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## 15. INDIGENOUS CULTURAL HERITAGE

### 15.1. LEGISLATION

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Indigenous cultural heritage sites are protected under both Commonwealth and State heritage legislation. The legislation recognises the importance of sites and cultural landscapes to Indigenous people, local communities and to science, and provides measures for their identification and protection.

#### 15.1.1. Commonwealth Legislation

##### 15.1.1.1. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act)* was established to preserve and protect areas and objects of particular significance to Indigenous people from injury or desecration.

The *ATSIHP Act* provides Indigenous people with the opportunity to request intervention from the Federal Minister to protect sites they consider to be at risk. Any steps necessary for the protection of a threatened place or significant artefacts such as skeletal remains, are outlined in a gazetted Ministerial Declaration (Sections 9, 10 and 12) and can include prevention of development.

Heavy penalties may be levied in the case of contravention of provisions of a Declaration (Section 22).

##### 15.1.1.2. *Environment Protection and Biodiversity Conservation Act 1999*

The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* protects sites of national or international heritage significance. The *EPBC Act* recognises the role of Indigenous people in the conservation and sustainable use of Australia's heritage values. The *EPBC Act* is administered by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC).

Section 528 of the *EPBC Act* defines the heritage value of a place as including the place's natural and cultural environment, having aesthetic, historic, scientific or social significance, or other significance for current and future generations of Australians.

Under the *EPBC Act*, actions likely to impact on a location of national environmental or heritage significance require assessment and approval. A Commonwealth Heritage List has been prepared, comprising places of national significance on Commonwealth land or under Commonwealth control. In Queensland, these are primarily natural and historical sites.

As indicated in **Section 15.2.3**, no sites listed on the Commonwealth Heritage List are located within the vicinity of the South Galilee Coal Project (SGCP) and there are no cultural heritage values requiring approval from the Federal Minister for SEWPaC.

## 15.1.2. State Legislation

### 15.1.2.1. *Aboriginal Cultural Heritage Act 2003*

The *Aboriginal Cultural Heritage Act 2003* (ACH Act) is the principal legislation protecting Indigenous cultural heritage in Queensland. The ACH Act states that its main purpose is to provide effective recognition, protection and conservation of Indigenous cultural heritage.

Under the ACH Act, Indigenous cultural heritage is defined as:

- a significant Aboriginal area in Queensland, or
- a significant Aboriginal object, or
- evidence of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.

A significant Aboriginal area or object must be significant to Aboriginal people because of either or both of the following:

- Aboriginal tradition, and/or
- the history, including contemporary history, of any Aboriginal party for the area.

Section 23 (1) of the ACH Act states that a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the 'cultural heritage duty of care'). By meeting one or more conditions specified under Section 23(3) of the ACH Act, a person or corporation is deemed to have complied with the cultural heritage duty of care. These conditions include operating under an approved Cultural Heritage Management Plan (CHMP) or a native title agreement where cultural heritage is specifically considered.

Under Part 7 of the ACH Act, when an Environmental Impact Statement (EIS) is required for any development works, a CHMP is mandatory. Activities undertaken under a CHMP fulfil the Proponent's duty of care.

The ACH Act outlines the procedures for developing and obtaining approval of a CHMP. The development and execution of the SGCP CHMP is described in **Section 15.5.2.**

### 15.1.2.2. *Torres Strait Islander Cultural Heritage Act 2003*

The purpose of the *Torres Strait Islander Cultural Heritage Act 2003* is to provide effective recognition, protection and conservation of Torres Strait Islander cultural heritage.

### 15.1.2.3. *Queensland Heritage Act 1992*

The *Queensland Heritage Act 1992* (QH Act) covers items from the historic environment. Although it primarily provides for the protection of non-Indigenous places, it also provides for the protection of places with joint Indigenous and non-Indigenous values.

The *QH Act* requires local government agencies to establish their own register of areas with 'cultural significance value', defined as a place or object with "*aesthetic, historic, scientific or social significance, or other special value, to the present community and future generations*".

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## 15.2. DESCRIPTION OF INDIGENOUS CULTURAL HERITAGE VALUES

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Cultural heritage is the value people have given to items and places through their association with those items and places. These values include items and places of significance to Indigenous people and places of scientific significance.

The Proponent will work with Traditional Owners to protect the Indigenous cultural heritage values located within SGCP area.

