

12 Issues specific to Miriuwung and Gajerrong people

12.1 INTRODUCTION

The land encompassing the Ord and Keep rivers, including the Project Area, is of traditional and current significance to Miriuwung and Gajerrong people.

In 1998, Miriuwung and Gajerrong people successfully argued their native title rights before the Federal Court, resulting in the first determination for native title on the Australian mainland. The land subject to the determination is approximately 7,900km², and approximately 100km² of that land is located within the Project Area. The balance of the Project Area is currently subject to two additional native title claims and an Aboriginal land rights claim by the Miriuwung and Gajerrong people.

This chapter summarises the environmental issues in relation to the proposed development of specific interest to Miriuwung and Gajerrong people. It also describes how Wesfarmers–Marubeni and the Water Corporation have addressed or intend to address those issues, including cultural heritage, social impact and native title.

12.2 HISTORICAL OVERVIEW

Conflict between white pastoralists and Aboriginal people in the East Kimberley and the Northern Territory in the early years of the development of the pastoral industry was common. The Aboriginal people living off the land as they had done for thousands of years found their traditional way of life inconsistent with the newly established pastoral industry. A long campaign of resistance was waged by at least some Aboriginal people (Maurice 1985, 5).

Conflict between Aboriginal people and pastoralists continued until the early part of the twentieth century. This conflict resulted in the Horseshoe Creek Massacre (1901), the Mistake Creek Massacre (1915) and the Forrest River Massacre (1926). Encounters in the vicinity of Kununurra occurred at Skull Creek, Dingo Springs, Bucket Spring and Newry, and are recalled in stories told by Aboriginal people (Green 1978; Mulvaney 1996; Ross and Bray 1989; Shaw 1981; Thoorbiliny 1987).

The introduction of the pastoral industry had a marked and deleterious effect on the native fauna and flora, which resulted in a diminished opportunity for Aboriginal people to maintain their traditional lifestyle (Lee 1998). As a result the Miriuwung, Gajerrong, Murinpatha, Jaminjung and other Aboriginal people in the region, began to work for the pastoral lessees who had assumed management of significant areas of their traditional country.

Aboriginal people who worked on the pastoral stations were still able to practice their traditional lifestyle, conduct ceremonies, hunt and visit country on weekends and during the wet season. Aboriginal people reversed their traditional time for ceremonies to accommodate their employment on the pastoral stations in the 'dry', and movement and congregation for ceremonial activity in the 'wet' (Western Australian Planning Commission 1999).

The development of farmland in ORIA Stage 1 in 1963, provided opportunities for Aboriginal labour being used for weeding and casual gardening work. In the same year, the Mirima Aboriginal Reserve was established in Kununurra along with the new township. The establishment of the Reserve created the first permanent base for Aboriginal people, providing a place where people could remain rather than returning to the pastoral stations at the commencement of the working season (Willis 1980, 22). The Native Welfare Department Annual Report for 1962 noted that Aboriginal people were moving away from the pastoral stations and finding work in other places in and around Kununurra (Willis 1980, 29).

By the mid-1960s, farmers and pastoral lessees were competing for the services of Aboriginal workers who now occupied the Reserve. Farmers paid £20–30 per week, whereas the pastoral lessees paid less than £5 per week. As a consequence, many Aboriginal people moved to Kununurra (Willis 1980).

The advent of equal wages for Aboriginal people in 1969 in the pastoral industry dramatically decreased Aboriginal employment on the pastoral stations. This in turn resulted in the increased movement of Aboriginal people into towns such as Wyndham and the newly established Kununurra.

Between 1963 and 1976, the Aboriginal population of Kununurra grew from 77 persons to 438 persons, with a similar increase in Wyndham (Willis 1980).

Since the 1980s, Government policies have encouraged the establishment of Aboriginal 'homeland communities' (now commonly known as Community Living Areas). The purpose of these homeland communities is to support Aboriginal people to re-establish themselves on their traditional country. There are currently over 30 Aboriginal homeland communities in the Kununurra-Wyndham area, most of which are small with some being remote (Western Australian Planning Commission 1999). Negotiations are ongoing with the Western Australian Government to establish additional homeland communities to further enable Aboriginal people to maintain their links with their traditional country.

The Western Australian Government and, to a lesser degree, the Northern Territory Government have been involved in facilitating the development of the Ord River region since the construction of the Kununurra Diversion Dam in the early 1960s. The early development of the region occurred at a time when there was no legal requirement to consult with, or consider, Aboriginal issues. Consequently, since the late 1960s, Aboriginal people have actively sought to have their traditional rights recognised, to participate in the economic development process, and to share in the subsequent benefits of economic development.

12.3 CONSULTATION WITH MIRIUWUNG AND GAJERRONG PEOPLE

The Western Australian Government has undertaken consultations with Miriuwung and Gajerrong people from 1995-1998 in relation to the proposed ORIA Stage 2 developments. The consultations generally focussed on compliance with cultural heritage issues as well as

other issues that may affect the Miriuwung and Gajerrong people such as employment and training opportunities.

Wesfarmers–Marubeni and the Water Corporation have taken over the lead role in consultation with respect to the Project Area since being awarded an exclusive mandate in April 1998 to investigate the viability of developing the Project Area.

Wesfarmers–Marubeni and the Water Corporation recognise the need to establish a working relationship with the Aboriginal community and to have consistent, open and honest consultation with them and, specifically, with those Miriuwung and Gajerrong people likely to be directly affected by the proposed development. Extensive consultation is occurring with the Miriuwung and Gajerrong people, as well as with the Aboriginal representative bodies – the Aboriginal Legal Service (ALS), the Kimberley Land Council (KLC) and the Northern Land Council (NLC).

Wesfarmers–Marubeni and the Water Corporation have established a Community Relations Team of three staff to facilitate ongoing communication with the Miriuwung and Gajerrong people in relation to the proposed development. Two members of the team reside permanently in Kununurra, including a Project Co-ordinator and Community Relations Officer, and the third Perth-based member visits Kununurra on a regular basis.

A good working relationship has been established through regular interface between the Community Relations Team, the Miriuwung and Gajerrong people and the Aboriginal representative bodies.

