

VOLUNTARY CULTURAL HERITAGE MANAGEMENT PLAN

between

Gia People

and

Ngaro/Gia People

and

SHUTE HARBOUR MARINA DEVELOPMENT PTY LTD

For the Shute Harbour Marina Project Area

On and adjacent to

Lot 2 (SP117389)

And

Lot 273 (HR1757)

Thirteenth Day of April 2008

Facilitated by The Hornery Institute

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1 PREAMBLE

This Cultural Heritage Management Plan (CHMP) is the NON COMMERCIAL IN CONFIDENCE VERSION OF THE AGREED CHMA BETWEEN ALL PARTIES AND IS THE result of: a cultural heritage assessment and consultation with concerning the potential areas of land reclamation undertaken as part of the investigation of the proposed construction of a Marina development and mixed use development project and aspirations of Gia and Ngaro/Gia in relation to culture and traditions, which are inherited from past generations, maintained in the present and bestowed for the benefit of future generations.

This plan details the proposed management of the site identified during an onsite survey assessment and any subsequent surveys of the proposed land reclamation areas.

Input from the relevant Aboriginal parties was facilitated through a series of meetings.

The CHMP sets out procedures for mitigating any negative impact from the construction of the proposed Marina Development and associated activities on areas of cultural significance to the Aboriginal Parties.

It also defines the roles and responsibilities of the parties concerned namely the Aboriginal Parties, Shute Harbour Marina Development Pty Ltd the construction contractor/s.

The CHMP includes:

- An outline of cultural heritage management principles;
- The roles and responsibilities of the Aboriginal Parties, Shute Harbour Marina Development Pty Ltd and the construction contractor/s;
- Management plans to protect identified cultural places during the construction phase;
- Strategies for limiting the impact of the development on possible cultural artefacts located during construction;
- An Aspirations Social Enterprise model to be implemented both during construction and operation; and
- Channels for communication and dispute resolution

The CHMP is subject to an approved Environmental Impact Assessment process and development approvals to proceed with the proposed development.

2 The Aboriginal Respondent Parties

2.1 Gia Respondent Party

Elsie Kyle, Raymond Wake, Patricia Brimble and Marie Coleman represent the Gia respondent party who assert cultural connection, based on ancestry and tradition, to the Designated Area described in this CHMA

2.2 Ngaro/Gia/Gia Respondent Party

Raymond Prior, Sandra Hero, Carol Prior, Diana Ross, Renarta Prior and Charmaine Koroi represent Ngaro/Gia respondent party who assert cultural connection, based on ancestry and tradition, to the Designated Area described in this CHMA

2.3 Cultural Heritage Area

Shute Harbour Marina Development Pty Ltd recognises the cultural connection of the Gia and Ngaro/Gia People to the Designated Area.

Shute Harbour Marina Development Pty Ltd proposes to develop on and adjacent to Lot 2 (SP117389) and Lot 273 (HR1757) (referred to hereafter as the Project Area), Shute Harbour, Queensland (**See Map Appendix A**).

2.4 Obligations to address in Cultural Heritage Management Agreement

The Cultural Heritage Management Agreement (CHMA) should address and include but not be limited to, the following:

- The obligations of each party (e.g. Aboriginal group, construction company);
- The resources required to implement the CHMA and the responsible group or organisation nominated;
- A section defining the specific terms used so there is no confusion or misunderstanding during the implementation phase;
- An agreed conflict resolution process.
- This process should be fully described so that an agreed process to deal with all potential problems is adequately defined for all parties and covers all phases of the development
- A schedule of project activities and the processes required to implement mitigation option for Aboriginal cultural heritage sites that are located within the project area as well as within areas of Archaeology potential (i.e. auguring and, where applicable, test excavations to determine the nature and extent of the Archaeological material that may be contained within the identified areas);The

- processes required to implement management options for any Aboriginal cultural heritage sites;
- The timing of the implementation of these processes (e.g. allowing adequate time prior to construction activities commencing); Procedures to be followed in the case of accidental discovery of Aboriginal cultural material during the construction phase of the project; and
 - Any other matters reasonably necessary for successfully carrying out activities under the plan or agreement.
 - The CHS Reports have formed the basis for the preparation of this Cultural Heritage Management Plan (CHMP) or Cultural Heritage Management Agreement (CHMA).

2.5 Cultural Heritage Survey

The CHS survey report has revealed that: -No archaeological evidence for significant Aboriginal cultural heritage sites or materials was discovered during the cultural survey and site inspection of the Shute Harbour Marina development area. This result was not unexpected for two main reasons:

The vast majority of the study site is intertidal and sub-tidal (well below high water mark).

Pedestrian access for the cultural inspection was therefore largely limited to the (elevated) coastal margins of the development area, immediately adjacent to Shute Harbour Road. High tide on the morning of the cultural survey (7th March 2008) precluded access to the intertidal zone. Attempts to traverse the intertidal areas at low tide (pm) were not successful due to deep deposits of mud (which generally limited pedestrian access to the most landward margins of the development area).

Previous detailed archaeological surveys of the coastal fringe of the Shute Harbour project area have revealed a very high level of previous surface and subsurface ground disturbance and landscape modification (Barker 1991; Bird 2004).

The most dramatic disturbance has occurred as a result of the construction of Shute Harbour Road and other existing infrastructure (road drainage networks, transmission lines, optical fibre cable, water pipeline, dwellings

and businesses, land reclamation, boat ramps, etc). Barker (1991) noted that development work for Shute Harbour Road has *“completely altered the profile of the shoreline”*.

Whilst Barker (1991) located a possible Aboriginal shell midden along the margins of Shute Harbour Road in 1991, he noted that this site was highly disturbed as a result of cutting and filling operations for the construction of Shute Harbour Road. Subsequent attempts to relocate this midden site in 2003/04 have found no evidence of the site within a wide vicinity of the listed GPS coordinates (Bird 2004).

Based on the high level of past disturbance and landscape modification, this current report and several previous archaeological investigations have assessed the overall potential for locating intact Aboriginal cultural sites or materials along the coastal margins of the project area (in both surface and subsurface deposits) as very low to negligible (Barker 1991; Bird 2001, 2002a, 2002b, 2004).

Despite the apparent dearth of tangible Aboriginal archaeological sites or remains in the Shute Harbour Marina project area, the Aboriginal Parties have noted that this coastline retains a high level of cultural significance to them.

Consultation with Gia and Ngaro/Gia Aboriginal Parties has clearly demonstrated that they view the project area as a significant component of the cultural landscape of their traditional homelands. It is important to note that for the Aboriginal Parties, the significance of their homelands is not just manifested in tangible archaeological sites or artefacts. Rather, the cultural significance is manifested in their enduring spiritual ‘connection to country’. This connection has not diminished despite the historical dispossession of land. Ngaro/Gia and Gia people are today actively involved in revitalizing their cultural connections to their homelands.

Further to this, the Aboriginal Parties see the natural environment and the cultural landscape as integral parts of the Aboriginal heritage concept. Indigenous cultural values are viewed as being inextricably linked to the natural attributes of the landscape (cf. Ross 1996). 'Sites' of significance to Aboriginal people may include natural features of the landscape or components of the landscape, such as mountain ranges, bays, coastal headlands, river systems, stands of vegetation and rock outcrops. Burke *et. al.* (2000:38) notes that *"generally speaking, virtually all of the land has some inherent significance for Aboriginal people, although sacred and secular sites can possess special Aboriginal significance"*.

Ngaro/Gia and Gia Aboriginal Parties have confirmed that the Shute Harbour coastal area (including the Shute Harbour Marina development site) remains culturally significant to them for the following reasons:-

- The area is part of their traditional homelands (land and sea country) and as such retains immeasurable cultural and spiritual values;
- The Aboriginal Parties believe that there is a possibility that intact Aboriginal cultural sites, artefacts or materials may remain in the project area (in the intertidal and subtidal zones, possibly buried within subsurface deposits of mud and other sediments);
- Some highly significant Aboriginal cultural sites (including burials, rock art, ceremonial sites, tidal fish traps, shell middens and stone artefacts) have been recorded in similar coastal settings (sheltered bays) in the Whitsunday region (on the mainland and offshore islands);
- The Aboriginal Parties report that coastal bays such as this one were economically important to the Gia and Ngaro/Gia peoples in traditional times, as fishing grounds, and for hunting and gathering both animal and plant resources. The marine, estuarine and riparian

- environments contained a plethora of birds, fish, shellfish, marine and terrestrial mammals and plant foods;
- Elders report that they have continued to visit the Shute Harbour area and adjacent coastline in contemporary times, to fish, collect shellfish and collect bush tucker and medicines;
 - The Aboriginal Parties are today actively involved in 'caring for country' along the Whitsunday coastline (e.g.: through turtle conservation and monitoring programs, Coast Care and native plant revegetation programs, etc). They maintain an active interest in land/sea management and development projects in their traditional homelands.
 - The results of this current study and previous cultural heritage investigations in the Shute Harbour Marina project area would suggest that the proposed development project is unlikely to have any major detrimental impacts to the Aboriginal archaeological record.
 - However, notwithstanding this purely archaeological assessment, the Gia and Ngaro/Gia Aboriginal Parties maintain their concern that development operations for the proposed project may impact unrecorded surface or subsurface cultural sites or items (especially along the immediate coastal fringe).
 - On this basis, they request that the development proponent appoint Gia and Ngaro/Gia representatives to monitor development operations during dry-land works.

The Aboriginal Parties have raised some queries and concerns relating to the potential long-term impacts of the proposed project on the natural environment of the Shute Harbour area (egg: mangrove and fringing coastal vegetation, turtle populations, fish habitat and other marine fauna,

potential pollution and spillage of oil and diesel in the bay, etc). Feedback on these issues is being provided to Aboriginal Parties as data is gathered during the EIS process.

The cultural report makes several recommendations for follow-up work to address the issues raised (egg: revegetation of reclaimed land areas with local native plants with direction and involvement of Aboriginal Parties, replanting of mangrove species and clean-up of pollution at the public boat ramp).

During the course of this cultural heritage study the Aboriginal Parties did not raise any major concerns, constraints or objections to the proposed development project, provided that the development proponent undertake to implement the recommendations of the cultural heritage report.

2.6 Cultural and Environmental Aspects:-

2.6.1 Recommendation 1:

The Aboriginal Parties maintain some concerns that Aboriginal archaeological sites or cultural materials (such as stone artefacts) might exist in intertidal and/or subtidal deposits within the Shute Harbour Marina project area.

On this basis, they request that a cultural monitoring/site inspection program be implemented for development operations, including any removal of fringing vegetation along the coastal margins, and the excavation of coastal deposits within the bay.

It is recommended that there be further discussions between the Aboriginal Parties and the proponent regarding the timing, duration, logistics, number of monitoring personnel and administrative arrangements for cultural monitoring, once the proponent and/or their contractors have devised a detailed (post approval) construction management plan.

The Aboriginal Parties have advised that it is important that future cultural monitoring and site inspection programs take into account the fact that two distinct Aboriginal groups, the Gia and Ngaro/Gia peoples, are involved in this cultural heritage project.

On this basis, they request that field officer representation in cultural monitoring programs is always equally divided between these two groups.

It is noted that from a purely archaeological perspective the overall potential for locating intact Aboriginal archaeological sites or materials within the intertidal and subtidal project area is assessed as low.

It is also noted that the cultural monitoring program will be influenced by practical logistical issues such as gaining access to the development site for monitoring and inspection purposes (given that the site must be drained prior to development works and it has deep deposits of mud and sediments).

On this basis, it is recommended that cultural monitoring of development operations and excavation works be targeted to dry-land development works (once the work site is drained).

2.6.2 Recommendation 2:

In the event that any Aboriginal cultural heritage sites, materials or values are discovered during development operations and /or cultural monitoring, the following recommendation should apply: -

- All development work and other activities at that location should cease, pending a thorough inspection of the find/s by Aboriginal Parties representatives. Optimally, the finds should be demarcated and protected from any potential impacts with pegs, flagging tape and/or other appropriate temporary barriers with a reasonable buffer area around them (the 'reasonable' buffer zone to be determined by the Cultural Monitors, Site Supervisor and/or other appropriate on-site personnel). Development work can continue outside the demarcated buffer zone. Following their assessment of the find/s, the Aboriginal Parties will provide advice on appropriate management action. Depending on the cultural significance of the find/s, the Aboriginal Parties and/or the development proponent may wish to seek independent technical advice from the project archaeologist and/or the Cultural Heritage Coordination Unit, Department of Natural Resources and Water. Development work at the location of the finds should not recommence until appropriate cultural heritage management action has been implemented to the satisfaction of all stakeholders.

2.6.3 Recommendation 3:

In the unlikely event that human skeletal material is discovered during development works, it is recommended that all development operations cease immediately within 100 m of the remains. Optimally, the finds should be demarcated and protected from any potential impacts with pegs, flagging tape and/or other appropriate temporary barriers. The

Queensland Police, Cultural Heritage Coordination Unit of the Department of Natural Resources and Water, as well as Aboriginal Parties representatives should be contacted as a matter of urgency. Currently, the Queensland Police, Department of Natural Resources, Water, and Aboriginal Parties have established policy and procedures to ensure that confirmed indigenous burials are treated in a manner consistent with Aboriginal traditions. Minimal disturbance to the remains should be a priority, and advice should be sought from respondent Party Aboriginal Elders on ways to deal with the material in a culturally appropriate and sensitive manner. A copy of the Department of Natural Resources and Water 'Draft Burial Policy' is available from DNRW and/or the project archaeologist.

2.6.4 Recommendation 4:

Personnel and contractors involved in the development project should undertake a cultural heritage induction prior to commencement of development operations. Workers must be provided with information on the types of Aboriginal cultural heritage sites likely to be found in the project area, along with specific guidelines to follow in the event of the discovery of cultural finds, or suspected cultural finds. Workers should be made aware of the provisions of the *Aboriginal Cultural Heritage Act 2003* and in particular, the 'Duty of Care Guidelines' under this legislation.

2.6.5 Recommendation 5:-

The Aboriginal Parties request that the proponents undertake to vegetate the (reclaimed) development site with local native plant species to enhance the natural, cultural and aesthetic values of the development site.

The Aboriginal Parties wish to contribute their ethnobotanical knowledge and expertise in selecting appropriate native plants (including traditional

bush tucker and medicinal plants) and in designing and landscaping the project site, as well as providing hands-on labour for such works.

2.6.6 Recommendation 6:-

Mangroves currently located along the foreshore and intertidal zone in the Shute Harbour Marina development area are to be cleared and removed as part of the development project. The Aboriginal Parties have noted their preference for the proponent to implement works to replant mangroves along the margins of the (reclaimed) development land, in preference to waiting for the natural regrowth of this vegetation (which may take many years). The Aboriginal Parties have indicated that they would like to be actively involved in mangrove replanting and revegetation works.

2.6.7 Recommendation 7:-

The Aboriginal Parties request that the development proponent make a commitment to clean up rubbish and pollution along the Shute Harbour foreshore and the margins of the Shute Harbour Marina development area.

2.7 Cultural Aspirations and Other Issues:-

2.7.1 Recommendation 8:-

The Aboriginal Parties request that the proponent consider using appropriate interpretative signage within the proposed development as a means to recognize and acknowledge the Aboriginal Parties of the project area and the Whitsunday region. The Aboriginal Parties have suggested that interpretative signage might include language names for the project area and its natural features (e.g.: the bay, local plants, terrestrial and marine animals, etc). Signage might also include information on the cultural values of the project area and its place in the wider cultural landscape of the Whitsunday region. To this end, it is recommended that

the proponent continue to consult with Elders and other knowledgeable Aboriginal Parties regarding appropriate language names for incorporation at the project site.

