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1 Introduction

This Procedure is the result of an assessment concerning the potential areas that may be impacted as part of Kenjarhy Aboriginal Mining Services (KAMS) works associated with works conducted under various contracts. It details the proposed management of sites and areas of significance identified during a desktop study and any subsequent surveys of the proposed areas of works.

It sets out methods for mitigating any negative impact from the construction and associated activities on areas of cultural significance to the Traditional Owners. It also defines the roles and responsibilities of the parties concerned, namely the Traditional Owners, KAMS and the future owners and operators of the project/s being conducted.

1.1 Purpose

To prescribe the required management protocols to prevent any unapproved impact on identified and/or unidentified Aboriginal and Non-Indigenous Heritages sites on land where KAMS conducts work.

This procedure has been developed to ensure compliance with the requirements of applicable legislation and client requirements as identified during the Tender process. This procedure will:

- Address Aboriginal Heritage and Non-Indigenous (European) heritage issues within KAMS operations and surrounding areas,
- Set down control measures to mitigate the impacts associated with KAMS activities,
- Outline the monitoring and measurement protocols for Aboriginal Heritage and Non-Indigenous Heritage sites within KAMS operations,
- Detail the review and reporting protocols, and
- Establish responsibilities for the management of Aboriginal Heritage and Non-Indigenous Heritage sites.

1.2 Scope

When working under a contract where a client has previously identified Aboriginal Heritage and Non-Indigenous Heritage sites and developed a Management Plan for these areas, KAMS will adopt the clients plan as their own.

Where no client plan exists, this procedure shall be applied to all contracts and works carried out by KAMS.

2 Cultural Heritage Principles

Aboriginal culture is an important resource to all Australians. To protect this resource and the interests and concerns of Traditional Owners, the principles which form part of this procedure are as follows:

- All reasonable precautions are to be taken to protect cultural places from damage caused by construction and associated activities.
- Traditional Owners' beliefs and cultural knowledge remain their property.
- Monitoring and cultural heritage management will involve Traditional Owners.
Respect for Aboriginal culture by all parties is fundamental to effective cultural heritage management. To facilitate an awareness of Aboriginal cultural heritage, a suitable induction program may be included for all personnel associated with and involved in KAMS operations.

When it is culturally appropriate, professional expertise will be engaged to advise on archaeological matters.

2.1 Aboriginal Heritage Identification

In most instances the client will have already undertaken studies to identify Aboriginal and Heritage sites. During this process they would normally have:

- Consulted and involved the Aboriginal community at stages of the investigation and provided a continuous opportunity for the Aboriginal community to participate in the interpretation and decisions making process,
- Identified and recorded by field survey Aboriginal heritage evidence or locations of potential evidence within the study area,
- Assessed the archaeological (scientific) significance and indentified the Aboriginal (cultural) significance of the evidence,
- Assessed the impacts of the proposed mine development of Aboriginal heritage, and
- Formulated recommendations appropriate for the management of Aboriginal heritage.

In instances where responsibility for identifying Aboriginal Heritage sites falls to KAMS, KAMS shall follow the steps as outlined above when conducting the study/ies.

2.2 Non-Indigenous (European) Heritage Identification

Homesteads are generally the most significant sites of Non-Indigenous Heritage. Even though a property may not be listed on any heritage registers, if it was built at the turn of the last century and, by virtue of being over 50 years of age, they are protected under the Heritage Act 1977.

3 Mitigation Measures

The following section outlines the control measures adopted by KAMS as part of the company’s commitment to managing Heritage items.

3.1 Control Measures

Mine Planning

- Mine plans are to consider all the heritage assessments that have identified Aboriginal sites.
- Proposed layouts of long wall panels and associated features are to be planned as far as possible to avoid creating subsidence effects in areas of greatest sensitivity.
- Future heritage surveys undertaken as part of the mine development or as part of monitoring, will be assessed and the appropriate amendments made to the mine plan where necessary.
Subsidence Management Plan
A Mine Subsidence Management Plan shall include discussion on the impacts of subsidence on Aboriginal heritage sites.

