

Schedule 3 – Heritage Protection Protocol

1. Definitions and Interpretation

1.1 Definitions

In this Schedule, the following words have the following meanings:

Aboriginal Liaison Officer means an Aboriginal Liaison Officer employed by YMAC. For the avoidance of doubt this person is not the ALO appointed pursuant to the MRO ILUA.

Aboriginal Site means land or waters which are of cultural, social, or spiritual significance to Aboriginal persons traditionally responsible for that land or those waters, and includes:

- (a) any 'Aboriginal Site' as defined in the *Aboriginal Heritage Act 1972 (WA)*; or
- (b) any 'Significant Aboriginal Area' or 'Significant Aboriginal Object' as defined in the *Aboriginal and Torres Strait Islanders Heritage Protection Act 1984 (Commonwealth)*; or
- (c) any 'site of particular significance' within the meaning of section 237(b) of the NTA,

whether recorded or not.

ACMC means the Aboriginal Cultural Material Committee referred to in the *Heritage Act*.

Calendar Quarter means a period of three (3) months commencing on 1 January, 1 April, 1 July or 1 October in any year.

Claimant's Representative means the member of the WY Claim Group appointed pursuant to item 13(d)(i).

CPI means, in respect of a Calendar Quarter, the Consumer Price Index Groups index number for the weighted average of 8 capital cities published by the Australian Bureau of Statistics (excluding the GST impact) under catalogue number 6401.0 for that Calendar Quarter.

Current Work Program means any Development Activity described in a Heritage Notice that CSIRO identifies as Development Activity it has planned and intends to conduct.

Development Activity means any physical work conducted or proposed to be conducted within the MRO.

Heritage Act means the *Aboriginal Heritage Act 1972 (WA)*.

Heritage Consultant means a person who is qualified to advise on the protection of Aboriginal and Torres Strait Islander heritage.

4. Exchange of Information

YMAC, the WY Claimants and CSIRO acknowledge the importance of a regular flow of information between CSIRO and the WY Claim Group, to ensure that people within the WY Claim Group are kept informed, to avoid misunderstandings and to enable informed decisions to be made. In accordance with this objective:

- (a) CSIRO will use its best endeavours to provide YMAC each year with an outline of the nature, location and timing of Development Activities in the MRO (including, where practicable, Low Impact Activities) proposed for that year, prior to conducting those Development Activities.
- (b) CSIRO will provide reasonable notice to YMAC of any significant change to the scope of the Development Activities notified under item 4(a).
- (c) if requested by YMAC, CSIRO will provide an outline of the nature, location and timing of Development Activities to be undertaken in the MRO, to the extent that such information is known to CSIRO.
- (d) where, as a result of receiving the above information, the WY Claim Group becomes aware of any particular cultural heritage concern arising from a proposal to conduct the relevant Development Activity, the WY Claim Group will use their reasonable endeavours to raise those concerns with CSIRO if practicable.

5. Circumstances when no Heritage Survey required

- (a) CSIRO may carry out Low Impact Activity in the MRO without conducting a Heritage Survey on any area that is not recorded as a Protected Area under the *Heritage Act*, provided the requirements of item 4 are complied with.
- (b) CSIRO may also carry out a Development Activity in the MRO without conducting a Heritage Survey despite item 6 where:
 - (i) after consultation, YMAC and CSIRO so agree;
 - (ii) the WY Claim Group waives all or part of their rights under this Schedule; or
 - (iii) in the circumstances described in item 6(b)(ii). This means that once a Heritage Survey has been conducted, the area/Development Activity the subject of the Heritage Survey does not need to be the subject of another Heritage Survey (unless YMAC, the WY Claim Group and CSIRO agree otherwise).
- (c) Nothing in this Schedule purports to authorise any act or omission that would be in breach of the *Heritage Act*.

6. The Heritage Notice

- (a) Except where excluded by item 6(b), if CSIRO intends to undertake any Development Activity in the MRO, it must issue a Heritage Notice to YMAC. The purpose of a Heritage Notice is to determine whether a Heritage Survey is required and if so, what kind.
- (b) Item 6(a) does not apply to any Development Activity which is:
 - (i) a Development Activity to which item 5 applies;
 - (ii) a Development Activity:
 - (A) that has been the subject of a previous Heritage Notice; and