The first official meetings between Wesfarmers–Marubeni, the Water Corporation and the Miriuwung and Gajerrong people occurred on 21 and 22 July 1998. On 21 July, a meeting was held at the Ski Beach on the Lake Kununurra foreshore, and was well attended by Miriuwung and Gajerrong people, as well as by representatives from the ALS, the KLC and the NLC. The purpose of the meeting was to enable Wesfarmers–Marubeni and the Water Corporation to outline the proposed Project and the planned development of the ERMP/draft EIS. The following day, representatives from Wesfarmers–Marubeni and the Water Corporation visited the Project Area to continue the discussions on site (see Figure 12.1). The two-day interaction session established a positive tone for future discussions and negotiations between the parties.

Since the initial meeting, Wesfarmers–Marubeni and the Water Corporation have attended regular meetings facilitated by the Aboriginal representative bodies to discuss and negotiate the cultural heritage assessment process, and other issues relating to Miriuwung and Gajerrong people.

In addition to meetings with the Aboriginal representative bodies, Wesfarmers–Marubeni and the Water Corporation have also convened regular meetings with the Miriuwung and Gajerrong people. The purpose of the meetings is to provide the Miriuwung and Gajerrong people and the Aboriginal representative bodies will feedback on the progress of the Project. These meetings commenced in February 1999 and are scheduled to occur at times that suit the attendance of Miriuwung and Gajerrong people. Wesfarmers–Marubeni and the Water Corporation formally invite the Miriuwung and Gajerrong people and the Aboriginal representative bodies to attend these meetings, which are generally well represented.

Figure 12.1 Consultation with Miriuwung and Gajerrong people in the Project Area on 22 July 1998



At the conclusion of each meeting, a summary of the issues discussed is provided to the Miriuwung and Gajerrong people and the Aboriginal representative bodies for their information. The Community Relations Officer also provides copies of this summary to representatives of the Miriuwung and Gajerrong families that were unable to attend the meeting.

Wesfarmers–Marubeni and the Water Corporation have also invited Miriuwung and Gajerrong people to participate in work undertaken directly for the ERMP/draft EIS. These invitations included:

- an invitation to participate in flora and fauna surveys conducted in May and June 1999;
- an invitation to view the locations of proposed test pits excavated by a Waringarri Aboriginal Corporation backhoe at the proposed sugar-mill site in April 1999.

Miriuwung and Gajerrong people participated on both occasions. The purpose of the former invitation was to create the opportunity for the documentation, in Miriuwung and Gajerrong language, of the various plants and animals to be recorded during the survey, and to allow cross-cultural interaction between the parties. For that exercise, the KLC was able to facilitate the involvement of Miriuwung and Gajerrong people in site inspections of the flora and fauna survey work (Figure 12.2).

Figure 12.2 Miriuwung and Gajerrong Traditional Owner examining fauna caught during the flora and fauna survey



Wesfarmers–Marubeni and the Water Corporation have demonstrated their commitment to significant consultation and ongoing dialogue with Miriuwung and Gajerrong people and the

Aboriginal representative bodies. This has allowed all parties to understand and to jointly own the issues and processes being employed and to resolve problems.

12.4 NATIVE TITLE AND LAND RIGHTS CLAIMS

12.4.1 Background

The 1992 High Court ‘Mabo decision’ overturned the concept of *terra nullius*. In reaction to the decision, the Commonwealth Government enacted the *Native Title Act 1993* (NTA), and established the National Native Title Tribunal to administer native title claims.

In December 1996, the High Court determined that native title may coexist with pastoral activities, but that pastoral lease rights would prevail if there was any inconsistency with native title rights. This decision is known as the ‘Wik decision’, after the Aboriginal group that brought the case to court.

The NTA requires that Governments proposing to deal with land where native title may exist, such as pastoral leases and vacant Crown land, must consult with Aboriginal people. This process is known as the ‘right to negotiate’.

12.4.2 Native title claims

In April 1994 (Claim WC94/2), August 1994 (Claim WC94/7), and January 1995 (Claim DC95/1), the Miriuwung and Gajerrong people lodged native title claims over a significant portion of the East Kimberley in Western Australia and the Northern Territory. The three claims cover the entire Project Area (see Figure 12.3).

As a result of the lodgment of the claims, proponents wishing to develop a significant portion of land in the East Kimberley must consult with Miriuwung and Gajerrong people. Wesfarmers–Marubeni and the Water Corporation began consultation with Miriuwung and Gajerrong people in July 1998, and the process is ongoing.

12.4.3 Aboriginal Land Rights claim

Unlike Western Australia, the Northern Territory has an additional legislative procedure by which Aboriginal people can claim land—the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). In accordance with the ALRA, Aboriginal people may claim unalienated Crown land outside of gazetted town areas and also land in which all interests are owned by, or on behalf of, Aboriginal people (e.g. reserves, missions etc.).

In accordance with the ALRA, the NLC has a statutory responsibility to lodge claims on behalf of ‘traditional owners’. One of the claims lodged by the NLC is known as the Legune Area land claim and it affects that portion of the Project Area contained within the Spirit Hills pastoral lease. The claim was lodged on behalf of Miriuwung and Gajerrong people.

The validity of the Legune Area land claim is currently the subject of Federal Court proceedings.

12.4.4 Native Title determination and appeal

On 24 November 1998, the Federal Court of Australia determined that Miriuwung and Gajerrong people have particular native title rights to a portion of their traditional land covered under native title claim WC94/2 (Lee 1998). The determination area covers approximately 7,900 km² and includes the Ord River, Lake Argyle and approximately 100 km² of the Project Area.

On 6 January 1999, the Western Australian Government and others lodged an appeal against the Federal Court determination. The full bench of the Federal Court of Australia heard appeal evidence from 26 July to 13 August 1999.

12.4.5 Settlement of Native Title Issues in relation to the Project

The entire Project Area comprises either land upon which native title has been determined (approximately 10,000 ha) or land currently the subject of native title claims (approximately 66,000 ha) (see Figure 12.3).

A native title determination, such as the determination made by the Federal Court on 24 November 1998, requires that native title holders be compensated for any temporary impairment or permanent loss of any or all of their native title rights. Furthermore, on land subject to a registered native title claim for which native title has not been formally determined, the claimants retain the “right to negotiate” over any proposed development of the land.

For land the subject of a native title determination and land the subject of a native title claim, the native title holders and claimants may voluntarily surrender their native title rights and interests by way of a negotiated settlement. Such a negotiated settlement is known as an Indigenous Land Use Agreement (ILUA).

