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Draft CHMP

# **CULTURAL HERITAGE MANAGEMENT AGREEMENT**

*Between*

**QR Limited**

*and*

**Norman Johnson  
on behalf of the Wiri People #2 and  
Gary Mooney on behalf of the Yuibera People**

## **Jilalan Rail Yard Upgrade Project**



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**Job Number: HR50-05**

## Table of Contents

<b>Jilalan Rail Yard Upgrade Project.....</b>	<b>1</b>
<b>1.0 Definitions and Interpretation.....</b>	<b>5</b>
<b>2.0 Term and Authority to Enter CHMA.....</b>	<b>8</b>
<b>3.0 Consent to Works and Duty of Care.....</b>	<b>9</b>
<b>4.0 Role of the Aboriginal Party .....</b>	<b>9</b>
<b>5.0 Role of Representatives of The Project Proponent .....</b>	<b>10</b>
<b>6.0 Cultural Heritage Induction .....</b>	<b>10</b>
<b>7.0 Monitoring Procedures .....</b>	<b>11</b>
<b>8.0 Procedures for a Find .....</b>	<b>13</b>
<b>9.0 Default.....</b>	<b>16</b>
<b>10.0 Dispute Resolution .....</b>	<b>16</b>
<b>11.0 Ownership and Use of Information .....</b>	<b>17</b>
<b>12.0 Confidentiality.....</b>	<b>17</b>
<b>13.0 Assignment .....</b>	<b>18</b>
<b>14.0 Indemnity.....</b>	<b>18</b>
<b>15.0 Governing Law.....</b>	<b>18</b>
<b>16.0 GST .....</b>	<b>18</b>
<b>17.0 Waiver .....</b>	<b>19</b>
<b>18.0 Further assurances .....</b>	<b>19</b>
<b>19.0 Relationship of Parties .....</b>	<b>19</b>
<b>20.0 Severability .....</b>	<b>19</b>
<b>21.0 Whole Agreement .....</b>	<b>20</b>
<b>22.0 Variation .....</b>	<b>20</b>
<b>23.0 Execution .....</b>	<b>20</b>
<b>24.0 Notices .....</b>	<b>20</b>
<b>Schedule 1 – Responsibilities of the Contact Officer .....</b>	<b>21</b>
<b>Schedule 2 – Payment Rates for the Contact Officer .....</b>	<b>22</b>
<b>Schedule 3 – Responsibilities of Monitor .....</b>	<b>23</b>
<b>Schedule 4 – Payment Rates for Monitors.....</b>	<b>24</b>

<b>Schedule 5 – Responsibilities of the Aboriginal Party.....</b>	<b>25</b>
<b>Schedule 6 – Responsibilities of Cultural Heritage Co-ordinator.....</b>	<b>26</b>
<b>Schedule 7 – Stop work form .....</b>	<b>27</b>
<b>Schedule 8 - Procedure where Human Remains found.....</b>	<b>29</b>
<b>Schedule 9 – Minor Find Recording Form.....</b>	<b>30</b>
<b>Schedule 10 – Major Find Recording Form.....</b>	<b>31</b>
<b>Schedule 11 – Contact details for Parties .....</b>	<b>33</b>
<b>Schedule 12 – Description of Project Works .....</b>	<b>34</b>
<b>Schedule 13 – Map of Project Works Area .....</b>	<b>35</b>
<b>Schedule 14 – Agreed Monitoring Areas .....</b>	<b>36</b>
<b>Schedule 15 – Maps of Monitoring Areas.....</b>	<b>37</b>
<b>Schedule 16 – Clearance form .....</b>	<b>42</b>
<b>Schedule 17 – Time Sheet.....</b>	<b>43</b>

**THIS DEED OF AGREEMENT** is made this                      day of                      2007

**BETWEEN:    QR Limited, A.C.N. 124 649 967.**

(“Project Proponent”)

**AND:            Norman Johnson** on their own behalf and on behalf of the Wiri People #2

(“Aboriginal Party”)

**AND:            Gary Mooney** on their own behalf and on behalf of the Yuibera People

(“Aboriginal Party”)

## **RECITALS**

- A. The Project Proponent intends to conduct the Project Works on the Project Works Area.
- B. The Aboriginal Party comprises the Registered Native Title Claimant(s) for the Wiri People #2 claim (QUD6251/98;QC98/11) and Yuibera People claim (QUD6223/98; QC98/37) to part of the Project Works Area.
- C. The Project Proponent recognises that it has a cultural heritage duty of care under the *Aboriginal Cultural Heritage Act 2003*.
- D. Representatives of the Aboriginal Party have undertaken an assessment to determine the potential for Cultural Heritage in the Project Works Area. Based on the results of this assessment, the Parties have agreed that it is necessary to manage Cultural Heritage in the Project Works Area.
- E. The Parties have agreed that the primary management strategies for ensuring that the Project Works cause minimal impact to Cultural Heritage in the Project Works Area are –
  - (a) providing induction sessions to inform all relevant persons about Cultural Heritage;
  - (b) Monitoring of agreed areas for the presence of Cultural Heritage; and
  - (c) establishing appropriate management strategies for Cultural Heritage items found as a result of the Monitoring process.
- F. This CHMA also seeks to mitigate potential impacts on Cultural Heritage by ensuring the direct involvement of the Aboriginal Party in the development and implementation of this CHMA and ensuring that all persons involved in the Project Works demonstrate respect for Aboriginal culture and Cultural Heritage./

G. The Wiri People #2 and Yuibera People assert that they have from time immemorial exercised their traditional laws and customs in their ancestral homeland which they contend includes part of the Project Works Area.

**NOW THE PARTIES AGREE AS FOLLOWS –**

**1.0 DEFINITIONS AND INTERPRETATION**

**1.1** In this CHMA, unless the context otherwise requires or the contrary intention appears, the following terms shall have the meaning assigned to them –

**"Aboriginal Party Representative"** means a person, nominated by the Aboriginal Party, who is suitably experienced to present a cultural heritage induction session containing the information required by clause 6.5.

**"Act"** means the *Aboriginal Cultural Heritage Act 2003*.

**"Agreed Monitoring Areas"** means the areas detailed in Schedule 14 and shown on the maps in Schedule 15 that the Parties agree may contain locations requiring Monitoring by representatives of the Aboriginal Party. In the event of any inconsistency between the maps and the written description, the written description in Schedule 14 prevails.

**"Business Day"** means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.

**"CHMA"** means this Cultural Heritage Management Plan and all schedules to it.

**"Clearing and Grubbing"** involves activities such as –

- (a) removing trees, shrubs and overhanging branches;
- (b) demolishing buildings and other artificial obstructions to ground surface or as specified;
- (c) disposing of cleared materials;
- (d) removing stumps and roots (including any subsequent regrowth) from the level of the existing ground surface down to a maximum depth, calculated using the following formula, as applicable:
  - where the natural ground surface is not covered by fill, then not deeper than 0.5 metres below the existing ground surface; or
  - where the natural ground surface is covered by fill, then not deeper than 1 metre below the existing ground surface; but
  - in any case, not deeper than the top of the natural bedrock layer;

- (e) removing other vegetable matter from the ground surface (including any subsequent regrowth);
- (f) removing abandoned services (including cables, conduits and pipes) from the level of the existing ground surface down to a maximum depth, calculated using the following formula, as applicable:
  - where the natural ground surface is not covered by fill, then not deeper than 0.5 metres below the existing ground surface; or
  - where the natural ground surface is covered by fill, then not deeper than 1 metre below the existing ground surface; but
  - in any case, not deeper than the top of the natural bedrock layer;
 and
- (g) disposing of grubbed material (including tree stumps and rocks removed from a site).

