religious or other reasons). Such places may have no distinguishing characteristics that alert non-Aboriginal people to their existence.

Ceremonial: These are places that have been used for ceremonial purposes. Although such sites can sometimes be identified by the presence of stone arrangements or modelling of the ground surface, many can only be located through consultation with people who have either direct or indirect knowledge of such sites.

Mythological: These sites generally encompass some natural feature, such as a hill or waterway, which is considered significant to contemporary Aboriginal people.

Burials: These are generally difficult to identify unless explicitly distinguished by some sort of marker, are known to family and/or community members, or have been recorded in a documentary or oral format.

1.4 LEGISLATION

The project will comply with the following applicable legislation and associated regulations:

- *Aboriginal Heritage Act 1972 (WA);*
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);*
- *Native Title Act 1993 (Cth);* and

- *Heritage of Western Australia Act 1990* (WA) (outgoing).
 - *Heritage Act 2018* (incoming);

A summary of applicable aspects of the above-listed legislation is provided in Appendix 1.

1.5 RELEVANT DOCUMENTATION

The CHMP is an integral component of, and interacts with the following Hastings plans, policies and documents:

- Health, Safety, Environment and Community Management System (HSEC Management System)
- Stakeholder Engagement Management Plan
- Stakeholder Contact Form
- Stakeholder Engagement Register
- Land Clearing and Topsoil Management Procedure
- Land Clearing Approval Form
- Yangibana Heritage Sites Register
- Yangibana Heritage Sites Map
- Yangibana Heritage Survey Map
- Relevant survey reports (listed on the Yangibana Heritage Document Register and identified along with the GIS coordinates of the area of survey)
- Relevant management plan (identified on the Yangibana Heritage Sites Register) for some heritage sites

2. BACKGROUND

2.1 DESKTOP REVIEW

Consultation with Yamatji Marlpa Aboriginal Corporation (YMAC) and the Department of Aboriginal Affairs has been undertaken to identify relevant Traditional Owners. Recently, a native title claim over the Project area has been lodged by the Thin-Mah Warianga, Tharrikari, Jiwarli group (WC2016/003) under the *Native Title Act 1993* (C'th).

A search of the Department of Aboriginal Affairs (DAA) Aboriginal Sites and Places Register was conducted on the 8th March 2016. The search determined that there are no previously recorded Aboriginal sites or other heritage places that will be affected by the project.

The predominant land use in the area is pastoralism with limited tourism. The existence of European heritage values within the Yangibana Project area has been investigated through the Australian Heritage Commission and Heritage Council of Western Australia databases. No sites of European heritage were identified within or immediately adjacent to the mine activities envelope.

2.2 SURVEY FINDINGS

Ethnographical and archaeological surveys have been undertaken under the guidance of the Traditional Owners of some areas of the Project footprint. These survey areas are recorded on the *Yangibana Heritage Survey Map*. Hastings will commission further Aboriginal heritage surveys with the relevant Traditional Owners and this map will be updated after each survey.

A number of areas of heritage significance have been discovered as a result of the surveys. The DAA has been informed of identified sites for potential inclusion in the Register of Aboriginal Sites. These sites are also maintained on the *Yangibana Heritage Site Register*. The *Yangibana Heritage Site Register* will be updated following all Heritage surveys with reference to site-specific management plans. In addition to the identified sites, the Frasers Creek, Gifford Creek and Lyons River are considered of importance to the Traditional Owners. As a result an exclusion buffer of 150m on either side of the center line of these water courses excludes any mine related disturbance unless unavoidable (e.g. access road crossing) and following consultation with the Traditional Owners.

All survey reports will be recorded on the *Yangibana Heritage Document Register* and kept in accordance with the *Document Control Procedure*.

3. MANAGEMENT

3.1 RISK ASSESSMENT

Key risks include:

- Potential impacts to known heritage sites of significance
- Potential impacts to unidentified heritage sites of significance
- Excavation of human remains

Mitigation of these risks is provided in Section 3.2 below.