Ongoing monitoring of subsidence and validation of the subsidence model for the site will enable an accurate estimate of likely subsidence to be maintained for the life of the project.

Aboriginal heritage sites that are located in the subsidence zones, where the likelihood of damage from subsidence is considered to be greater than 1%, will be included in an application under s.90 of the NPW Act 1974 to permit impacts to the sites, with salvage measures where appropriate. As part of this s.90 process, KAMS will consult with DECC and the Aboriginal community and seek to address any issues that they may have. A plan showing the approximate location of the sites that may require s.90 Consent at some stage throughout the development should be prepared.

Where a s.90 consent is issued, all sites are to be recorded in full details (through diagrams, drawings, photos etc.) by an appropriately qualified archaeologist prior to the relevant site being disturbed.

Whenever possible, KAMS shall assist representatives of the local Aboriginal groups to undertake the salvage of artefacts post s.90 approvals.

3.2 Heritage Items Not Previously Identified
If, during the course of any activities associated with KAMS works a potential Heritage item is identified, all work within the area will cease immediately. An archaeologist will be engaged to undertake an assessment of the site in consultation with DECC and the local Aboriginal stakeholder groups. All necessary permits and/or consents will be obtained as required before the recommencement of work in that area.

3.3 Conservation Areas
Any works undertaken in the vicinity of Conservation Areas, will require approval from the General Manager in consultation with the client if appropriate.

4 Protection of Indigenous Sites
Each site location will be assessed by KAMS to determine its location in relation to identified construction points. Management of these sites is covered in the procedures for known sites, in the event that these sites are in any way likely to be impacted upon by the dam construction and/or operations activities.

4.1 Known sites
Management practices will follow the recommendations of the Cultural Heritage Report which has been prepared following the survey and the Procedure, both in general principles and as indicated for particular sites.

KAMS will ensure that contractors and all personnel are provided with a Cultural Heritage Induction Program. People approved of and identified by the Traditional Owners would conduct this program. This should help to ensure the adherence to relevant legislation protecting sites in the construction and use and maintenance phases of the dam operation.
The known sites recorded in this survey will be recorded on all work plans and maps. Copies of these maps will be provided to the Cultural Officer.

Before any activities begin near a recorded site, the site/s will be identified and flagged by the Cultural Officer or archaeologist as appropriate. Protection of the site may include the erection of temporary barriers or fences on advice from the archaeologist and the Traditional Owners.

Access to sites should be restricted to essential personnel and contractors should adjust activities to ensure avoidance of any culturally significant sites during their activities. Where it is unavoidable that known cultural material will be affected during construction, the material will be moved to an agreed distance from the activity or collected by or under the supervision of the Traditional Owners before construction. Such material will be stored and dealt with subject to the *Cultural Record Act*, in accordance with the wishes of the Traditional Owners.

### 4.2 Inadvertent Discovery

Places and items of cultural significance may be uncovered throughout the construction phase and during the life of the mine. The material may be:
- burials, and
- all other cultural material.

**Burials**

Human remains are controlled by the following legislation:
- the Coroners Act 2009 (NSW);
- the Crimes Act 1900 (NSW);
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW; and
- the National Parks and Wildlife Act 1974 (NSW) covers Aboriginal human remains.

Should human remains be found during KAMS contracted works, the following procedure should be adopted:

On discovery of the material the following actions should occur as soon as practicable:

1) all work should cease at the location and if necessary, the Cultural Officer should be notified, if not already present at the location. Construction workers and operational personnel will comply with the instructions of the Cultural Officer. Construction may continue at an agreed distance away from the site.

2) the Works Manager or Supervisor and the KAMS Project Manager and EPA should be notified.

3) all personnel and contractors on site should be advised that it is an offence under the *Coroners Act* to interfere with the material, and

4) The Police must be notified.