2.7.2 Recommendation 9:-

The Aboriginal Parties have entered into discussions with the development proponent regarding the establishment of a Cultural Centre and 'Yarning Circle' as part of the Shute Harbour Marina Development project. Discussion between the parties is continuing at the current time and outcomes will be incorporated into the Cultural Heritage Management Plan and associated agreements between the parties.

It is noted that all cultural and intellectual property rights associated with the establishment and operation of any such Cultural Centre will always remain with the Gia and Ngaro/Gia Aboriginal Parties.

The Cultural Centre and Yarning Circle will be a multi-functional space. Some intended uses may include the sale of indigenous arts and crafts, cultural displays, and performance area for cultural dancers, meeting place, tourist interpretative centre, business/administrative base and a keeping place for significant cultural items and artefacts.

2.7.3 Recommendation 10:-

The Aboriginal Parties have advised that they wish to have further discussions with the development proponent, the Whitsunday Shire Council and any other relevant stakeholders (as required) regarding the future use of the strip of land on the northern side of Shute Harbour Road (land currently proposed to be returned to public ownership). Specifically, the Aboriginal Parties have noted that they intend to seek support from the development proponent in acquiring ownership and/or use of the land at Lot 273 on HR1757 (currently zoned commercial), with a view to establishing an art and craft workshop and cultural workspace, to support

the planned Cultural Centre identified and agreed with the proposed Shute Harbour Marina Development Project and Shute Harbour Marina Development Pty Ltd. Should the identified land not be available an alternative, suitable area is requested.

2.7.4 Recommendation 11:-

The Aboriginal Parties have requested that the development proponent enter into further discussions with them regarding future employment, training, tendering and other potential economic opportunities for the construction and operational phases of the development project. In particular, the Aboriginal Parties would like to seek assistance/preferred opportunities from the proponent in tendering for future contracts associated with the project (e.g.: landscaping and revegetation works, building works, security contracts, caretaking and management roles, etc).

2.7.5 Recommendation 12:-

As per the provisions of Part 7 of the *Aboriginal Cultural Heritage Act 2003 (ACHA)* it is recommended that the above-listed recommendations are incorporated into a Cultural Heritage Management Plan (CHMP) for the proposed development project, to be signed by the 'endorsed Aboriginal parties' (or their nominated representatives) and representative/s of the development proponent.

2.8 This Cultural Heritage Management Agreement (CHMA)

This Cultural Heritage Management Agreement (CHMA) addresses and includes but is not limited to, the following:

- The obligations of each party (e.g. Aboriginal groups, construction company);
- The resources required to implement the CHMA and the responsible group or organisation nominated;

- A section defining the specific terms used so there is no confusion or misunderstanding during the implementation phase;
- An agreed conflict resolution process. This process will be fully described so that an agreed process to deal with all potential problems is adequately defined for all parties and covers all phases of the development;
- A schedule of project activities;
- The processes required to implement mitigation options for Aboriginal cultural heritage sites that are located within the project area as well as within areas of Archaeology potential (i.e. auguring and, where applicable, test excavations to determine the nature and extent of the Archaeological material that may be contained within the identified areas);
- The processes required to implement management options for any Aboriginal Cultural Heritage sites;
- The timing of the implementation of these processes (e.g. allowing adequate time prior to construction activities commencing);
- Procedures to be followed in the case of accidental discovery of Indigenous cultural material during the construction phase of the project; and
- Any other matters reasonably necessary for successfully carrying out activities under the Cultural Heritage Management Plan or Cultural Heritage Management Agreement.

The CHS Report and Aboriginal Parties consultation has formed the basis for the preparation of this Cultural Heritage Management Plan (CHMA) or Cultural Heritage Management Agreement (CHMA)

3 TERMINOLOGY

Where items in this Section are italicised, they are further defined in this listing.

Aboriginal Party: Refers to the Gia and Ngaro/Gia peoples represented by the respondents as listed in this CHMA.

Aboriginal Tradition: Means the body of traditions, observances, customs, values and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

Act: Means the *Aboriginal Cultural Heritage Act 2003 (QLD)*.

Archaeologist: Refers to the Archaeologist appointed for the project (in accordance with **Section 31**).

Artefact Scatter: Means an isolated artefact.

Aspirations: Means a desire or ambition to maintain, celebrate and share Aboriginal Parties culture through social enterprise opportunities and programs during the construction and operation of SHMD.

Business Day: Means any day, other than a Saturday, Sunday or Public Holiday

CHMA: Means this Cultural Heritage Management Agreement.

CHS: Refers to the Cultural Heritage Surveys of the Project Area undertaken by Northern Archaeology Consultancies Pty Ltd.

CHS Report: Refers to the reports prepared by Northern Archaeology Consultancies Pty Ltd following the completion of the Cultural Heritage Surveys referred to in **Section 2.5** of this CHMA.

Commencement Date: Refers to the date on which this *CHMA* is signed by the Respondent and Sponsor (Development Proponent) *Parties*.

Confidential Information: means the following:

- a) All anthropological or ethnographic information, and information concerning indigenous law and custom, cultural heritage and areas of traditional significance relating to the respondent Aboriginal groups; and
- b) Any commercial information of a confidential nature relating to business and financial activity of the sponsor, including but not limited to information about the sites inspected under cultural heritage conditions; which is received in writing or acquiring writing, orally or through observation, and is identified as being confidential or is received or acquired in circumstances which the recipient ought reasonably to have known that the information should be confidential;

Construction: Refers to all construction activities associated with the *Project* by contractors or sub-contractors employed by Shute Harbour Marina Development Pty Ltd.

Construction Personnel: Refers to senior construction personnel nominated by Shute Harbour Marina Development Pty Ltd involved in initial ground clearing / earthworks within the Project Area.

Complete Documentation: means authorisation to sign formal CHMA Agreement on behalf of Sponsor Development Proponent (**Refer Appendix B**)

Cultural Heritage: Has the same meaning as that under the Act;

Cultural Heritage Activities: Means the training, monitoring and assessment activities including Cultural Heritage Management Plan Implementation and Review Committee.

Cultural Heritage Management Plan (CHMP): Refers to this Cultural Heritage Management Plan or Cultural Heritage Management Agreement.

Cultural Heritage Monitoring Program (CHMOP): Refers to the planning scheduling and reporting program to guide the delivery of Cultural Heritage monitoring

Cultural Heritage Site: refers to the following:

- a) an object (including Aboriginal burial remains) of significance to Aboriginal people in accordance with *Aboriginal tradition* including objects, natural or artificial, that were used for, or adapted for, any purpose connected with traditional cultural life of Aboriginal people past or present;
- b) an area that is of particular significance to Aboriginal people in accordance with Aboriginal tradition; or

c) an area which is or was associated with the Aboriginal people and, which should be preserved because of its significance.

Cultural Heritage Team: Refers to a ***equally represented*** from the Gia respondent party and the Ngaro/Gia respondent party and an *Archaeologist* Elders and Coordinators who will undertake further cultural heritage work if required within the *Project Area* as outlined in this CHMA. Monitoring will be undertaken as per the Self-determination fixed price contract arrangement contained within.

Cultural Officer: Refers to the Cultural Officer responsible for cultural heritage coordination appointed by Shute Harbour Marina Development Pty Ltd for the project in accordance with **Section 26**.

Dispute: means a dispute between Parties with respect to this CHMA or any of its provisions

Dispute Notice: Means a notice given by either Party under **Clause 18.2**.

End Date: Means the date on which all construction activities by Shute Harbour Marina Development Pty Ltd within the *Project Area* have ceased, or a date specified by way of written notice from Shute Harbour Marina Development Pty Ltd to the Aboriginal Parties representing Gia and Ngaro/Gia people, whichever is the earlier.

Environmental Impact Assessment (EIS): Means the EIS for Shute Harbour marina Development declared by the Coordinator-General declared as a 'significant project' for which an Environmental Impact Statement (EIS) is required in accordance with Part 4 of the *State Development and Public Works Organization Act 1971*.

The EIS also refer to The Commonwealth Minister for the Environment and Heritage decision that the project is a 'controlled action' and subject to assessment under the provisions of the *Environment protection and Biodiversity Conservation Act 1999 (Commonwealth)*.

It also refers to matters arising from The Commonwealth Minister's decision, that the project constituted a controlled action under Section 75 of the EPBC Act.

An EIS is an assessment of the likely positive and/or negative influence a project may have on the environment. "Environmental Impact Assessment can be defined as: The process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made." The purpose of the assessment is to ensure that decision-makers consider environmental impacts before deciding whether to proceed with new projects. This CHMA is subject to EIS approval and development Approvals by the Whitsunday Regional Council

Execution Date: means the day on which this CHMA is executed by the parties and if executed on different days, the later of those days.

Find: Means any artefact that Shute Harbour Marina Development Pty Ltd and the Aboriginal Parties suspect is cultural heritage other than suspected human remains.

GST: has the meaning given to the Australian Taxation System (Goods and Services Tax)

Keeping Place: Means a secure place for the storage of any cultural heritage to be provided by Shute Harbour Marina Development Pty Ltd during the surface disturbance works as described in this CHMA.

Lease: means the grant of a term lease under the Shute Harbour Marina Development Community Title arrangements for the Cultural Centre and Yarning Circle; performance space.

Monitor: Refers to representatives from the Aboriginal Respondent Parties who will perform the services of a *Monitor* during the surface disturbance phase of the *Construction* phase of the *Project* as outlined in this CHMA.

Monitoring Roster: Refers to the Monitoring Roster for the nominated *Monitors*.

NR&W: Means the Queensland State Department of Natural Resources and Water, formerly the State Department of Natural Resources, Mines and Water.

Parties: Means Shute Harbour Marina Development Pty Ltd and the Aboriginal Parties representing Gia and Ngaro/Gia People.

PPE : means Personal Protection Equipment

Pre-Construction: Means all activities undertaken prior to the commencement of *Construction*.

Project: Refers to all activities, including pre-construction and construction and operation within the *Project Area* by the Shute Harbour Marina Development Pty Ltd or its agents or sub-contractors.

Project Area: Refers to on and adjacent to Lot 2 SP117389 and Lot 273 HR 1757, Shute Harbour, Queensland.

Public Holiday: has the meaning given in the Acts Interpretation Act 1954 (QLD)

Receipt date: means the day on which a Dispute Notice is taken to have been received in accordance with **Clause 18.2**

SHMD: Refers to Shute Harbour Marina Development Pty Ltd.

SHMDABDP: Means Shute Harbour Marina Development Aboriginal Business Development Program detailed in the Aspirations Section of this CHMA. **Refer Clause 54.3**

Shute Harbour Marina Development Pty Ltd: Refers to the Shute Harbour Marina Development Pty Ltd including its employees, contractors, agents, subsidiaries, invitees from time to time or assignees or successors.

Significant Aboriginal Area: Has the meaning given to it in the *Aboriginal Cultural Heritage Act 2003*.

Significant Aboriginal Object: Has the meaning given to it in the *Aboriginal Cultural Heritage Act 2003*.

Site Manager/Officer: Refers to a person nominated by Shute Harbour Marina Development Pty Ltd who will fulfil the role of Site Manager/Officer as outlined in **Section 27**

Sponsor: means Shute Harbour Marina Development Pty Ltd or Developer Proponent

State: means the State of Queensland

Supplier: has the meaning given in the Australian Taxation System (Goods and Services Tax) Act 1999 Commonwealth

Tax Invoice: has the meaning given in the Australian Taxation System (Goods and Services Tax) Act 1999 Commonwealth

Work Schedule: Refers to the Work Schedule prepared by Shute Harbour Marina Development Pty Ltd, which outlines the timing of, and activities associated with the *Project*.

3 INTRODUCTION TO THIS CHMA

- 3.1** The Project Area is on land and water, which has cultural heritage significance to the Aboriginal Parties representing Gia and Ngaro/Gia People.
- 3.2** This Cultural Heritage Management Agreement commences on the Commencement Date, and ends on the End Date.
- 3.3** The Parties, by mutual agreement, may amend in writing the CHMA to remedy provisions that have been found to be unsatisfactory.
- 3.4** This CHMA provides information on the roles and responsibilities of the Shute Harbour Marina Development Pty Ltd and the Gia respondent party and Ngaro/Gia respondent party to facilitate co-operation between the parties and address cultural heritage issues within the Project Area and any issues, which may arise during both the Project's construction and operation.
- 3.5** This CHMA comprises five distinct elements:
- (1) Objectives of the CHMA;
 - (2) Principles of Cultural Heritage Management;
 - (3) Responsibilities of each party to this CHMA; and
 - (5) Aspirations social enterprise for long-term partnerships with SHMD and Aboriginal Parties sustained culture inherited from past generations, maintained in the present and bestowed for the benefit of future generations.
- 3.6** Headings in this CHMA are for convenience only, and do not affect interpretation.
- 3.7** A singular word includes the plural and vice versa.
- 3.8** A word, which suggests one gender includes the other gender;
- 3.9** If a Party to this document is made up of more than one person, or a term is used in this document to refer to more than one Party:
- (a) an obligation of those persons is joint and several; and
 - (b) a right of those persons is held by each of them severally.
- 3.10** This CHMA is being undertaken under Part 7 of the *Aboriginal Cultural Heritage Act 2003*. It covers Shute Harbour Marina Development Pty Ltd Indigenous cultural heritage compliance obligations in relation to all Aboriginal Cultural Heritage including all Significant Aboriginal Objects and Significant Aboriginal Areas in the

Project Area. This CHMA covers all Shute Harbour Marina Development Pty Ltd activities in the Project Area;

- 3.11** The respondents representing Gia and Ngaro/Gia people warrant that they constitute the Aboriginal Party for the purposes of the *Aboriginal Cultural Heritage Act 2003* in relation to all parts of the Project Area which this CHMA relates, and further that they:
- (a) have particular knowledge about traditions, observances, customs or beliefs associated with the Project Area; and
 - (b) either they:
 - (i) have responsibility under Aboriginal tradition for some or all of the Project Area, or for Significant Aboriginal Objects located or originating in the Project Area; or
 - (ii) are members of a family or claim group that is recognised as having responsibility under Aboriginal tradition for some or all of the Project Area, or for Significant Aboriginal Objects located or originating in the Project Area.

4 STATUTORY REQUIREMENTS

4.1 This CHMA is agreed between the parties on the basis that it is in conformity with the *Aboriginal Cultural Heritage Act 2003*;

The Act defines Aboriginal Cultural Heritage as anything that is:

- (a) a significant Aboriginal area in Queensland; or
- (b) a significant Aboriginal object; or
- (c) evidence, of Archaeology or historic significance, of Aboriginal occupation of an area of Queensland.

4.2 Should human remains be uncovered during the project then legal provisions as laid down in the Coroner's Act, Police requirements and policies as well as the *Aboriginal Cultural Heritage Act 2003* would apply. This requires the Police and Department of Natural Resources and Water to be contacted (**see Section 34 of this CHMA**)

5. COMPLIANCE WITH THE ACT

5.1. The parties acknowledge that:

- a) Shute Harbour Marina Development has a duty of care with respect to Cultural Heritage pursuant to the Act;
- b) The Aboriginal Parties and their representatives will participate in the Cultural Heritage Activities in accordance with obligations arising from their asserted traditional laws and customs.