**“Commencement Date”** means the date that the last Party executes this CHMA.

**“Contact Officer”** means the representative of the Aboriginal Party nominated in accordance with clause 4 to fulfil all of the responsibilities listed in Schedule 1.

**“Contractor”** means a contractor engaged by the Project Proponent to construct the Project Works.

**“Cultural Heritage”** means Aboriginal cultural heritage which is anything that is –

- (a) a Significant Aboriginal Area in Queensland; or
- (b) a Significant Aboriginal Object; or
- (c) evidence of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.

**“Cultural Heritage Assessor”** means a person suitably qualified in a discipline such as archaeology or anthropology to provide professional assistance and advice as required by clause 8.9.

**“Cultural Heritage Co-ordinator”** means the representative of the Project Proponent nominated in accordance with clause 5 to fulfil all of the responsibilities listed in Schedule 6.

**“DNR & W”** means the Queensland Department of Natural Resources and Water.

**“Exclusion Zone”** means an area containing a Major Find that has been fenced or otherwise marked by the Contractor.

**“Find”** means suspected Cultural Heritage or Human Remains.

**“Human Remains”** means any human remains, but does not include –

- (a) human remains buried under the authority of a law of the Commonwealth or any State or Territory; or
- (b) human remains in or from a place recognised as a burial ground for internment of remains as referred to in paragraph (a).

**“Major Find”** means a Find which is not a Minor Find.

**“Minor Find”** means Cultural Heritage which is isolated with little or no related Cultural Heritage material in the immediate vicinity.

**“Monitor”** means a representative of the Aboriginal Party who is employed to provide Monitoring and to fulfil all other responsibilities listed in Schedule 3.

**“Monitoring”** means the process whereby Monitors assess locations within the Agreed Monitoring Areas for the presence of Cultural Heritage, as soon as safely possible following Clearing and Grubbing.

**“Parties”** means the Project Proponent and the Aboriginal Party.

**“Project Works”** means the transport corridor works required to construct the transport corridor infrastructure as specified in Schedule 12, to be conducted on behalf of the Project Proponent in the Project Works Area.

**“Project Works Area”** means the area identified on the plan in Schedule 13, that may be impacted by the construction of the Project Works.

**“Registered Native Title Claimant”** has the meaning given in the *Native Title Act 1993* (Cth).

**“Significant Aboriginal Area”** means an area of particular significance to Aboriginal people because of either or both of the following –

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of the Aboriginal Party for the area.

**“Significant Aboriginal Object”** means an object of particular significance to Aboriginal people because of either or both of the following –

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of the Aboriginal Party for an area.

**“Site Office”** means that part of the Project Works Area as nominated by the Contractor.

**“Temporary Storage Area”** means an area which the Contractor has agreed that the Aboriginal Party can use for the temporary storage of Cultural Heritage pursuant to clause 8.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this CHMA the table of contents and the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this CHMA.
- 1.4 A reference to a statute, regulation, ordinance or local law shall be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender shall include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this CHMA and includes any amendments to them made in accordance with this CHMA.
- 1.9 Where under or pursuant to this CHMA the day on or by which any act, matter or thing is to be done is not a Business Day, such an act, matter or thing may be done on the next Business Day.
- 1.10 In the case of any inconsistency between the Schedules and a clause contained in this CHMA, the provisions of the clause shall prevail to the extent of any inconsistency.

## **2.0 TERM AND AUTHORITY TO ENTER CHMA**

- 2.1 Subject to clause 2.2, this CHMA will start on the Commencement Date and continue until the Project Proponent gives notice of the completion of the Project Works.
- 2.2 The Project Proponent may terminate this CHMA, by written notice, if the Aboriginal Party ceases to be the 'Aboriginal Party' for the Project Works Area in accordance with the Act.
- 2.3 The Aboriginal Party represents and warrants that they are the Registered Native Title Claimants for part of the Project Works Area.

### **3.0 CONSENT TO WORKS AND DUTY OF CARE**

- 3.1** The Parties agree that the Project Proponent, and their agents, contractors and sub-contractors, may conduct the Project Works in the Project Works Area in accordance with this CHMA.
- 3.2** The Aboriginal Party agrees that compliance with this CHMA by the Project Proponent satisfies the cultural heritage duty of care under the Act in respect of the Project Works.
- 3.3** The Parties agree that this CHMA has been developed in accordance with the Act, and that it may be approved by the chief executive as contemplated by the Act.
- 3.4** The Project Proponent may terminate this CHMA, by written notice, if this CHMA is not approved by the chief executive as contemplated by the Act.

### **4.0 ROLE OF THE ABORIGINAL PARTY**

- 4.1** The Aboriginal Party will comply with all of the responsibilities outlined in Schedule 5.
- 4.2** Within 1 week of the Commencement Date, the Aboriginal Party must notify the Project Proponent in writing of the name and contact details for the Contact Officer.
- 4.3** The Aboriginal Party agrees to notify the Project Proponent of updated contact details for the Contact Officer from time to time to ensure that the information remains current.
- 4.4** The Aboriginal Party agrees to ensure that –
  - (a) the nominated Contact Officer and any substitute Contact Officer, are engaged by the Aboriginal Party;
  - (b) the nominated Contact Officer and any substitute Contact Officer, are aware of and comply with all of the responsibilities outlined in Schedule 1; and
  - (c) in the event of non-compliance with the responsibilities outlined in Schedule 1, the Contact Officer is promptly replaced with a suitably qualified person.
- 4.5** The Project Proponent agrees to pay the Aboriginal Party the amounts as outlined in Schedule 2 for services required by this CHMA and provided by the Contact Officer in compliance with Schedule 1.
- 4.6** The Aboriginal Party will ensure that each of the Monitors –
  - (a) is adequately trained in identifying Cultural Heritage;

- (b) is engaged by the Aboriginal Party;
- (c) hold the certifications required by applicable workplace health and safety legislation before reporting for Monitoring duties;
- (d) report for Monitoring duties with appropriate personal protection equipment and clothing;
- (e) is aware of and comply with all of the responsibilities outlined in Schedule 3; and
- (f) is authorised by the Aboriginal Party to make binding decisions on-site in relation to any Cultural Heritage that the Monitor decides is a Minor Find.

**4.7** The Project Proponent agrees to pay the Aboriginal Party the amounts outlined in Schedule 4 for services required by this CHMA and provided by the Monitors in compliance with Schedule 3.

**4.8** The Aboriginal Party agrees to ensure that –

- (a) the nominated Aboriginal Party Representative and the Aboriginal Party Negotiator (if required), is engaged by the Aboriginal Party;
- (b) the nominated Aboriginal Party Representative is aware of and complies with the commitment to provide cultural heritage induction sessions as required by clause **6.5**; and
- (c) the Aboriginal Party Negotiator is aware of clause **8.0**.

## **5.0 ROLE OF REPRESENTATIVES OF THE PROJECT PROPONENT**

**5.1** Within 1 week of the Commencement Date, the Project Proponent must notify the Aboriginal Party in writing of the name and contact details for the Cultural Heritage Co-ordinator.

**5.2** The Project Proponent agrees to update the contact details for the Cultural Heritage Co-ordinator from time to time to ensure that the information remains current.

**5.3** The Project Proponent agrees to ensure that the nominated Cultural Heritage Co-ordinator is aware of and complies with all of the responsibilities outlined in Schedule 6, and in the event of non-compliance, must promptly replace the Cultural Heritage Co-ordinator with a suitably qualified replacement.

**5.4** The Project Proponent agrees to ensure that all of their employees, contractors and sub-contractors are aware of and comply with their responsibilities outlined in this CHMA.