A valid ILUA must conform to the provisions of the NTA, and may be registered with the National Native Title Tribunal. Typically, parties to an ILUA can include Aboriginal native title holders/claimants, Aboriginal representative bodies, project proponents and Governments. Mutually agreed benefits packages for the claimants/native title holders are a key element of any ILUA, in return for the voluntary surrender of native title rights and interests over the land. It is envisaged that particular rights may remain intact while enabling development of the land to proceed in a timely manner.

The proposed development could not occur until all native title issues over the Project Area are resolved. The preferred approach of Wesfarmers–Marubeni and the Water Corporation is to resolve all native title issues in relation to the Project Area by concluding an ILUA with the Miriuwung and Gajerrong people. This has been communicated by Wesfarmers–Marubeni and the Water Corporation to the Miriuwung and Gajerrong people and the Aboriginal representative bodies at all times throughout the consultation process.

Resolution of the native title issues by way of an ILUA is considered to be the most equitable way of securing access to land in the Project Area, and the most pragmatic approach to a timely resolution of the issues. Furthermore, negotiation of an ILUA, which satisfies the interests of the Miriuwung and Gajerrong people, may also result in the withdrawal of the ALRA claim over the portion of the Project Area located on the Spirit Hills pastoral lease.

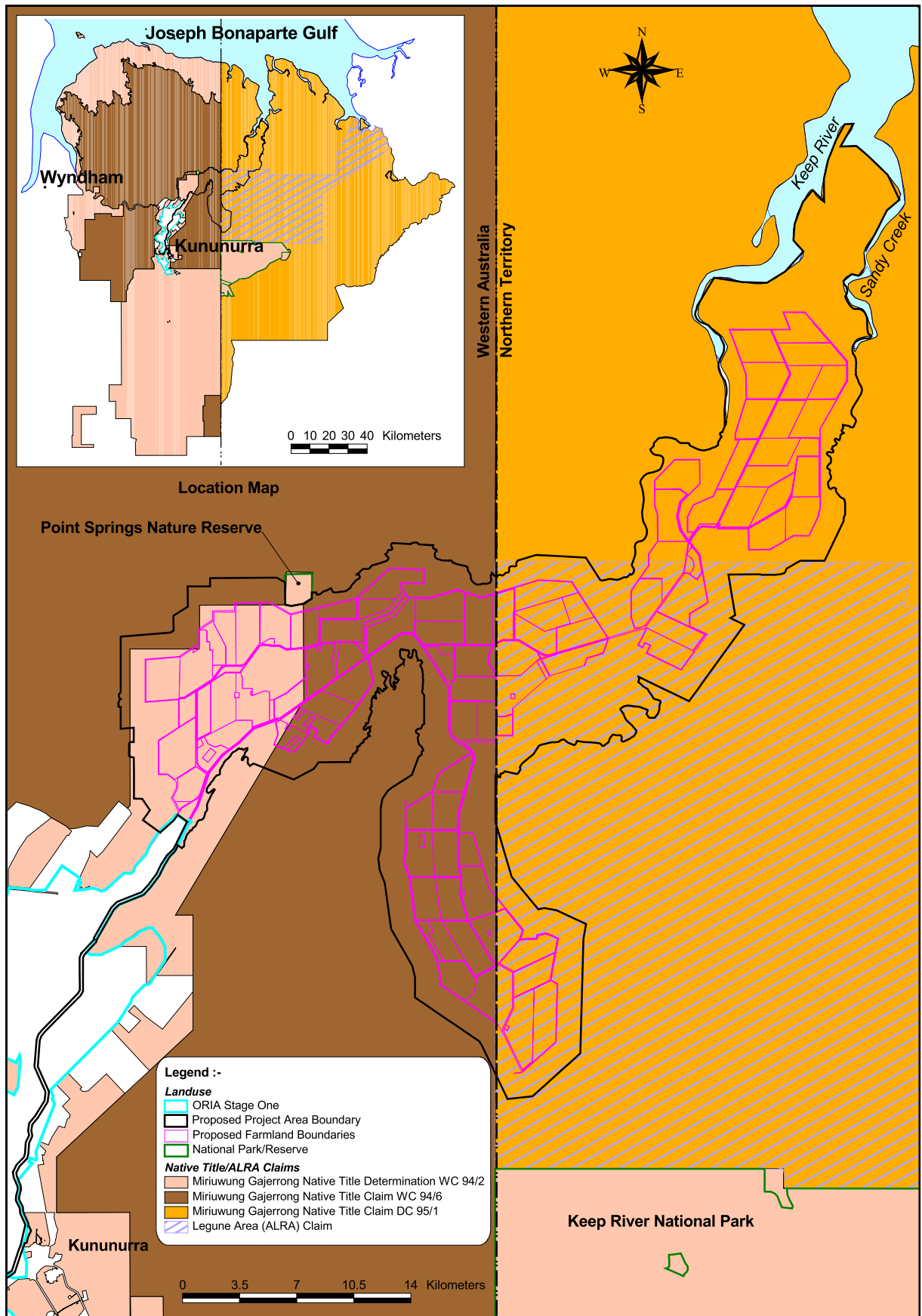


Figure 12.3 Native Title and land rights claims associated with the Project Area

The issues that the ILUA may address include compensation for the loss or temporary impairment of native title rights; management and protection of cultural heritage and environmental values; training and employment; establishment of business opportunities; and improving the social and economic development of Miriuwung and Gajerrong people

A spirit of co-operation has prevailed so far in discussions Wesfarmers–Marubeni and the Water Corporation have had with the Miriuwung and Gajerrong people and the Aboriginal representative bodies, which augers well for future discussions on substantive issues in relation to an ILUA. The spirit of co-operation has been evident in relation to work completed to date on cultural heritage (see Section 12.5) and Aboriginal social impact issues (see Section 12.6).

12.5 CULTURAL HERITAGE

12.5.1 Background

The Project Area is located within the traditional lands of the Miriuwung and Gajerrong people. Their traditional country broadly includes the land and seas adjacent to the Joseph Bonaparte Gulf, from the Ord River in the west to the Victoria River in the east (Mulvaney 1996, 3).

