

APPENDIX K

Cultural and Heritage Sub-plan

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1.0 INTRODUCTION

When responding to a marine pollution incident there are many aspects of the environment that need to be considered. As with the biological environment, logistic or economic considerations, cultural and heritage issues are a major factor for consideration in the planning of the response. To do this oil spill responders need to be aware of the cultural and heritage resources and issues (both indigenous and non-indigenous) relevant to an area.

In Western Australia, these resources include historical buildings, natural landmarks, private property and considerable maritime heritage including historic navigation structures, shipwrecks, piers and defence structures. In addition there is the culture and heritage of the many coastal communities and significant indigenous cultural heritage that exist throughout the lands and waters of Western Australia. The rights and interests of the Aboriginal people in this heritage derive from customary law, original ownership, developing Aboriginal traditions and recent history.

Forward planning and preparation through a process of consultation with stakeholders is an effective tool for managing cultural and heritage issues in the context of formulating oil spill contingency plans. Such plans should identify the indigenous, European and other issues and include cultural and heritage strategies specific to the area of operations of the port, facility or agency concerned.

The Western Australian Marine Oil Pollution Plan acknowledges that the protection and conservation of culture and heritage is important in maintaining the identity and well being of all communities.

2.0 OBJECTIVES OF A CULTURAL AND HERITAGE SUB-PLAN

The primary objective of a Cultural and Heritage sub-plan is to ensure that the oil spill response operation and associated activities take into consideration the cultural and heritage values of an area.

This can be achieved by:

- Identifying the relevant stakeholders for an area
- Identifying the cultural (indigenous and other) relationships with the marine/coastal environment
- Ensuring that the maintenance and protection of cultural and heritage values are considered in the planning process and in response activities (by a process of consultation to develop mutually acceptable procedures)
- Providing equity for community involvement in setting direction and management actions
- Presenting indigenous and other community values positively to stakeholders and the wider community

3.0 LEGISLATIVE REQUIREMENTS

Legislation relevant to this sub-plan includes:

The ***Aboriginal Heritage Act (1972)*** is administered by the Department of Indigenous Affairs to protect and preserve any site or object that is of significance to aboriginal people. Section 5 the Act states that: “any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographic interest should be preserved, because of its importance and significance to the cultural heritage of the State”.

The ***Aboriginal Affairs Planning Authority (AAPA) Act 1972*** provides for an Aboriginal Lands Trust with responsibility for the management of Aboriginal Reserves in a manner that is within the wishes of the resident Aboriginal people.

The ***Heritage of Western Australia Act, 1990*** provides for the conservation of any place that has significance to the cultural heritage of Western Australia. Under this act penalties can be imposed when places of significance are damaged.

The Commonwealth ***Native Title Act, 1993*** both recognises and protects Native Title. It provides for the preservation of the rights and interests of the indigenous people, including the ownership of land.

The Commonwealth ***Aboriginal and Torres Strait Islander Heritage Protection Act 1984*** provides for the preservation of the rights and interests of the indigenous people. It may be appropriate where spills occur in areas under Commonwealth jurisdiction, where state legislation may not apply.

4.0 RESPONSIBILITIES FOR CULTURAL AND HERITAGE ISSUES

Management of cultural and heritage issues is assigned to the Consultation Unit of the Planning Section of the Department of Indigenous Affairs or under a Community and Heritage Unit that may be established in a significant spill, or when there are particular issues to consider.

A Consultation Officer or Cultural and Heritage Officer is responsible within the OSRIC System for the implementation of the Cultural and Heritage sub-plan and advises the Incident Manager (IM) and the WA Marine Pollution Controller (WA MPC) when activated, on relevant cultural and heritage issues.

It is the responsibility of the IM and the WA MPC to take all information that is provided in regard to cultural and heritage issues into consideration when planning the response.

5.0 IDENTIFYING STAKEHOLDERS

Managing cultural and heritage issues effectively requires good information to be accessible both before and during a marine pollution incident. This requires consultation between response agencies and cultural and heritage managers. However, establishing who may have an interest and what that interest may be can be a difficult and time-consuming task. It is therefore advisable to have pre-identified community groups within a region incorporated into the Oil Spill Contingency Plan.