## **6.0 CULTURAL HERITAGE INDUCTION**

- 6.1** Within 1 month of commencing involvement with any Project Works, all employees, contractors and sub-contractors of the Project Proponent will make reasonable endeavours to attend a cultural heritage induction session which complies with the requirements of this clause **6.0**.
- 6.2** Each cultural heritage induction session will be presented in 2 parts.
- 6.3** The first part of each cultural heritage induction session will be presented by a suitably qualified person who is appointed by the Contractor.
- 6.4** The first part of each cultural heritage induction session will include a brief outline of the responsibilities contained in this CHMA.
- 6.5** The second part of each cultural heritage induction session will be presented by the Aboriginal Party Representative, who will provide –
- (a) a description of the area to which the Aboriginal Party asserts a traditional connection;
  - (b) a description of the values held by the Aboriginal Party, and
  - (c) information about the type of Cultural Heritage that is of significance to the Aboriginal Party or likely to be found in the Project Works Area.
- 6.6** Project Proponent agrees to pay the Aboriginal Party the amount of \$<Insert>plus GST for each cultural heritage induction session completed by the Aboriginal Party Representative in accordance with clause **6.5**.
- 6.7** In the event that a cultural heritage induction session is not undertaken in compliance with this clause, the parties agree that Project Works may proceed providing that this CHMA is otherwise complied with.

## **7.0 MONITORING PROCEDURES**

- 7.1** Subject to clause **7.5**, the Parties agree that –
- (a) Monitoring within the Agreed Monitoring Areas will be limited, unless otherwise agreed, to locations that are directly affected by the Project Works and which have not been subjected to previous ground disturbance.
  - (b) if Clearing and Grubbing is to be undertaken at a location in only 1 of the Agreed Monitoring Areas at a particular time, then 2 Monitors will be required to perform Monitoring at the location in that Agreed Monitoring Area as directed by the Project Proponent;
  - (c) if Clearing and Grubbing is to be undertaken at locations within 2 or more of the Agreed Monitoring Areas at the same time, then only 1 Monitor will be required to perform Monitoring at each of the locations within in each of those Agreed Monitoring Areas as directed by the Project Proponent; and

- (d) if the Project Proponent requires additional Monitors to perform Monitoring in any part of the Project Works Area, then the Contact Officer will be given at least 48 hours notice to make the required number of Monitors available at the Site Office.

**7.2** The Cultural Heritage Co-ordinator for the Project Proponent will make a reasonable effort to provide the Contact Officer with indicative work programs at least 48 hours in advance of Monitors being required, to indicate –

- (a) the dates;
- (b) times;
- (c) the locations within the Agreed Monitoring Areas requiring Monitoring on particular dates; and
- (d) the number of Monitors, calculated in accordance with clause **7.1**, that are required to attend at the Site Office to undertake Monitoring duties.

**7.3** The Aboriginal Party will ensure that the required number of Monitors report to the Site Office for Monitoring duties on the dates and at the times required.

**7.4** The Contractor will arrange for a suitable representative to transport the Monitors from the Site Office to the locations within the Agreed Monitoring Areas requiring Monitoring.

**7.5** The Aboriginal Party agrees that if the required number of Monitors are not made available at the Site Office on the dates and at the times required, or the Cultural Heritage Co-ordinator or the Contractor deems that a Monitor is unfit to fulfil the responsibilities outlined in Schedule 3, then –

- (a) the Cultural Heritage Co-ordinator or the Contractor is entitled to have the unfit Monitor immediately removed from the Project Works Area;
- (b) the Cultural Heritage Co-ordinator or the Contractor will make all reasonable efforts to contact the Contact Officer to request that replacement Monitors be made available at the Site Office;
- (c) Project Works will cease for a maximum period of 1 hour in the locations within the Agreed Monitoring Area in which the Monitors were scheduled to provide Monitoring, to allow an opportunity for suitable replacement Monitors to be made available at the Site Office for Monitoring; and
- (d) if suitable replacement Monitors are not made available at the Site Office within 1 hour, the Project Works, including Clearing and Grubbing, may be undertaken in those locations within the Agreed Monitoring Areas without Monitoring by Monitors.

**7.6** A Monitor will complete a clearance form in accordance with the form attached as Schedule 16, as soon as possible after Monitoring of an Agreed Monitoring Area has been completed and the Parties have complied with clause **8.0** as applicable. After the

clearance form has been completed, the Project Proponent may conduct Project Works in the Agreed Monitoring Area.

## **8.0 PROCEDURES FOR A FIND**

- 8.1** A person who identifies a Find during activities associated with the Project Works will take the following steps without delay –
- (a) signal for all machine operators in the immediate vicinity to temporarily stop work; and
  - (b) complete section A of the stop work form attached as Schedule 7, and provide it to the Cultural Heritage Co-ordinator.
- 8.2** If a Monitor is on-site, the person who identifies the Find must ensure the Monitor is informed of the Find. That Monitor will then complete the procedure outlined in clause **8.4**.
- 8.3** If a Monitor is not on-site, the person who identifies the Find must ensure that the Cultural Heritage Co-ordinator is informed of the Find. The Cultural Heritage Co-ordinator must then arrange for a Monitor to complete the procedure outlined in clause **8.4**.
- 8.4** The relevant Monitor, as determined by clauses **8.2** and **8.3**, will undertake the following steps without delay –
- (a) provide all people working in the vicinity with details of the Find;
  - (b) contact and inform the Cultural Heritage Co-ordinator of the Find;
  - (c) decide if the Find contains or may contain any Human Remains, and if so, undertake the procedure in Schedule 8;
  - (d) where the Find is not suspected to contain any Human Remains, decide whether the Find is a Minor Find or a Major Find;
  - (e) if the Find is considered to be a Minor Find, comply with clause **8.5**; and
  - (f) if the Find is considered to be a Major Find, comply with clause **8.8**.
- 8.5** In the case of a Minor Find, the relevant Monitor, as determined by clauses **8.2** and **8.3**, will undertake the following steps without delay –
- (a) complete a form recording the details of the Minor Find, in accordance with the form attached as Schedule 9, and provide it to the Cultural Heritage Co-ordinator;
  - (b) arrange for the Minor Find to be relocated to the Temporary Storage Area until the Aboriginal Party decides who is to have custody of the Cultural Heritage;

- (c) advise the Cultural Heritage Co-ordinator that the Minor Find has been relocated to the Temporary Storage Area; and
- (d) advise that machinery may re-commence in the vicinity; and
- (e) complete section B of the form attached as Schedule 7 and provide the completed form to the Cultural Heritage Co-ordinator.

**8.6** Subject to clause **8.7**, the Parties agree that –

- (a) for any Cultural Heritage owned by the State pursuant to section 20 of the Act, which is found in the Project Works Area during activities associated with the Project Works, the Aboriginal Party will become the owner of the Cultural Heritage when it is found;
- (b) upon becoming the owner of the Cultural Heritage, the Aboriginal Party will have the responsibility for directing who will have the custody of the Cultural Heritage;
- (c) where a Minor Find is relocated to the Temporary Storage Area under clause **8.5(b)**, the Aboriginal Party must, within 28 days of its relocation to the Temporary Storage Area, or any extended time approved by the Cultural Heritage Co-ordinator –
  - (i) remove the Minor Find from the Temporary Storage Area;
  - (ii) advise the Cultural Heritage Co-ordinator that the Minor Find has been removed; and
  - (iii) if the Aboriginal Party wishes to return a Minor Find to a location within the Project Works Area, it must discuss this with the Cultural Heritage Co-ordinator prior to the return to ensure that the location will not be impacted by further Project Works and that the location is otherwise suitable; and

**8.7** The parties agree that -

- (a) if the Minor Find is not removed from the Temporary Storage Area in accordance with clause **8.6(c)**, the Project Proponent may relocate the Minor Find and will inform the Aboriginal Party as to its new location; and
- (b) if a dispute arises as to whether the Aboriginal Party owns a particular item of Cultural Heritage, upon becoming aware of the dispute, the Project Proponent will provide the Cultural Heritage to the University of Queensland (or such other entity as agreed in writing between the parties from time to time) to hold, pending determination of the dispute according to law.