While no detailed ethnography of Miriuwung and Gajerrong people has been recorded, it is understood that Miriuwung country broadly includes the pastoral leases of Argyle, Ivanhoe, Newry, Spirit Hills and Rosewood. It is also understood that Gajerrong country occurs north and northeast of Miriuwung country, and broadly includes the pastoral leases of Carlton Hill, Legune, Spirit Hills and Bullo River. Miriuwung and Gajerrong people have strong social and cultural links to each other and to their lands (Mulvaney 1996).

Miriuwung and Gajerrong languages are related (Lee 1998, 66). Miriuwung and Gajerrong people believe that it is in their traditional lands where their languages belong (Lee 1998, 68) and that their language reflects the cultural knowledge that Miriuwung and Gajerrong people have of their country.

Miriuwung and Gajerrong country is criss-crossed by pathways or Dreaming tracks that the ancestral beings created in their journeys across the land during the ancestral epoch or Dreaming. Miriuwung and Gajerrong people refer to this period as the ‘Ngarranggarni’. Sites of cultural significance occur which include mythological sites, where Miriuwung and Gajerrong people attest that the ancestral beings conducted specific activities in the Dreaming. These sites are manifested in the form of geographic features and their associated vegetation including hills, waterholes, river systems and rock outcrops.

Specific cultural restrictions apply to access to certain sites. The travels and activities of the ancestral beings are recalled in song and ceremonies that continue to be practiced today by Miriuwung and Gajerrong people. Other places of cultural heritage significance reflect the prehistoric and contemporary use of the land by Miriuwung and Gajerrong people. Such places include middens, fish traps, stone arrangements, hearths, grinding hollows, paintings, engravings, burials, artefact scatters, stone quarries, ochre quarries and scarred trees, either singly, or in combination (Gregory 1994, 53).

There have been a number of cultural heritage assessments undertaken in the broader region both by independent consultants and by Government officers (Dortch 1977; Novak 1980;

Kirkby 1985; Quartermaine and O’Conner 1991; Quartermaine 1990; Barber et al. 1993; Gregory 1994; Gregory and Sutton 1997).

Archaeological excavations in the Ord River Valley at the Miriwun and Monsmont rock shelters, now under Lake Argyle in Western Australia, have resulted in the archaeological assemblages being dated to 17,980 BP (before present) (Dortch 1977). More recent archaeological investigations have revealed that the Jinmium rock shelter located east of the Project Area can be dated to the period 10–22,000 BP (Fullagar et al. 1996; Roberts et al. 1998).

Current cultural practices by Miriwung and Gajerrong people include the collection of red ochre from hills located on the coastal plains on the Legune pastoral lease, as well as other material for the production of artefacts. Ochre’s were, and still are, used in the production of paintings in the rock shelters in the immediate region (Mulvaney 1996). Aboriginal people assert a mythic origin for stone artefact material, which suggests that stone artefact scatters have a level of religious and historical significance (Barber et al. 1993).

To date, there has been no comprehensive ethnographic or archaeological assessment of the Western Australian portion of the Project Area, encompassing the Weaber Plain and the Western Australian portion of the Knox Creek Plain. However, there have been limited site-specific assessments conducted. There has been an ethnographic assessment (sacred site survey) of the Northern Territory portion of the proposed footprint of the irrigable land contained within the Keep River Plain and the Northern Territory portion of the Knox Creek Plain by the Aboriginal Areas Protection Authority (AAPA). Also, the Department of Lands, Planning and Environment Heritage Conservation Branch (HCB) have undertaken a comprehensive archaeological assessment of the same land within the Northern Territory.

12.5.2 Legislation relevant to Aboriginal cultural heritage in the Project Area

Cultural heritage sites are protected by State, Territory and Commonwealth legislation. The Project Area is affected by a range of cultural heritage legislation and Government processes, as well as by the desire of Miriwung and Gajerrong people to protect the cultural heritage values of their traditional land. Wesfarmers–Marubeni and the Water Corporation are obliged to comply with the following legislation relevant to cultural heritage matters:

- Commonwealth: *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHPA), *Australian Heritage Commission Act 1975* (AHCA);
- Western Australia: *Aboriginal Heritage Act 1972* (AHA), *Heritage of Western Australia Act 1990* (HWAA);
- Northern Territory: *Northern Territory Aboriginal Sacred Sites Act 1989* (ASSANTA), *Heritage Conservation Act 1991* (HCA).

The overriding cultural heritage legislation is the ATSIHPA, the provisions of which are generally only invoked when the protection offered by the respective State or Territory legislation are deemed to be inadequate.

The AHCA is administered by the Australian Heritage Commission (AHC), a division of the Department of Environment Australia. The functions of the AHC are to identify and conserve the National Estate via the maintenance of the Register of the National Estate. The AHC has a particular interest in the conservation of Aboriginal cultural heritage values.

Under the Western Australian AHA administered by the Aboriginal Affairs Department (AAD), it is an offence to damage or destroy an Aboriginal site without the permission of the Minister for Aboriginal Affairs. Compliance with the AHA usually occurs via the commissioning of both an ethnographic and an archaeological assessment, involving the participation of Aboriginal people with a stated cultural heritage interest in the land. Qualified independent anthropologists and archaeologists generally undertake such assessments.

The HWAA provides for the identification and conservation of places of cultural heritage significance throughout Western Australia. The Heritage Council of Western Australia (HCWA) administers the HWAA and maintains the Register of Heritage Places that are considered to be worth conserving.

The Northern Territory ASSNTA is administered by the AAPA, and provides global protection for 'sacred sites' (ethnographic sites). It is an offence to damage or destroy a sacred site.

In order to comply with the provisions of the ASSNTA, proponents are obliged to apply to the AAPA to determine whether any sacred sites occur on the land subject to proposed development. The AAPA, after consultation with the relevant traditional custodians of sacred sites would then grant an Authority Certificate to the proponent, and the certificate would stipulate any conditions applicable to the proposed development and use of the land.

Under the Northern Territory HCA, it is an offence to damage or destroy an archaeological place without the permission of the Minister for Lands, Planning and the Environment. The HCB of the Department of Lands, Planning and Environment administers the HCA. As with the AHA in Western Australia, compliance with the provisions of the HCA occurs through the commissioning of an archaeological assessment. This assessment is generally undertaken by a qualified independent archaeologist, observing the advice of the HCB.

