

## SECTION 11

### Section 11

#### INDIGENOUS CULTURAL HERITAGE

## 11. Indigenous Cultural Heritage

This Section describes the indigenous cultural heritage values that may be affected by the Project. It also provides an assessment of any likely effects on sites of indigenous cultural heritage values and a process for the management of those objects, areas and values identified.

### 11.1 Methodology

The methodology adopted for the indigenous cultural heritage protection is largely determined by the provision of the *Aboriginal Cultural Heritage Act 2003* (ACH Act). This legislation sets out a process with statutory timeframes for the development of “approved” Cultural Heritage Management Plans (CHMP) for the Project. Details of relevant Commonwealth and State legislation are set out in Section 11.2.

The legislative framework requires consultation with relevant Aboriginal Parties, field surveys and preparation of a CHMP for the Project area that will need to be approved under the provisions of the ACH Act.

The methodology adopted for the protection of cultural heritage consisted of a staged process aimed at identifying the Aboriginal cultural heritage values within the study area. This included:

- A search of the DNRW’s Aboriginal and Torres Strait Islander Cultural Heritage database to identify known places of Aboriginal cultural heritage significance;
- Consultation with Aboriginal people with traditional knowledge of the area;
- Field surveys that included walking the preferred alignment to identify any places or artefacts of Aboriginal cultural heritage significance;
- Analysis of the results of the desktop study, consultation, and field survey; and
- Reporting of these findings.

### 11.2 Cultural Heritage Legislation

#### 11.2.1 Commonwealth Legislation

##### Native Title Act 1993

Commencing on 1 January 1994 the *Native Title Act 1993* recognises Australian common law and the rights and interests over land and water possessed by some Indigenous people in Australia under the traditional laws and customs. This Act established the National Native Title Tribunal to govern how native title is dealt with across Australia. Federal parliament reviewed and amended this Act in 1998 and 2007.

There are currently three native title claims over the Project study area. These claims have been lodged by the Wulli Wulli, Gangulu, and Iman #2 People (see Map 13 – Aboriginal Cultural Heritage Native Title and Artefacts in the Map Folio). A fourth claim has been lodged by the Iman #1 People, but is not registered.

Native Title may potentially exist over land within the study area which is not freehold, including rivers and creeks, leasehold land and reserves. Native Title may either be extinguished or suppressed for the duration of the Project, dependent upon the process that is chosen to grant the necessary interests in Crown lands required to construct the Project. Regardless of the process chosen, compliance with the *Native Title Act 1993* will be required.

Negotiations with the registered Native Title Claimants may need to be undertaken to ensure approval is obtained for the Project on the land potentially subject to the Native Title rights. This process has commenced and is discussed in Section 4.3.

### **Aboriginal and Torres Strait Islander Protection Act 1984**

The *Aboriginal and Torres Strait Islander Protection Act 1984* purpose is to preserve and protect places and objects of cultural significance to Aboriginal and Torres Strait Islander people. Under the Act, Aboriginal people have the right to request the Minister for Families, Housing, Community Services and Indigenous Affairs to intervene through an injunction where they consider their cultural heritage is at risk.

#### **11.2.2 State Legislation**

Matters related to indigenous cultural heritage are protected by the *ACH Act* which is administered by the DNRW. As an EIS is being undertaken for the Project, under Section 87 of the Act it is mandatory that a CHMP is developed and approved under the *ACH Act*. The Proponent's preferred approach to obtaining an approved CHMP is through consultation and partnership with traditional owner groups.

To ensure Aboriginal duty of care is implemented during the Project and to minimise, or prevent the any adverse impacts to sites or objects of Aboriginal Cultural Heritage, CHMPs with the Iman #2 and Wulli Wulli have been prepared. These CHMPs have been agreed between both parties based on field investigations and recommendations are currently being assessed by the Consultative Committee which contains members representing the Proponent and Traditional Owners.

As an agreement could not be reached with the Gangulu regarding the management of the area's cultural heritage significance, and ongoing attempts to consult with representatives of the Gangulu have been unsuccessful. Documents have been prepared by the Proponent's legal team and were submitted to the Land Court before 24 December 2008. A number of factors can affect the duration of a Land Court decision and in some cases a decision can take up to six months.