5.2 The Parties have:

- a) consulted and negotiated about issues to be addressed in the CHMA's development about the terms of the CHMA; and
- b) made every reasonable effort to reach agreement about the contents of the CHMA.

5.3 Cultural Heritage Activities maximise the suitability of the management arrangements for the effective protection and conservation of cultural heritage in the CHMA Area.

5 Aboriginal Respondents Bound in this Cultural Heritage Management Agreement

5.1 *Gia Respondent Party*

This CHMA binds parties:

Elsie Kyle, Raymond Wake, Patricia Brimble and Marie Coleman, representatives of Gia people as listed as respondent party, acknowledge and agree that:

- a) they are authorised as a representative of Gia People to enter into the CHMA and by entering this CHMA bind the Gia People.
- b) prior to signing this CHMA, they received independent advice in respect to this CHMA.
- c) Queensland Cultural Heritage and Native Title Management Services Pty Ltd (QCHANTMS) ABN: 67 126 281 043 / ACN 126 281 043 is authorised to manage the administrative and financial arrangements during the construction monitoring phase detailed in this CHMA and by entering this CHMA bind this organisation;
- d) Raymond Wake respondent to this agreement has tabled a proxy permitting Raylene Van Veen (nee Wake) to be bound by this Agreement of his behalf (**Refer Appendix I**)

5.2 *Ngaro/Gia Respondent Party*

CHMA binds parties:

Raymond Prior, Sandra Hero, Carol Prior, Diana Ross, Renarta Prior and Charmaine Koroi, representatives of Ngaro/Gia people as listed as respondent party, acknowledge and agree that:

- a) they are authorised as a representative of Ngaro/Gia peoples to enter into the CHMA and by entering this CHMA bind the Ngaro/Gia People.
- b) prior to signing this CHMA, they received independent advice in respect to this CHMA.
- c) Gudjuda Reference Group Aboriginal Corporation ABN: 65 884 273 677 is authorised to manage the administrative and financial arrangements during the construction phase detailed in this CHMA and by entering this CHMA bind the Ngaro/Gia People;
- d) Diana Ross responded to this Agreement has tabled a proxy to Cilla Pryor to be bound to this CHMA on her behalf (**Refer Appendix K**)

5.3 Shute Harbour Marina Development Pty Ltd Sponsor Party

3.3.1 Shute Harbour Marina Development Pty Ltd acknowledges and agrees that it is authorised to enter into and is bound by this CHMA.

3.3.2 David Quinlan, Project Manager, Shute Harbour Marina Development Pty Ltd has been authorised by Shute Harbour Marina Development Pty Ltd for the Shute Harbour Marina Projects Designated Area.

6 OBJECTIVES

The objectives of this CHMA are:

1. To provide procedures to implement recommendations contained within Northern Archaeology Consultancies' (2008) report on a Cultural Heritage Survey of the Project Area of Lot 2 Sp117389 and Lot 273 HR 1757;
2. To provide procedures to identify protect and / or manage cultural heritage sites that are or may be uncovered within the Project Area;
3. To involve the Aboriginal Respondent Parties and their nominated Cultural Heritage team (monitors) in the management of Aboriginal cultural heritage sites, including those within or that may be uncovered within the Project Area;
4. To provide procedures to satisfy all relevant statutory requirements;
5. To set Agreements in place in relation to work required as outlined in this CHMA; and
6. To allow Shute Harbour Marina Development Pty Ltd to fulfil its commercial obligations and objectives.
7. SHMD voluntarily seeks to actively support the respondent Aboriginal Parties identified Aspirations in this CHMA by actively contributing to their realisation and including guiding principles and opportunities in this CHMA.
8. The Aboriginal Respondent Parties acknowledge that the SHMD 's voluntary support and active contribution towards assisting the Aboriginal Parties attain their Aspirations as defined in this CHMA is beyond the legislative requirements and obligations of Duty of Care as a sponsor as defined under the Queensland Cultural Heritage Act and acknowledges the collaborative partnerships fostered in this Agreement.

7 PRINCIPLES OF CULTURAL HERITAGE MANAGEMENT

To achieve the objectives in **Section 6.0**, the following principles of Aboriginal Cultural Heritage Management are to be adopted:

1. An attitude of respect, understanding and value for cultural heritage materials specifically and of Aboriginal culture in general. This attitude is fundamental to effective cultural heritage management. To facilitate an awareness of Aboriginal Cultural Heritage, a suitable induction program will be included for all construction personnel associated with and involved in the Project;
2. Acknowledgment by all parties that the project has the potential to damage Aboriginal cultural heritage sites that are or may be present in the Project Designated Area and hence the necessity to implement a series of actions and procedures to minimise or manage the potential impact of the Project on any cultural heritage sites that are or may be uncovered during the Project;
3. Aboriginal cultural traditions will be acknowledged and cultural heritage values will be conserved, protected and / or managed in accordance with statutory requirements (**Refer Section 6.0**);
4. The impact of the Project on any Aboriginal cultural heritage sites that are or may be present within the Project Designated Area will be managed through Cultural Heritage Management procedures as agreed between the Parties and as outlined in this CHMA;
5. Acknowledgement of the cultural significance of Aboriginal Cultural Heritage sites to the Gia and Ngaro/Gia People;
6. Acknowledgement that the cultural heritage management strategies must be practical and realistic and take account of commercial realities; and
7. Acknowledgment that cultural and intellectual property rights associated with Aboriginal Parties cultural heritage sites remains the property of the Gia and Ngaro/Gia People bound by this Agreement through the respondent parties.

With these principles in mind, this CHMA seeks to:

- a) Ensure direct involvement of the Gia and Ngaro/Gia People through the respondent Aboriginal parties in the development and implementation of this CHMA;

- b) Ensure direct involvement of Gia and Ngaro/Gia People through the respondent Aboriginal parties in all actions deemed necessary to identify, protect and / or manage any cultural heritage sites that are within or may be uncovered in the Project Designated Area during surface disturbances construction activities; and
- c) Engage, when appropriate, professional expertise such as an Archaeologist.

8 RESPONSIBILITIES

It is important that all parties understand and accept their responsibilities under the CHMA.

Detailed **Sections 24 & 25** are those responsibilities as they relate to Shute Harbour Marina Development Pty Ltd and the Gia and Ngaro/Gia People through the respondent Aboriginal parties.

9 THE PROJECT

This CHMA covers all activities associated with the construction of the Project that will cause surface disturbance.

This CHMA also covers activities associated with the principles and implementation of agreed Aspirations/Social Enterprise Arrangements contained within this CHMA - **Refer Section 55.**

To be clear, the CHMA does not cover any activities:

- a) that do not cause surface disturbance along coastal margins as per recommendations detailed in the cultural heritage survey report; or
- b) that are not associated with the construction of the Project.

To be clear, the CHMA has an attached set of guiding principles and Social Enterprise arrangements to advance described Aboriginal Parties Aspirations. The CHMA does not cover any activities:

- c) that are not associated with the development and implementation of agreed Aspirations/Social Enterprise Arrangements outlined in this CHMA

10 IMPLEMENTATION OF THE CHMA

The CHMA sets out all the arrangements that exist between the Parties with respect to the management of Cultural Heritage in the CHMA Designated Area. Any such amendment will be effective only if the amendment is:

- a) made in writing and signed by all the Parties; and
- b) recorded by way of replacement of, addition to or subtraction from, the land marked as the CHMA Designated Area on the maps contained in this CHMA refer

11 Release and Waiver

By undertaking the Cultural Heritage Activities set out in the CHMA, the Aboriginal respondent party agree that they will not attempt to obtain stop orders or injunctions to prevent the Project from being undertaken provided that SHMD complies with the guidelines set out by Cultural Heritage Act .

Shute Harbour Marina Development Pty Ltd will carry out the project in accordance with the provisions of this CHMA.

However, if

- a) either Parties are in dispute; or
- b) either Party do not fulfil some or all of their obligations under this CHMA, the other Party agrees to continue to carry out the Project in accordance with its obligations under this CHMA, to the extent that is reasonable or practicable to do so.

12 COMMENCEMENT OF TERM

12.1.1 Commencement

This CHMA commences from the date that it is signed by all identified Parties.

12.1.2 CHMA Operational Period

This CHMA will continue to operate until all activities associated with the Construction that cause surface disturbances have been completed and the Aspirations Implementation phase of the Project as detailed in this Agreement.

12.1.3 Phases of CHMA

To be clear, this CHMA has two distinct phases in its implementation:

- a) Activities associated with construction that causes surface disturbances.
- b) The Governance partnership and business planning to realise Aspirations as described in this CHMA
- c) The implementation of the Aspirations to independent commercial management of business enterprises by Gia and Ngaro/Gia people as defined in this CHMA

13 INTELLECTUAL PROPERTY

1. The intellectual property of any information regarding the Cultural Heritage clause of the CHMA Designated Area will not pass to Shute Harbour Marina Development Pty Ltd.

14 CONFIDENTIALITY

Each Party undertakes not to disclose 'Confidential' information without the written consent of each of the Parties unless:

- (a) It is required by law; or
- (b) It becomes public knowledge (other than in breach of this clause);
- (c) it was received from another person having unrestricted legal right to disclose the information
- (d) It is disclosed to the Parties accountants, financiers, financial institutions, legal advisors, or employees on their undertaking to keep the information confidential in accordance with this agreement.
- (e) to enable the carrying out of the Project; or
- (f) as agreed in writing by all parties.
- (g) any information that is provided by a Party to another Party that is not available on the public record and that is identified as being "confidential' will not be disclosed

15 Release of Public Information

The Parties agree to release details of the CHMA negotiations process and cultural aspirations model to advance the sustainability of the Aspirations Social Enterprise Arrangements, Development Approvals and Environmental Impact Assessment purposes, economic viability requirements, and profile the positive partnership arrangements developed and as described in this CHMA.

16 Media

All parties endorse mutually agreed proactive media whereby the Aspirations, partnerships and community relations may promote or profile the guiding principles and partnership activities in this CHMA including the Aspirations Agreement as described in this CHMA

17 AMENDMENT

This CHMA may only be amended by a written agreement between all the Parties.

18 ASSIGNMENT AND NOVATION

1. SHMD may assign or novate its rights and obligations under this CHMA in whole or in part to any other party, or related body corporate to such party, who requires or holds an interest in the Project and who agrees to be bound by SHMD's obligations under the CHMA:
 - (a) other than its rights and obligations and
 - (b) without the consent of Gia and Ngaro/Gia Peoples through the respondent Aboriginal parties.
- 2 Once the other Parties have agreed to accept such obligations, SHMD will no longer be bound by those obligations.
- 3 SHMD will ensure that any other Party to whom this CHMA is assigned is aware of its obligations under the CHMA and will monitor the implementation of the CHMA by that other Party.
- 4 SHMD will ensure that the other party formal enters into a written agreement as is bound to this agreed CHMA between all parties
- 5 SHMD will notify the Aboriginal Parties within fourteen working days of their intent to novate its rights and obligations (in whole or in part) to any other party.

19 DISPUTE RESOLUTION

19.1 Dispute Procedures

If a dispute arises in the course of implementation of this CHMA the following procedures will apply:

- (a.1) Wherever possible, issues will be negotiated directly between the Cultural Heritage Team and / or Monitor and Shute Harbour Marina Development Pty Ltd Site Manager/Officer or Cultural Officer during the surface disturbance construction phase and
- (a.2) Wherever possible, issues will be negotiated directly between the Cultural Heritage Team and / Monitor and Shute Harbour Marina Development Pty Ltd Marina Manager during the operational phase
- (b) If these discussions are unsuccessful, the issues will be referred to the CHMA Implementation and Review Committee.
- (c) A dispute will be deemed to exist only after those discussions have failed to resolve the matter.

19.2 Dispute Notice:

If a dispute arises under this CHMA, the Party alleging the dispute will send a written Dispute Notice to all other Parties, setting out the terms of the dispute.

19.3 Dispute Resolution Meeting:

The parties will then convene a meeting within three (3) business days of receipt of the Dispute Notice to attempt to resolve the dispute.

19.4 Mediation:

If the Parties are unable to convene a meeting(s) within three (3) business days of receipt of the Dispute Notice and/or are unable to reach agreement at such meeting(s) within five (5) business days of receipt of the Dispute Notice, the Parties may appoint a mutually agreeable mediator, or either Party may request that the Department of Natural Resources and Water appoint a mutually agreed mediator to provide mediation assistance to resolve the dispute between the Parties.

19.5 Participation in Meetings:

The Parties agree to participate in any agreed dispute resolution meeting(s) or mediation in an open and conciliatory manner and to endeavour to reach a mutually acceptable compromise to the issues in dispute.

20 CONTRACT OFFICERS

20.1 Nominated Contract Officers

- a) The Aboriginal Parties have each appointed a Contract Officer to whom all administrative communications required under this CHMA are to be directed.
- b) The nominated Aboriginal Parties Contract Officers are:
 - i. Contract Officer Eddie Smallwood as the representative of the Gudjuda Reference Group Aboriginal Corporation ABN 65 884 272 677 (Refer Appendix D)
 - ii. Contract Officer David Mailman as the representative of the Queensland Cultural Heritage and Native Title Management Services Pty Ltd (QCHANTMS) ABN: 67 126 281 043/ ACN: 126 281 043. (Refer Appendix F)
- c) All Parties are entitled to rely upon advice provided by the Contract Officers as the informed and final decision of the respondent Aboriginal Party the Contract Officers are nominated to represent, and any advice provided by an approved Contract Officer will bind the relevant Party to act in accordance with the terms of the advice provided consistent with the conditions detailed in this CHMA.

21 General

21.1 Full Effect CHMA

Each Party must do all things reasonably necessary to give full effect to this CHMA

21.2 Waiver

A right given under this CHMA may only be waived in writing, executed by the party giving the waiver

This CHMA can only be varied by written agreement executed by each party

21.3 Provisions

22.3.1 If part or all of any clause of this CHMA is void, illegal or enforceable, that part may be severed from this CHMA and the remaining provisions of this CHMA continue to bind all parties to the CHMA

22.3.2 This CHMA constitutes the entire agreement between the parties and may only be superseded by varied agreement by written agreement by each party and mutually agreed through the CHMA Implementation and Review Committee (Refer Section 20)

22 Non-Indigenous Heritage Management Plan

- a) While this CHMA compliments the overall cultural heritage objectives of the site, SHMD will also develop a **non-Indigenous Heritage Management Plan for the site**.
- b) Shute Harbour Marina Development Pty Ltd will acknowledge that this CHMA is a separate agreement between the Aboriginal Parties and SHMD to that of a non-Indigenous Heritage Management Plan.

23 NOTICES

23.1 Execution of Notices

All notices to be given under this CHMA are deemed to have been properly given to the other Party if those notices are signed by the nominated Contract Officer or CHMA Implementation and Review Committee representative and provided to the other Party's Contract Officer or CHMA Implementation and Review Committee representative in writing:

- (a) if delivered by registered post the relevant Party's address/es (Refer Appendix L-) two (2) business days after posting; or
- (b) if delivered by fax – upon receipt of a fax transmission report that indicates the fax has been received; or
- (a) if delivered by email – the following business day after sending, if no email delivery error message has been received in that time; or
- (b) if delivered in person – immediately upon delivery.