A technical risk assessment will be undertaken for specific heritage sites located in the near vicinity to Project activities. These risks will be identified with appropriate mitigation actions in the site-specific heritage management plan.

Task-specific risk assessments (e.g. Take-5) will also be undertaken by individuals to ensure heritage sites in the near vicinity to a particular project activity are considered prior to undertaking the activity.

3.2 MITIGATION

3.2.1 Protection of Known Indigenous Sites

Under Section 17 of the *Aboriginal Heritage Act 1972* (WA) it is an offence to excavate, destroy, damage, conceal or in any way alter any heritage site.

Known heritage sites can be protected using the following measures:

- Heritage sites are identified through ethnographic and archaeological surveys (areas that have been surveyed are shown on the Heritage Survey Map).
- All sites located within the Project area are documented, including accurate mapping of their boundaries and extents (Yangibana Heritage Site Register and Yangibana Heritage Sites Map).
- Prior to any ground disturbance, a Land Clearing Approval Form shall be submitted to the Environment Department, during the construction and operations phases, for internal approval in accordance with Land Clearing and Topsoil Management Procedure. Whether or not a heritage survey has been undertaken (Yangibana Heritage Survey Map), and if so, whether or not heritage sites are listed on the Yangibana Heritage Site Register and their respective management will be considered in order to grant approval in accordance with the Land Clearing and Topsoil Management Procedure.
- The coordinates of identified heritage sites are included within the GIS database of the Project area and the Yangibana Heritage Site Register.
- Information on sites of cultural heritage significance are provided to all staff and contractors as part of the HSEC Induction.
- Detailed maps (Yangibana Heritage Sites Map) of each area showing all known sites are displayed on site for perusal by ground personnel.
- Known heritage sites are considered during planning. Where possible, projects are designed to avoid disturbance of Indigenous sites.
- Site-specific heritage management plans are developed for specific sites where necessary. Documents are developed in accordance with the DPHL's requirements and relevant Traditional Owners are consulted.
- If a heritage site must be disturbed, approval is to be sought from the Minister for Aboriginal Affairs via a Section 18 application. Work cannot commence until approval is received from the Minister.
- A rehabilitation plan is prepared in consultation with the Traditional Owners and DPHL prior to work commencing on sites.
- In order to maintain good relations and to promote cooperation it is recommended that care be taken when work has to occur near a site (within 100 m of a Heritage site). The presence of monitors (representatives of the Traditional Owners) will assist in the avoidance of potential damage to sites, and consultation with the Traditional Owners will occur to determine if monitors are required where work occurs within 50 m of a Heritage Site (refer to Section 4.1 below).

3.2.2 Protection of Unknown Heritage Sites

The Aboriginal Heritage Act 1972 provides protection for all heritage sites regardless of whether or not they are recorded on the DPHL Heritage Register.

3.2.2.1 Consultation

The risk of damaging unknown sites can be minimised through prior consultations with the Traditional Owners. All consultations will be recorded using Hastings Stakeholder Engagement Form and Stakeholder Engagement Register.

3.2.2.2 Surveys

Ethnographic and archaeological surveys shall also be undertaken over any areas not previously surveyed, prior to undertaking ground disturbing activities, in order to manage the risk of impacts to unknown heritage sites. The outcomes of these surveys will be recorded in a report by specialists and considered by Hastings in its project planning. The DPHL will be notified of any new heritage sites to be included on the DPHL Heritage Register. Any new heritage sites identified during the surveys will be protected as described in Section 3.2.1. Where Traditional Owners request specific management actions to be undertaken for a heritage site, a site-specific heritage management plan will be developed for that particular site.