Should there be a need to disturb archaeological sites to enable a development to proceed, an application accompanied by the consultant's reports would be lodged with the HCB. The HCB administers the Heritage Advisory Council (HAC), which in turn provides advice to the Minister for Conservation regarding permission to undertake work on an archaeological place. The final decision on the matter rests with the Minister. As well as the necessity to comply with relevant State, Territory and Commonwealth legislation, including the Western Australian *Environmental Protection Act 1986*, it is critical that the aspirations of Miriung and Gajerrong people are adequately met as part of the proposed development. These aspirations were recently reinforced in the determination of native title for Miriung Gajerrong WC94/2 by Justice Lee of the Federal Court, who stated that Miriung and Gajerrong people have, amongst other rights:

a right to maintain and protect places of importance under traditional laws, customs and practices in the 'determination area'. (Lee 1998, 7)

12.5.3 Strategy for the protection of cultural heritage

Wesfarmers–Marubeni and the Water Corporation are committed to ensure compliance with relevant State, Territory and Commonwealth heritage legislation, as well as to meet the expectations of the Miriung and Gajerrong people in respect to the protection of cultural heritage. The approach to these issues is as follows:

- (a) to fully inform the responsible State, Territory and Commonwealth agencies responsible for cultural heritage legislation of the nature of the proposed development work;
- (b) to acquire information existing within the relevant State, Territory and Commonwealth agencies on the location, spatial dimensions and significance of known cultural heritage sites;
- (c) to establish and ensure implementation of a set of Cultural Heritage Protection Procedures to be observed by Wesfarmers–Marubeni and the Water Corporation, and all consultants and contractors, during the Project feasibility study and the future development of the Project;
- (d) to consult and negotiate with Miriuwung and Gajerrong people and their Aboriginal representative bodies as to how they wish to ensure that the cultural heritage values of the land are protected, and to undertake archaeological and ethnographic assessments of the Project Area;
- (e) to develop a Cultural Heritage Management Plan to ensure the long-term management and protection of the cultural heritage values of the land within the Project Area.

12.5.4 Cultural heritage assessments of the Project Area

In 1997, both the AAPA and the HCB undertook independent cultural heritage assessments of the proposed footprint of the irrigable land within the Northern Territory portion of the Project Area for the Northern Territory Department of Primary Industry and Fisheries (DPIF). These assessments resulted in the issuing of an AAPA Authority Certificate to the DPIF, and the production of a report on the archaeological sites located within the Northern Territory portion of the land by the HCB (see Section 12.5.5). This information has provided important baseline information for Wesfarmers–Marubeni and the Water Corporation with respect to the potential cultural heritage values of the entire Project Area.

In 1998 and 1999, Wesfarmers–Marubeni and the Water Corporation formally consulted the AAPA, HCB, AAD, HCWA and AHC with respect to the location, spatial dimensions and significance of known cultural heritage sites within the broader Project Area.

The AAPA formally issued Wesfarmers–Marubeni and the Water Corporation with an Authority Certificate over the land, which included details of sacred sites within and around the land. In addition, AAPA is in the process of issuing Wesfarmers–Marubeni and the Water Corporation with a further Authority Certificate to allow access to areas of land external to the Project Area to enable the potential removal of pavement material for roads and foundations.

The HCB has provided point grid references and physical descriptions of archaeological sites that were recorded during the 1997 assessment and documentation relevant to the assessment.

The AAD provided grid references for ‘Open Access’ Aboriginal sites (archaeological) occurring within a 1 km by 1 km polygon and ‘Closed Access’ Aboriginal sites (ethnographic) occurring within a 10 km by 10 km polygon within the Western Australian portion of the Project Area. No details on the spatial extent or significance of ethnographic sites were provided to Wesfarmers–Marubeni and the Water Corporation by the AAD.

The HCWA provided Wesfarmers–Marubeni and the Water Corporation with a list of places of cultural heritage significance within the broader region. None of the places listed occur within the Project Area or would be affected by the proposed development.

The AHC has advised that there are three cultural heritage sites in the immediate region of the Project Area – Morung Archaeological Site, Keep River Sites Complex and the Weaber Range Sites Complex - only the latter of the three sites is located in close proximity to the Project Area.

The available information on cultural heritage sites provided by the various Government agencies was overlaid on topographic plans of the Project Area. The proposed Project design, including the irrigation channels, drains and roads as well as the potential sugar-mill sites, was superimposed on the plans to ascertain whether any known cultural heritage sites would be affected by the initial design of the proposed development. This exercise revealed that five ethnographic sites would potentially be affected, and the proposed design was modified to ensure that these ethnographic sites would not be affected. The exercise also revealed that no known archaeological sites would be affected by the proposed development.

Access to information on known cultural heritage sites was crucial in order to ensure that sites would not be inadvertently impacted by future ground-disturbing activity, and that the proposed design could be readily altered at an early stage if necessary.

A reasonable prediction of ethnographic site distribution for the Western Australian portion of the Project Area could be made from the data on known ethnographic sites provided by the AAPA for the Northern Territory portion of the Project Area. These data revealed that the ethnographic sites in the Northern Territory portion of the Project Area, are primarily represented by specific hills, rock outcrops, water sources, and creek beds, banks and associated vegetation. These data also broadly suggest that the black-soil country encompassing the Keep River, Knox Creek and Weaber plains is of potentially low cultural heritage significance, notwithstanding that all of the land is of traditional significance to specific Miriuwung and Gajerrong people.

In keeping with the desires of the Miriuwung and Gajerrong people for cultural heritage information to remain confidential, information on known cultural heritage sites has not been disclosed in this ERMP/draft EIS.

12.5.5 Archaeological analysis

In 1997, an archaeological assessment of the Keep River Plain and the Northern Territory portion of the Knox Creek Plain were completed by the HCB (Gregory & Sutton 1997). The assessment was completed within the proposed footprint of the irrigable land on the two plains.

The assessment revealed that the distribution of archaeological sites within the Northern Territory portion of the land is *'tightly defined in terms of their distribution and highly reliable predictions about this distribution can be made'*. The research classified the Northern Territory portion of the land into four 'archaeological sensitivity classes'—low, moderate, high, and very high. The classification identified various land units as follows:

- *low* archaeological sensitivity; cracking clays, possibly containing extremely low levels of archaeological material.