#### **11.2.3 Local Government**

##### **Former Taroom Shire**

Places of indigenous cultural heritage significance within the former Taroom Shire are provided protection through the development process. Protection is granted under *Section 2.8 of Planning Scheme Policy 1 – Information Council May Request* which allows Council to request a proponent to provide sufficient detail to accurately determine the likely impact of the proposal on location of any known sites of indigenous, cultural or natural heritage. Schedule 2 Division 6 of the plan lists four places and items of cultural heritage significance, none of these are sites of aboriginal cultural heritage significance.

##### **Former Banana Shire**

The Banana Shire Council Local Plan requires any developments and their potential ecological impacts to be assessed against the criteria listed in Division 3: Schedule A – Preparation Of Ecological Assessment Reports And EMPs. Part 6 of this Schedule provides a non-exhaustive suggested list of elements, which may need to be discussed to enable an adequate assessment on potential ecological impacts. This includes but is not limited to:

- Consultation of the EPA Indigenous sites database;

- Consultation with traditional owners regarding potential impacts to cultural heritage values in the area; and
- Cultural heritage survey by a cultural heritage practitioner in consultation with relevant indigenous owners.

Since this Schedule was completed responsibility for the Aboriginal and Torres Strait Islander cultural heritage Database has passed to the DNRW. Appendix 2B Heritage Places Overlay for the Project includes no places of local Aboriginal cultural heritage significance.

### **11.3 Cultural Heritage Consultation**

Under the provisions of the ACH Act the relevant Aboriginal parties that the Proponent has sought to consult and negotiate with are identified via the group(s) that make up the native title claims over the Project area. For this Project the claimant groups are:

- Iman #2 (Satisfied the Registration Test of the National Native Title Tribunal on 26/07/2002, QC97/055);
- Wulli Wulli (Satisfied the Registration Test of the National Native Title Tribunal on 16/07/2000, QC00/007); and
- Gangulu (Satisfied the Registration Test of the National Native Title Tribunal on 7/06/2000, QC97/036).

The geographical areas of the claims of each group are shown in Map 13 – Aboriginal Cultural Heritage Native Title and Artefacts in the Map Folio. There is approximately 10 km of overlap between the Wulli Wulli and Gangulu claims and for the purposes of this report both groups were consulted regarding the cultural heritage significance of this shared area.

Each of the claimant groups received a Part 7 notification as per the Act advising of the Proponents intention to develop a CHMP for the Project. All three groups have been involved in negotiations and aspects of the cultural heritage survey.

Consultation with both the Iman #2 and the Wulli Wulli have been ongoing and representatives of both groups have participated in elements of relevant cultural heritage field surveys of the preferred alignment.

As mentioned above in Section 11.2.2, despite ongoing attempts to consult with representatives of the Gangulu, agreement has not been reached with the Gangulu regarding the management of the area's cultural heritage significance.

The current status of the CHMPs is discussed in Section 11.2.2.

### **11.4 Description of Indigenous Cultural Heritage Values**

#### **11.4.1 Topography and Geology**

Topography within and surrounding the study area is dominated by hill crests with undulating, gently sloping upper, middle and lower slopes with slope angles varying between 0 and 20%. Between these slopes and crests lie approximately 50 existing and historic creek beds. Elevations within the study area range from 150 m Australian Height Datum (AHD) to approximately 320 m AHD (see Map 6 – Topography and Landform in the Map Folio).

The dominant landform patterns surrounding the Project are characterised as a series of valleys in between a number of dividing hill ranges that all slope towards the Dawson River in the centre of the

larger Dawson River Catchment. This area is located adjacent to ranges to the west and south of the Project. The Project runs generally parallel and to the west of the Auburn Range, crossing an outcrop on the western fringe of the Auburn Range south of Cracow. This is one of the major topographical features within the study area and is characterised by steep sandstone ridges and deeply incised gullies (see Section 4.1).

#### **11.4.2 Flora and Fauna**

The widespread agricultural use of land has led to the broad-scale clearing of native bushland surrounding the Project. Historically, pre-clearing, the landscape was dominated by Brigalow (*Acacia harpophylla*) and Belah (*Casuarina cristata*) scrub on the basalt hills, characteristic of the Brigalow Belt South, with silver-leaved ironbark (*Eucalyptus melanophloia*), poplar box (*Eucalyptus populnea*), fuzzy box (*Eucalyptus conica*), wilga (*Geijera parviflora*) and buddha (*Eremophila mitchellii*) on heavier alluvial soils.