3.2.2.3 Unplanned finding of a heritage site

If a previously unidentified area of heritage significance is found (i.e. artefacts are uncovered) then the following actions will be taken:

- The ground disturbing activity in the area will be stopped immediately.
- The area will be barricaded to prevent further inadvertent access or disturbance.
- Hastings Heritage and/or Environmental Manager will be notified immediately.
- A heritage assessment will be conducted by suitably qualified consultants and relevant Traditional Owners.
- The Traditional Owners will be consulted regarding the significance and cultural value of the area.
- If the heritage survey determines that the area is not a heritage site then work will recommence.
- If the heritage survey determines the area is a heritage site, a report (in accordance with DPHL requirements) will be prepared and submitted to the DPHL.
- The responsible Manager will assess whether or not the planned activities can avoid the heritage site. If avoidance of the site is not reasonably possible then a Section 18 application will be lodged. The Section 18 application will be prepared by a suitably qualified consultant with relevant experience and in accordance with the requirements of the Guidelines for Preparing Reports for Application to the Aboriginal Cultural Material Committee Under Section 18 of the Aboriginal Heritage Act 1972 (WA).

- Determine, salvage and relocate the cultural materials with the relevant Traditional Owners in order to protect the values associated with such objects to which the Act applies and which are of significance to the Traditional Owners.
- If required, Hastings will then prepare a Heritage Site Management Plan via advice from heritage consultants. The plan will be developed in accordance with the DPHL's requirements and through consultation with the Traditional Owners. The following information will be included in the management plan.
 - current use of site
 - prospective use of site
 - presentation of site
 - what is significant about the site
 - strategies for maintenance, protection and monitoring
 - current threats and how these could be solved
 - potential threats and how these could be prevented
 - cause of the threat and how the cause can be eliminated
 - funding avenues
 - management of the site
 - performance monitoring and reporting

3.2.3 River and Creek Values

3.2.3.1 Documented Knowledge

Many heritage sites are located in close proximity to the river, creeks and associated drainage systems. The riparian ecosystems have significant heritage values due to their ecological interconnections (i.e. wildlife habitat, water source, food and shelter). This has been recognised by the Traditional Owners during surveys (Brad Goode and Associates 2016).

Aboriginal people would travel alongside rivers and creeks in the area, using them as a compass, as well as a food and water source. Sites where there were grinding patches, rock holes and artefact scatters were “highly significant as a place where Aboriginal people camped, sat down and made tools, hunted for food and practiced culture” (Brad Goode and Associates 2016).

The pools require a proprietary ritual whenever TOs approach them whereby they sing and throw sand in to announce their arrival to the water serpent, known as Papanyungu ('papa' meaning water and 'nyungu' meaning to belong to a place). The water serpent occupies the Lyons River and the permanent pools along the tributaries of the river (Brad Goode and Associates 2016). Windarra pool occurs to the east of where the access road crosses the Lyons River as shown in Figure 1. At Windarra pool proprietary ritual is required for visitors whereby sand is thrown into the river to alert the serpent to the strangers' presence. Water reeds mark the permanent water sources and indicate the serpents spirit continues to reside in the pools (Brad Goode and Associates 2017). The pools were utilised as a traditional and historical food source where fish, such as mullet, were caught. The TOs believe that if the pool is interfered with (including becoming polluted) and the water serpent disturbed then the person who committed the offence will become sick, as well as the custodians for failing to look after the sacred site.

Ceremonies, such as corroborees would also be held at special locations along the waterways. The Thalaangkaya Corroboree site at the confluence of the Gifford Creek and Lyons River is approximately 800m from the accommodation village. A thalu site called Kalkuwarra, where rituals were held, occurs upstream and outside of Hastings tenements on the Lyons River (Brad Goode and Associates 2016).