The EPA policy states: “the discovery of any human remains must be reported to the Police. Police Officers are then required to establish the area of discovery as a potential crime scene and are responsible for preserving and securing the area. The Environmental Protection Agency will attend the scene as a priority and along with the Police scientific officers will collect appropriate data on ethnicity, antiquity and evidence or otherwise of criminal activity for submission to the Police investigators. In all cases a second opinion will also be sought from forensic osteologists/pathologists.”
1) Reasonable efforts to protect the remains shall be made if required. Note that the material should not be removed or disturbed further but buffer zones or temporary barriers may be appropriate.

2) At the same time as other individuals and agencies are contacted, the Cultural Officer will notify the Traditional Owners of the discovery, the steps which have been taken and make appropriate arrangement for nominated Traditional Owners to attend the site, if required.

3) The Traditional Owners should be consulted as to the management of the material once Aboriginal origin has been determined.

4) No further work at the locations should be undertaken until all parties have been consulted and agreement has been reached.

5) The material should remain undisturbed in place if possible and if the remains are uncovered remedial works should be undertaken to ensure the remains are recovered and secure.

The location of the burial should be recorded in sufficient detail for its future protection. Any remedial works should be undertaken in consultation with the Cultural Officer and the Traditional Owners.

The Cultural Officer should monitor any works associated with recovering of the skeletal material.

Should a decision be reached to relocate the material the following should occur:

1) a data recovery program, planned in consultation with the Traditional Owners, a qualified archaeologist and the EPA, should be developed and implemented. This will include recording of the location of the burial and other features as required by the Traditional Owners;

2) an EPA permit under the Cultural Record Act should be obtained, if necessary after consultation with EPA;

3) representatives of the Traditional Owners should be present during the recovery phase;

4) a suitable keeping place or re-interment location should be negotiated between KAMS, the Traditional Owners and the appropriate government agencies; and

5) Reasonable efforts should be undertaken by KAMS to ensure that Traditional Owners can undertake the appropriate spiritual ceremonies necessary.

**Discovery of all other surface or buried cultural material**

If surface or buried material is uncovered, the following procedures should be undertaken:

1) All work in the immediate vicinity of the find must cease and reasonable efforts to secure the discovery should be made. Work can continue at an agreed upon distance from the site. Note that the material should not be removed or disturbed further but barriers or temporary fences may be erected as a buffer around the remains if required;

2) The Cultural Officer and appropriate KAMS managers should be notified;

3) EPA should be contacted and advised of the situation;
4) The Cultural Officer will create accurate records, including map references and photographs of the material or an in situ evaluation of the resources can be made by a qualified archaeologist if required;

5) A written statement of the Cultural Officer/archaeologist's findings and recommendations should be provided to the Traditional Owners for their consideration;

6) Based on the recommendations from the Cultural Officer/archaeologist, decisions regarding the treatment of the resources shall be made in consultation with the Traditional Owners and the EPA.

If the resources cannot be evaluated without further archaeological work, then the following procedure should be undertaken:

1) a data recovery program planned in consultation with the Traditional Owners, a qualified archaeologist and the EPA should be developed and implemented;

2) an EPA permit under the Cultural Record Act should be obtained;

3) representatives of the Traditional Owners should be present during the data recovery phase; and

4) based on the results of the data recovery program the resources shall be evaluated in consultation with the Traditional Owners, archaeologist and the EPA.

4.3 Remedial activities

The Cultural Officer and the Traditional Owners will oversee repairs to any sites damaged during construction. Such repairs will be undertaken by KAMS. Repairs will be in accordance with Traditional Owner instructions and only include those measures approved by the designated Traditional Owners in writing beforehand.

KAMS will not undertake any remedial activities without the written consent of the Traditional Owners. Such consent will not be unreasonably withheld and will be provided by the Traditional Owners in a timely manner to minimise delays to work schedules without compromising cultural values or sensitivities.

4.4 A Keeping place

It may be necessary to establish a keeping place for the storage of cultural material. Any material, which is recovered as part of a mitigation plan, should be held in a safe keeping place in perpetuity. KAMS will begin discussions prior to commencement of construction with the Traditional Owners about creating a suitable keeping place (permanent or temporary) and the nomination of suitable representatives who could be consulted on the material. The keeping place may be:

1) a keeping place within an existing KAMS facility held in trust for Traditional Owners with access to the material provided on request. This will be a temporary measure until the Traditional Owners nominate a suitable permanent place. KAMS should investigate if suitable storage facilities are already available to them in a regional centre. Any such facility should only be approved after consultation with the Traditional Owners.