Government agencies are an important resource for social-cultural information. They can provide information on significant cultural sites, heritage issues and indigenous issues. They can also help identify the stakeholder groups who can highlight specific cultural and heritage issues for a given area. The agencies which can assist in the identification of stakeholders include:

- Department of Indigenous Affairs
- Aboriginal Lands Trust
- Aboriginal and Torres Strait Islander Commission (ATSIC)
- National Native Title Tribunal (NNTT)
- Native Title Representative Bodies
- Heritage Council of WA
- Local Government
- Conservation Groups
- Tourism Industry

In addition, claimant groups and other bodies corporate can provide advice on how to identify the relevant authorised personnel and other people with interests in an area.

5.1 Department of Indigenous Affairs

The Department of Indigenous Affairs (DIA) has prime responsibility for the *Aboriginal Heritage Act 1972*. The DIA can provide up to date information about Aboriginal sites and coordinate the provision of advice to government on Aboriginal heritage and culture.

Under the Act, the DIA manages the Aboriginal Site Register. This register contains approximately 19,000 sites throughout Western Australia and details such information as:

- a brief description of the site,
- the site type,
- the site informants (usually the Traditional Owners)
- a map showing the site boundaries and location.

This information is included in the WA Oil Spill Resource Atlas and can also be obtained from DIA via their website or by contacting one of the regional offices. Metropolitan contact details for the Department of Indigenous Affairs are:

Department of Indigenous Affairs

Level 1, 197 St Georges Terrace
Perth WA 6000

Tel (08) 9235 8000

Fax (08) 9235 8088

www.dia.wa.gov.au

5.2 Aboriginal Lands Trust

The Aboriginal Lands Trust (ALT) is a statutory body established under the *Aboriginal Affairs Planning Authority (AAPA) Act 1972*. Under the Act, the ALT has responsibility for the overall management of Aboriginal reserves, many of which are leased by the Trust to Aboriginal community corporations.

The ALT is required to manage and develop land in a manner that accords, as far as possible, with the wishes of the resident Aboriginal people.

The ALT can provide information as to the location of reserves and Aboriginal lands, and must be contacted when seeking permission for entry (for guidelines see Appendix A). Contact details are outlined below:

Aboriginal Lands Trust

Level 1, 197 St Georges Terrace
Perth WA 6000

Phone: (08) 9235 8000
Fax: (08) 9235 8093
Email: alt@dia.wa.gov.au

5.3 Aboriginal and Torres Strait Islander Commission

The Aboriginal and Torres Strait Islander Commission (ATSIC) is Australia's main indigenous agency for the coordination of the indigenous position on Native Title, Land and Sea rights. In this role ATSIC have established a Heritage Protection program that assists Indigenous people in conserving their heritage and in obtaining recognition of their relationship to their unique culture. As such it is an important resource for information on Indigenous issues and has links to regional groups throughout Western Australia.

Contact details for ATSIC are:

Aboriginal and Torres Strait Islander Commission

National Office
Lovett Tower
Woden ACT 2606

General Enquiries for ATSIC (02) 6121 4000
WA Policy/National Network Offices (08) 9220 3251

5.4 Heritage Council of WA

The Heritage Council is the State's advisory body on heritage matters focussing on places, buildings and sites. The Council was set up under the Heritage of Western Australia Act 1990.

The Heritage Council aims to provide for and encourage the conservation of places that have significance to the cultural heritage of WA. As such, they are the major resource for information on heritage issues for the State. The Heritage Council maintains an information database of heritage places in WA. It includes places listed by Local Government Authorities, the Register of the National Estate (through the Australian Heritage Commission) and the National Trust of Australia (WA).

The Heritage Council can be contacted for information about whether a place is entered in a heritage list, or whether there are places of significance within a given area.

The Council regularly consults, negotiates with and involves groups with rights and interests. They therefore are familiar with the process or protocols that communities have established from consultation and as such are a good agency to assist with addressing heritage and cultural issues.