### 15.2.1. Previous Cultural Heritage Assessments

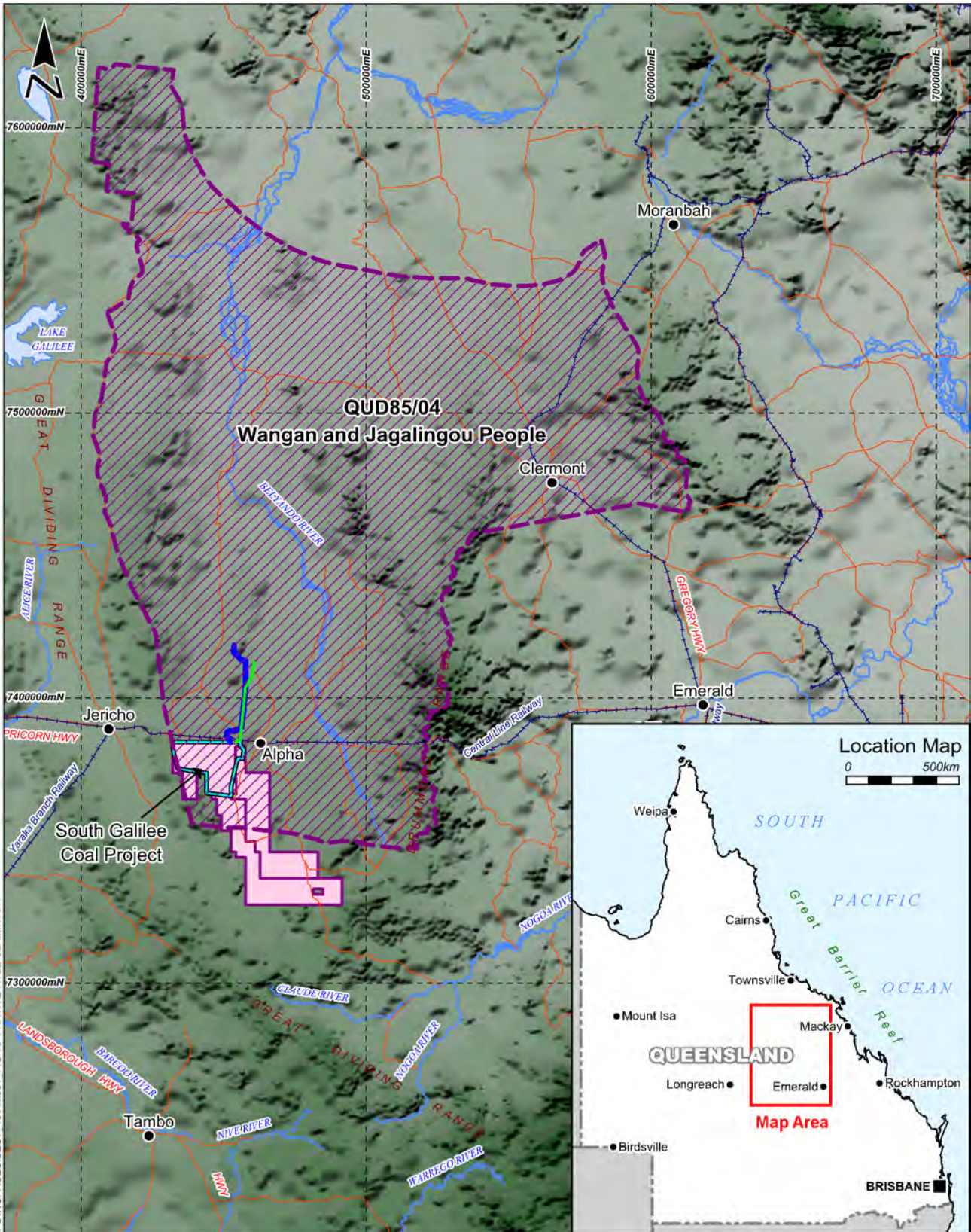
No publicly available Indigenous cultural heritage assessments have previously been conducted within the SGCP area.

Initial field surveys have been conducted prior to geotechnical and/or exploration works at proposed mining projects located north of the SGCP (e.g. Galilee Coal Project (GCP), Alpha Coal Project and Kevin's Corner Project). Although the associated survey reports are confidential in nature, some cultural heritage material has been identified (e.g. isolated artefacts, stone artefact scatters and scarred trees).

Based on the findings of these initial surveys, a similar pattern of findings would be expected at the SGCP.