2) a permanent keeping place at the location where the material was found. KAMS will be responsible for resourcing and maintaining the facility. Procedures for access by nominated representatives should also be developed.

3) a keeping place at a location nominated by the Traditional Owners. KAMS should resource the Traditional Owners to ensure the material is adequately stored and maintained permanently.
4) The EPA should be consulted and kept informed during discussions regarding the location of material as they have legislative responsibilities in this matter.

5 Protection of European historical sites

Management of historic sites in New South Wales (NSW) is controlled primarily under the NSW Heritage Act 1977.

5.1 Known sites

1) Management practices will follow the recommendations of the CHR and the Procedure, both in general principles and as indicated for particular sites.

2) KAMS will ensure that contractors and all personnel are provided with a Cultural Heritage Induction Program. This should help to ensure the adherence to relevant legislation protecting sites in the construction and use and maintenance phases of the operation.

3) The known sites recorded in this survey will be recorded on all works plans and maps. Copies of these maps will be provided to the Project Manager.

4) Before any activities begin near a recorded site, the site/s will be identified and flagged by the archaeologist. Protection of the site may include the erection of temporary barriers or fences on advice from the archaeologist.

5) Access to sites should be restricted to essential personnel and contractors should adjust activities to ensure avoidance of any sites during their activities.

6) Where it is unavoidable that known cultural material will be affected during construction, the material will be moved to an agreed distance from the activity or collected. A salvage plan for such material will be prepared by the archaeologist in consultation with the relevant authority. Such material will be stored and dealt with subject to the NSW Heritage Act 1977.

5.2 Inadvertent discovery

1) All work at the location must cease and reasonable efforts to secure the site should be made. Note that the material should not be removed or disturbed further but barriers or temporary fences may be erected as a buffer around the remains if required;

2) Appropriate KAMS managers should be notified;

3) EPA should be contacted and advised of the situation.

4) An in situ evaluation of the resources should be made by a qualified archaeologist/heritage architect as appropriate;

5) Based on the recommendations from the archaeologist decisions regarding the treatment of the resources shall be made in consultation with the EPA.

6) If the resources cannot be evaluated without further archaeological work then the following procedure should be undertaken:
   - A data recovery program planned in consultation with the EPA should be developed and implemented
   - An EPA permit should be obtained, if required
   - Based on the results of the data recovery program the resources shall be evaluated in consultation with the EPA.
6 Responsibilities

6.1 KAMS Responsibilities

1. KAMS will meet all its obligations as specified to ensure the complete implementation of this Procedure.
2. KAMS will ensure that the appropriate permits governing cultural heritage management are in place prior to commencement of works.
3. KAMS will ensure that all areas that are likely to be impacted by its works are assessed for cultural heritage significance before commencement of activities. Examples of such areas include access tracks, clearing, hard stands for plant and equipment, etc.
4. KAMS will, where required, consult with Traditional Owners about how they should be involved in the planning decisions affecting cultural heritage places.
5. KAMS will ensure monitors on site are trained in construction site safety procedures in accordance with relevant legislation.
6. KAMS will provide an archaeologist for specialist advice when required by the Traditional Owners or by KAMS.
7. KAMS will ensure that its staff and contractors have a full awareness of their responsibilities under this procedure to protect Aboriginal cultural heritage sites within its area of operations.
8. KAMS will consult with Traditional Owners regarding relevant cultural heritage issues throughout the life of the area of operations.