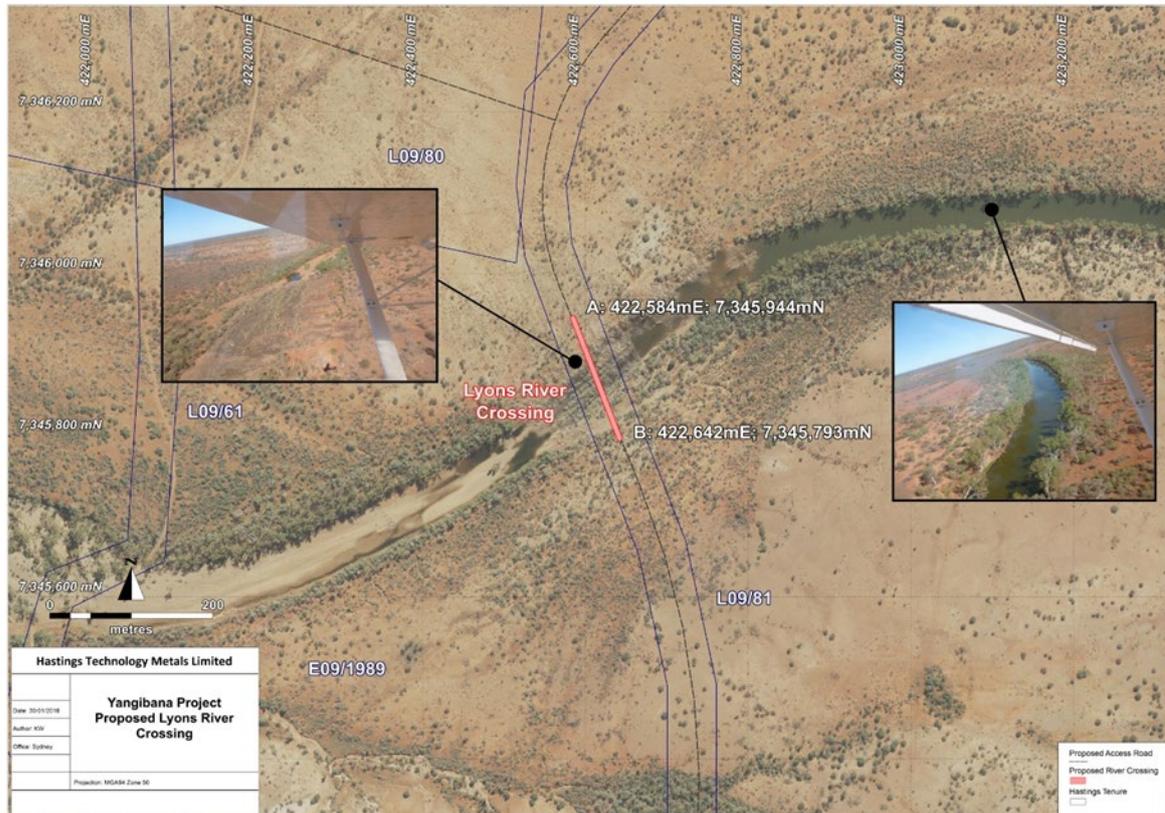


Figure 3-1: Windarra pool

3.2.3.2 Potential Impacts

Potential Impacts include:

- Water abstraction from Lyons river
- Contamination of the rivers and creeks by chemicals used at the accommodation village and process plant
- Recreational use of Windarra pool

3.2.3.3 Mitigation

In order to protect the riparian and water course areas, the following actions will be implemented:

- Implementation of Environmental Management Plans to prevent contamination, including but not limited to:
 - Water Management Plan
 - Radiation Waste Management Plan

- Waste Rock Management Plan
- Surface Water Management Plan
- Land Management Plan
- TSF Operating Manual
- No activities to occur within the 150 m exclusion zone on each side of the following water courses without permission from the Traditional Owners (as per the Native Title Agreement):
 - Lyons River
 - Fraser Creek
 - Yangibana Creek
 - Gifford Creek
- No recreation activities at the Lyons River Pool or the Fraser Creek Pool.
- Presence of heritage monitors during construction of the Lyons River crossing.

3.2.4 Skeletal/Ancestral Remains

There is potential for the discovery of burial grounds (considered to be a heritage site) when earth-moving and construction activities take place. If a burial site or human remains are found during ground disturbing activities the following actions will be taken:

- Ground disturbing activity in the area will be stopped immediately.
- The site will be barricaded to prevent further inadvertent access or disturbance.
- The Police and the Department of Aboriginal Affairs will be notified immediately.
- The location of the remains will be recorded in the GIS database of the Project.
- If the human remains are identified as Aboriginal, subject to the directions of local police, the Heritage Manager must consult with the Traditional Owners and, if appropriate, the Department of Indigenous Affairs in relation to any steps that may need to be taken in relation to the human remains including, if appropriate, recording and/or reburial.