**8.8** In the case of a Major Find, the relevant Monitor, as determined by clauses **8.2** and **8.3**, will complete the following steps without delay –

- (a) complete a form recording the details of the Major Find, in accordance with the form attached as Schedule 10, and provide it to the Cultural Heritage Co-ordinator;
- (b) request that the Contractor set up a temporary Exclusion Zone to protect the Major Find; and
- (c) request the Aboriginal Party nominate a suitably authorised representative of the Aboriginal Party (“**Aboriginal Party Negotiator**”) to meet with the Cultural Heritage Co-ordinator to develop a strategy for the protection and custody of the Major Find.

**8.9** At any time, the Project Proponent may require that a Cultural Heritage Assessor be appointed in accordance with clause **8.10**, to analyse and independently assess a Find.

**8.10** The parties agree that the following process will be used to select a Cultural Heritage Assessor where one is required under clause **8.9** –

- (a) The Cultural Heritage Co-ordinator will request that the Aboriginal Party nominate a suitably qualified person to be considered for selection as the Cultural Heritage Assessor by the Project Proponent;
- (b) within 7 days of the nomination, the Project Proponent must accept or reject the person nominated by the Aboriginal Party under clause **8.10(a)** for selection as the Cultural Heritage Assessor.
- (c) if the Project Proponent rejects the person nominated by the Aboriginal Party, then the steps contained in clauses **8.10(a)** and **8.10(b)** will be repeated until the Project Proponent accepts the person nominated as suitable for selection as the Cultural Heritage Assessor.
- (d) once the Project Proponent accepts the person nominated by the Aboriginal Party, then the Project Proponent may engage the Cultural Heritage Assessor to undertake an independent analysis and assessment of the Find.

**8.11** The Parties agree that the Exclusion Zone may not be entered for the purpose of conducting Project Works until one of the following events occurs:

- (a) a strategy for the protection and custody of the Major Find is agreed between the Cultural Heritage Co-ordinator and the Aboriginal Party Negotiator, and section B of the stop work form attached as Schedule 7 is completed and provided to the Cultural Heritage Co-ordinator; or
- (b) the Project Proponent has made reasonable attempts to negotiate an agreed strategy for the protection and custody of the Major Find with the Aboriginal Party Negotiator, but has not achieved agreement within a period of 20 Business Days, or some longer period agreed to in writing by the Cultural Heritage Co-ordinator, commencing on the day after the machine operators are signalled to temporarily stop work, and the Project Proponent has made reasonable attempts to safely relocate the Major Find away from the location of the Project Works.

## **9.0 DEFAULT**

**9.1** No party may terminate this Agreement for substantial breach by another party without first giving written notice of that breach to the other party and allowing the other party a reasonable period to remedy such breach.

## **10.0 DISPUTE RESOLUTION**

**10.1** Apart from obtaining any injunctive, declaratory or other urgent relief from a Court, each of the Parties agrees that it will not commence a proceeding or action in a Court in connection with this CHMA until the following dispute resolution procedure has been undertaken –

- (a) In the event that any party claims that a dispute has arisen under this CHMA, that party must give a notice to the other party setting out full details of the dispute (the *Dispute Notice*).
- (b) The Parties must meet as soon as practical after the receipt of the Dispute Notice by a party to attempt to resolve the dispute. The dispute is negotiated directly between the Monitor, the Cultural Heritage Co-ordinator and the Contractor, or other representatives of the Parties as relevant.
- (c) In the event that the dispute cannot be resolved by direct negotiation within 7 days of a party receiving a Dispute Notice, then:
  - (i) if the dispute is a cultural heritage management issue, the Cultural Heritage Co-ordinator may, within a further 7 days, refer the dispute to the DNR & W to seek its comments on the Parties' compliance with legislation. The Parties must reasonably consider the DNR & W's comments and may agree to act in accordance with them; and
  - (ii) any party may suggest the dispute be mediated by an independent mediator, and the other party will reasonably consider the suggestion.
- (d) In the event that the dispute is unresolved within 21 days of a party receiving a Dispute Notice, either party may seek to have the dispute determined by a Court or Tribunal of competent jurisdiction.

**10.2** Unless otherwise ordered by a Court, each party will bear its own costs in relation to the resolution of a dispute between the Parties under this CHMA.

**10.3** Each party will, as far as possible, continue to perform its roles and responsibilities in accordance with this CHMA despite the existence of the dispute.

**10.4** This clause **10.0** continues in force even where the CHMA has been fully performed, terminated or rescinded or where the Parties or any of them have been discharged from the obligation to further perform the CHMA for any reason.

## **11.0 OWNERSHIP AND USE OF INFORMATION**

**11.1** Subject to clause **11.3**, the Project Proponent will own information, reports or other documents generated or compiled in the development and implementation of this CHMA, except where such information is the property of another person or is already in the public domain.

**11.2** The Aboriginal Party will provide any information to the Project Proponent, which is required to meet any requirements of law, including for the purpose of applying for any permits, licences, approvals or other authorities required for the Project Works or for purposes associated with this CHMA.

**11.3** Where information generated in the course of implementing this CHMA is of a confidential nature to the Aboriginal Party and where the Aboriginal Party informed the Project Proponent of this fact, that information –

- (a) may not be used for any purpose other than in fulfilment of the Parties' obligations under this CHMA; and
- (b) can not, without the express written permission of the Aboriginal Party, be supplied to or used by any third party, or used for any other purpose, unless:
  - (i) required by law or by government authorities/departments; or
  - (iv) disclosure is to solicitors, barristers or other professional advisers or consultants under a duty of confidentiality

## **12.0 CONFIDENTIALITY**

**12.1** Subject to clauses **11** and **12.3**, this CHMA, all associated agreements and all information supplied by one party to another are confidential between the Parties and will not be disclosed to any person by any party without the prior written consent of the other party.

**12.2** Each of the Parties agrees that in supplying any information, reports or other documentation to a third party, it will obtain an undertaking from the third party to keep that information confidential and will forward a copy of that undertaking to the other party to this CHMA.

**12.3** Clause **12.1** shall not apply in the following circumstances:

- (a) any disclosure required by law or by government authorities/departments;

- (b) if the information is already in the public domain; and
- (c) any disclosure to solicitors, barristers or other professional advisers or consultants under a duty of confidentiality.

### **13.0 ASSIGNMENT**

**13.1** The Project Proponent may assign or novate its rights and obligations under this CHMA (in whole or in part) to any party who acquires an interest in the Project Works and on such assignment the assignee and the Aboriginal Party shall enter into a mutual covenant agreeing to be bound by the terms of this CHMA.

### **14.0 INDEMNITY**

**14.1** The Aboriginal Party indemnifies and releases and discharges the Project Proponent from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the Project Proponent, or which the Project Proponent may pay, sustain or be put to by reason of, or in consequence of or in connection with a breach of the terms of this CHMA by the Aboriginal Party other than as a result of the negligent act or omission or the wilful default of the Project Proponent, its servants or agents.

### **15.0 GOVERNING LAW**

**15.1** The laws applicable in Queensland govern this CHMA.

**15.2** The Parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of Queensland and all Courts competent to hear appeals there from.

### **16.0 GST**

**16.1** For the purposes of this CHMA –

- (a) “GST” has the same meaning as in GST Law;
- (b) “GST Law” includes *A New Tax System (Goods and Services Tax) Act 1999* (Cth), order, ruling or regulation which imposes or purports to impose or otherwise deals with the administration or imposition of GST on a supply of goods or services in Australia;
- (c) “supply” means a supply which is deemed under the GST Law; and
- (d) “tax invoice” includes a document, which is deemed to constitute a tax invoice under the GST Law.