- *moderate* archaeological sensitivity; cracking clays occurring near the margins of major streams, the Keep River and Sandy Creek, possibly containing some archaeological material of low density;
- *high* archaeological sensitivity; red-brown soils that are in a slightly elevated position within the landscape, containing stone artefact scatters that exhibit technological diversity and high densities; and
- *very high* archaeological sensitivity; prominent outcrops of sedimentary rock possibly containing a high density of stone artefact scatters, as well as rock shelters containing art and cultural deposits.

Tables 12.1 and 12.2 reflect the findings of the research and provide indicative proportions of the classes for the land within the Keep River Plain and the Northern Territory portion of the Knox Creek Plain (after Gregory and Sutton 1997, II).

Based upon the research of Gregory & Sutton (1997), a predictive model was developed by Wesfarmers–Marubeni and the Water Corporation for the archaeological site distribution within the proposed footprint of the irrigable land including the Weaber Plain portion of the Project Area. The model indicated that land units classified as having moderate archaeological sensitivity could be expected on 4% of the land. Land Units classified as high to very high archaeological sensitivity could also be expected on 4% of the land; however, this land would not be developed as it is unsuitable for agricultural purposes. The remaining 92% of the land could be expected to be of low archaeological significance and would be unlikely to contain significant archaeological sites. The predictive model was subsequently validated during an archaeological assessment undertaken in October 1998 (see Section 12.5.6).

Table 12.1 Proportion of the Keep River Plain by archaeological sensitivity class

Archaeological sensitivity class	Proportion
Low	96%
Moderate	2%
High	0%
Very High	2%
Total	100%

Table 12.2 Proportion of the Knox Creek Plain of each archaeological sensitivity class

Archaeological sensitivity class	Proportion
Low	96%
Moderate	1%
High	3%
Very High	0%
Total	100%

Two findings in the research of Gregory (1994) appear to be significant factors influencing the distribution of archaeological sites: the presence of water, and the apparent preference for uplands, not lowlands, for occupation purposes. There is a strong relationship between water and site location. In general, archaeological sites were found to be located most frequently at a distance less than 200 m from water and as the distance to water increased, so site frequency declined (Gregory 1994, 54). Also, the majority of previously recorded

archaeological sites tended to occur in the uplands; however, Gregory conceded that this distribution might reflect a previous research bias (Gregory 1994, 53).

As stated above, based upon the predictive model, only 4% of the land is likely to contain significant numbers of archaeological sites. It should be noted that most of the areas within which archaeological sites are likely to occur are associated with permanent watercourses and ephemeral creeks, and that these areas are unlikely to be impacted by the proposed development.

The predictive model, and known archaeological and ethnographic sites, was analysed in conjunction with the preliminary Project design layout. This process impacted the preliminary Project design layout in forty-nine locations. The preliminary Project design layout was revised so as to ensure that both known and predicted archaeological and ethnographic sites would be avoided by the proposed development.

The predictive model was also utilised by Wesfarmers–Marubeni and the Water Corporation in the development of a set of formal Cultural Heritage Protection Procedures (CHPP) (see Appendix N). The CHPP clearly outlines the protocol to be observed by representatives of Wesfarmers–Marubeni and the Water Corporation, and all consultants and contractors, with respect to the treatment of any archaeological sites and materials encountered during field work. The CHPP also details protocols to be observed in relation to ethnographic sites, interactions with Miriuwung and Gajerrong people, and various environmental protocols.

12.5.6 Cultural heritage fieldwork completed in 1998

Prior to 1998 there had been no comprehensive ethnographic or archaeological assessment of the Western Australian portion of the Project Area. Site specific assessments had occurred in the past. However, it is only in the Northern Territory portion of the land within the Project Area, that the AAPA and the HCB had completed an ethnographic assessment and an archaeological assessment respectively.

In mid 1998, Wesfarmers–Marubeni and the Water Corporation commenced discussions with the Aboriginal representative bodies; the ALS, KLC and the NLC; with respect to cultural heritage issues in relation to the entire Project Area. It should be noted that at that time, a single group did not represent the Miriuwung and Gajerrong people, but that the ALS, KLC and NLC collectively represented elements of the whole community. It should also be noted that the Miriuwung and Gajerrong people have to date yet to form a single representative entity. Wesfarmers–Marubeni and the Water Corporation throughout the community consultation process (Section 12.3 refers), conveyed the discussions with the Aboriginal representative bodies to the Miriuwung and Gajerrong people.

The objective of Wesfarmers–Marubeni and the Water Corporation was to have a single cultural heritage assessment completed of the entire Project Area completed by the latter part of the 1998 dry season. The objective was to have an assessment completed which would enable all proposed development works to proceed at some time in the future. It was also envisaged at that time that completion of the assessment would enable the completion of investigatory geotechnical works planned by Wesfarmers–Marubeni and the Water Corporation for October 1998.

Due to time constraints, a single cultural heritage assessment of the entire Project Area was not completed in the 1998 dry season. However, time permitted the completion of an assessment of cultural heritage issues with respect to the proposed investigatory geotechnical

works. The assessment was coordinated by the KLC and NLC, as a Work Programme Clearance.

The Work Programme Clearance was completed on:

- a 50m wide corridor of approximately 400 km length within which proposed irrigation channels, drains, levees and roads would be located;
- six potential sugar mill sites.

Fieldwork associated with the ethnographic component of the Work Programme Clearance was undertaken by twelve males and twenty-three female Miriuwung and Gajerrong people, who were accompanied by a male and female anthropologist respectively. The areas subject to the assessment were inspected by land and by helicopter (Figure 12.4).

Cultural information on ethnographic sites was not provided to Wesfarmers–Marubeni and the Water Corporation, but details were provided on locations within the assessment area where the proposed development may conflict with ethnographic sites. Furthermore, four of the six proposed sugar mill sites were considered to conflict with ethnographic sites (Barber and Rumley 1998).

As a result of the assessment, the proposed alignment of the M2 Channel adjacent to Cave Springs (Figure 12.5) has been re-designed, and four of the original potential sugar mill sites have not been subject to further consideration. It should be noted that these potential sugar mill sites are located off the black soil plains.

A secondary, yet important, outcome of the Work Programme Clearance was the validation of the central hypothesis of the predictive model—black soil cracking clay can generally be considered of minor cultural heritage significance, whilst hills, rocky outcrops and creeks can generally be considered to have cultural heritage significance to Miriuwung Gajerrong people.