24 RESPONSIBILITIES OF SHUTE HARBOUR MARINA DEVELOPMENT PTY LTD

Shute Harbour Marina Development Pty Ltd will:

24.1 Employment of a Cultural Officer

24.1.1 Shute Harbour Marina Development Pty Ltd will employ a full-time Cultural officer for the proposed two year construction period for the purposes of cultural heritage coordination and preparatory Aspirations realisation work in consultation with the CHMA Implementation and Review Committee.

24.1.2 The position will be advertised and selected based on merit

24.1.3 The CHMA Implementation and Review Committee will provide advice in relation to the development of the advertised position description and interview for successful recruitment of an agreed identified (Gia/Ngaro will be strongly encouraged to apply) position-Cultural Officer.

24.1.4 The Cultural Officer will be the point of contact between the CHMA Implementation and Review Committee, Respondent parties and Contract Officers, Cultural heritage Team and Shute Harbour Marina Development Pty Ltd personnel and contractors.

24.2 Comply with Obligations and Notification to Construction Personnel

SHMD will undertake all obligations as outlined in this CHMA and advise all Construction Personnel of:

- a) Construction personnel responsibilities outlined in this CHMA;
- b) Shute Harbour Marina Development Pty Ltd responsibilities under this CHMA; and
- c) The roles and responsibilities of the Cultural Officer, Cultural Heritage Team and/or Monitors in implementing this CHMA;
- d) Construction personnel will not impede or obstruct the operations of the Cultural Officer, Cultural Heritage Team and/or Monitors where they are acting in accordance with this CHMA and any Workplace Health and Safety policies established for the Project;
- e) Provide induction for the Cultural Officer, Cultural Heritage Team and/or Monitors compliant with Work Place Health and Safety in accordance with the *Workplace Health and Safety Act 1989*;
- g) Provide any reasonable information required by the Aboriginal Respondent Parties and their representatives on the CHMA Review and Implementation Committee to implement this CHMA.

25 RESPONSIBILITIES OF ABORIGINAL RESPONDENT PARTIES

25.1 Nomination of CHMA Implementation and Review Committee

The responsibilities of the Aboriginal Respondent Parties are to:

- a) Nominate two (2) representatives from their respondent party with the appropriate skills and/or experience to act as CHMA Implementation and Review Committee Members.
- b) The nominated Respondent Parties Contract Officers shall be the delegated liaison for communication between Shute Harbour Marina Development Pty Ltd and the Aboriginal respondent Parties as agreed in this CHMA. Shute Harbour Marina Development Pty Ltd is entitled to rely on the CHMA Implementation and Review Committee Aboriginal respondent Parties representatives as having the authority of the Gia respondent party and Ngaro/Gia respondent party to act on their behalf.
- c) The names and contact details of the CHMA Implementation and Review Committee are included in this CHMA
- d) Nominate alternative CHMA Implementation and Review Committee and Contract Officers from each respondent Aboriginal Parties in the event that the selected CHMA Implementation and Review Committee Member or nominated Contract Officer is unable to fulfil the obligations and commitments of the CHMA Implementation and Review Committee or Contract Officer/s outlined in this CHMA.
- e) Endeavour to realise the Cultural Heritage Objectives in accordance with this CHMA.
- f) Endeavour to realise the Aspirations and Cultural Heritage Objectives in accordance with this CHMA.

25.2 Adhere to the obligations outlined in this CHMA

- (a) The agreed nominated Gia respondent party and Ngaro/Gia respondent party representatives will identify, prior to any cultural heritage work commencing, appropriate people to perform the role of Cultural heritage team member including Monitor as set out in this CHMA. It is the responsibility of Respondent Aboriginal parties through their nominated Contract Officers to have a sufficient number of Monitors nominated to undertake the cultural heritage work so that Monitors are always available when required.

To be clear: failure by a Monitor to be available for work will not affect the Work Schedule proposed by Shute Harbour Marina Development Pty Ltd.

- b) All Parties must to this Agreement must Comply with the Work Schedule in accordance with this CHMA, consistent with the Cultural Heritage Act guidelines.

To be clear:

An approved work schedule must be made available to the CHMA Implementation and Review Committee Members and their nominated Contract Officer/s within thirty days of commencement of construction surface disturbances and within fourteen (14) days of reviewed or varied scheduled works and at commencement of duty.

- i) Ensure protection and / or management of all cultural heritage sites identified in the Project Area in accordance with this CHMA and NR&W guidelines;
- j) Provide any information as appropriate, required by Shute Harbour Marina Development Pty Ltd to implement this CHMA; and
- k) Not impede, prevent, hinder or disrupt the operations of Shute Monitors, Harbour Marina Development Pty Ltd staff, contractors and sub-contractors within the Project Area when they are complying with their obligations under this CHMA

26 RESPONSIBILITIES OF THE CHMA IMPLEMENTATION AND REVIEW COMMITTEE RESPONDENT PARTY REPRESENTATIVES AND THEIR NOMINATED CONTRACT OFFICERS

26.1 Nomination

The Gia respondent party and Ngaro/Gia Respondent Party Contract Officers, in consultation with nominated Gia respondent party and Ngaro/Gia respondent party CHMA Implementation and Review Committee Representatives, will:

- a) Nominate or novate two members from each Respondent Aboriginal Party to represent their interests on the CHMA Implementation and Review Committee
- b) Representatives to the CHMA Implementation and Review Committee have been nominated by both Gia and Ngaro/Gia respondent parties and are listed in this CHMA.

26.2 Nominated respondent Aboriginal Party Representatives:

- a) Gia Respondent Party nominated Elsie Kyle and novated Vicky Toffetti (**Refer Letter of nomination by Aboriginal Respondent Party and Vicky Toffetti acceptance to CHMA Implementation and Review Committee Appendix G**) Refer to Appendix M Nominated Representatives listing
- b) Ngaro/Gia respondent Party nominated Carol Prior and Charmaine Koroi to be their representatives on the CHMA Implementation and Review Committee

26.3 Membership Representation

Unless otherwise agreed by all the Parties, the Committee is constituted of the following members:

- (a) 2 Gia People (from the respondent party listed or their nominated representative) nominees;
- (b) 2 Ngaro/Gia People (from the respondent party listed or their nominated representative) nominees; and
- (c) 2 SHMD nominees.
- (d) In the event that this CHMA is assigned to another party or novated under **Clause 15**, the CHMA Implementation and Review Committee is to include nominees of that Party.

26.4 Key role of CHMA Implementation and Review Committee

The role of the CHMA Implementation and Review Committee is to consider and make recommendations to the Parties with respect to:

- (c) any issues that may arise regarding implementation of the CHMA; and
- (d) any amendments that may be made to the CHMA to improve its operation.

26.5 Meetings

The Committee may meet at such intervals as the Parties consider necessary to enable the effective implementation of this CHMA.

The contract details a suggested, effective implementation of this CHMA.

26.6 Member Vacancy or Replacement

Either Party to this CHMA may replace their Contract Officers and/or their members of the CHMA Implementation and Review Committee and/or the contract details of those persons by providing written notice of such changes to the other Parties

26.7 Amendments to CHMA

- a) Changes will be effective from the date that such changes are read and mutually agreed by the other Party's bound by this CHMA.
- b) The contract will be amended to reflect any changes as above and SHMD will provide a copy of the amended contract to the Gia respondent party and Ngaro/Gia respondent party within five (5) business days.

26.8 Committee Representatives Responsibilities

CHMA Implementation and Review Committee Representatives will:

- I. Consult with the Site Manager/Officer and Cultural Officer to present the Cultural Heritage Induction Program;
- II. Compile a list of Monitors nominated from their group to undertake monitoring ten (10) weeks prior to works commencing on surface disturbance construction works as described in this CHMA
- III. The compiled list of Monitors will be nominated **equally** from Gia respondent party and Ngaro/Gia respondent party to undertake cultural heritage work within the Project Area during surface disturbance during Construction.
- IV. The Respondent Aboriginal Parties have self determination over the number, schedule and attendance of Cultural Heritage Team including monitors during the surface disturbance construction phase.
- V. The respondent Aboriginal Parties identified A minimum of 2 Monitors (1 Gia respondent party and 1 Ngaro/Gia respondent party Monitor) are required when scheduled to undertake this task, a maximum of 4 Monitors (2 Gia People's and 2 Ngaro/Gia respondent party Monitors are required during excavation of mangrove and coastal vegetation and in the instance of an artefact scatter find);
- VI. Organise with the Cultural Officer and nominated Contract Officer, a Construction Cultural Heritage Work Plan providing details of schedule time and reporting requirements prior to commencing construction.
- VII. Provide the Cultural officer charged with the responsibility for cultural heritage coordination with a report detailing the results of the cultural heritage work and an assessment of any cultural heritage sites located as defined under Section 10 of the *Aboriginal Cultural Heritage Act 2003*.
- VIII. This report must be provided to Shute Harbour Marina Development Pty Ltd within two (2) weeks of the completion of the cultural heritage work;

- IX. Provide Shute Harbour Marina Development Pty Ltd with a report/s of any other cultural heritage work to be undertaken within the Project Area based on the recommendations arising from the cultural heritage work during surface disturbance construction scheduling.
- X. All reports must be provided within two (2) weeks of the completion of the cultural heritage work being undertaken; .
- XI. Provide the Cultural Officer or the Site Manager with the names of the nominated Monitors and monitoring roster ten (10) weeks prior to commencing works;
- XII. Brief the Monitors of their responsibilities and tasks under this CHMA;
- XIII. Advise the Site Manager/Cultural Officer of any changes to the monitoring roster, including substitutions.
 - a. Substitution Monitors will only be permitted on site to work upon completion of mandatory Workplace Health and Safety Induction;
 - b. Monitors will only be permitted on site to work with the appropriate Personal Protection Equipment including steel capped boots.
- Xiv Maintain an accurate record of all work undertaken;
- XV Arrange for the assessment and documentation of any Aboriginal cultural heritage material uncovered within the Project Area during surface disturbances to the recommended depth of 1.5 m during the proposed Project Construction Phase as described in this CHMA.
- XVI Undertake Aspirations preparatory work to progress their realisation as described in this CHMA

26.9 The role and structure of the SHMD Implementation and Review Committee

The role and structure of the SHMD Implementation and Review Committee will be subject to ongoing internal review.

- 1) SHMD may review the structure and role of the SHMD Implementation and Review Committee in consultation with both Aboriginal respondent parties by the end of the Construction phase and during the transitional and operations phases of Aspirations realization from the date of establishment.
- 2) The review period shall be mutually agreed minimum 30 days maximum 90 days.
- 3) In conducting a review Annual Reports prepared by the respondent parties may be taken into account

- 4) The Review at the conclusion of the surface disturbance phase of construction will assist to inform future governance models, which may be required to better respond to the commercial and operational phases of the Aspirations principles.

27 RESPONSIBILITIES OF THE CULTURAL OFFICER IN THE DELIVERY OF CULTURAL HERITAGE COORDINATION DURING SURFACE DISTURBANCE CONSTRUCTION PHASE

27.1 Cultural Officer Responsibilities and Authority

- 1 Shute Harbour Marina Development Pty Ltd will nominate the Site Cultural Officer for Cultural Heritage Coordination and Aspirations development for the Project and respondent parties.
- 2 The Respondent Aboriginal Parties are entitled to rely on Shute Harbour Marina Development Pty Ltd's Cultural Officer having the authority of Shute Harbour Marina Development Pty Ltd to act on its behalf where appropriate and consistent with position description and project brief.
3. The name and contact details of the recruited Cultural Officer for cultural heritage coordination will be provided to the Respondent Aboriginal parties prior to the Construction phase of the proposed project as described in this CHMA.

27.1.1 Cultural Coordination Role

The responsibilities of the Cultural Officer for cultural heritage coordination are:

- (a) To be the point of contact between Shute Harbour Marina Development Pty Ltd and the respondent Aboriginal Parties for onsite cultural heritage during the surface disturbance component of the Construction phase of the project as described in this CHMA;
- (b) To provide the nominated Contract Officers for both Respondent Aboriginal Parties with a detailed Work Schedule for the project as soon as practicable after development approvals and thirty days (30) prior to commencement of construction.
- c) Work schedules will be regularly reviewed and amendments to schedules will be provided within fourteen (14) working days prior to any surface disturbance Construction activities in the Designated Area commencing. The Work Schedule will clearly outline dates and times of Project activities.

d) Any substantial and urgent alterations to the Work Schedule shall be notified in writing to the Respondent Aboriginal Parties.

e) Shute Harbour Marina Development Pty Ltd will take all reasonable actions to provide such notice at least five (5) business days before or if urgent at least three (3) business days prior to the commencement of the activity to allow coordination of the Cultural Heritage Team and / or Monitors in accordance with this CHMA.

27.2 Cultural Heritage Induction Planning and Organisation

- 1 To ascertain from the CHMA Implementation and Review Committee if unavailable, the appropriate Company or Indigenous representatives to undertake the Cultural Heritage Induction Program;
2. To organise a suitable time for agreed Company or Gia and Ngaro/Gia Aboriginal representatives to undertake a Cultural Heritage Induction Program for Shute Harbour Marina Development Pty Ltd.

27.3 CHMA Aspirations Preparatory work

To undertake Aspirations development and planning research work to progress the CHMA aspirations and report findings and recommendations to the CHMA Implementation and Review Committee

27.4 Administrative Service Delivery

To arrange payment from Shute Harbour Marina Development Pty Ltd to the nominated Contract Officers upon receipt of a Tax Invoice based on the agreed Schedule of Fees for the required cultural heritage work;

27.5 Wet weather and schedule of work impacts

The Cultural Officer will manage the Cultural Heritage team reporting on the Projects Designated Area and will manage wet weather notification requirements in a timely and efficient manner

The Cultural officer will:

- (a) Notify the Respondent Aboriginal Parties nominated Contract Officers if weather conditions will prevent work from commencing or will increase delays for more than one day and will prevent the schedule of work from commencing or continuing

27.6 Timesheet management and correspondence to Respondent Aboriginal Parties nominated Contract officers

Monitors must complete a time sheet/log sheet upon arriving and departing the Project. These time sheets, a copy of which will be given to and kept

by the Cultural Officer, who will provide these to the Respondent Aboriginal Parties on a weekly basis to process.

27.7 Cultural Heritage Coordination

- a) The Cultural Officer will liaise directly with the Police, NR&W, Cultural heritage team and the CHMA Implementation and Review Committee and Contract officers, if human remains are uncovered within the Project Area and comply with the Cultural heritage guidelines as described in the Cultural Heritage Act;
- b) The Cultural Officer will inform the Contracts Officers in the first instance CHMA Implementation and Review Committee of any disputes and/or issues raised by the Cultural Heritage Team or construction personnel;
- c) The Cultural Officer will notify the Aboriginal Respondent Parties to discuss possible assessment and documentation of any Indigenous cultural heritage material uncovered within the Project Area during construction activities or at any other time during the Project.
- d) If required by CHMA Implementation and Review Committee arrange for the assessment and documentation of any Aboriginal cultural heritage material uncovered within the Project Designated Area during soil disturbances to the recommended depth of a further 1.5 m if artefact scatters are found during the proposed Project Construction Phase.
- e) Liaise with the nominated Archaeologist in consultation with Respondent Aboriginal Parties and NR&W in relation to appropriate management strategies to be implemented consistent with NR&W cultural heritage guidelines and contract arrangements.
- f) Advise the Site Manager/Officer when management measures on any uncovered Aboriginal cultural heritage material have been completed so that construction activities can commence or recommence.