**16.2** The Parties acknowledge that GST may be payable on a supply of goods and/or services under this CHMA.

**16.3** Where GST is payable upon any supply of goods and/or services under this CHMA, the consideration payable by the recipients to the supplier for the supply shall be adjusted in accordance with clause **16.4**.

**16.4** Subject to the supplier issuing a valid GST tax invoice, the consideration payable by the recipient to the supplier for the supply shall be increased by the amount equal to that which the supplier is obliged to remit as GST on the supply.

## **17.0 WAIVER**

**17.1** The failure of a party at any time to require performance of any obligation under this CHMA is not a waiver of that party's right –

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this CHMA.

## **18.0 FURTHER ASSURANCES**

**18.1** Each party must do anything (including executing agreements and documents) necessary or desirable to give effect to this CHMA and the transactions contemplated by it.

## **19.0 RELATIONSHIP OF PARTIES**

**19.1** Nothing in this CHMA constitutes the Parties in a partnership or joint venture. None of the Parties will pledge the credit of the other. Each party will be responsible for the debts that party incurs unless that party has prior written consent of all other Parties to incur the debt.

## **20.0 SEVERABILITY**

**20.1** If any clause in this CHMA on its interpretation is illegal, invalid or inoperative or unenforceable, then that clause will so far as possible be read down to the extent necessary to ensure that it is not illegal, invalid or inoperative or unenforceable so as to give it a valid operation.

**20.2** If the clause or part of the clause cannot be read down, the clause or part of it shall be deemed to be void and shall be severed from this CHMA but the remaining clauses shall not be affected.

## **21.0 WHOLE AGREEMENT**

**21.1** This CHMA constitutes the entire agreement between the Parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it.

## **22.0 VARIATION**

**22.1** Any party may request a meeting to discuss possible changes or amendments to this CHMA and the Parties must meet to discuss the proposed changes or amendments within 14 days of the request.

**22.2** This CHMA may only be varied or replaced by an agreement signed by the Parties.

## **23.0 EXECUTION**

**23.1** The Parties shall each execute two copies of this CHMA with each party retaining an original copy.

## **24.0 NOTICES**

**24.1** Unless otherwise specified in this CHMA, notices or notifications under this CHMA may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Schedule 11 or any substitute address as may have been notified in writing by the relevant addressee from time to time.

**24.2** Notice will be deemed to be given –

- (a) 2 Business Days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day.

## **Schedule 1 – Responsibilities of the Contact Officer**

The Aboriginal Party will ensure that a suitably experienced and authorised Contact Officer complies with the responsibilities listed below.

1. In respect of the Monitors, the Contact Officer will ensure that the required number of Monitors report to the Site Office for Monitoring duties on the dates and at the times required by the Project Proponent, in accordance with clause **7.0** of the CHMA;
2. The Contact Officer will undertake any duties specifically required by the CHMA and will communicate co-operatively with the Contractor, the Cultural Heritage Co-ordinator or other representatives of the Project Proponent to assist with the implementation of the CHMA.
3. Whilst within the Project Works Area, the Contact Officer will follow any lawful direction given by the Contractor or other representative of the Project Proponent.
4. If the Contact Officer is unable to perform any of the responsibilities listed above, he will advise the Aboriginal Party and request that it appoints a suitable temporary replacement to perform the responsibilities, and advises the Project Proponent Cultural Heritage Co-ordinator of the details of the temporary replacement.

## **Schedule 2 – Payment Rates for the Contact Officer**

For services required by this CHMA and provided by the Contact Officer in compliance with Schedule 1, within 28 days of receiving a tax invoice which contains the details required by item 3 of Schedule 5 to this CHMA, the Project Proponent will pay the following amounts, as applicable, to the Aboriginal Party –

1. \$<Insert> plus GST per hour or part thereof worked.

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### **Schedule 3 – Responsibilities of Monitor**

The Aboriginal Party will ensure that suitably experienced and authorised Monitors comply with the responsibilities listed below.

1. In respect of Monitoring, the Monitors will ensure that –
  - (a) they report to the Site Office for Monitoring duties on the dates and at the times required by the Project Proponent, in accordance with clause **7.0** of the CHMA;
  - (b) on a daily basis they complete the timesheets in the form attached as Schedule 17 or as provided by the Contractor, for each full or part day worked, and provide the completed timesheet to the Contractor;
  - (c) they are adequately trained in identifying Cultural Heritage;
  - (d) they are authorised to make binding decisions on-site in relation to any Cultural Heritage that they decide is a Minor Find;
  - (e) before reporting for Monitoring duties, they hold the certifications required by applicable workplace health and safety legislation;
  - (f) they report for Monitoring duties with appropriate personal protection equipment and clothing and properly use such equipment and clothing whilst on the Project Works Area;
  - (g) they are not in the possession of, or under the influence of alcohol or non-prescription drugs, whilst on the Project Works Area; and
  - (h) whilst within the Project Works Area, they follow any lawful direction given by the Contractor or other representative of the Project Proponent.
2. The Monitor will undertake any duties specifically required by the CHMA and will communicate co-operatively with the Contractor, the Cultural Heritage Co-ordinator or other representatives of the Project Proponent to assist with the implementation of the CHMA.

## Schedule 4 – Payment Rates for Monitors

1. For services required by this CHMA and provided by a Monitor in compliance with Schedule 3, within 28 days of receiving a tax invoice which contains the details required by item 3 of Schedule 5 to this CHMA, the Project Proponent will, subject to clause 2 of this Schedule, pay the following amounts, as applicable, to the Aboriginal Party in respect of each Monitor –
  - (a) where between 6 and 8 hours of work are performed by a Monitor in one day, the amount of \$<Insert> plus GST;
  - (b) where less than 6 hours of work are performed by a Monitor in one day, the hourly rate of \$<Insert> plus GST for each hour or part thereof worked; or
  - (c) where more than 8 hours of work are performed by a Monitor in one day, the hourly rate of \$<Insert> plus GST for each hour or part thereof worked;
2. Where a Monitor has commenced work on a day, but the continuation of work is prevented by inclement weather, machinery breakdown or any other contingency outside the reasonable control of the Aboriginal Party, the following amount is payable, as applicable –
  - (a) where less than 4 hours of work are performed by a Monitor, the amount of \$<Insert> plus GST;
  - (b) where less than 6 hours but greater than 4 hours of work are performed by a Monitor, the hourly rate of \$<Insert> plus GST for each hour or part thereof worked; or
  - (c) where between 6 and 8 hours of work are performed by a Monitor, the amount of \$<Insert> plus GST;
  - (d) where more than 8 hours of work are performed by a Monitor in one day, the hourly rate of \$<Insert> plus GST for each hour or part thereof worked.

## **Schedule 5 – Responsibilities of the Aboriginal Party**

The Aboriginal Party will comply with the responsibilities listed below.