6.2 Responsibilities of the Traditional Owners

1. The relevant Indigenous communities will determine, through consultation processes, including consultation with the Land Council, their designated Traditional Owner representatives.
2. With the concurrence of the Traditional Owners, the Land Council will assume the role of communicating to Client, community decisions regarding appointments of Cultural Officers and specific designated Traditional Owners who are able to speak on behalf of their respective communities.
3. One or more Cultural Officers will need to be appointed for the construction. The Cultural Officer/s is/are to be on site during relevant construction activities, with assistance to be provided from monitors in accordance with the Procedure as required. The number of monitors will be commensurate with the scale of the work to be undertaken. Monitors will be sufficiently skilled in the identification of cultural material, and will work alongside the survey or construction teams in the areas recommended as requiring monitoring.
4. Each Cultural Officer’s responsibilities will include the following:
   - Being on site when relevant construction activities are scheduled to occur;
   - Coordinating all phases of any cultural heritage monitoring;
   - Arranging for monitors to be available on site when required based on the work schedules provided by KAMS and the construction contractor/s and notify KAMS in advance as to the names of the team members;
   - Ensuring that all activities undertaken by the monitors comply with relevant legislation;
- Ensuring that no cultural material is removed or disturbed except where stipulated in a negotiated agreement with KAMS, EPA and other relevant agencies;
- Ensuring that any material so removed is deposited in an agreed keeping place and that adequate records of the material are kept;
- Keeping a daily diary describing the team’s location and activities as a record for the Traditional Owners. A copy or a weekly summary will be forwarded to KAMS Project Manager;
- Maintaining open lines of communication with other Traditional Owners, KAMS staff and construction personnel;
- Attending regular project meetings.

5. All monitors will undertake their duties, obligations and responsibilities set out in the Procedure and the relevant legislation.

6. The Traditional Owners, through Land Council, may substitute the Cultural Officer/s, the nominee/s or the monitors/s

Cost reimbursement by Client will be for work carried out under this procedure by the Cultural Officer/s and the nominee/s and by monitors where these are necessarily employed, including expenses agreed in advance.

7 Disclosure of information

1) KAMS will provide all relevant information to the Traditional Owners, about the proposed development.

2) Aboriginal people will be involved in the assessment of potential impacts on culturally significant areas.

3) There is no requirement in this process for Traditional Owners to impart sensitive cultural knowledge. This information is restricted and remains the intellectual property of the Aboriginal community members. However, the Traditional Owners will ensure that no place or artefact is identified without a bona fide cultural significance.

4) The identification of the location and details of any recorded sites in this report in any document other than KAMS documents is considered culturally inappropriate by the Traditional Owners and should be avoided.

7.1 Notification and Reporting

1) The Traditional Owners and KAMS will provide each other with all necessary information to carry out the Procedure and this information will be provided in a timely manner.

2) The Traditional Owners in agreement with the Cultural Officer and the Project Manager will nominate the number of monitors reasonably necessary to complete the work efficiently. The monitors will be experienced in the type of work to be undertaken.

3) KAMS and the contractors will endeavour to provide the Cultural Officer with daily briefings of work schedules at least 2 days prior to the implementation of the work schedule to allow coordination of any monitoring arrangements. (It is expected that the necessity for these briefings will reduce as construction on site becomes established).
4) The Cultural Officer will be informed of any substantial alterations to the work schedule as soon as is practicable and in sufficient time to allow the arrangement of the presence of the required monitors.

5) Provided KAMS has given sufficient notification of work schedules, arrangements and alterations the construction is not to be suspended in the case of monitors not arriving on site.

6) KAMS recognises that Aboriginal community protocols may occasionally require the Cultural Officers and the monitors to temporarily relinquish their positions. In such cases, the Cultural Officer will ensure that any cessation of monitoring activities or disruption of the work schedule is avoided by arranging for a replacement Cultural Officer to be in attendance.

7) In the event of wet weather, industrial action, equipment unavailability or other factors halting construction, the Project Manager or other designated person shall notify the Cultural Officer without delay that work is to be suspended and when resumption is expected.

8) The Cultural Officer will maintain the following records:
   - Daily work reports for Cultural Officer and monitors;
   - Site inspection reports, including reports on discovery and disposition of material during monitoring;
   - Incident reports relating to any breach of the Procedure.