27.8 Liaison and support role

- a) The Cultural Officer will be the direct contact person for the Aboriginal parties nominated Contract Officers, Cultural Heritage team including Monitors, while they are within the Project Area during the surface disturbance component of the Construction Phase of the proposed Project
- b) The Cultural Officer will also be responsible for advising where appropriate and liaising with the CHMA Implementation and Review Committee for the purposes of cultural heritage management (i.e. should cultural heritage material be uncovered within the Project Area during the soil disturbances of the Construction phase of the proposed Project),

- c) The Cultural Officer will also be responsible for undertaking preparatory Aspirations realisation work as described in this CHMA and for liaising with the CHMA Implementation and Review Committee for the purposes of and to advance planning and preparations for the realisation of the Aspirations as described in this CHMA.

27.9 Cultural Officer Name and Contact Details

The name and contact details of the nominated Cultural Officer will be determined after development approval and prior to the construction works.

28 RESPONSIBILITIES OF THE SITE MANAGER

Shute Harbour Marina Development Pty Ltd will recruit an Employee/s or Contractor as the Site Manager/Officer for the Project Area.

28.1 The responsibilities of the Site Manager in relation to this CHMA:

1. Liaise with the Cultural Officer to ensure timely notification occurs to the CHMA Implementation and Review Committee members should human bone and/or Indigenous cultural heritage material is uncovered within the Project Area and implement the NR&W guidelines;
2. Flag and / or fence the area of any Indigenous cultural heritage material uncovered (e.g. including bones and / or other suspected Aboriginal cultural heritage material)
3. Ensure that the Monitors present within the Project Designated Area have completed a Workplace Health and Safety Induction prior to commencing duty on site;
4. Ensure that the Monitors comply with Personal Protection Equipment requirements prior to commencing duty at the Project Area;
5. Ensure that all construction staff associated with this Project are informed of their responsibilities under this CHMA;
6. Inform the nominated Gia respondent party or Ngaro/Gia respondent party contractors within two (2) hours if a Monitor does not arrive at the Project Area at the agreed time; and

7. Forward signed time sheets/log sheets to the nominated Respondent Aboriginal Parties Contract Officers at the end of each working week if required.

29 RESPONSIBILITIES OF THE CULTURAL HERITAGE TEAM INCLUDING MONITORS

29.1 *Identification and Roster of Cultural Heritage team Including Monitors*

The agreed nominated Gia respondent party and Ngaro/Gia respondent party representatives will identify, prior to any cultural heritage work commencing, appropriate people to perform the role of Cultural Heritage team members including Monitors as set out in this CHMA. It is the responsibility of Gia respondent party and Ngaro/Gia respondent party through their nominated Contract Officers to have a sufficient number of Monitors nominated to undertake the cultural heritage work so that Monitors are always available when required.

29.1.1 Monitoring during surface disturbances

For the Surface Disturbance Construction Phase of the Project, the Cultural Heritage team including Monitors will:

- (a) Undertake a Workplace Health and Safety Induction Program prior to commencing cultural heritage work within the Project Designated Area;
- (b) Undertake a Cultural Heritage Monitoring Induction Program prior to commencing cultural heritage work within the Project Designated Area
- (b) Provide their own transport to and from (or as negotiated with Aboriginal parties contract arrangements) the Project Designated Area as well as all meals, drinks and steel capped boots, as per Fixed fee payment arrangements;
- (c) Contact the Site Manager/Officer upon entering and departing the Project Area to complete and sign Time Sheets/log sheets and collect Personal Protection Equipment (PPE) as required.
- (d) The Cultural Heritage team including Monitors will only be paid by and according to the Contracted arrangements between themselves and the respondent Aboriginal Parties Contract arrangements

- (d) All Cultural Heritage Team Members including Monitors will wear steel-capped boots (provided by themselves) and other safety equipment (provided by Shute Harbour Marina Development Pty Ltd) as required while within the Project Designated Area;
- (e) Undertake monitoring duties as outlined in this CHMA and contracted by the Aboriginal Parties contract arrangements;
- (f) Notify the equipment operator that all work in the immediate vicinity of any significant cultural heritage material uncovered during construction must cease immediately;
- (g) Immediately inform the Site Manager/Officer or Cultural Officer of the location of the cultural heritage material;
- (h) Inform the Site Manager/Officer or Cultural Officer immediately of the progress of monitoring activities being undertaken within the Project Designated Area; and
- (i) Advise the Site Manager/Officer or Cultural Officer when all management measures for any cultural heritage material uncovered during construction have been completed so that construction activities can recommence.
- (j) Cultural Heritage Management measures are to be implemented consistent with NR&W guidelines.

29.2 *Workplace Health and Safety*

29.2.1 Prior to participating in any monitoring, the Cultural Heritage Officers will undertake the Project's Workplace Health and Safety Induction Program.

29.2.2 At all times that the Cultural Heritage team are participating in any monitoring, the Cultural Heritage Officers will:

- (a) Dress appropriately for the conditions by wearing long sleeved shirts, long legged pants and steel capped boots, hard hats, safety glasses etc. as required. Personal Protection Equipment (PPE) other than steel-capped boots will be provided by SHMD.
- (b) Take all reasonable precautions to ensure that they and all other persons participating in the Cultural Heritage Activities remain free from injury;
- (c) Observe all reasonable directions given to them by relevantly authorised Project personnel; and

- (d) Remain completely free of the effects of illegal drugs and alcohol and submit to any drug and/or alcohol tests carried out in accordance with the Project's established drug and alcohol policies for all personnel and contract/subcontract personnel.

30 Cultural Heritage Induction Program for Cultural Heritage team including Monitors

30.1 Generational Cultural Monitoring Skills Transfer Program

SHMD recognises the needs and opportunities that Cultural Heritage Management and Cultural Monitoring can bring for Aboriginal Elders to pass on cultural heritage monitoring skills to younger Gia and Ngaro/Gia peoples thereby providing generational cultural legacy and cultural skills.

a)

30.2 Satisfaction Cultural Heritage Monitoring Induction

The Aboriginal Parties on their own behalf and on behalf of the Gia and Ngaro/Gia People agree that the benefits provided to the respondent Aboriginal Parties for Cultural Heritage Induction Monitoring Program are:

- i. In full and final satisfaction of any Cultural Monitoring Induction Program

31 RESPONSIBILITIES OF THE ARCHAEOLOGIST

31.1 Engagement Process

Shute Harbour Marina Development Pty Ltd in consultation with Respondent Aboriginal parties will engage an Archaeologist to be on call during the Construction Phase of the Project. Contact details of the Project Archaeologist will be provided after development approvals and prior to construction.

31.2 Archaeologist Responsibilities

The responsibilities of the Archaeologist are:

- a) As part of the Cultural Heritage Team, to implement agreed cultural heritage management recommendations for all cultural heritage sites or areas of high Archaeology potential identified within the Project Area;
- b) To provide Shute Harbour Marina Development Pty Ltd and the Respondent Aboriginal Parties with a report detailing the results of cultural heritage work undertaken on any Aboriginal material uncovered within the Project Designated Area, however while maintaining "Confidentiality" as per the Cultural Heritage requirements described in this CHMA
- c) To assist where appropriate in Cultural Heritage Induction and Cultural Awareness Programs as required and advised by the CHMA Implementation and Review Committee;
- d) Undertake a Workplace Health and Safety Induction Program prior to commencing cultural heritage work within the Project Designated Area during the surface disturbance component of the Construction Phase;
- e) To be on call if a potentially significant find, or any bone, which could potentially be human remains, are found during any phase of the Project;
- f) To be on call should Shute Harbour Marina Development Pty Ltd and / or either of the Respondent Aboriginal Parties require advice on any Archaeology and / or cultural heritage matters or issues in relation to the Project and agreed by SHMD; and
- g) Generally undertake Archaeology work as required by this CHMA.

32 RESPONSIBILITIES CONSTRUCTION PERSONNEL INVOLVED IN THE PROJECT

32.1 Construction Personnel Responsibilities

The responsibilities of the construction personnel are:

- a) To organise in consultation with the Cultural Officer Work Place Health and Safety Induction for the Cultural Heritage Team including Monitors; and Archaeologist.
- b) To contact the Site Manager/Officer or Cultural Officer should weather conditions or other factors beyond the control of Shute Harbour Marina Development Pty Ltd delay any construction activities where monitoring is required;
- c) To inform the Site Manager/Officer or Cultural Officer if any Indigenous cultural heritage material is observed during Construction activities within the Project Area.

33 Cultural Heritage Induction Program

33.1 Cultural Heritage Induction Training

All personnel will attend Cultural Heritage Induction Training prior to commencing surface disturbance construction works

All contactors and sub-contractors engaged by Shute Harbour Marina Development Pty Ltd that are working within the Project Area must comply with all obligations as specified in this CHMA.

33.1.1 In the instance of Respondent Aboriginal representatives presenting Cultural Heritage Program. Equal representation and equal remuneration shall apply as described in this CHMA.

33.2 Surface Disturbance Construction Timing

- a) SHMD preliminary planning has identified approximately five (5) blocks of ten (10) days of Monitoring required on the site over a two year period.
- b) SHMD has set aside a further block (1) of ten (10 days) to allow for project over-runs in terms of works
- c) SHMD will provide a detailed schedule of works after project development approvals and prior to construction.

- d) Monitoring may take place in stages over the various areas as determined by the Respondent Aboriginal Parties.

33.3 Notice of Construction Works Schedule

SHMD will provide notice of the date/s of surface disturbance construction works and a schedule showing the area(s) to be monitored pursuant to the notice, to CHMA Implementation and Review Committee; and nominated Contract Officers at least thirty (30) days initial advice; and fourteen (14) days for any variance prior to commencement of monitoring in those areas, or such shorter period as agreed between the Parties.

33.4 Preparation for On-site Monitoring

- a) The nominated Contract Officers in consultation with CHMA Implementation and Review Committee members will provide the names and contact details of Cultural Heritage team including Monitors that will take part in monitoring of the area(s) at thirty (30) days initial advice; and fourteen (14) days for any variance prior to its commencement.
- b) All Cultural Heritage Monitors must have completed Workplace Health and Safety Induction Training provided by SHMD.

33.5 Monitoring Process

33.5.1 Commencement of Monitoring day

At the commencement of each monitoring day, the Cultural Heritage Team and Monitors will meet with the Site Manager/Officer or Cultural Officer and develop a work plan for the day.

In the areas to be monitored, the Cultural Heritage Officers will:

- a) Carry out a visual ground inspection of the areas for evidence of cultural heritage;
- b) Collect and relocate any identified cultural heritage to the Keeping Place; and
- c) Keep records of any cultural heritage collected and relocated in accordance with their collection record sheets.

33.6 Keeping Place

SHMD will provide a Keeping Place for cultural heritage collection (locked storage area within the worksite, located in an agreed place by the CHMA Implementation and Review Committee).

To be clear, it is not necessary that the Cultural Heritage Team/ Monitors agree that a particular artefact is cultural heritage for it to be collected and relocated to the Keeping Place.

34 Department of Natural Resources & Water Guidelines (previously *DNRN&W*) for Management of Human Remains

All Parties will comply with the following guidelines

DNRN&W Guidelines – The Discovery, Handling and Management of Human Remains under the Provisions of the Act 2003

NR&W Guidelines – Reburial & Management Options

34.1 REBURIAL AND MANAGEMENT OPTIONS: - General information sheet

34.1.1 Aboriginal and Torres Strait Islander Burials and Police Notification

If you find bones and suspects that they are human it is ***essential that you do not disturb the material.***

Your must report the findings to the Queensland Police Services.

The Police will determine if the remains represent a crime scene. If it is established that the remains are not a crime scene and the Coroner is satisfied that the remains are Aboriginal or Torres Strait Islander the Department of Natural Resources and Mines procedure on *The Discovery, Handling and Management of Human Remains under the Provision of the Aboriginal Cultural Heritage Act 2003 and Torres Strait Cultural Heritage Act 2003* will apply.

34.1.2 Managing the remains

The following options should be discussed with the Respondent Aboriginal Parties:

- Should remains be left where they are?

While this is generally the preferred options consideration needs to be given to the possibility that the remains might be disturbed at a later date.

Leaving the remains where they are will require the support of the landholder especially if the Aboriginal or Torres Strait Islander community wishes to visit the site at a later date.

If the decision to remove remains is made, protocols need to be developed regarding the removal

- Should the remains be reinterred nearby?

Arrangement should be made for the Aboriginal or Torres Strait Islander community to visit the location.

Is any sort of marking required by the Aboriginal or Torres Strait Islander community?

- Should the remains be reinterred at a nearby cemetery?

Conditions under the *Land Act 1994* may apply.

Arrangements may be made with Queensland National Parks & Wildlife Services regarding burial on parks.

- Should the remains be held somewhere for safe-keeping?

Aboriginal or Torres Strait Islander 'keeping places' may already exist. Consideration also needs to be given to:

- Whether or not further analysis should be undertaken on the remains?
- How the remains should be handled?
- Who is going to remove the remains?

In all cases of reburial the location should be accurately recorded even if it is kept confidential.

35 THE DISCOVERY, HANDLING AND MANAGEMENT OF HUMAN REMAINS UNDER THE PROVISIONS OF THE ABORIGINAL CULTURAL HERITAGE ACT 2003 AND TORRES STRAIT ISLANDER CULTURAL HERITAGE ACT 2003

If you find bones and suspect that they are human it is **essential that you do not disturb the material. You must report the findings to the Queensland Police Service.** The Police will determine if the remains represent a crime scene. If it is established that the remains are not a crime scene and the Coroner is satisfied that the remains are Aboriginal or Torres Strait Islander the Department of Natural Resources and Mines procedure on the *Discovery, Handling and Management of Human Remains under the Provisions of the Aboriginal Cultural Heritage Act 2003 and Torres Strait Cultural Heritage Act 2003* will apply.

35.1.1 1 General Guiding Principles

Death in all human societies is a significant event. It occurs on a regular but unpredictable basis, removing individuals from family, close relations and friends. Death is often associated with complex rituals. This was and is still the case with Aboriginal and Torres Strait Islander people. Disturbance to burials and human remains is therefore of major concern to them, as it is for all members of Australian society.

Aboriginal and Torres Strait Islander people have been in Australia for more than 40,000 years. In that time they have buried hundreds of thousands of their ancestors in a variety of ways. In some cases people were cremated; in others their bones were placed in hollowed-out logs or trees or wrapped in bark cylinders and placed in rock shelters. Many were also buried in the ground with grave goods. Burials commonly occurred in sand dunes and alluvial deposits, which were easy to dig. However, wind and water easily erode such locations and frequently these natural processes expose remains. Other common burial locations are rock shelters, rocky overhangs and hollow trees. All are vulnerable to human disturbance. The close proximity of scarred or carved trees and stone arrangements and the remains of fireplaces, stone artefacts and food refuse may be suggestive to an Aboriginal or Torres Strait Islander burial.

In view of possible natural or human disturbance to Aboriginal or Torres Strait Islander places the Queensland Government has in place a legislative

framework that will ensure such burials are treated in a manner consistent with legal requirements and Aboriginal and Torres Strait Islander traditions.

There is also provision for Aboriginal or Torres Strait Islander people who have traditional or familial links with human remains to seek ownership of these remains regardless of who claimed previous ownership.