1. The Aboriginal Party will employ the Contact Officer (and any substitute), the Aboriginal Party Representative, the Aboriginal Party Negotiator (if required) and the Monitors to perform the services required by this CHMA.
2. In respect of the Contact Officer (and any substitute), the Aboriginal Party Representative, the Aboriginal Party Negotiator (if required) and all Monitors employed to perform the services required by this CHMA, the Aboriginal Party will, at its own expense, do all things required of an employer by applicable legislation, including but not limited to –
  - (a) remunerating the Contact Officer (and any substitute), the Aboriginal Party Representative, the Aboriginal Party Negotiator (if required) and Monitors, for services performed;
  - (b) providing personal protection equipment and clothing as may be required by the Contractor, including but not limited to steel cap safety boots, long sleeve high visibility shirt or vest and long pants;
  - (c) maintaining workers compensation and all other relevant insurances and providing a copy of current certificates of insurance to the Cultural Heritage Co-ordinator within 7 days of being requested to do so;
  - (d) maintaining superannuation contributions; and
  - (e) maintaining tax contributions.
3. In respect of services required by this CHMA and performed by the Contact Officer (and any substitute), the Aboriginal Party Representative and the Monitors, the Aboriginal Party will promptly submit a tax invoice to the Project Proponent which –
  - (a) correctly reflects the services provided by the Contact Officer (and any substitute), the Aboriginal Party Representative or Monitors;
  - (b) is annotated with the Project number (which can be obtained from the Cultural Heritage Co-ordinator); and
  - (c) is otherwise a valid tax invoice for the purposes of the GST Law.
4. The Aboriginal Party will undertake any duties specifically required by the CHMA and will communicate co-operatively with the Contractor, the Cultural Heritage Co-ordinator and other representatives of the Project Proponent to assist with the implementation of the CHMA.

## **Schedule 6 – Responsibilities of Cultural Heritage Co-ordinator**

The Project Proponent will ensure that the Cultural Heritage Co-ordinator complies with the responsibilities listed below.

1. The Cultural Heritage Co-ordinator will undertake any duties specifically required by the CHMA and will communicate co-operatively with the Contact Officer (and any substitute), the Aboriginal Party Representative, the Aboriginal Party Negotiator (if required), Monitors and the Aboriginal Party to assist with the implementation of the CHMA.
2. The Cultural Heritage Co-ordinator will be the initial Project Proponent contact person in the event that the Aboriginal Party, the Contact Officer, or the Monitors has any queries in relation to the implementation of this CHMA or the Project Works generally.
3. The Cultural Heritage Co-ordinator will organise for the Contractor to sign and forward timesheets completed by any Monitors to the Aboriginal Party on a weekly basis, to enable a tax invoice to be prepared.
4. The Cultural Heritage Co-ordinator will mark the locations of known Cultural Heritage and the Agreed Monitoring Areas on working plans of the Project Works Area and provide this plan to the Contractor before Project Works commence.
5. If the Cultural Heritage Co-ordinator is unable to perform any of the responsibilities listed above, he will ensure a suitable temporary replacement is available to perform the responsibilities on his behalf and will advise the Aboriginal Party of the details of the temporary replacement.



**SECTION B** – Monitor to fill out this section to advise machinery may re-commence in the area detailed in Section A above:

I \_\_\_\_\_, a Monitor, hereby

declare that machinery can recommence work in the area listed above.

Signed

Date

Time

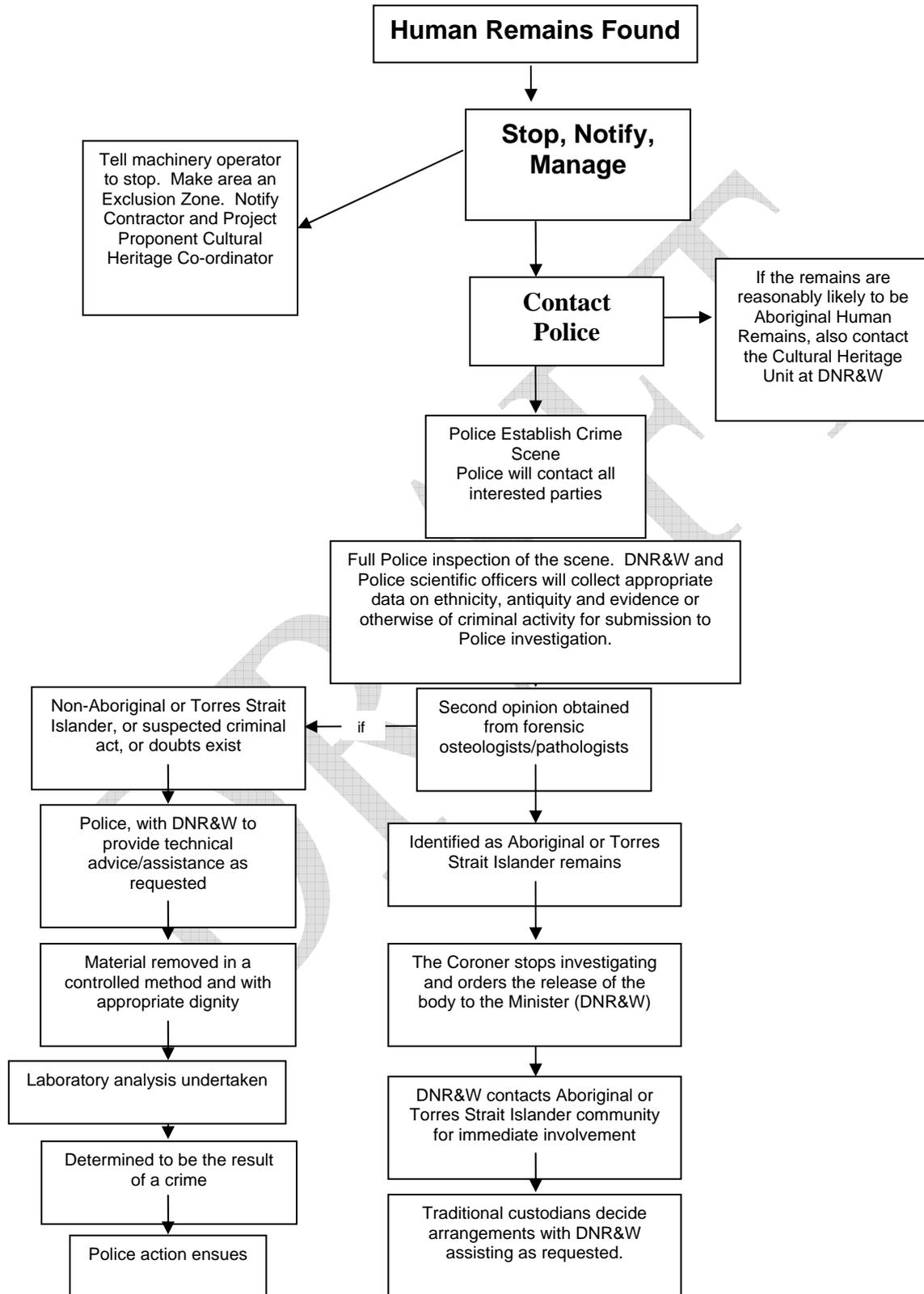
am/pm

**Note:** Section B of this form is to be given to the Project Proponent Cultural Heritage Co-ordinator as soon as completed.

The Cultural Heritage Co-ordinator will provide a copy of the completed form to the Contractor without delay.