Diverse grasslands would have dominated the plains. Common species include plains grass (*Stipa sp.*), panic grass (*Panicum sp.*), windmill grass (*Chloris sp.*) and blue grass (*Dicanthium sp.*) on black earths, with the occasional white box (*Eucalyptus albens*), yellow box (*Eucalyptus melliodora*), poplar box and wilga.

The Gilbert Range and Auburn Ranges are characterised by narrow-leaved and silver-leaved ironbarks (*Eucalyptus crebra* ± *Eucalyptus melanophloia*) on coarse grain sedimentary rocks, with an understory of native grasses. The corresponding geology, topography and soils of these ranges make this land less suitable to agriculture, and as such, have allowed the remnant vegetation to remain relatively undisturbed.

#### **11.4.3 Land Use**

The Dawson Valley region plays an important role within Queensland, with the majority of the land in the area used for some type of agricultural production, mostly relating to cattle breeding and fattening. It is estimated that beef production in the region generates approximately \$135 million annually (DVDA, n.d.). Dryland cropping (including grain sorghum and wheat) and irrigated cropping (most notably cotton) are also prevalent within the Dawson Valley, and these industries are mainly concentrated in the more fertile black soils. There are extensive coal reserves throughout the study area. The thermal coal reserves located around Taroom and Wandoan, and thermal and coking coal reserves near Theodore and Moura are estimated to be in excess of six billion tonnes (DVDA, n.d.). While most of these coal deposits are undeveloped, coal is mined at Moura and near Biloela. In addition, gold is mined at Cracow.

#### **11.4.4 Historical Context**

Section 12.2.3 contains a brief contextual history of European settlement in the area surrounding the Project. While not meant to be a full and comprehensive history, it is included to inform the possible impacts of European settlement of the study area upon Aboriginal tenure, land use, and relationship to land.

### **11.5 Field Surveys**

To identify sites and objects of Aboriginal cultural heritage value and to identify the potential impacts of the Project on these sites and objects, field surveys of the multi-user corridor have been undertaken. Field surveys were conducted in consultation with representatives of the Iman #2 and

Wulli Wulli, however, at the time of writing it had not been possible to conduct a field survey in consultation with representatives of the Gangulu.

The initial Cultural Heritage survey of the portion of the alignment within the Native Title claim of the Wulli Wulli was undertaken between the 19 and 31 May 2008. During this survey a number of sites and objects were identified and recorded and management recommendations regarding these places agreed as a part of the CHMP. The remainder of survey for the Wulli Wulli portion of the alignment was completed at the end of August 2008.

A Cultural Heritage survey of the portion of the alignment within the Iman # 2 Native Title claim was undertaken between the 26 July and 4 August 2008.

## 11.6 Potential Impacts and Mitigation Measures

The potential impacts of the Project, the mitigation measures already taken and recommendations as to further mitigation actions are summarised in Table 11-1.

**Table 11-1: Potential Impact and Mitigation Measures for Indigenous Cultural Heritage**

<b>Potential Impact</b>	<b>Mitigation Measure</b>
Adverse impact on known sites and values of Aboriginal cultural heritage	<ul style="list-style-type: none"> <li>• Management options vary according to the level of impact and the ability of the Proponent to adjust proposed work to avoid identified sites. In general, avoidance is the best management option for avoiding impact to significant Aboriginal heritage values. However, avoidance will not always be a viable or necessary option.</li> </ul>
Accidental discovery of cultural and archaeological sites during construction	<p>Implement the management measures set out and agreed through the CHMP's to ensure the potential for places, sites and objects of Aboriginal cultural heritage are not damaged or destroyed.</p> <p>As part of the consultation process for the CHMP a number of management protocols and frameworks have been established and will be formalised as part of the consultation process.</p> <p>These include:</p> <ul style="list-style-type: none"> <li>• The establishment of an agreed mitigation process;</li> <li>• The establishment of a co-ordinating committee to oversee monitoring, conflict resolution, and the management of objects and places of Aboriginal cultural heritage;</li> <li>• The application of salvage and avoidance principles for items or places of cultural heritage significance discovered as part of the construction and operation phase of the project;</li> <li>• The use of monitors as reasonably recommended by consulting archaeologists in and around construction works;</li> </ul>

<b>Potential Impact</b>	<b>Mitigation Measure</b>
	<ul style="list-style-type: none"> <li data-bbox="886 406 1441 507">• The implementation of a cultural heritage awareness induction for construction personnel; and</li> <li data-bbox="886 518 1441 592">• Protocols for accidental discoveries not predicted by the cultural heritage survey.</li> </ul>