### 15.2.2. Aboriginal Party Identification

A search of the National Native Title Tribunal Register for the current Native Title status of the SGCP area ascertained that the SGCP is within the boundary of the currently registered native title claim by the Wangan and Jagalingou People (Tribunal Number QUD85/04), (refer to **Figure 15-1**). Engagement with the identified Aboriginal Party and development of a CHMP has been undertaken according to agreed communication protocols (described further in **Section 15.5.2**).



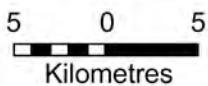
S:\PROJECTS\AM001-STHGALILEE-ES\GIS\MAPINFO\WORKSPACE\SECT\_15\AM001-FIG 15-1 NATIVE TITLE CLAIM.WOR



- LEGEND**
- MLA70453
  - Exploration tenement
  - Native Title Claim Area
  - SGCP infrastructure corridor
  - SGCP power line
  - Access Road
  - Railway
  - River
  - Population centre

Data Source: Tenement - DEEDI, Topography (250k) - Geoscience Australia

Alpha Coal Pty Ltd  
**South Galilee Coal Project**  
 Native Title Claim QUD85/04



Scale: 1:2,000,000 (A4)

06/09/2012  
 Proj. : MGA Z55  
 Datum: GDA 1994

**FIGURE 15-1**

### 15.2.3. Heritage Register Search

A search was undertaken of the following heritage registers for items or places of significance on the SGCP site:

- the World Heritage Register
- the (former) Register of the National Estate
- the National Heritage List
- the Commonwealth Heritage List
- the State Heritage Register
- the Department of Environment and Heritage Protection (DEHP) Cultural Heritage Database and Register
- Barcaldine Regional Council (BRC) heritage register, including the previous planning scheme for Jericho Shire Council.

No items or places were identified within the SGCP in any of these registers. However, sites may exist within the SGCP area that have not yet been recorded.

### 15.2.4. SGCP Field Survey

The Proponent has adopted a staged approach to the management of Indigenous cultural heritage. Initially, the CHMP was developed as described in **Section 15.5.2**.

Initial cultural heritage inspections were undertaken prior to the commencement of exploration drilling and/or geotechnical investigations, with subsequent inspections conducted on an 'as needs' basis. This is in parallel with the exploration program to determine the presence of Indigenous cultural heritage prior to disturbance. Cultural heritage inspections of specific exploration drilling sites were conducted by representatives of the Wangan and Jagalingou People in August 2011 under the approved CHMP. No cultural heritage was identified during this process.

Comprehensive cultural heritage field surveys across the proposed SGCP area commenced in October/November 2011, as described in **Section 15.2.4.1**. Cultural heritage field surveys have been prioritised according to the order in which target areas are expected to be subject to surface disturbance. Field surveys will be ongoing and will be completed prior to the commencement of construction.

#### 15.2.4.1. Methodology

The archaeological survey team consisted of four Wangan and Jagalingou representatives, one archaeologist and one representative from SGCP.

The methodology adopted for the archaeological surveys is described below:

- Plans for each of the priority survey areas were provided by SGCP and a systematic series of transects were generated by Wangan and Jagalingou's archaeologist. The survey transects were oriented in a north-south direction and spaced approximately 50 metres (m) apart.
- The centre lines of the survey transects were loaded onto hand-held Global Positioning System (GPS) units. The transects were surveyed on foot, with the archaeologist and SGCP representative walking along each transect and the four Wangan and Jagalingou representatives walking on either side to provide even coverage of each transect.
- All field data (including ground visibility, ground integrity and general environmental conditions) was systematically recorded using transect forms and note books.
- Any identified cultural heritage was photographed and recorded *in-situ* to inform the development of appropriate management regimes, in particular to allow the application of avoidance (i.e. leaving artefacts *in-situ* and on country) as the primary management approach.
- During the archaeological survey, Wangan and Jagalingou representatives were encouraged to identify cultural material, provide oral information about culturally sensitive areas or objects and voice any general concerns relating to the impacts of the SGCP on cultural heritage. Where the Wangan and Jagalingou representatives specifically requested that a particular find or feature be recorded, it was recorded by the archaeologist regardless of their opinion on its artefactual nature/cultural significance.
- Culturally modified trees, commonly called scarred or carved trees, were assessed according to a detailed list of selection criteria developed by the Wangan and Jagalingou archaeologist. The selection criteria allow for a degree of scientific rigour to be applied to the identification process.
- Ground surface integrity and visibility were recorded across the survey area in order to provide insight into the levels to which the landscape had been modified, and how much of the ground surface was visible to the survey team.