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## Schedule 8 - Procedure where Human Remains found



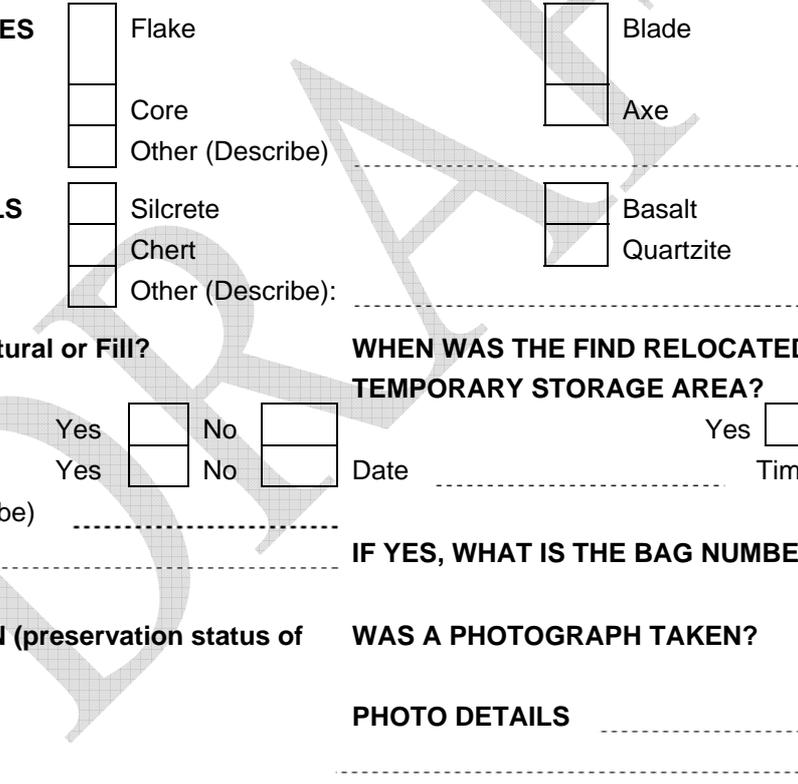
## Schedule 9 – Minor Find Recording Form

**LOCATION:** .....

**SITE TYPE**

<input type="checkbox"/> Artefact Scatter	<input type="checkbox"/> Art Site	<input type="checkbox"/> Fish Trap
<input type="checkbox"/> Isolated Find	<input type="checkbox"/> Scarred Tree	<input type="checkbox"/> Shell Midden
<input type="checkbox"/> Rock Shelter	<input type="checkbox"/> Quarry	
<input type="checkbox"/> Other (Describe) .....		

**ENVIRONMENT** .....

Sketch (Location)
 

.....

.....

**SITE DESCRIPTION** .....

.....

.....

**ARTEFACT TYPES**

<input type="checkbox"/> Flake	<input type="checkbox"/> Blade	<input type="checkbox"/> Hammer Stone
<input type="checkbox"/> Core	<input type="checkbox"/> Axe	<input type="checkbox"/> Grindstone
<input type="checkbox"/> Other (Describe) .....		

**RAW MATERIALS**

<input type="checkbox"/> Silcrete	<input type="checkbox"/> Basalt	<input type="checkbox"/> Quartz
<input type="checkbox"/> Chert	<input type="checkbox"/> Quartzite	
<input type="checkbox"/> Other (Describe): .....		

**Is the profile Natural or Fill?**

Natural	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Fill	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Other (Describe) .....			

**WHEN WAS THE FIND RELOCATED TO THE TEMPORARY STORAGE AREA?**

Yes  No

Date: ..... Time: ..... am/pm

**IF YES, WHAT IS THE BAG NUMBER** .....

**PRESERVATION (preservation status of the artefact/s)**

<input type="checkbox"/> Poor	<b>WAS A PHOTOGRAPH TAKEN?</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
<input type="checkbox"/> Fair	
<input type="checkbox"/> Good	
<input type="checkbox"/> Excellent	
<input type="checkbox"/> Other (Describe) .....	

**PHOTO DETAILS** .....

.....

**WHEN DID YOU INFORM THE CULTURAL HERITAGE CO-ORDINATOR THAT THE MINOR FIND WAS RELOCATED TO THE TEMPORARY STORAGE AREA?**

Date: ..... Time: ..... am/pm

**MONITOR NAME:** .....

**SIGNATURE:** ..... **DATE** .....

## Schedule 10 – Major Find Recording Form

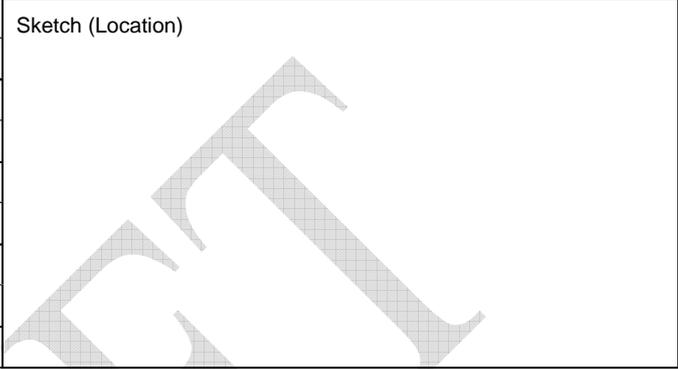
**LOCATION:** .....

**SITE TYPE**

<input type="checkbox"/> Artefact Scatter	<input type="checkbox"/> Art Site	<input type="checkbox"/> Fish Trap
<input type="checkbox"/> Isolated Find	<input type="checkbox"/> Scarred Tree	<input type="checkbox"/> Shell Midden
<input type="checkbox"/> Rock Shelter	<input type="checkbox"/> Quarry	
<input type="checkbox"/> Other (Describe) .....		

**ENVIRONMENT** .....

**SITE DESCRIPTION** .....

Sketch (Location)
 

**ARTEFACT TYPES**

<input type="checkbox"/> Flake	<input type="checkbox"/> Blade	<input type="checkbox"/> Hammer Stone
<input type="checkbox"/> Core	<input type="checkbox"/> Axe	<input type="checkbox"/> Grindstone
<input type="checkbox"/> Other (Describe) .....		

**RAW MATERIALS**

<input type="checkbox"/> Silcrete	<input type="checkbox"/> Basalt	<input type="checkbox"/> Quartz
<input type="checkbox"/> Chert	<input type="checkbox"/> Quartzite	
<input type="checkbox"/> Other (Describe): .....		

ARTEFACT LOCATION DEPTH / SOIL PROFILE (mark on profile column)	DEPTH (cm)	PROFILE (A, B, C, D)
<p><b>Is the profile Natural or Fill?</b></p> <p>Natural    Yes <input type="checkbox"/>    No <input type="checkbox"/></p> <p>Fill        Yes <input type="checkbox"/>    No <input type="checkbox"/></p> <p>Other (Describe) .....</p>	5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100	<p>A    Topsoil layer, usually darker soil with organic material</p> <p>B    Subsoil, usually light coloured, dense, low in organic matter</p> <p>C    Transition zone between soil and bedrock rock, usually contains weathered pieces of bedrock.</p> <p>D    Bedrock</p>

**PRESERVATION (preservation status of the artefact/s)**

<input type="checkbox"/>	Poor
<input type="checkbox"/>	Fair
<input type="checkbox"/>	Good
<input type="checkbox"/>	Excellent
<input type="checkbox"/>	Other (Describe) .....

**NUMBER OF ARTEFACTS COLLECTED IN SURROUNDING AREA?**

<input type="checkbox"/>	1 – 5
<input type="checkbox"/>	5 – 10
<input type="checkbox"/>	10 – 15
<input type="checkbox"/>	15 – 20
<input type="checkbox"/>	20 – 25
<input type="checkbox"/>	25+

**DESCRIBE SCATTER** .....

.....

.....

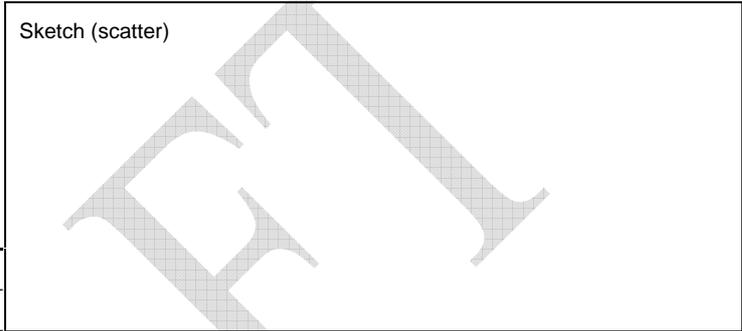
.....