3.2.5 Decommissioning and Closure

A Mine Closure Plan (MCP) has been developed in accordance with the Guidelines for Preparing Mine Closure Plans (EPA and DMP, 2016). Planning for decommissioning and closure will occur during all phases of the Project based on:

- Research outcomes
- Environmental performance during operations
- Progressive rehabilitation outcomes
- Monitoring results
- Annual review of the Risk Register against performance indicators

- Lessons learned from environmental performance of other mine management measures in the mining industry.

The Traditional Owners will be consulted during the planning for decommissioning and closure.

4. MONITORING

4.1 WORKS IN CLOSE PROXIMITY TO HERITAGE SITES

In order to maintain good relations and to promote cooperation it is recommended that care be taken when work must occur near a site. The presence of monitors (representatives of the Traditional Owners) will assist in the avoidance of potential damage to sites.

Monitors shall be present for all works involving road upgrades at major river and creek crossings.

A process for the monitoring of works in the vicinity of important sites will be formalised through the Heritage Manager and in consultation with the Traditional Owners to ensure attendance by Traditional Owners can occur in a timely and regulated manner.

If deemed practical and acceptable, early notice (4 weeks, if possible) of the nature of work and their exact location shall ensure adequate time to organise monitors to attend and provide advice during the initial ground disturbance and land clearing in preparation for the works in the vicinity of the nominated site.

4.2 HERITAGE SITES

All heritage sites in close proximity to the Project area will be visually inspected on a monthly basis, to ensure there are no impacts from the Project activities. Visual inspections will be recorded in the mine site Pre-start meeting minutes on the day that they occur.

Additional monitoring requirements, specific to a particular heritage site, will be provided in the site-specific heritage management plan.

Traditional owner representatives will be invited to visit the Project area twice per annum to conduct an inspection and meet with the assigned Hastings Heritage Manager.

5. REPORTING

5.1 SURVEY OUTCOMES

During the planning phases, archaeological and ethnographic surveys will be conducted over areas that require future ground disturbance. The survey reports will document any areas of heritage significance in the survey area. The DPHL will be notified of heritage sites discovered as a result of the survey findings. All survey reports will be recorded on the Yangibana Heritage Document Register and kept in accordance with the Document Control Procedure.

5.2 UNAUTHORISED DISTURBANCE TO A HERITAGE SITE

A heritage site is disturbed when it is excavated, destroyed, damaged, concealed or in any way altered without prior authorisation of the Registrar of Aboriginal Sites and/or consent from the Minister for Aboriginal Affairs. The *Aboriginal Heritage Act 1972* (AHA) protects places and objects that may be of importance or significance to people of Aboriginal descent in Western Australia. These places and objects may be identified as a site and record on the DPHL Heritage Register. All sites are protected under the AHA whether or not they are recorded on the DPHL Heritage Register. Under Section 17 it is an offence to disturb a site.

In the highly unlikely event that there is an alleged disturbance of a heritage site associated with Hastings operations, Hastings will take the following measures:

- Ground disturbing activity in the area will be stopped immediately. The site will be barricaded off to prevent further inadvertent access or disturbance.
- An incident report will be prepared in consultation with the person who reported the disturbance.
- The DPHL will be contacted as soon as possible to notify them of the alleged disturbance.
- A thorough internal investigation will be carried out.

The Traditional Owners will be notified and kept up to date throughout each stage of the investigation.

6. REVIEW

The implementation of this CHMP will be reviewed in accordance with Hastings *Inspections and Audits Procedure*.

APPENDIX A SUMMARY OF APPLICABLE LEGISLATION

COMMONWEALTH

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984

This Act enables the Australian Government to respond to requests to protect important Indigenous areas and objects under threat, if it appears that state or territory laws have not provided effective protection. The Australian Government can make special orders, called declarations, to protect traditional areas and objectives of particular significance to Indigenous people in accordance with Indigenous tradition from threats of injury or desecration. The government cannot make a declaration unless an Indigenous person (or a person representing an Indigenous person) has requested it. The power to make declarations is meant to be used as a last resort, after the relevant processes of the state or territory have been exhausted.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act) describes significant heritage areas as:

- An area of land in Australia or beneath Australian waters
- An area of water in Australia
- An area of Australian waters being of particular significance to Aboriginals in accordance with Indigenous tradition.