During the initial phase of the archaeological survey, it became apparent that artefactual material was only being recorded in the vicinity of ephemeral waterways. The survey methodology was therefore refined in consultation with the Wangan and Jagalingou representatives as follows:

- The original transects were combined to form 100 m wide transects
- These modified transects were used until sufficient artefactual material was recorded and/or the survey team considered that an area had significant archaeological potential, at which point surveying of 50 m wide transects resumed.

#### **15.2.4.2. Field Survey Results**

Wangan and Jagalingou's archaeologist is currently preparing a formal report to the Wangan and Jagalingou applicants and SGCP. This report will describe the results of the archaeological survey and propose management recommendations, if required. Once the management recommendations have been agreed upon by the Wangan and Jagalingou applicants and the SGCP, the report will be finalised and management measures implemented.

### **15.3. CULTURAL HERITAGE SIGNIFICANCE**

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Cultural heritage significance relates to peoples' perspective of place and sense of value, within the context of history, environment, aesthetics and social organisation. Thus the identification and assessment of the significance of cultural heritage values is an integral step in the process of management and conservation of cultural heritage.

The International Council on Monuments and Sites (ICOMOS), the peak body of professionals working in heritage conservation in Australia, has adopted the Burra Charter as a guide to acceptable standards with regard to the assessment and management of items of cultural heritage significance. It is widely regarded as the acceptable best practice standard for heritage practitioners.

The Burra Charter defines cultural significance as “*aesthetic, historic, scientific social or spiritual value for past, present or future generations*” (ICOMOS, 1999).

Indigenous sacred sites of heritage significance cannot always be identified by features in the landscape and often involve no alteration to the natural landscape. As such they can be archaeologically invisible and only identifiable with the aid of Indigenous interpretation. If such sites are still remembered by local Indigenous communities, they will hold particular cultural significance.

The heritage significance of an item should always be seen as independent of any practical management considerations. This significance assessment has been guided by the Burra Charter and the criteria for entry onto the Queensland Heritage Register. A place or item needs to only be significant in one of these criteria to be considered of heritage significance. An assessment of Indigenous cultural heritage relies on the assessment of the two core elements of scientific (archaeological) and social (cultural) significance.

### 15.3.1. Scientific (Archaeological) Significance

Scientific or archaeological significance refers to the ability of a place or an item to provide information on past human activities or past environmental conditions that may not be available in other sources. The determination of a site's uniqueness, and/or its representativeness, helps to determine at a practical level its scientific significance.

The more unique or unusual the site, the greater its significance. Representativeness generally refers to the ability of one site or a sample of sites to represent as accurately as possible, the range and frequency of site types in a particular area. The notion of representativeness also refers to the maintenance of site diversity. For any given place the significance will be greater where evidence of its association or the event that created it survives *in-situ* than, where it has been changed or evidence of context does not survive.

An assessment of scientific significance will be made based on the results of the cultural heritage field survey (refer to **Section 15.2.4**). Any items of scientific significance will be managed in accordance with the CHMP.

### 15.3.2. Social (Cultural) Significance

Social value embraces the qualities for which a place has become a focus of spiritual, political, national or other cultural sentiment to a majority or minority group (ICOMOS, 1999). Significance assessments by Indigenous people may be based on traditional, historical, contemporary or other cultural values. Criteria such as rarity, uniqueness and representativeness are often not relevant in this type of assessment.

Places which contain no archaeological material may also be significant due to:

- a past event
- its association with a story, or
- an inherent spiritual quality associated with the place.

The scientific significance assessment of a site is not necessarily consistent with Indigenous peoples' perceptions and evaluations as the Indigenous cultural heritage values of a site may override other forms of significance assessment.

The Proponent will continue to engage with the Wangan and Jagalingou People to identify any Indigenous cultural heritage sites, landscapes or places of cultural significance. Any items of cultural significance will be managed in accordance with the CHMP.

## 15.4. POTENTIAL IMPACTS

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The SGCP is not expected to impact directly on any currently listed Indigenous cultural heritage values.

The SGCP area will be disturbed directly as a result of coal mining activities, such as land clearing, blasting, open-cut mining, subsidence, the creation of waste rock emplacements and the construction of infrastructure. Most of these activities will be localised and their potential impacts on the cultural landscape can be anticipated.