Figure 12.4 Hillary Rumley and Miriuwung and Gajerrong people undertaking the Work Programme Clearance (photo courtesy Hillary Rumley)



Figure 12.5 Cave Springs



The investigatory geotechnical work was completed in October 1998, following completion of the ethnographic component of the Work Programme Clearance. The geotechnical investigation comprised the sampling and subsequent analysis of approximately one hundred and fifty drill holes and twenty-one backhoe pits. The backhoe and driver were sourced from the Waringarri Aboriginal Corporation in Kununurra (Figure 12.6).

Figure 12.6 Jack Trust, Waringarri machine operator during the 1998 geotechnical investigation work



Fieldwork associated with the archaeological component of the Work Programme Clearance was completed in conjunction with the investigatory geotechnical work. Two archaeologists, engaged by the NLC, surveyed the assessment area ahead of the geotechnical team to ensure that the investigatory works would affect no archaeological sites encountered.

Four additional archaeological sites and twenty isolated stone artefacts were identified during the assessment work, which lasted for nineteen days. Geotechnical works were deviated to avoid these areas of significance (Archae-Aus 1999).

The low incidence of archaeological sites and artefacts identified on the black soil plain conformed to the central hypothesis of the predictive model.

12.5.7 Further cultural heritage assessment

A further cultural heritage assessment would be required within and around the Project Area prior to the commencement of the proposed development. Assessment would be required for the proposed black-soil farmlands, the portion of the M2 channel linking the Kununurra Diversion Dam with the Project Area, as well as potential borrow pits for construction materials and communication sites. This assessment will ensure that Wesfarmers-Marubeni and the Water Corporation have fully complied with the relevant cultural heritage legislation, as well as the aspirations of the Miriuwung and Gajerrong people.

Negotiations between Wesfarmers-Marubeni and the Water Corporation, the Miriuwung and Gajerrong people and the Aboriginal representative bodies, are continuing with respect to the completion of the balance of the cultural heritage assessment. It is currently envisaged that this assessment will be completed during the 2000 dry season.

12.5.8 Managing cultural heritage

It is proposed that the findings of the combined cultural heritage assessments would support the development of a Cultural Heritage Management Plan (CHMP), which would define how the cultural heritage values within the Project Area would be protected and managed for the life of the Project.

The CHMP would reflect Wesfarmers-Marubeni and the Water Corporation's philosophy for the management of cultural heritage values in the Project Area. This philosophy includes:

- the establishment of field management techniques for the protection of surface and subsurface cultural heritage sites and materials;
- the development of an ideology of respect and value for cultural heritage sites and materials;
- the meaningful participation of Miriuwung and Gajerrong people in the CHMP during both the construction and the operational phases of the Project;
- the retention of the control and rights of cultural heritage knowledge by Miriuwung and Gajerrong people; and
- the use of appropriate expertise in the implementation of the CHMP.

The cultural heritage values that would need to be considered in the development of the CHMP include:

- all surface archaeological and ethnographic sites and cultural materials recorded during the cultural heritage assessments of the Project Area;

- all areas of land associated with the development and construction of the Project Area and associated infrastructure;
- all subsurface archaeological materials, including human remains, which may be discovered during excavation, grading or other earthworks during construction or operation; and
- all additional surface archaeological and ethnographic sites and cultural materials that may be identified during the post-construction phase or operation of the Project.

Wesfarmers–Marubeni and the Water Corporation intend to develop the CHMP in partnership with the Miriuwung and Gajerrong people. The CHMP would consolidate relevant information on cultural heritage sites and would detail mechanisms to ensure the harmonious coexistence of the cultural heritage values and the proposed development wherever possible.

Proposed measures, which would facilitate and ensure ongoing access of Miriuwung and Gajerrong people to cultural heritage sites, including traditional resource procurement zones such as the Keep River estuarine system, are as follows:

- the excision of significant cultural heritage sites from the Project Area;
- the establishment of ‘green access paths’ to cultural heritage sites located within the farmland, to guarantee ongoing access and foster the pursuit of traditional lifestyle practices;
- the establishment of the proposed 41,000 ha conservation area within the Project Area (Chapter 10 refers).

Particular significant cultural heritage sites, including Milligan Lagoon (Figure 12.7), Folly Rock and the hill adjacent to the Spirit Hills homestead, would be conserved within the 41,000 ha of proposed conservation area. These sites have a range of conservation values.

It is predicted that the development of the CHMP would detail and provide measures for mitigating any potential negative effect brought about by changes to the biological and physical environment of the black soil plains on the traditional cultural associations of the Miriuwung and Gajerrong people

Figure 12.7 View of Milligan Lagoon



12.6 ABORIGINAL SOCIAL IMPACT

12.6.1 Background

Over the last 25 years there have been a number of studies into the social and economic impact on Aboriginal people in the East Kimberley region as a result of pastoral, agricultural and mining development. Significant studies completed to date have been commissioned by the Kimberley Land Council and the State and Commonwealth Governments.

In 1978, the Commonwealth and Western Australian Governments jointly undertook a review of ORIA Stage 1 (Commonwealth of Australia 1978). The review examined, amongst other issues, the impact of the development on Aboriginal people. The review noted that the development of ORIA Stage 1 had '*contributed to the dislocation of the life and religion of Aboriginal people living in the area by destroying land of sacred and traditional value*' (ibid. 1978, 5).

The review also noted that Aboriginal people residing in Kununurra:

- were experiencing acute social problems, some of which could be identified specifically with the development of ORIA Stage 1;
- were experiencing lifestyle changes as a result of the flooding of Lake Argyle and the development of the irrigated land;
- had been displaced (approximately 250 people) from the pastoral leases by the land resumption's of the 1960s;
- had lost access or had access to country severely restricted as a result of land being resumed; and
- had lost sacred sites as a result of the inundation of Lake Argyle and the development of ORIA Stage 1, with the latter resulting in increased access by non-Aboriginal people to sites reducing or destroying their ceremonial significance.

During the period from 1985 to 1987, the Centre of Resource and Environmental Studies (CRES) at the Australian National University conducted extensive research in the East Kimberley on the social and economic impacts of the major resource developments occurring in the region at that time. These studies focused principally on the development of the Argyle Diamond Mine, and included aspects relating to ORIA Stage 1.