Further information has been provided from the Commonwealth Department of the Environment and Energy, Heritage Division (pers. comm. Margaret Hammond via Matt Whitting, 25 January 2019):

The ATSIHP Act is Commonwealth legislation that can protect areas and objects that are of particular significance to Aboriginal people. The ATSIHP Act allows the Environment Minister, on the application of an Aboriginal person or group of persons, to make a declaration to protect an area, object or class of objects from a threat of injury or desecration where the state legislation has not provided adequate protection.

There is potential, for an Aboriginal person or group of persons, to submit an application to the Minister under the ATSIHP Act to protect Aboriginal heritage within or adjacent to the indicative disturbance footprint. Best practice consultation with interested Aboriginal persons or group of persons is likely to minimise the likelihood of an application.

The ATSIHP Act pre-dates Native Title and operates independent of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Any processes that relate to the same area under these Acts are able to be considered on their own merits and in parallel, if required.

PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986

The *Protection of Movable Cultural Heritage Act 1986* (PMCH Act) regulates the export of cultural heritage objects from Australia. It protects objects which, if exported would diminish Australia's cultural heritage. The PMCH Act sets out the National Cultural Heritage Control List of objects covered by the legislation which currently includes:

- Indigenous art
- Works of fine art and artefacts
- Scientific and archaeological artefacts
- Fossils, meteorites and minerals
- Agricultural and industrial heritage
- Books, stamps and medals
- Historical material.

NATIVE TITLE ACT 1993

Native title recognises the traditional rights and interests of Aboriginal and Torres Strait Islanders according to their traditional laws and customs. Under the *Native Title Act 1993*, native title claimants can make an application to the Federal Court to have their native title recognised by law.

Under the Native Title Act, where a proposed activity such as mineral exploration or mining affects native title it is referred to as a 'future act'. Under legislation there are defined future act processes that allow for tenure to be validly and lawfully granted. The future acts process only applies on land within a registered or determined claim where native title has not been extinguished (such as freehold). Tenements granted prior to the introduction of the Native Title Act in 1993, or prior to the registration of a native title claim for a particular area are not subject to the future act process of the Native Title Act irrespective of underlying tenure.

The future acts process is analogous to a sliding scale whereby the greater the impact on the land the greater the procedural rights afforded to registered native title claimants or determined native title holders. This is in line with the intent of the Native Title Act to recognise and protect native title and the rights and interests it entails. Importantly the Native Title Act does not provide a right of veto to native title groups and future act matters can be resolved by mediation and / or arbitration by the Commonwealth National Native Title Tribunal in the event that negotiated agreements cannot be reached. In this regard the Native Title Act sets out statutory advertising requirements, processes and timeframes to encourage agreement making, but to also allow for the timely resolution of matters by arbitration if required.

Section 211 of the *Native Title Act 1993* protects the right of native title holders to carry out certain activities on their traditional lands and waters. These activities include fishing, hunting, gathering, and visiting the areas in relation to cultural practices.

ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION (EPBC) ACT 1999

The EPBC Act establishes the National Heritage List, which includes natural, Indigenous and historic places that are of outstanding value to the nation. Nothing within the Project area is listed on the National Heritage List. The Act also establishes the Commonwealth Heritage List, which comprises natural, Indigenous and historic places on Commonwealth lands and waters under Australian Government control, and identified by the Minister for the Environment, Heritage and

the Arts, as having Commonwealth Heritage values. Nothing within the Project area is listed on the Commonwealth Heritage List.

STATE

In Western Australia the primary instrument for the protection and management of cultural and heritage is the *Aboriginal Heritage Act 1972*. During the environmental approvals process cultural heritage is also indirectly covered by the *Environment Protection Act 1986*.