.....

**DENSITY OF SCATTER / NUMBER OF ARTEFACTS PER SQUARE METRE**

<input type="checkbox"/>	5+
<input type="checkbox"/>	10+
<input type="checkbox"/>	15+
<input type="checkbox"/>	Other (Describe) .....

Sketch (scatter)



**WAS THE MAJOR FIND RELOCATED TO THE TEMPORARY STORAGE AREA?**

Yes  No

**IF YES, WHAT IS THE BAG NUMBER** .....

**WAS A PHOTOGRAPH TAKEN?**

Yes  No

**ROLL NUMBER** .....

**PHOTO DETAILS**

.....

.....

**WHEN DID YOU CONTACT THE CULTURAL HERITAGE CO- ORDINATOR TO DEVELOP A STRATEGY FOR THE PROTECTION OF THE MAJOR FIND?**

Date:

**DESCRIBE THE STRATEGY AGREED FOR THE PROTECTION OF THE MAJOR FIND:**

**MONITOR NAME:** .....

**SIGNATURE:** .....

**DATE** .....

## Schedule 11 – Contact details for Parties

### Aboriginal Party – contact details

Contact: Mr Frank Mannix

Address: Po Box 1830, AITKENVALE QLD 4814

Preferred Mode of Contact: email / telephone / fax

Details of contact email / telephone / fax:

Email: fgm@dglaw.net.au

Telephone: 07 4772 2408

Fax: 07 4772 2368

Contact: Gary Mooney

Address: Suite 7 & 8, Villa Maria Building, 36 Victoria Street, MACKAY QLD 4740

Preferred Mode of Contact: telephone / fax

Details of contact telephone / fax:

Telephone: 07 4953 5956

Fax: 07 4953 5957

### Project Proponent

#### Project Proponent

<b>QR Limited</b>
Peter Stanley - Senior Property Officer (Cultural Heritage & Native Title)
GPO Box 1429
Brisbane Qld 4000
Preferred Mode of Contact: email / telephone / mobile / fax
Email: <a href="mailto:peter.stanley@qr.com.au">peter.stanley@qr.com.au</a>
Telephone: 3235 1359
Mobile: 0407 738 150
Fax: 3235 2429

**Schedule 12 – Description of Project Works**

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**Schedule 13 – Map of Project Works Area**

DRAFT

**Schedule 14 – Agreed Monitoring Areas**

Agreed Monitoring Areas		
Description	GPS	
	Start (north)	Finish (south)
	o	
	N/A	

DRAFT

**Schedule 15 – Maps of Monitoring Areas**

DRAFT

Map 1

DRAFT

Map 2

DRAFT

Map 3

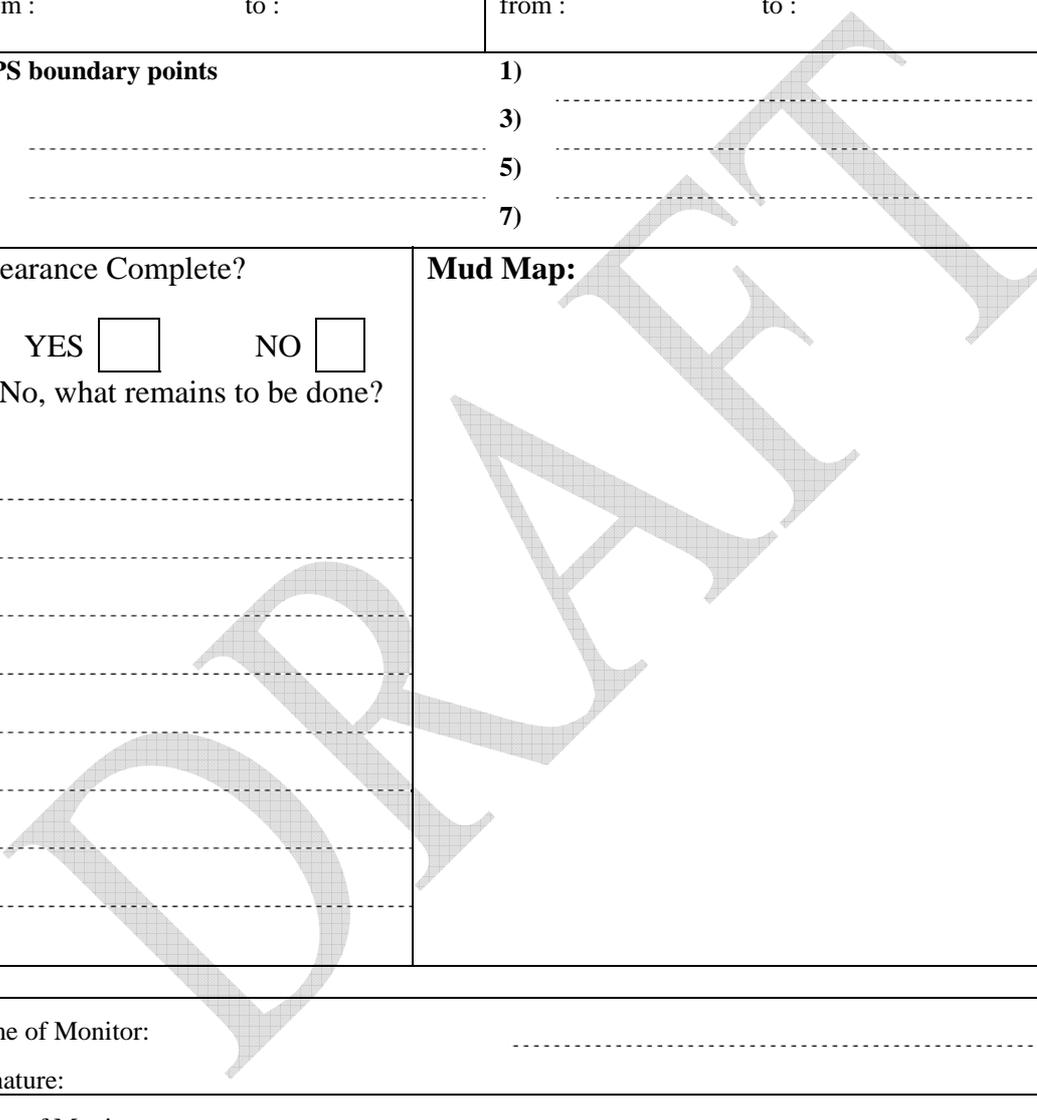
DRAFT

DRAFT

## Schedule 16 – Clearance form

**PROJECT NAME:** Jilalan Rail Yard Upgrade Project

**JOB NUMBER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

CLEARED AREA	
CHAINAGE	WIDTH
from :                      to :	from :                      to :
<b>GPS boundary points</b> 2) _____ 4) _____ 6) _____	1) _____ 3) _____ 5) _____ 7) _____
Clearance Complete?  YES <input type="checkbox"/> NO <input type="checkbox"/> If No, what remains to be done?  _____ _____ _____ _____ _____ _____	<b>Mud Map:</b>  

Name of Monitor:	_____
Signature:	_____
Name of Monitor:	_____
Signature:	_____

**Comments (if any):**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Executed as a Deed by the Parties on the dates appearing below.

SIGNED SEALED and DELIVERED )

for and on behalf of )

QR Limited, A.C.N. 124 649 967, as attorney )  
under Power of Attorney dated 14 June 2005 )

this            day of            2007 )

by . . Eric John Woolley . . . . . )

(full name)

General Manager Property )  
(designation)

who is a duly authorised officer, in the presence )  
of: )

..... )

(signature of witness)

..... )

(print name of witness)

.....  
(signature)  
By executing this document the  
Attorney states that the Attorney has not  
received any notice of revocation of the  
Power of Attorney.