35.1.2 2 Desired Outcomes

This procedure has a number of general desired outcomes: -

- While natural or human process can inadvertently expose Aboriginal or Torres Strait Islander human remains, all attempts will be made to limit further disturbance.
- If further investigation and disturbance is required, procedures are in place for the proper handling of such remains.
- All such procedures are sensitive to the wishes of the Aboriginal or Torres Strait Islander owners of the remains.
- That Aboriginal or Torres Strait Islanders who have traditional or familiar links with human remains are able to claim ownership of those remains.

35.1.3 3 Legislative Framework

Criminal Code Act 1899

All persons **must** be aware that under the ***Criminal Code Act 1899*** (s236) it is an offence to improperly or indecently interfere with a human body or human remains, whether buried or not. An offence under this provision can result in imprisonment for up to two years.

Coroners Act 2003

Provisions of the ***Coroners Act 2003*** provide that when human remains are located it is the duty of the person finding the remains to report the findings to a police officer or Coroner (Part 2 s7 and 8). (**NB** Part 4, Division 4 Section 82 (1) defines every magistrate as a Coroner (a "local Coroner").

The Coroner starts having control of human remains when the Coroner starts investigating the deceased person's death (s26(1)). The Coroner must stop investigating a death if the Coroner's investigation shows that the body is Aboriginal or Torres Strait Islander traditional burial remains (Part 3 s12(2)(a)). Where this occurs, a Coroner will authorise for the remains to be released to the Minister responsible for administering the

Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Heritage Act 2003. (See s26(2) (a) and form 12 version 1- Order for release of Traditional remains pubd gaz 21 November 2003 p995-6).

To ensure best practice in the coronial system, the State Coroner must develop guidelines in respect to certain matters, including those dealing with investigations of deaths involving human remains found in suspected traditional burial site, and in particular, must provide for the early notification and involvement of the Aboriginal or Torres Strait Island community having a connection with the burial site (Part 3 s14(3) (b)).

36 Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003

The basic intent of the *Aboriginal Cultural Heritage Act 2003* ('the Acts') is that Aboriginal or Torres Strait Islander cultural heritage should be protected.

It is also the intent of the Acts that (as far as practicable) Aboriginal or Torres Strait Islander cultural heritage should be owned and protected by Aboriginal or Torres Strait Islander people with traditional or familiar links to the cultural heritage if it is comprised of any of the following-

- (a) Aboriginal human remains;
- (b) Secret or sacred objects; or
- (c) Aboriginal heritage lawfully taken away from an area.

It is further intent of the Acts that Aboriginal and Torres Strait Islander cultural heritage that is in the custody of the State, including the Queensland Museum, should continue to be protected by the State until it can be transferred into protection of its Aboriginal or Torres Strait Islander owners (Part 2 Division 1 s14 (1-4)).

Under the Acts Aboriginal or Torres Strait Islander people who have a traditional or familiar link with Aboriginal human remains are the owners of those remains before commencement of the Act (Part 2 Division 2 x15 (1-2)).

An Aboriginal or Torres Strait Islander persons who owns human remains may at any time ask the State (or an entity that represents the State) who holds custody of the remains to continue to be the custodian of the human remains or return the human remains to them (Part 2 Division 16 (1-4)).

If a person, other than the State has in their possession Aboriginal or Torres Strait Islander human remains to which they do not have traditional or familial links then the person must take all reasonable steps to ensure that the human remains are taken into the custody of the chief executive as soon as practicable. Penalties apply if a person fails to do this (Part 2 Division 2 s17 (1-2)).

If a person knows of the existence and location of Aboriginal human remains and is not the owner of those remains, or knows or ought reasonably to know the human remains are Aboriginal or Torres Strait Islander human remains or knows or suspects the chief executive does not know of the remains, the person must as soon as practicable (and after advising the Police or Coroner) advise the chief executive of the extent of the human remains and provide all the details about the nature and locations of the human remains the chief executive reasonably requires. Penalties apply if a person fails to do this (Part 2 Division 2 s18).

36.1 Procedures for dealing with Aboriginal and Torres Strait human remains

In all cases when human remains are located it is important to remember that:

- The discovery of any human remains must as soon as possible be reported to the nearest police.
- It is an offence to interfere with human remains, whether buried or not.

The Police or Coroner must be advised of the presence of any human remains. An appropriate officer or officers will then establish the area of discovery as a potential crime scene and are responsible for preserving and securing the area.

If a determination is made that satisfies the Coroner that the remains are not a crime scene and that the remains could constitute an Aboriginal or Torres Strait Islander burial site, Police will contact the Cultural Heritage Coordination Unit (or their Department of Natural Resources and Mines. Officers of the Cultural Heritage Coordination Unit (or their representatives) may attend the scene and along with the Police scientific officers and collect appropriate data on ethnicity, antiquity and evidence of criminal activity or otherwise for submission to the Coroner. Further advice maybe sought from forensic osteologists/pathologists or physical anthropologists.

If the remains are thought to be neither Aboriginal nor Torres Strait Islander, nor related to criminal activity or are of doubtful determination, Officers of the Department of Natural Resources and Water (or their representatives) may assist the Police in further determinations. This may require controlled removal and analysis by suitable forensic experts as ordered by the Coroner. In all cases of possible criminal activity the requirements of the Police and Coroner for data collection and site security will have priority. If the remains are determined, to the satisfaction of the Police and Coroner, to be Aboriginal or Torres Strait Islander, Officers of the Department of Natural Resources and Water will then take responsibility for liaison and reburial with the appropriate Aboriginal or Torres Strait Islander community.

At all stages minimal disturbance to the remains will be a priority and they will be dealt with in a sensitive manner. Advice and guidance from Aboriginal or Torres Strait Islander elders will be taken as soon as the possibility of criminal activity is dismissed.

When an offence under provisions of the *Aboriginal Cultural Heritage Act 2003* or *Torres Strait Islander Heritage Act 2003* is suspected to have occurred then the Regional Compliance Team of the Department of Natural Resources and Mines must be advised. Where an offence is suspected the scene must be kept secure until handed over to Department of Natural Resources and Mines compliance officers.

36.2 Self Determination Contract Model

SHMD will contract as a Fixed Fee Arrangement for all goods and services and pay equally the Aboriginal Respondent Parties to deliver monitoring and cultural heritage management as detailed in this CHMA This SELF DETERMINATION model will be **equally** shared between the two Aboriginal Respondent Parties to this CHMA for all monitoring and cultural heritage management and consultation services)

Administrative charges as described in this CHMA during the construction phase of the proposed development

37 ACCEPTANCE

37.1 Acceptance of Standard Conditions

The performance of the Self determination model will be deemed to be acceptance of the Standard Conditions of Contract stated herein.

38 Satisfaction of Self Determination Model 44.1. The Aboriginal Respondent Parties on their own behalf and on behalf of the Gia and Ngaro/Gia People agree that the benefits provided to the respondent parties

39 Contingency Funds for Cultural Heritage Management

While there are indications that the Designated Area has been significantly disturbed over time (Refer Cultural Survey Report) and the report indicated low likelihood of finding intact cultural heritage artefacts in the subtidal and tidal areas of the proposed development, funds as described in the agreed CHMA will be shared **equally** between the two Aboriginal Respondent Parties should an artefact of significance be found. SHMD will hold in reserve the allocated funds to enable duty of care and processes according to NR&W guidelines for Cultural Heritage Artefact finds to be appropriately and respectfully managed.

40 CULTURAL HERITAGE MANAGEMENT

This section of the CHMA is divided into two sub-sections with each sub-section addressing the processes to be followed during that particular period of the project.

40.1 Sub-section A – Pre-Construction

40.2 Shute Harbour Marina Development Pty Ltd will nominate and appoint employee or contractor as Site Manager/Officer Cultural Officer for the Project to coordinate cultural heritage onsite and manage Cultural Heritage obligations.

40.3 Upon the provision of the CHMA Implementation and Review Committees names the Site Manager/Officer and Cultural Officer, will forward the work schedule for the Project to the nominated respondent party Contract Officers.

46.4 The CHMA Implementation and Review Committee will nominate the Company or Indigenous representatives that will conduct the Cultural Heritage Induction Program and advise the Site Manager/Officer that person/s name (maximum 1 Gia respondent party and 1 Ngaro/Gia respondent party representative will deliver an induction session).

- 46.5** The Site Manager/Officer will arrange for the nominated Company or Indigenous representatives (maximum 1 Gia respondent party and 1 Ngaro/Gia respondent party representative will deliver an induction session) to present a Cultural Heritage Induction Program for all construction personnel involved in the project.
- 46.6** The CHMA Implementation and Review Committee will compile a list of the approved names of people who will perform the role of Monitors for the Project and provide the list to the Site Manager/Officer.
- 46.7** The Site Manager/Officer or Cultural Officer will arrange for an induction for the Monitors so that they meet all necessary Workplace Health and Safety requirements in accordance with the *Workplace Health and Safety Act 1989*.
- 46.8** The main cultural heritage activity during construction is monitoring initial vegetation clearance / earthwork activities. The time frame for these activities will be outlined in the work schedule.
- 46.9** The purpose of monitoring would be to ensure that encroachment into or disturbance of any protected cultural heritage sites does not occur and that should previously undetected cultural heritage sites be uncovered they are managed in an appropriate manner consistent with NR&W Guidelines.
- 46.10** The monitoring roster will be finalised during the Pre-Construction Phase, the Site Manager/Officer Cultural Officer will advise the appropriate Monitor of the date and time of commencement of cultural heritage work.
- 46.11** The rostered Monitor must arrive at the Project Area by the appointed time and sign his/her time sheet/log sheet. The time sheet/log sheet must also be signed before leaving the Project Area.
- 46.12** In the event that a rostered Monitor is not available, the Monitor will contact the Contract Office to arrange a substitute Monitor. The Contract Office will advise the Site Manager/Officer of the substitution.
- 46.13** In the event that a rostered Monitor does not arrive at the Project Area at the appointed time, construction will proceed as scheduled. The Cultural Officer will advise the appropriate Contract Office of the unavailability of the Monitor.
- 46.14** In the instance of Indigenous Archaeology material being uncovered during construction activities while the Monitors are present, the following procedures will take place:

- The Monitor will notify the equipment operator that all work in the vicinity of the find must cease immediately;
- The Monitor will inform the Site Manager/Cultural Officer of the find;
- The Site Manager or Cultural Officer will contact the CHMA Implementation and Review Committee and Contracts Office of the find and the Site Manager/Officer will contact the respondent party Contract Officer in the absence of a Monitor and Archaeologist so that the find can be fully assessed;
- The area of the find should be fenced or flagged by the Monitor and access restricted until the find is documented and assessed;
- Work may recommence 30m or an agreed distance from the find or elsewhere as mutually agreed by the Monitor, Archaeologist and Cultural Officer Site Manager/Officer;
- If such a resumption of work occurs and material is still being encountered, and subject to consultation between the Monitor, Archaeologist and Cultural Officer and Site Manager/Officer, the procedure should be repeated until no further material is encountered;
- The Archaeologist will record the location of the find and analyse, document and record all Archaeology material uncovered;
- Construction activity must be halted for a period necessary to allow the material to be evaluated and to determine and implement suitable management techniques;
- The Archaeologist and/or Site Manager/Officer, Cultural Officer must inform SHMD in writing within twenty four (24 hours) anticipated delay in works and respond consistent with NR&W's guidelines mitigate management technique; and
- The Archaeologist and/or Monitor will inform the Cultural officer or Site Manager/Officer in writing within twenty four (24 hours) if any further action is required and when work can recommence in the area of the find.

46.15 In the instance that Aboriginal Archaeology material be uncovered during construction activities when a Monitor is not present, the following procedures will take place:

- The Site Manager/Officer or Cultural Officer will advise the CHMA Implementation and Review Committee and Contracts Officers of the find;
- The area of the find will be fenced or flagged by the Cultural Officer or Site Manager/Officer and access restricted until the find is documented and assessed;
- The Aboriginal Parties will organise for the uncovered material to be inspected and assessed by a Monitor and the Archaeologist;
- Work may recommence 30m, or an agreed distance from the find or elsewhere as mutually agreed by the Monitor, Archaeologist and Site Manager/Officer and Cultural Officer;
- If such a resumption of work occurs and material is still being encountered, and subject to consultation between the Monitor, Archaeologist and Site Manager/Officer and Cultural Officer, the procedure will be repeated until no further material is encountered;
- The Archaeologist and Monitor will record the location of the find and analyse, document and record all Archaeology material uncovered;
- Construction activity must be halted for a period necessary to allow the material to be evaluated and to determine and implement suitable management techniques consistent with a CHMA mitigation plan;
- The Cultural Heritage Team will keep the Cultural Officer and Site Manager/Officer informed of the progress of the work and advise when all management strategies have been completed; and the Archaeologist and/or Monitor will inform the Site Manager/Officer and Cultural Officer if any further action is required and when work can recommence in the area of the find.
- A mitigation plan will be included in this CHMA.

46.16 A report detailing the results of monitoring work must be provided to Shute Harbour Marina Development Pty Ltd by the nominated Contract Officers within two (2) weeks of the cessation of monitoring activities.

41 FURTHER CULTURAL HERITAGE WORK

- 47.1** Based on the results of the cultural heritage work being undertaken within the Project Area further archaeology work may be required.
- 47.2** The recommendations of all reports documenting cultural heritage work undertaken within the Project Area must clearly outline the processes required in order to implement all recommendations.
- 47.3** All reports, once completed, will form part of this CHMA.

42 NOTIFICATION AND REPORTING

- 48.1** Shute Harbour Marina Development Pty Ltd and the CHMA Implementation and Review Committee will provide each other with all necessary information to carry out this CHMA, and this information will be provided in a timely manner;
- 48.2** Shute Harbour Marina Development Pty Ltd and the CHMA Implementation and Review Committee will keep written records of all cultural heritage work undertaken under this CHMA;
- 48.3** The Archaeologist will provide the Site Manager/Officer and Cultural Officer and CHMA Implementation and Review Committee with a report detailing the results of the cultural heritage work undertaken within the Project Area. The report will contain a significance assessment of any sites located as well as management recommendations. The report from the Cultural Heritage Team member must be included as an Appendix to the Archaeological report. The report must be provided within two (2) weeks of the completion of the survey; and
- 48.4** Reports detailing any other cultural heritage work undertaken within the Project Area must be provided to Shute Harbour Marina Development Pty Ltd by the Cultural Heritage Team and/or Archaeologist. All reports must be provided within two (2) weeks of the completion of the cultural heritage work detailed in the report.

43 Schedule 7:

43.1 Explanation of procedures

- (1) Police Officers maintain authority and responsibility for a potential crime scene at all time.
- (2) Cultural Heritage Coordination Unit Officers (or their representatives) may attend the scene and provide advice as required by Police or crime scene officers.
- (3) Police will nominate a person to provide a second opinion if appropriate. Such opinion may be available on-site if a suitable forensic expert is available. However, if a suitable forensic expert is unavailable to travel to the site, digital images may be sent to them to provide an opinion. All data required for first and second opinions is to be collected in site.
- (4) Final decision of this rests with Police, on advice from the Coroner.
- (5) Officers of the Cultural Heritage Coordination Unit will, on request, assist Police in technical aspects of evidence retrieval.
- (6) Advice on handling may be sought from appropriate sources where this does not compromise integrity of crime scene or quality of evidence.

Additional procedures and information

Where the remains are determined to be Aboriginal or Torres Strait Islander the Coroner will authorise for remains to be released and will complete *Form 12 Order for the Release of Traditional Remains*. This provides for the remains to the Minister responsible for administering the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Heritage Act 2003*.