The Heritage Council of WA can be contacted at:

Heritage Council of Western Australia

108 Adelaide Terrace
East Perth WA 6004

Phone: 08 9221 4177
Fax: 08 9221 4151
Country free-call: 1800 644 177
Email: heritage@hc.wa.gov.au
Web: www.heritage.wa.gov.au

5.5 National Native Title Tribunal

The National Native Title Tribunal (NNTT) is a Commonwealth Government body that facilitates the making of agreements among Aboriginal and Torres Strait Islander people, governments, industry and others whose rights or interests may co-exist with native title rights and interests.

In its roles, the National Native Title Tribunal maintains a number of registers and databases that hold accurate and comprehensive records of native title applications, determinations and indigenous land use agreements (ILUAs) made under the *Native Title Act*.

To find out whether an area of land or water is, is not or may be affected by a native title application, determination or indigenous land use agreement (ILUA), you can request a search of the Tribunal's public registers and databases.

This search can be conducted by contacting the NNTT for the request form and mail, fax or email the completed form to the Tribunal. A charge may be associated with this service. When requesting a search it is important to clearly identify the area of land or water over which the search is required and the local government areas involved. Additional information such as a locality map with geographic reference co-ordinates together with towns and other geographical features will assist the Tribunal to progress the search.

The NNTT can be contacted at:

National Native Title Tribunal

Level 4, Commonwealth Law Courts
1 Victoria Avenue
GPO Box 9973
PERTH WA 6848

Phone: 1800 640 501
Fax: +61-(0) 8-9268 7299
Web: www.nntt.gov.au

5.6 Native Title Representative Bodies

Native Title Representative Bodies (NTRB) are incorporated bodies, recognised under the Native Title Act 1993 (Commonwealth) for the purpose, amongst other things, of representing and assisting Aboriginal and Torres Strait Island peoples to seek recognition and protection of native title.

They are advocates and representatives of native title parties at the local, regional and State levels. NTRBs provide a range of services to native titleholders. They also play a significant role in developing community structures to facilitate decision-making by claimants in the native title process. As such they have a good understanding of their region and can work on behalf of the native title claimants representing their interests in protection of their indigenous culture.

NTRBs for a given area can be contacted through the Department of Indigenous Affairs or in some cases via the local council.

5.7 Local Government

Local Government Authorities (LGAs) are the custodians of much of the land in their respective jurisdiction and carry out functions on behalf of the wider community. In relation to cultural and heritage issues this means addressing the *Aboriginal Heritage Act 1972*, and similar legislation when planning and managing land use. LGAs must notify local indigenous communities about a proposed activity and consult and negotiate about key issues. They are therefore a good source of information, being familiar with the region, the issues and the community groups.

Details for Local Government in each regional area can be found at the website for the Department of Local Government and Regional Development:

www.dlgrd.wa.gov.au

5.8 Conservation and Community Groups

Conservation and community groups have close relationships with the various cultural and heritage attributes of an area. These groups help highlight the significant issues and contribute to identification, assessment and management of areas of natural and cultural heritage. Working closely with these groups to gain a better understanding of the cultural and heritage issues makes for more effective contingency planning.

Local Government generally has links to the various conservation and community groups in their respective regions. Organisations such as the Australian Heritage Commission, National Heritage Trust and WA Heritage Council may also be able to provide information on these groups.

5.9 Tourism Industry

The Western Australia Tourism Commission (WATC) is the State Government organisation responsible for developing and marketing WA as a premier tourist destination. It is a good source of information regarding significant tourist areas and features throughout the State.

The WATC manages the Australian Tourism Data Warehouse, a central storage facility for tourism products and destination information. It includes information on destinations and attractions that should be highlighted in the oil spill contingency plan, as areas sensitive to the impacts of marine pollution.

Contact details for the WATC are:

Western Australia Tourism Commission

Perth Head Office
6th Floor, 16 St Georges Terrace
Perth WA 6000

Tel (08) 9220 1700
Fax (08) 9220 1702

www.wa.gov.au/watc/

6.0 IDENTIFYING THE ISSUES

In the event of a marine pollution incident, responsible management of cultural and heritage issues means making informed decisions. This is best achieved by having the information readily available by identifying the issues and then addressing these in management plans.