Reports on fieldwork during construction will be prepared on a weekly basis by the Cultural Officer. Copies will be forwarded to KAMS and the Traditional Owners. Monitors will maintain a schedule of sites visited if relevant. This schedule will be given to the Cultural Officer on a weekly basis. Monitors will submit a formal incident report to the Cultural Officer as soon as they become aware of any possible breach of the Procedure. Copies will be given to the Project Manager as soon as possible.

8 Communication and Dispute Resolution

Communication between all parties may include:

1) The Cultural Officer reporting to the Traditional Owner groups and to KAMS

2) Appropriate channels for review of the process and protocols which have been developed including meetings between the Cultural Officer and KAMS representatives

3) Representatives of the Traditional Owners will undertake discussions with KAMS to negotiate and resolve disputes.

4) KAMS will undertake reasonable costs to resource the Cultural Officer and representatives of the Traditional Owners to reach an agreed settlement.

5) Where agreement is not reached on a matter where the agreement of the Traditional Owners is required, the General Manager will notify in writing the nominee of the Traditional Owners of its proposed action and will proceed with that action not earlier than one (1) month after notice is given to such nominee.

6) Any action to be taken under clause 5 must satisfy all statutory duties of care and responsibility including those under the NSW Heritage Act, and the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984 or any other relevant heritage legislation which becomes effective during the course of the project.
8.1 Personnel issues

1) The Cultural Officer and the monitors are appointed by the Traditional Owners to oversee the implementation of the Procedure.

2) KAMS and its contractors do not have the authority to direct these appointees to undertake any action except in relation to the specific issues of Work Place Health and Safety.

3) The Traditional Owners will establish a policy of formal disciplinary procedures for the Cultural Officer and monitors. The Cultural officer and monitors will be informed of these procedures during the induction process.

4) The Cultural Officer will also inform the KAMS Project Engineer of the procedures in sufficient detail for an understanding of the arrangements.

KAMS’s Project Manager and the Cultural Officer may invite each other to any meetings with third parties regarding the Procedure or the activities of the Cultural Officer or any monitor, where the attendance of both parties may facilitate resolution of any issues.

9 Training and Awareness

KAMS recognises that training and awareness is an integral part of the Environmental Management System. This is the means by which personnel are informed about the components of the Plan and how it is implemented. The training also includes detail on peoples specific responsibilities with respect to the management of Heritage Items areas within KAMS operations.

KAMS’s environmental training and awareness program consists of induction training for new starters and contractors along with refresher and ongoing “toolbox” training for all permanent employees as required.

10 Monitoring and Measurement

The significant impacts of activities related to current KAMS operations are typically related to subsidence. This may include damage to sites as a result of rock breakage, slippage and fracture, or enhanced erosion and weather due to exposure which may result as a consequence of changes in surface profile. For this reasons monitoring and measurement of the Heritages items identified is linked closely to the Subsidence Management Plan4.

11 Reporting and Review

The following section includes the Reporting and Review requirements relating to the management of Heritage Items within KAMS area/s of operations.

11.1 Reporting

All external and internal reporting is undertaken in accordance with the reporting requirements of the KAMS Environmental Management Plan5.

A summary of any heritage management issues and actions arising will be reported as per the Incident Reporting and Investigation Procedure6 and to clients where required. It will also include a summary of the monitoring and measurement outcomes.
11.2 Inspections
KAMS will conduct regular inspections in accordance with the Environmental Management Plan.

11.3 Review
This procedure will be reviewed in accordance with the Environmental Management Plan. The review will include an assessment of the effectiveness of the established controls and their performance against the Plans objectives.

12 Definitions
Human Remains ............................................. The term ‘human remains’ is used as it applies in the legislation and government policy statements. No disrespect to the Traditional Owners, their relatives or other people of Aboriginal or Torres Strait Islander descent is intended or implied in its use.

13 References & Related Documents

1  National Parks & Wildlife Act 1974
2  Environmental Planning & Assessment Act 1979
3  Heritage Act 1977 (NSW)
4  HSE-MP-020 Slope Stability & Strata Control Management System
5  HSE-MP-009 Environmental Management Plan
6  HSE-PR-019 Incident Reporting & Investigation