ABORIGINAL HERITAGE ACT 1972

The *Aboriginal Heritage Act 1972* (AHA) was introduced in Western Australia for the protection of all Aboriginal cultural heritage: It applies to all tenure, including freehold, and binds all agencies including the Crown. The AHA provides for the recognition, protection and preservation of significant sites in Western Australia and recognises Aboriginal peoples' strong relationship to the land. The AHA provides automatic protection for all places and objects in Western Australia that are important to Aboriginal people (in accordance with the AHA) because of connections to their culture. These places and objects are referred to as Aboriginal sites (Section 5 of the AHA), and defined as:

- place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of Aboriginal people, past or present;
- any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
- any place which, in the opinion of the Registrar, is or was associated with Aboriginal people and which is of historical, anthropological, archaeological or ethnographic interest and should be preserved because of its importance and significance to the cultural heritage of the State; and
- any place where objects to which the Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

An Aboriginal site may:

- exist in any area of Western Australia;
- not have been recorded elsewhere; and
- not have been identified in previous heritage surveys or reports on that area but remains fully protected under the AH Act.

Aboriginal sites are identified by heritage specialists, Traditional Owners and the Aboriginal Cultural Materials Committee (in accordance with Section 5 of the AH Act). If an owner of land wishes to use the land in any way that might breach s.17, they are able to apply for consent under s.18 (2) of the Aboriginal Heritage Act. Consent has the effect of removing criminality from any breach of s.17.

Notice for consent has to be given to the Aboriginal Cultural Material Committee or ACMC. The Committee makes recommendations to the Minister about whether consent should be granted and

under which conditions. The Minister then makes a decision based on the recommendations of the ACMC and the general interest of the community. It is an offence under s.17 of the AHA 1972 to excavate, destroy, damage, conceal, or in any way alter an Indigenous site. Section 57 of the AHA outlines the various penalties that can be applied under the Act. These offences can lead to legal action. In the case of a disturbance by an individual, penalties comprise fines from \$20,000 to \$40,000 and imprisonment for nine months to two years and a daily penalty of \$400.

A disturbance by a body corporate may result in penalties that comprise fines ranging from \$50,000 to \$100,000 and a daily penalty of \$1,000.

ABORIGINAL HERITAGE AMENDMENT ACT 2014

This Act amends the Aboriginal Heritage Act 1972. Key reforms include:

- Increased penalties for those who damage or destroy Aboriginal heritage, including the possibility of prison time
- The ability for court-ordered remediation for those who damage Aboriginal heritage.
- An extension to the time available to prosecute, from one year to five years
- The CEO of the Department of Aboriginal Affairs (DAA) taking over responsibility for evaluating the significance of Aboriginal heritage places and objects. In doing so, the CEO will be required to take into account the views of the Aboriginal people who are entitled to speak for the country which is the subject of this process
- Streamlined processes that allow the CEO to issue declarations that no sites exist in particular areas, and permits to use land where no sites will be affected
- The ability for permits to be transferred without the need for new applications
- The ability for DAA to recover costs for services provided under the Act. (Hon. Peter Collier, Minister for Education; Aboriginal Affairs; Electoral Affairs, 2014).

ABORIGINAL HERITAGE REGULATIONS 1974

The Aboriginal Heritage Regulations 1974 are regulations applying to any Aboriginal site or protected area or land held subject to a covenant in favour of the Minister in relation to which the Minister has a duty under the AH Act.

HERITAGE OF WESTERN AUSTRALIA ACT 1990

A place listed on the Register of Heritage Places has cultural heritage significance or possesses a special interest to or associated with cultural heritage. The Register lists those places which are to be protected, and is compiled and maintained by the Heritage Council. Approval would need to be sought from the Heritage Council to demolish or develop a place listed on the register. In addition, significant heritage places are also protected under The *National Trust of Australia (WA) Act 1964 (WA)* and the *Environmental Protection and Biodiversity Conservation Act 2000*. Local government planning schemes also offer a level of protection to listed heritage places.