Contacting the various stakeholders listed in section 5.0 is the easiest way to identify the indigenous, European and other cultural and heritage aspects that could potentially be impacted by a marine pollution incident. These must be addressed in oil spill contingency plans and listed on coastal resource atlases such as the Oil Spill Response Atlas (OSRA).

The OSRA contains the latest DIA information, but Port Authorities, Maritime Export Facility and terminal operators may become aware of additional areas of cultural and heritage significance during their individual OSCP planning processes and should advise the TRANSPORT Environmental Officer of any additional information as it becomes available. This will enable the OSRA to be kept up to date.

Further community liaison can also work to effectively identify the interests and needs of groups in relation to indigenous and non-indigenous cultural values. This is best achieved on a local scale through a direct relationship between agencies and industry and the community. The National Plan facilitates involvement at the State level by including DIA and Local Government representation on the Executive Response Group.

The range of sites vulnerable to oil or other pollution in WA that could be identified by this means includes:

- Mythological sites (eg Langgi near Koolan Island and the Yampi Peninsula). They include but are not limited to whirlpools, reefs and islands.
- Many estuaries in the southwest that have fish traps - Broke Inlet, Young's Lake and Oyster Harbour.
- The numerous fish traps along the Kimberley coast.
- Shell middens occurring throughout the coastal regions particularly of the Kimberley, Pilbara and Murchison/Gascoyne. (They are especially vulnerable)

- A number of Kimberly painting sites are very close to the shore (eg Bigge Island)
- Burial sites that are known to exist in the sand dunes immediately above high water mark all along the coast.
- The islands of the Dampier Archipelago and Burrup peninsular are littered with engraved sites and pteroglyphs.
- Historical sites such as the leprosariums on Bernier & Dorre Islands, the failed Camden Harbour settlement.

7.0 THE CONSULTATION PROCESS

Once issues have been identified procedures need to be put in place within the oil spill response plan to protect the cultural and heritage value. The purpose of community consultation in marine pollution management and response is to:

- Further investigate the issues
- Gain an understanding and appreciation of the issues
- Negotiate on the management
- Mutually develop the procedures

Consultation, depending on the issue, will require meeting with State and local government agencies and community groups and /or facilitating workshops to discuss the issues and explain the pollution response.

The type and extent of consultation will vary. However, the following stages would normally be followed when organising and conducting meaningful consultations, particularly with indigenous groups.