Should any Police Officer or Officer of the Department of Natural Resources and Mines (or their representative) be in any doubt as to the requirements of the relevant Coroner for their region, then it is essential that the Coroner be directly consulted. Alternatively, as the State Coroner is responsible for all Coroners any perceived difficulties in implementing the policy/procedure should be referred to him/her.

The excavation of human burial remains for whatever reason is not encouraged. However, should this occur in the process of excavating a site, excavations should immediately stop. The remains should be covered

and the Site Manager/Officer should be contacted who will then follow the procedures set put in this document.

If a researcher acting under an authority or agreement from the Cultural Heritage Coordination Unit and with the Aboriginal or Torres Strait Islander Body for an area discovers burial remains in the process of excavating a site, they shall immediately stop excavation, cover the remains and contact an Officer of the Cultural Heritage Coordination Unit, who will then follow the procedures set out in this document.

The Queensland Museum acquired human remains from the 1870's to 1972 including some legally recovered under the *Aboriginal Relics Preservation Act 1967*. However, by 1972 it was no longer considered appropriate to deposit human remains with the Queensland Museum (except in exceptional circumstances) and with permission of the relevant Aboriginal or Torres Strait Islander community. The Museum has now developed a repatriation policy for human remains still in its collection (see - *Queensland Museum Policy on Ancestral Remains and Burial Goods* – May 2004, *Queensland Museum Policy on Secret Sacred Objects* – May 2004). These policies commit the Queensland Museum to returning to Aboriginal and Torres Strait Islander communities, family groups, and individuals, ancestral remains and burial goods, and secret sacred objects held in Museum collections.

44 Voluntary Aspirations Agreement

The Respondent Aboriginal Party have identified a number of Aspirations which are included in this CHMA.

44.1 Completion of Surface Disturbance Construction CHMA arrangements and Commencement of CHMA Aspirations Guiding Principles and partnerships.

This CHMA will formalize the respondent Aboriginal parties involvement in the management of the designated areas post SHMD development approval and during SHMD's operations.

To be clear:

All CHMA agreements and conditions are subject to development approval process.

44.1.1 Sustainable Partnerships Commitment

This CHMA will facilitate the development of a sustainable partnership based on recognition, mutual respect and agreed goals to realize respondent Aboriginal party Aspirations.

44.1.2 The Shute Harbour Marina Development Pty Ltd will adopt a flexible and learning approach to working with and meeting the Aspirations of the Gia and Ngaro/Gia respondent parties detailed in this CHMA.

44.1.3 The Respondent Aboriginal Parties and their nominees will adopt a flexible and learning approach to the development Project and commercial sustainability practices, management policies and processes and compliance requirements of SHMD designated area.

44.2 The purpose of the Aspirations Agreement

The purpose of the Aspirations Agreement Section of this CHMA is to set out the terms and conditions reached between Shute Harbour Marina Development Pty Ltd and Aboriginal respondent parties, including potential governance models and initiatives mutually agreed.

- 1) Shute Harbour Marina Development Pty Ltd recognizes the right of the two Aboriginal respondent parties to retain their identity and intellectual property; and
- 2) Both Aboriginal respondent parties recognize the right of Shute Harbour Marina Development Pty Ltd in its on-going responsibilities for the sustainable, environmentally supportive, commercially viable management of the designated area.

45 Objectives of the Aspirations CHMA Agreement

The objectives of the Aspirations included in this CHMA are to facilitate:

1. The active resourcing to the extent possible as described in this CHMA the involvement of the Aboriginal respondent parties in decisions about the management of the agreed Designated Areas including the integration of the Gia respondent party and Ngaro/Gia respondent party knowledge, internal decision making processes and perspectives into management, planning and works planning.

45.1 Mutual Recognition and Trust

The development of mutual recognition and trust between the Aboriginal respondent Parties and SHMD and the identification and promotion of

employment, training and economic development opportunities of the as Aboriginal respondent Parties as defined in this CHMA.

- 1) SHMD shall assist and to the extent possible, require of the Aboriginal respondent Parties representatives responsible for managing and or providing advice regarding the management of the agreed Designated Areas to develop communication protocols and working relationships with the Aboriginal Respondent Parties and their nominees.

In the process of decisions regarding the management of designated areas, SHMD will take into account relevant advice and recommendations received from:

- The CHMA Implementation and Review Committee in accordance with this Agreement; and
- The approved organization/s responsible for managing and providing advice approval regarding the development and management of the designated area.
- The approval for such organization/s by Aboriginal Respondent Parties must be provided in writing to SHMD.

45.2 Decision Making and Response Protocols

If SHMD in making a decision in relation to a matter on which the Aboriginal Respondent Parties represented by their CHMA Implementation and Review Committee has provided advice or a recommendation, decides to act otherwise than in accordance with that advice or recommendation, the SHMD may provide to the CHMA Implementation and Review Committee with written reasons for the decision.

45.3 Affect of the Aspirations Agreement on rights and obligations

45.3.1 **To be clear** nothing in this component of the Aspirations CHMA compromises the legal rights or political aspirations of the Gia respondent party and Ngaro/Gia respondent party relative to any of their social, cultural or economic goals.

45.3.2 **To be clear** nothing in this component of the Aspirations CHMA compromises the legal rights or responsibilities detailed in the Cultural Heritage Act.

45.3.3 **To be clear** nothing in this component of the Aspirations CHMA affects any rights that the Aboriginal Respondent Parties may have to their intellectual or cultural property.

45.3.4 **To be clear** nothing limits SHMD prerogatives under any relevant laws and policies;

45.3.5 **To be clear** nothing affects any rights, duties or obligations arising from the operation of the SHMD proposed development and its operations

45.3.6 **To be clear** Aboriginal respondent Parties will comply with SHMD Body Corporate Rules pertaining to the SHMD and the Marina Management Plan.

45.3.7 **To be clear** nothing will limit the capacity of SHMD responsibilities for managing the Designated Area to continue to perform their established functions including , as applicable , in relation to the management of the lease or waters and the provision of advice; or

45.3.8 **To be clear** Nothing affects the valid rights of other parties and interested parties on the SHMD site nor members of the public both Indigenous and non-Indigenous.

45.3.9 The Indemnity clause included in this CHMA (during surface disturbance construction phase) binds parties during the Aspirations phase

46 The development of a governance model to realize the SHMD Aspirations of the Aboriginal Respondent Parties

46.1 Governance Model Principles

A sound governance model will be critical to the success of the Gia and Ngaro/Gia communities, community capacity building success in realizing their Aspirations at the SHMD site.

46.1.1 A Strengths Weaknesses Opportunities and Threats analysis

- 1) SHMD recognizes that the design and development of community governance will need to be supported and will provide in consultation with the Aboriginal Respondent Parties the following:
 - A Strengths Weaknesses Opportunities and Threats analysis of successful governance models for sustainable commercial and cultural tourism development will be undertaken by SHMD to assist Aboriginal Respondent Parties in their governance decision making
- 2) A maximum 20 hours funded from the SHMD REEF FUND
- 3) The emphasis on the models will include
 - key principles of fairness, equity;
 - legally delegated community financial authority;

- developing a realistic timetable for a measured incremental transition;
- actively working in partnership with government, departments and the private sector to fully design and implement the model;
- is financially sound, efficient, and accountable (internally and externally)
- exercises powers through local policies, processes and organizational structures that are widely seen as legitimate and effective;
- is compatible with community values, priorities and participation;
- reproduces and is sustained by stable leadership; and
- Displays the authority and capacity, and possesses the resources necessary to solve problems locally and to sustain the social, cultural and economic well-being of Aboriginal Respondent Parties and their community members.

46.2 Transitional sustainability

Transitional sustainability and Aspirations work be discussed and planned for between SHMD and voluntary committee members of the CHMA Implementation and Review Committee

47 Development of an Aboriginal Respondent Parties and SHMD Partnership Framework

47.1 Empowerment Principles

This Aspirations section of the CHMA provides an opportunity to empower Aboriginal Respondent Parties to participate and share their knowledge of natural resource management for the benefit of the community, SHMD, local Indigenous and non-Indigenous community, State, National and International visitors.

47.1.1 The aim of the Shute Harbour Marina Development Aboriginal Respondent Parties Partnership Framework is to explore meaningful ways for Aboriginal Respondent Parties to equitably participate in decision-making, training activities, employment and business tourism enterprises.

47.1.2 SHMD is committed to facilitating real partnering opportunities for Aboriginal Respondent Parties to share their knowledge and aim to give Aboriginal Respondent Parties the chance to reconnect with their culture and interest in country and on waters.

47.1.3 In this spirit of partnership, Aboriginal Respondent Parties perspectives will be integrated into SHMD's land and water management and initiatives; and cultural and heritage values will be included in planning and operations.

47.1.4 The framework establishes the base on which the SHMD's business and activities align with SHMD's commitment to:

- Work inclusively with Aboriginal Respondent Parties relating to the Designated SHMD Area and ensure Aboriginal Respondent Parties can contribute in the future management of Shute Harbour's biodiversity, water and land; and contribute to the realization of Gia and Ngaro/Gia peoples Aspirations.

48 CHMA ASPIRATIONS GUIDING PRINCIPLES

48.1 Four Guiding Principles

This CHMA's aspirations guiding principles include:

- **Principle 1:** Respect and Recognition
- **Principle 2:** Sharing and Caring for Country
- **Principle 3:** Partnership and Capacity Building
- **Principle 4:** Cultural Heritage

49 Connection to Country and Waters

SHMD's approach to Aboriginal Respondent Parties will be with an understanding that Ngaro/Gia and Gia people have a continuous connection to Country and waters, and that Aboriginal Respondent Parties have a valuable contribution to make

- in land, water and natural resource management
- can fulfill a uniquely integrated role in land, water and resource management practices
- cultural heritage tourism

50 Principle 1: Respect and Recognition

50.1 Consultation

57.1.1 SHMD will consult with the CHMA Implementation and Review Committee in the use of appropriate interpretative signage within the

proposed SHM development as a means to recognize and acknowledge the Aboriginal Parties of the project area and the Whitsunday region.

50.2 Respect and Recognition- Interpretive Sign Strategy

50.2.1 Interpretive Sign Strategy

SHMD in consultation with the CHMA Implementation and Review Committee will develop an **Interpretive Sign Strategy** during the construction phase of the project to optimize the use of community language names for the project area and its natural features. Examples include but are not limited to: the Shute Harbour Bay, local plants, terrestrial and marine animals.

The CHMA Implementation and Review Committee will be consulted on the inclusion of information on the cultural values of the project area and its place in the wider cultural landscape of the Great Barrier Reef region.

50.3 Respect and Recognition- YARNING CIRCLE- PERFORMANCE SPACE

50.3.1 Rooftop location

SHMD will provide a 'Yarning Circle" performance space proposed for a rooftop location (on top of the Car Park) for Aboriginal Respondent Parties with the intention to facilitate the showcasing and public promotion of Gia and Ngaro/Gia cultural heritage, dance, music and storytelling to the general public and local State, National and International tourists visiting the proposed project area.

57.3.2 The Yarning Circle Performance space will be incorporated into the business planning framework to ensure commercial viability and agreement is subject to viable business planning standards as described in this CHMA.

57.3.3 The Business Plan will identify possible funding sources including funds for kitout, operation and training for performers and technical and events staff as described in this CHMA

51 Principle 2: Sharing and Caring for Country:

SHMD will facilitate and support opportunities for Gia respondent party and Ngaro/Gia respondent party to connect and Care for Country as defined in this CHMA

51.1 Local Native Plant Species Vegetation of SHMD

51.1.1 Vegetation Initiatives and Ethnobotanical Knowledge

SHMD will undertake to vegetate the (reclaimed) development site with local native plant species partly as a means to replace the existing fringing native coastal species now present along the Shute Harbour foreshore, but also to enhance the natural, cultural and aesthetic values of the development site.

51.1.2 SHMD will provide opportunity for Aboriginal Respondent Parties to contribute their ethnobotanical knowledge and expertise in selecting appropriate native plants (including traditional bush tucker and medicinal plants).

51.2 Ethnobotanical Knowledge Sharing Program

An Ethnobotanical Knowledge Sharing Program will be developed in consultation with the CHMA Implementation and Review Committee to inform SHMD's landscape design and planning and children's recreational areas, including outdoor public realm.

51.3 Native Vegetation Labour Program

The Ethnobotanical Knowledge Sharing Program will maximize opportunity for Gia and Ngaro/Gia people through the Aboriginal Respondent parties to participate in the designing and landscaping of the project site and will include a **Native Vegetation Labour Program** initiative for vegetation works to be incorporated into an **Indigenous Employment and Training Strategy**

52 CHMA Aspirations Principle 3: Partnership and Capacity Building

52.1 Partnership and Capacity Building Strategies

The activities and strategies to realize the Aspirations of the Aboriginal Respondent Parties as detailed in this CHMA will specifically:

- include Aboriginal Respondent Parties' consultation and equal representation in partnerships component that reflects a meaningful engagement process

- identify opportunities for Aboriginal Respondent Parties and their communities to gain the skills required to be better placed as partners and commercial operators.

In this CHMA capacity building relates to a range of activities by which Gia and Ngaro/Gia individuals, respondent parties and governance structures improve their capacity to achieve sustainable natural resource management and commercial and cultural tourism.

52.1.1 Capacity in this CHMA context includes awareness, skills, knowledge, motivation, commitment and confidence.

52.2 Partnership and Capacity Building- Employment and Training

52.2.1 An Indigenous Employment and Training Strategy

An **Indigenous Employment and Training strategy** will be developed in partnership with SHMD in consultation with the CHMS Implementation and Review Committee to maximize employment and training opportunities for Gia and Ngaro/Gia peoples during the construction and operational phases of the SHMD development project.

52.3 Partnership and Capacity Building- SHMD Aboriginal Business Development Program (SHMDABDP)

52.3.1 SHMD recognizes that the identified commercial enterprise CHMA aspirations are constrained by Aboriginal Respondent Parties having little financial capital for the initial setup and interim running costs during the commercial establishment of an cultural centre and yarning circle as described in this CHMA. In response to this barrier to Aspirations realisation commitment to assist the Aboriginal Respondent Parties to realise their aspirations is made as detailed in this CHMA.

59.3.2 SHMD will develop in consultation with Aboriginal Respondent Parties a **Gia and Ngaro/Gia Business Development Program** for the SHMD site which will include:

52.3.3 Business Support for a period of five (5) years:

Gia and Ngaro/Gia business development, which includes facilitated access to professional and marketing advice, contributory support to develop a business idea/plan, audit, access to sources of and application

writing/mentoring for government funding and philanthropic funding to start or acquire business, infrastructure and governance capacity building, training and development of business skills and other services such as product development, assistance with business growth, feasibility studies and the provision of ongoing mentoring services.

52.3.3.1 Board members Voluntary Mentoring

SHMD board members and delegated staff will commit approximately 200 hours of profession mentoring to assist Aboriginal Respondent Parties in their business development strategic planning and feasibility studies

52.3.3.2 Funding audit assistance

SHMD will assist the Aboriginal Respondent Parties to undertake an audit of potential funding and commercial investment sources to inform the development of a business plan to realize the a cultural centre and yarning circle performance space.