Given the nature of open-cut mining, significant impacts on any existing cultural heritage values in the area covered by the open-cut mining area, waste rock emplacements or infrastructure will be likely.

The SGCP also has the potential to impact indirectly on Indigenous cultural heritage (e.g. as a result of subsidence associated with underground mining). Indirect impacts are more difficult to anticipate and will vary depending on a number of factors (e.g. location in the landscape, type of cultural heritage feature, depth of cover).

Mitigation and management measures have been negotiated and agreed with the Traditional Owners and are described in **Section 15.5**.

In addition, it is important to note that impact mitigation and/or management measures may also result in impacts on Indigenous cultural heritage. Specific mitigation and/or management measures would be developed in consultation with the Wangan and Jagalingou People and the DEHP.

## 15.5. MITIGATION AND MANAGEMENT MEASURES

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### 15.5.1. General Mitigation and Management Measures

Impacts to significant Indigenous cultural heritage features will be avoided where practicable.

The following general mitigation and management measures will be implemented at the SGCP to minimise impacts on Indigenous cultural heritage:

- comprehensive field survey will be conducted prior to surface disturbance
- where identified Indigenous cultural heritage features are located proximal to proposed surface disturbance, these sites will be demarcated where practicable to minimise the risk of accidental damage
- where direct disturbance is unavoidable, consideration will be given to collecting and relocating significant Indigenous cultural heritage features

- all SGCP employees and contractors will be made aware of their responsibilities and obligations in relation to cultural heritage (including procedures to be followed in the event of accidental discovery of Indigenous cultural heritage material or skeletal remains) as part of the induction and training process
- in the event that significant Indigenous cultural heritage features are identified, a monitoring program will be developed in consultation with the Wangan and Jagalingou People prior to the commencement of construction in order to monitor the potential impact of the SGCP activities against baseline values.

### 15.5.2. Cultural Heritage Management Plan

As described in **Section 15.2.2**, the SGCP is located within the registered Native Title claim area of the Wangan and Jagalingou People.

Notification that the Proponent intended to develop a CHMP was sent to the Wangan and Jagalingou People in March 2011. The Wangan and Jagalingou People indicated that they wished to take part in the development of the CHMP and the applicant for the registered Wangan and Jagalingou native title claim was the Aboriginal Party for this purpose.

A number of meetings were held with representatives of the Wangan and Jagalingou People to negotiate and develop the CHMP. The locations and dates of these meetings are provided below:

- Brisbane, 16 March 2011
- Rockhampton, 11-12 April 2011
- Brisbane, 19-20 April 2011
- Bundaberg, 18-19 May 2011
- Brisbane, 8-9 June 2011
- Bundaberg, 20 June 2011.

The CHMP was executed by all parties on 11 July 2011 and approved by the DEHP on 5 August 2011.

The preparation of an approved CHMP allows the Proponent to meet its cultural heritage duty of care. The CHMP manages all aspects of Indigenous cultural heritage relating to the SGCP, including mitigation and management measures. The mitigation measures in the CHMP are comprehensive and include the following:

- the obligations of each party (e.g. Aboriginal groups and SGCP)
- an outline of the resources required to implement the CHMP and the responsible group or organisation nominated
- a committee comprising of Wangan and Jagalingou and SGCP representatives to assist with the management of Indigenous cultural heritage management

- a conflict resolution process covering all phases of the Project development
- the process required to identify Indigenous cultural heritage within the Project area
- a recording process to assist initial management and recording of accidental discoveries of Indigenous cultural heritage
- the manner in which Indigenous cultural heritage is to be assessed
- agreed processes for the implementation of management processes for Indigenous cultural heritage
- procedures to be followed in the case of accidental discovery of Indigenous cultural heritage material
- a process for the discovery of skeletal remains
- cultural heritage inductions for the SGCP workforce.

Practical strategies to manage potential impacts on Indigenous cultural heritage sites and artefacts/items have been formulated in consultation with the Wangan and Jagalingou Traditional Owners and are contained within the CHMP. Site avoidance is the preferred option for cultural heritage protection, although where impacts are unavoidable, alternative management practices will be necessary.

Following the completion of Indigenous cultural heritage surveys, management plans will be developed which encapsulate survey results and provide direction on future management and protection of Indigenous cultural heritage values.