- (B) to which the provisions of this Schedule have already been applied; or
- (iii) a Development Activity where:
 - (A) the proposed Development Activity; or
 - (B) the area on which the Development Activity is proposed to be conducted,

has been the subject of a separate heritage agreement or a previous heritage survey entered into or conducted (as the case may be), by CSIRO or the State's Department of Industry and Resources with or on behalf of the WY Claim Group or the WY Claimants prior to the Commencement Date and not under this Schedule.
- (c) For the avoidance of doubt the reference to a separate heritage agreement in item 6(b)(iii) includes, but is not limited to:
 - (i) the heritage agreement entered into between the State's Department of Industry and Resources and YMAC (as authorised representative of the WY Claimants) in May 2007 (under cover letter from YMAC dated 23 May 2007) for the purpose of conducting a heritage survey over an area of the MRO described in Schedules 2 and 3 of that heritage agreement. The heritage survey the subject of that heritage agreement was conducted between 21 May 2007 and 26 May 2007; and
 - (ii) the heritage agreement entered into between CSIRO and Danconsult (as agent for the WY Claim Group and the WY Claimants) on 19 January 2009 for the purpose of conducting a heritage survey over an area of the MRO described in Schedule 1 of that heritage agreement. The heritage survey the subject of that heritage agreement was conducted between 18 January 2009 and 20 January 2009.

7. Considering the Heritage Notice

- (a) Where CSIRO submits a Heritage Notice, YMAC and CSIRO will consult with each other to determine whether a Heritage Survey is required, in which consultation the following binding rules and non-binding presumptions will apply:
 - (i) where no previous heritage survey (whether under this Schedule or otherwise) has been undertaken in relation to the MRO, a Heritage Survey is required unless otherwise agreed;
 - (ii) where a previous Heritage Survey (conducted under this Schedule) has occurred within the MRO, but has not covered the proposed Development Activity the woproposs pre no prCn012 TT Ja

- (ii) whether there has been any previous Heritage Survey or other ethnographic heritage survey and the age, methodology, participants, standard and results of that survey;
 - (iii) the extent to which the land has been affected by previous ground disturbing activities;
 - (iv) whether the register maintained by the Department of Indigenous Affairs discloses any Aboriginal Sites on the relevant land;
 - (v) any relevant matter relating to the WY Claim Group's practices, laws and customs; and
 - (vi) any other relevant factor raised by any of the parties.
- (d) YMAC or CSIRO may request additional information from the other at any time to enable discussion and proper consideration of the Heritage Notice.

8. Survey Methodology

- (a) If it is determined by YMAC and CSIRO that a Heritage Survey is required, then the methodology to be adopted and the report delivered will be in accordance with this item.
 - (b) Subject only to item 8(c), the WY Claim Group are not obliged or required to provide culturally sensitive information to CSIRO.
 - (c) The information provided by the WY Claim Group and recorded in a Survey Report will be determined as follows:
 - (i) where CSIRO provides details in its Heritage Notice only of a particular Development Activity to be undertaken pursuant to its Current Work Program, the Survey Report will clearly indicate (using maps and co-ordinates) that part of the Development Activity that is cleared or not cleared. Should the proposed activities change then a new Heritage Notice must be issued;
 - (ii) where CSIRO provides details in its Heritage Notice of a range of possible Development Activities in an area (including activities outside its Current Work Program), the Survey Report will clearly indicate (using maps and co-ordinates) any parts of that area to be avoided because they contain Aboriginal Sites;
 - (iii) where any of the following applies:
 - (A) a survey has been conducted and a Survey Report completed pursuant to items 8(c)(i) or 8(c)(ii) above;
 - (B) an ethnographic survey in relation to the relevant area which the WY Claim Group accepts as valid has been completed; or
 - (C) CSIRO has conducted or proposes in a Current Work Program in a Heritage Notice drilling involving the construction of drill pads;
- and CSIRO provides details in its Heritage Notice of possible future developments (including developments outside that which is permitted under the MRO ILUA), the Survey Report will give a clear indication of the ethnographic landscape, such that CSIRO can understand the heritage situation in order to facilitate

- (i) preliminary advice recording the results of the Heritage Survey as soon as reasonably practicable;
 - (ii) a draft Survey Report as soon as reasonably practicable to enable them to comment on it; and
 - (iii) a final Survey Report as soon as reasonably practicable after the WY Claim Group has had an opportunity to consider the draft Survey Report, through its usual decision making structure.
- (b) In accordance with item 8 the Survey Report will record sufficient information to enable CSIRO to plan and (subject to the law and this Schedule) undertake the things that are the subject of the Heritage Notice.
 - (c) Unless otherwise agreed the Survey Report will substantially be in the form of Addendum 3.
 - (d) The Survey Report (in a form that can be relied upon by CSIRO) must be provided to CSIRO within such time frames as YMAC and CSIRO have agreed at the time of receipt