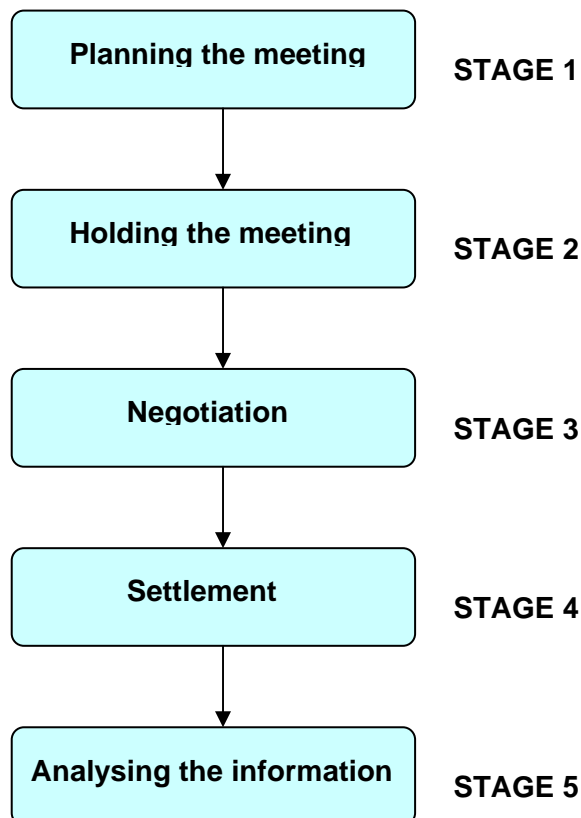


Figure 7.1: Process for community consultation

7.1 Stage 1 - Planning the meeting:

- Be clear as to what it is you want from the consultation process. Avoid consulting when you don't have a clear idea of the issues and the proposal. Be prepared in what you have to say by considering how your proposal might affect the groups.
- Talk to the right people; ensure that you have asked the most suitable representative from the group and all necessary representatives. Speaking to one person on behalf of a wider group may not be appropriate and may offend others. This could place the negotiations at risk and in some cases even result in legal action.
- Identify all the stakeholders and think about the way that the various groups will interact. There are some alliances and some conflicts. It may be appropriate to hold separate meetings to avoid unproductive debate that will hold back progress.
- These types of meeting are time consuming and expensive so it is important to prepare well. You may also have to pay the travel costs or other fees for representatives. These need to be assessed before hand and budgeted for.
- Give the group sufficient notice that you intend to approach them about an issue. For example write a letter to indicate that you are preparing an Oil Spill Contingency Plan or exercise etc, and wish to discuss aspects of cultural or heritage significance. Follow up with phone calls and reminders of the meetings.
- Ask groups which is the best location to hold meetings. Some community groups would prefer you came to their local area, rather than to a government office.

7.2 Stage 2 – Holding the Meeting

- The first meeting is important to establish trust between yourself and the community group (indigenous or otherwise) and the relationship that is to follow. Take some time during the meeting to talk informally to the various stakeholders.
- Some principles that are especially relevant to indigenous groups in meetings are:
 - Use a facilitator who is familiar with the indigenous language and knowledgeable about the indigenous cultures. The Department of Indigenous Affairs can help with this.
 - Create appropriate settings and locations for the consultation process, preferably in the territories and settlements where indigenous people live.
 - Provide background information in a format that can be understood by a range of people in the community. Photographs, video presentations and models can be helpful.

- Videotaping or recording meetings can be of use, but get the prior permission of the attendees.
- Recognise time frames for indigenous people and community groups, especially in terms of decision-making. They can sometimes take some time depending on level of community feedback input etc.
- Identify and adhere to any process or protocol that communities have established for consultation.
- Develop an understanding of culture and social framework in the group you are talking to. Be aware of cultural protocols and the politics relevant to the group
- Try to establish where the power lies. In some groups there will be dominant speakers and these people may be important in negotiations.
- Appreciate gender issues; there may be a need to speak to both sexes separately, use representatives from government agencies to help with this.
- Be flexible for timings of meetings

Remember that any consultation process is a two-way education process. You are trying to learn from them, just as to teach how what you are doing is for the benefit of the wider community.

7.3 Stage 3 – Negotiation

- To successfully negotiate it is important that communications are clear and unambiguous. This can be particularly difficult when dealing across language barriers. Interpreters may be necessary and also you may need to appoint a facilitator to mediate the negotiations. This person needs to have the trust of both parties and could for example be a representative from the Department of Indigenous Affairs.
- Do not anticipate that outcomes that you might find attractive will be also be attractive to the group in question. Different groups can have considerably different values that will often conflict. Conflicts between groups that do not relate to the issue should not be addressed in these forums but resolved privately. However recognise that these can impair your outcome, encourage resolution, taking care not to take sides. Allow time for resolution, and arrange to come back and talk again.
- Never attempt to buy favours or integrate yourself with members of the groups by providing favours that may not be in their interests (vehicles/alcohol). This is not sustainable and will lead to loss of reputation.

7.4 Stage 4 – Settlement

- Understand that groups may not always meet a resolution but always seek a clear understanding of why so you can seek opportunities for re-establishing negotiations for the future.

- Complete negotiations amicably, it is important to uphold the reputation of your organisation with community groups for further negotiations and the ongoing relationship.
- Once settlement is reached it is important to clarify what you have agreed. This should be put in writing at the meeting and followed up with further written confirmation. Ensure you have record of all those who are party to the agreement, if possible have participants sign as confirmation.