52.3.4 Funding Application Assistance

SHMD will in the first eighteen (18) months assist the Aboriginal Respondent Parties on behalf of their community members apply for hard and soft infrastructure, governance and business development, equipment and sustainability funding from a range of funding sources and investment partnerships to establish but not limited to the Cultural Centre and Yarning Circle performance space as defined in this CHMA Aspirations agreement

52.4 Business finance at commencement of the proposed Cultural Centre

52.4.1 Contribution to set up costs for Cultural Centre

SHMD will provide from the SHMD's "Reef Fund" to contribute to the set up costs of the Cultural Centre on the SHMD Project development site.

59.4.1.1 The provision of set up funds from the proposed SHMD REEF FUND is subject to the development of a mutually endorsed sustainable Business Plan, which includes cultural heritage principles, commercial viability, operational sustainability, governance management system and structure and a detailed feasibility study according to best practice Business Standards.

59.4.1.2 A Business Plan will be developed which incorporates a legal plan reflecting the Designated Area will be drawn up prior to the implementation of the Aspirations principles

52.5 Partnership and Capacity Building- SHMD Aboriginal Business Development Program (SHMDABDP) - Business Incubators'

52.5.1 Aboriginal Respondent Parties with the facilitated assistance of SHMD will take advantage of existing enterprise models in the community to build on the concept of 'business incubators'¹ and the establishment of 'enterprise hubs' where relevant which perform business incubation functions.

52.5.2 Mentoring and business development planning to assist Aboriginal Respondent Parties with skills to manage and sustain a commercially operable enterprise will be provided and or facilitated by other funding agencies to develop Gia and Ngaro/Gia peoples business development and governance management skills.

52.5.3 SHMD will provide when possible in kind contribution to Social Enterprise for Gia and Ngaro/Gia Aboriginal Respondent Parties. There are two main categories of community volunteering which SHMD has considered They involve company employees and board members:

- Sharing their existing knowledge and expertise with community groups to assist with their management and development.
- Obtaining new knowledge and skills to enable employees and board members to participate as community volunteers.

52.6 Partnership and Capacity Building- SHMDABDP Cultural Centre

52.6.1 SHMD will provide ten(10) years lease paid from the SHMD Reef Fund for the Cultural Centre, with a further ten (10) years lease option at a 50% reduced rate of scheduled Rental Fee.

52.6.2 A detailed lease contract will be provided and mutually agreed during the construction phase of the project subject to EIS and local government Council Approvals and sustainable business plan

52.6.3 The lease contract will be made under the development sites Community Title arrangements

¹ Incubator skills models accessed 18/2/08 <http://www.wettropics.gov.au/res/downloads/Cultural.pdf>

52.6.4 The details contained within the lease agreement must comply with the conditions contained in this CHMA and be fair and reasonable for all parties.

52.7 Partnership and Capacity Building- SHMDABDP- Yarning Circle Performance space

52.7.1 SHMD will provide twelve (12) months lease paid for the SHMD Reef Fund for the Yarning Circle.

52.7.2 The Lease Agreement is subject to a mutually agreed viable business plan

52.7.3 Economic Development Initiatives:

Economic development initiatives foster the development of Aboriginal Respondent Parties business by improving the capacity of Gia and Ngaro/Gia people to start and operate a business.

These initiatives aim to provide practical guidance on how to develop or implement business ideas and give access to tailored information and products.

52.8 Partnership and Capacity building- Preferred Tenders Model

Aboriginal Respondent Parties seek assistance/preferred opportunities from SHMD in the construction phases and operational phases of SHMD development.

Interest includes but is not limited to landscaping and revegetation works, building works, cleaning contracts, security contracts, and caretaking and management roles.

52.8.1 Access and Equity Strategies in Tendering Processes

SHMD will incorporate access and equity strategies in tendering processes to maximize Aboriginal Parties opportunity to tender for the delivery of goods and services.

52.8.2 Detailed Pre-tender interviews

SHMD will provide a detailed interview to the Aboriginal Respondent Parties relating to impending tenders to assist in the capacity of Gia and Ngaro/Gia people to bid in the tender process.

52.8.3 Where appropriate a preferred tender process may apply.

52.8.4 Determination of applicable preferred tender categories will be determined via consultation with the CHMA Implementation and Review Committee to identify areas or categories of interest to Gia and Ngaro/Gia people

52.8.5 Preferred tender processes do not limit statute requirements and assessment on merit of tenders.

52.8.6 Aboriginal Respondent Parties as tenders will be required to meet all requirements and standards including skills, specialist skills where required, workplace health and safety and duty of care, accountability requirements detailed in tender documents

52.8.7 **To be clear:** SHMD rights to determine successful tenderer against tender requirements will not be limited, however will be consistent to fair and reasonable and legal tender conditions

53 Principle 4 -Culture and Heritage

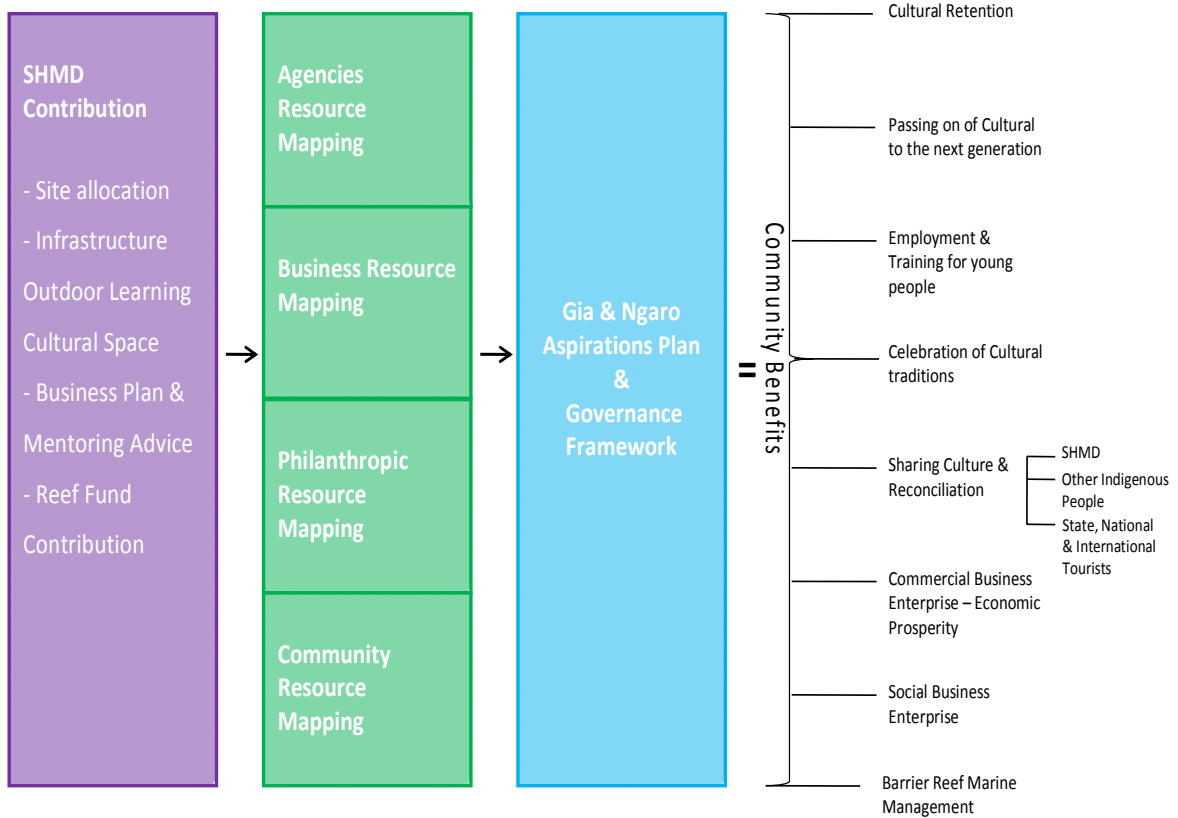
53.1 Principle 4 Culture and Heritage - The Cultural Centre

53.1.1 It is the intent of this CHMA to provide the proposed Cultural Centre will be incorporated with a Charter Boat waiting lounge for charter tourists on the proposed SHMD site, whereby visitors to the site can enjoy air-conditioned comfort, while waiting to aboard to just after disembarking from cruise charters subject to a viable business plan.

53.1.2 The parties agree that this commercial and cultural tourism strategy will maximise and enhance visitor's commercial reef and destination experience. When realised visitors will be able to increase their understanding of reef conservation as well as experience Aboriginal culture and Gia and Ngaro/Gia traditional dreamtime stories, art crafts and traditional exchange and other activities as determined by the Aboriginal Respondent Parties on behalf of Ngaro/Gia and Gia people

54 CHMA ASPIRATIONS MODEL

GIA & NGARO Interactive Cultural Centre Potential Community Benefits



54.1 Principle 4- Culture and Heritage- Marine Ecology and Conservation

54.1.1 SHMD and Aboriginal Respondent Parties recognise that there is a growing body of evidence, which indicates that tourists visiting Australia are unable to satisfy their desire to experience Aboriginal culture and interact with Aboriginal people. To advance opportunities for Gia and Ngaro/Gia people to share their culture and care for land and waters, the development of a **Marine Ecology Social Enterprise** will be included for consideration on the potential business program model

54.2 Principle 4- Culture and Heritage- Aboriginal Cultural Tourism

54.2.1 This CHMA Aspirations Agreement will maximize the potential for Aboriginal Respondent Parties to showcase their culture through the development of **Aboriginal Tourism Enterprises** to supply this market through appropriate forms of tourism involving care of country and culture.

54.2.2 Aboriginal Respondent Parties will work in partnership with SHMD to promote Cultural Heritage sharing in a highly desirable tourist destination at the SHMD project site.

54.3 Tourism and Indigenous Arts and Crafts Initiative

54.3.1 Aboriginal Respondent Parties will develop a Tourism and Indigenous Arts and Crafts Initiative to be incorporated in an agreed Business Plan

54.3.2 All parties recognise and committed to working towards a sustainable, commercially viable Cultural Tourism Plan which has the potential to realise/establish the following:

1. Employment, training and skills development for young people in the tourism and hospitality industries
- 2 Stand-alone Aboriginal owned cultural tourism enterprises
- 3 Cultural tourism services attached to mainstream and other tourism enterprises
- 4 Potential Joint ventures between Gia and Ngaro/Gia Aboriginal people and mainstream Tourism Enterprises

54.4 Potential Joint Venture Leverage

SHMD will facilitate in the first eighteen (18) months of CHMA Aspirations implementation commercial joint venture advice to foster potential joint ventures between Aboriginal Respondent Parties and mainstream tourism enterprises.

55 Satisfaction Statements

55.1.1 The Aboriginal Respondent Parties on their own behalf and on behalf of the Gia and Ngaro/Gia People agree that the benefits provided to the respondent parties are:

- a) In full and final satisfaction to progress the principles and intent of the aspirations agreement

b) For the benefit of all Gia and Ngaro people
55.1.2 The Aboriginal Respondent Parties agree to maximize leverage from the aspirations and intended principles detailed in this CHMA.

55.1.3 Aboriginal respondent Parties will voluntarily and actively work collaboratively to seek economic and voluntary philanthropic investment to realize the aspirations contained in this CHMA for the long term benefits of the Gia and Ngaro/Gia peoples

55.1.4 Aboriginal Respondent Parties identify and endorse the development proposal as it provides long term generational benefits for their community and will provide a world class mainland destination place to maximize Cultural Tourism Enterprise which offers to the community opportunity for cultural, social environmental care for country and waters and economic benefits for their community who have generally low socio-economic status in the broader community.

56 Exclusion Cultural Heritage Management Agreement between Whitsunday Regional Council and Aboriginal Respondent Parties

This Cultural Heritage Management Agreement does not include any agreement negotiations nor conditions of the Whitsunday Regional Shire Council as sponsor for the Designated Area between the existing Shute Harbor Motel and the existing Barge Jetty (proposed new Shute Harbour Public Boat Ramp) and the Aboriginal Registered Parties in their negotiations for Cultural Heritage Management Agreement.

57 Executed as deed by the parties on the dates appearing below

Signed Sealed and Delivered for and on behalf of Shute Harbour Marina Development Pty Ltd

By **ELSIE KYLE**

E Kyle

This ^{13th} day of ^{APRIL} 04 2008

In the presence of :

D.A. Mailman

.....
Signature of witness)

DAVID .A. MAILMAN

.....
(Name of witness)

Signed Sealed and Delivered by

on behalf of the Gia People

By **RAYLENE VAN VEEN**

Raylene

This ^{thirteenth} day of ^{April} 2008

In the presence of :

D.A. Mailman

.....
Signature of witness)

DAVID .A. MAILMAN

.....
(Name of witness)

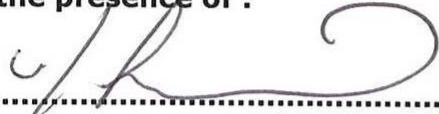
Signed Sealed and Delivered by

MARIE COLEMAN
By Marie Coleman

on behalf of the Gia People

THIRTEENTH APRIL

This day of 2008
In the presence of :



Signature of witness)

Vicky Toffetti

(Name of witness)

Signed Sealed and Delivered by

DATRICIA M. BRIMBLE
By Patricia M. Brimble

on behalf of the Gia People

THIRTEEN APRIL
This day of 2008
In the presence of :



Signature of witness)

DAVID A. MAILMAN

(Name of witness)

Signed Sealed and Delivered by

Sandra Hero
By *Sandra Hero*

on behalf of the Gia People

This *thirteenth* day of *April* 2008

In the presence of:

[Signature]
.....

Signature of witness)

Vicky Toffetti
.....

(Name of witness)

Signed Sealed and Delivered by

RAYMON ARON
By *[Signature]*

on behalf of the Ngaro and Gia People

This *THIRTEEN* day of *APRIL* 2008

In the presence of:

[Signature]
.....

Signature of witness)

Vicky Toffetti
.....

(Name of witness)

Signed Sealed and Delivered by

CHARMAINE KOROI
By *[Signature]*

on behalf of the Ngaro and Gia People

This *thirteenth* day of *APRIL* 2008

In the presence of:

[Signature]
.....

Signature of witness)

Vicky Toffetti
.....

(Name of witness)

Signed Sealed and Delivered by

RENARTA PRIOR

By *RPrior*

13 THIRTEENTH APRIL

This day of 2008

In the presence of:

[Handwritten signature]

Signature of witness)

Vicky Toffetti

(Name of witness)

on behalf of the Ngaro and Gia People

Signed Sealed and Delivered by

CAROL PRIOR

By *Carol Prior*

This *13* day of *April* 2008

In the presence of:

[Handwritten signature]

Signature of witness)

OWEN KYLE

(Name of witness)

on behalf of the Ngaro and Gia People

Signed Sealed and Delivered by

CILLA PRIOR

By *Cilla Prior*

This *thirteenth* day of *April* 2008

In the presence of:

[Handwritten signature]

Signature of witness)

OWEN KYLE

(Name of witness)

on behalf of the Ngaro/Gia People

Signed Sealed and Delivered by

DAVID QUINLAN

on behalf of the Shute Harbour Marina
Development Pty Ltd

By

[Handwritten signature]

^{THIRTEENTH APRIL}
This day of 2008
In the presence of:

[Handwritten signature]

.....
Signature of witness)

OWEN KYLE

.....
(Name of witness)

**Refer to Cultural Heritage Management Plan Shute Harbour Marina
Development EIS Consultation Report
Shute Harbour Marina Development Project
Shute Harbour Road, Shute Bay, Whitsunday Region
In consultation with Gia and Ngaro/Gia Aboriginal Respondent Parties
July 2008**