12. Confidentiality

- (iv) unavoidable total disturbance.
- (c) CSIRO will bear the reasonable costs of the negotiations.
- (d) If a section 18 notice results in the Minister consenting to the use of the land the subject of the notice, then in addition to any conditions imposed by the Minister, CSIRO must:
 - (i) invite the WY Claim Group to have one representative (**Claimant's Representative**) to be onsite at all times during the Activity to oversee such Activity; and
 - (ii) compensate the WY Claim Group in the sum of \$500 per day for each day that the Claimant's Representative is onsite assisting with the above monitoring, plus travel time, meals and accommodation of the same standard as CSIRO's onsite representatives. CSIRO shall have no payment obligation under this clause if the Claimant's Representative is an existing CSIRO employee or contractor.
- (e) At the end of the negotiation period under item 13(a), unless otherwise agreed, CSIRO shall be free to continue with its section 18 notice.
- (f) Clauses 25 (Default) and 26 (Dispute Resolution) of the MRO ILUA do not apply to this item 13.

Schedule 3 - Addendum 1

Heritage Notice

In accordance with item 6 of the Schedule, the purpose of the information provided in and with the Heritage Notice is to determine whether a Heritage Survey is required and if so, its nature and extent. In order to facilitate this objective, a Heritage Notice must at least contain the following:

1. A statement by CSIRO as to whether it considers that a Heritage Survey is necessary.
2. The form of methodology referred to in item 8 which CSIRO nominates in the event that a Heritage Survey is undertaken.
3. Topographic maps of a reasonable scale showing the area to be surveyed.
4. Aerial photographs (if available) or smaller scale maps.
- 5.

Schedule 3 - Addendum 2

Costs for the Conduct of a Heritage Survey

This Addendum is agreed pursuant to the MRO ILUA.

	Item	Rate	GST	Description
1.	Ethnographic Assessment			
(a)	Land Access Manager	\$250.00	Plus GST	per survey *
(b)	Heritage Officer or Anthropologist (YMAC)	\$920.00	+GST	per person per day or pro rata for part thereof
(c)	External Consultant Anthropologist	At Cost	+GST	per person per day
(d)	DIA Register of Aboriginal Sites Search	\$200	+GST	per person per day or pro rata for part thereof
(e)	Aboriginal Liaison Officer (YMAC ALO) (if required)	\$500.00	+GST	per person per day
2.	Archaeological Assessment (if necessary and agreed)			
(a)	Archaeologist (Archaeological Team) external contractors	At Cost		
(b)	Fieldwork and reporting	At Cost		
3.	Aboriginal Consultants (Traditional Owners – item 9(a)(ii))			
(a)	Aboriginal Consultants 4-6 unless otherwise agreed	\$500.00 (indexed to CPI**)	+GST	per person per day
4.	Field Expenses			
(a)	Heritage Officer or Anthropologist accommodation/meals	\$150.0 At cost	+GST	
(b)	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
(c)	Aboriginal Consultants accommodation/meals	At cost	+GST	
5.	Travel Expenses			
(a)	YMAC vehicle mileage (km)	\$0.70	+GST	per km
(b)	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel		

Schedule 3 - Addendum 3

Contents of Survey Report

The Survey Report will contain the following:

1. Copyright/Confidentiality

A statement to the effect that the Survey Report may only be copied in accordance with the MRO ILUA and subject to any other restriction agreed to by the WY Claimants and CSIRO from time to time.

2. Who conducted the Survey

- (a) Name and contact details of the Heritage Officer or Heritage Consultant
- (b) Names of Traditional Owners consulted
- (c) Confirmation that the Traditional Owners speak for the land and waters surveyed
- (d) Names of any other persons who participated in the survey

3. Survey Date

Information	Description of Content	Further comments
Survey Methodology	Reference to relevant item in Schedule	
Archaeological Method	Description of archaeological method employed (e.g. sampling strategy); Transect; and/or purposive; and/or random or arbitrary; or none stated. Percentage coverage of survey area.	
Ethnographic Method	Provide an account of the consultation process (including all informants/ reporters, any potentially relevant people who were not consulted, and why)	This will be answered by setting out in short form the process by which YMAC takes instructions on heritage survey participants.
Contact for further information	Name of relevant Native Title Representative Body	This will be YMAC

Additional survey information to be provided to DIA in situations where WY Claimants decide to ‘opt in’ to disclose such information:



Area characteristics	<p>A textual description of each avoidance area.</p> <p>Boundaries to be defined by coordinates.</p> <ul style="list-style-type: none"> ○ The coordinates of survey boundaries, maps and capture of ground coordinates as described in the End Notes.
Conditions or recommendations?	Outline any conditions on the Development Activity proceeding and/or recommendations for heritage management.

Survey conducted pursuant to item 8(c)(iii) of this Schedule

Information

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