The CRES research found that Aboriginal people in the region had experienced a series of significant changes in the 1960s and early 1970s. These changes have included the introduction of equal wages, the increased reliance on capital intensive investment in the pastoral industry, and the establishment of ORIA Stage 1. All of the changes have led to some dislocation of Aboriginal communities and consequent social disruption (East Kimberley Impact Assessment Project 1985,2). A series of working papers and a final report were produced by Coombes et al. (1989) (*Land of promises—Aborigines and development in the East Kimberley*). The report noted that development should be planned so as to bring benefits to all of the people of the region, and must include Aboriginal people (Kimberley Land Council 1992).

In 1997, DRD commissioned AACM International Pty Ltd to undertake consultation with Aboriginal people regarding the potential development of ORIA Stage 2. This work was a component of an unpublished Public Environmental Review. The consultation with

Aboriginal people in 1997 revealed that the proposed development of ORIA Stage 2 would offer an opportunity for Aboriginal people to increase their participation in the regional economy and to reduce their dependence on resources from welfare programmes (AACM International Pty Ltd 1997, 3).

The consultation also identified various other potential impacts, including:

- the potential marginalisation of the Aboriginal community, resulting in the increased incidence of the symptoms of marginalisation such as alcohol abuse and family violence;
- potential increased pressure on existing health, education and other social services;
- potential non-participation of Aboriginal groups in the proposed development. Most Aboriginal people perceived that, without active participation and recognition, Aboriginal stakeholders would continue to become frustrated and depressed;
- potential restriction on access to plains and riversides for hunting, fishing and ceremonies;
- potentially harmful effects of chemicals on traditional foods and water supplies;
- improved access to currently remote areas. The development of the Project Area would result in improved access to the Knox Creek, Weaber and Keep River plains. Aboriginal people generally see this as a positive impact;
- potential increased incidence of water-related diseases. There was concern about the increased risk of diseases transmitted by mosquitoes, such as Ross River fever. Aboriginal people are especially vulnerable to diseases transmitted by mosquitoes because they often live and sleep outside and rarely have housing with screens; and
- possible pressure from construction crews. There may be a risk that construction crews may cause negative impacts on Aboriginal people as construction crews are typically made up of single, non-Aboriginal males.

The KLC has also noted potential economic opportunities for Aboriginal people in relation to the proposed development. In July 1998, over 300 people attended a conference, coordinated by the KLC, entitled 'The Kimberley—Our Place, Our Future'. In the conference proceedings, it was stated that *'major opportunities in the region include the expansion of tourism, the full development of the Ord River irrigation area, the expansion of pearling, and the development of a capacity to process meat'*.

In August 1999, the Western Australian Planning Commission released the draft 'Kununurra–Wyndham Area Development Strategy (KWADS) for public comment. The objective of KWADS is to develop and identify future land use and growth requirements of Kununurra and Wyndham (Section 1.2 refers). Preparation of KWADS included consultation with Aboriginal people and a workshop with Aboriginal people in Kununurra.

The KWADS research noted that:

- Aboriginal people are not well positioned to benefit from the range of employment, enterprise and lifestyle opportunities offered by an area preparing for substantial development;
- cultural and heritage issues require specialised consideration and the Aboriginal community require assistance to manage and strengthen their culture and heritage;

- homeland communities will require the coordination of responsibilities and actions of various planning agencies in order to realise community development aspirations;
- appropriate consultation procedures are necessary to involve the Aboriginal community and their representative bodies;
- opportunities need to be established to ensure Aboriginal participation in economic development and land management;
- land use agreements need to be considered to deliver benefits to Aboriginal people and to permit co-existence; and
- strategies need to be developed to encourage Aboriginal people to participate in and achieve economic and social benefit from the development of the region.

12.6.2 Framework for the process

Completion of an Aboriginal social impact assessment in relation to the proposed development is not a strict legal requirement for Wesfarmers–Marubeni and the Water Corporation. However, it is considered likely that completion of a Project-specific assessment would provide an invaluable insight into the social and economic expectations, and any concerns, held by Miriuwung and Gajerrong people in relation to the proposed development. As a consequence, it is likely that completion of an assessment would assist all parties in the negotiation and settlement of an ILUA.

Since January 1999, Wesfarmers–Marubeni and the Water Corporation have been working collaboratively with the Aboriginal representative bodies, who in turn have been working with the Miriuwung and Gajerrong people, to establish the terms of reference for the proposed assessment. The terms of reference are to outline the framework within which the information, regarding the potential impact that the proposed development may have on Aboriginal people, would be gathered, analyzed, documented and managed. The proposed terms of reference have been the subject of discussion at all of the Aboriginal community meetings convened by Wesfarmers–Marubeni and the Water Corporation in 1999. It has been agreed by the parties that the assessment is to be known as the Aboriginal Socio-Economic Impact Assessment (ASEIA).

The purpose of the assessment is to provide sufficient information about the proposed development to the Miriuwung and Gajerrong people to enable them to identify and assess any potential resultant impact. The objective of the ASEIA is to ensure that any potential impact from the proposed development is assessed with respect to:

- a Miriuwung and Gajerrong understanding of country, the use of land and access to culturally important areas and landscapes in and around the proposed development;
- any impact on the ability of Miriuwung and Gajerrong people to live in accordance with their own values, traditions and aspirations;
- any impact on community structures and vitality, and economic vitality;
- historical and current responses to previous developments in the region;
- the preferred outcomes of Miriuwung and Gajerrong people regarding the proposed development;

- maximising the potential positive impacts and the mitigation of any potential negative impacts.

The terms of reference for the ASEIA are in the process of being finalised with the Aboriginal representative bodies. Preliminary ASEIA research commenced in mid-June, with an anthropologist, an ethnobotanist and a land-use planner working with Miriuwung and Gajerrong people.

It is intended that the ASEIA will focus on three main areas of research as follows:

- ‘Planning for Country’: the output being an anthropological study and a land-use study;
- ‘Planning for People’: the output being a social research study;
- ‘Planning for the Future’: the output being an economic impact study.

Wesfarmers-Marubeni and the Water Corporation look forward to the completion of the ASEIA with the involvement and support of the Miriuwung and Gajerrong community.