7.5 Stage 5 - Analysing the Information

- Throughout the consulting process it is likely that you will receive a range of opinions and views, many of which will be contradictory. Advice should be reviewed carefully to ensure that it is based on a level of fact and supported by the group. This may require the input of government agencies to assist in the interpretation of all information (eg the Heritage Council or the Department for Indigenous Affairs).
- Assessment of issues and inclusion of management options within contingency plans may not always be to the satisfaction of all stakeholders. It may be of benefit to approach groups to provide further comment to the OSCP.
- In the event of a marine pollution incident, direction of the response is ultimately up to the Incident Controller (IC) and it is his/her duty to consider all advice given in the response planning process. It is inevitable that there will be some level of conflict due to the different priorities of the groups of the consultation.
- However the principal of “Net Benefit” to the environment should apply as the general principal for planning the response. It is important to always consider that there are certain legal and moral obligations and that if obligations are not met, an activity carried out as part of oil spill response may be invalid and bad publicity aside may result in claims made for damages and compensation.

8.0 PROVIDING EQUITY FOR COMMUNITY GROUPS

At a State level, the presence of DIA and the LGA representing cultural and heritage issues on the Executive Response Group assists in protecting community interests. They also assist in developing equitable policies and procedures in marine pollution management. On a local level this could include representation from community groups in training exercises, meetings and distribution lists for contingency plans.

9.0 CORPORATE POLICY

The Incident Management Team In the event of a marine pollution incident or the relevant agency preparing contingency plans must act in the best interests of the wider community. It is essential that the various cultures are recognised and that normal positive values are demonstrated to stakeholders and the general community.

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There are legislative requirements to provide for this (Section 3.0). However, there are also ethical and moral obligations to consider. Most organisations, including state agencies will generally have corporate policies that make provision for ethical behaviour. All operations should be compliant with agency/industry corporate policy, and should follow their respective code of ethics.

10.0 REFERENCES

AMSA Guidelines for Consultation with Aboriginal and Torres Strait Island Groups:
Adapted from a paper by C.R. Cook, January 1996.

Appendix A: Entry to Aboriginal Reserves or Lands

Some marine pollution incidents may require respondents to access Aboriginal reserves and lands held by the Aboriginal Lands Trust (ALT). Transit permits are required to pass through Aboriginal reserves subject to Part III of the AAPA Act or to visit Aboriginal communities located on such reserves. The permit system is designed to help protect the privacy of Aboriginal communities, preserve Aboriginal heritage and culture, safeguard the natural environment and to promote visitor safety. Under the AAPA Act, transit permits are required for any person visiting or passing through an Aboriginal reserve subject to Part III of the AAPA Act, unless he/she is:

- a person of Aboriginal descent;
- a member of either House of Parliament of the State or of the Commonwealth;
- a person lawfully exercising a function under the AAPA Act or otherwise acting in pursuance of a duty imposed by law; or
- a person authorised in that behalf under the regulations of the AAPA Act.

In a marine pollution incident some response personnel may already have the authority to enter lands (eg Police officers and other officers of public authorities) for the purpose of performing the functions of their position (ie oil spill response). However this should always been determined prior to entry.

Applications for routine transit permits can generally be processed quickly, particularly for emergency response. To obtain a permit the WA Department of Indigenous Affairs (Permits facility) should be contacted. Alternatively access should be addressed in site-specific contingency plans, and other arrangements made.

It is important to remember that as guests of the local inhabitants, there are certain guidelines that should be followed when entering Aboriginal lands. The following rules apply:

DO

- Introduce yourself on arrival if you are staying.
- Respect any community decision to guide your movements.
- Learn about the community from the local Land Council or Department of Indigenous Affairs office prior to your visit.
- Enquire about the conditions for the consumption of alcohol before your visit. Many communities do not permit alcohol.
- Be courteous in your dealings with Aboriginal community members.
- Carry adequate personal provisions, including medication, for your journey.

DON'T

- Arrive in a community and drive around within the area/reserve without the community's knowledge and permission.
- Take photographs without permission.
- Visit without adequate personal provisions.
- Assume that the community will agree to all your requests.
- Attend ceremonies or meetings without being invited.