



Government of **Western Australia**  
Department of **State Development**

# Anketell Cultural Impact Assessment Framework Brief

29 July 2015

# CONSULTANT BRIEF: PREPARATION OF A CULTURAL IMPACT ASSESSMENT FRAMEWORK

## Introduction

This Brief describes the Scope of Services to develop a Cultural Impact Assessment Framework (**CIA Framework**) that will inform and guide all Cultural Impact Assessments (**CIAs**) conducted by project participants in both the Port Precinct and the Industrial Areas of the multi-user Anketell Project<sup>1</sup>.

The CIA Framework will form part of an Infrastructure and Services Assessment (**ISA**) to be undertaken in relation to the Anketell Project in accordance with the ISA Framework as developed and approved by the Western Australian Government's Department of State Development (**DSD**).<sup>2</sup>

The development of the CIA Framework will occur ahead of the Anketell ISA. The focus of the ISA will be on assessment and subsequent management of the impact that the Anketell Project may have on government infrastructure and services in the region of the Project. As CIA is a component of the Anketell ISA, the governance and processes around both the ISA and the CIA should be consistent.

## Background

The proposed Anketell Port and Strategic Industrial Area (**Anketell Project**) establishes a major port and industrial area for the Pilbara – to be located at Anketell, near Cape Lambert in the City of Karratha. The multi-user port is proposed to have the capacity to through-put up to 350 million tonnes per annum (**mtpa**) of bulk exports, primarily iron ore.

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<sup>1</sup> The specific area of the Anketell Project will be clearly described to prospective consultants.

<sup>2</sup> As described at <http://www.dsd.wa.gov.au/what-we-do/offer-project-support/infrastructure-and-services-assessment>

The Ngarluma Aboriginal Corporation (**NAC**) is the registered native title body corporate for the Ngarluma people, who hold determined, non-exclusive possession native title rights and interests within the land areas proposed for the Anketell Project.

The Ngarluma people, the Western Australian Minister for State Development, and the Western Australian Land Authority, negotiated an Indigenous Land Use Agreement over the area, the *Anketell Port, Infrastructure Corridor and Industrial Estates Agreement (Anketell ILUA)*, which was registered with the National Native Title Tribunal on 23 July 2014. The ILUA extinguishes the Ngarluma people's native title rights and interests in the proposed industrial areas and suppresses their native title rights in the proposed Port Precinct.

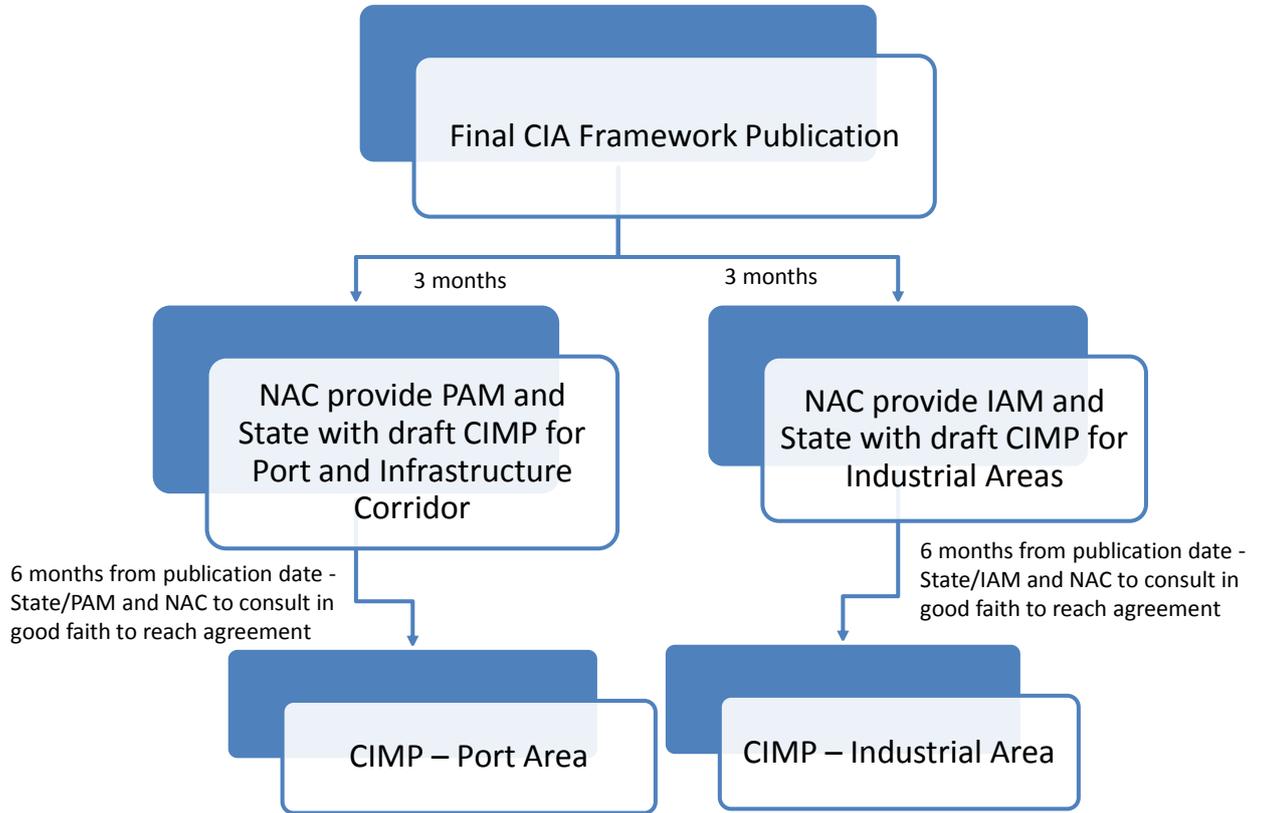
DSD is the lead agency for the development of the Anketell Project on behalf of the State Government. The port lands will be managed in accordance with the *Port Authorities Act 1999* and the industrial land will be managed by LandCorp and developed by future third parties.

The Anketell ILUA commits the State to commission, and reasonably resource the development of a CIA Framework.

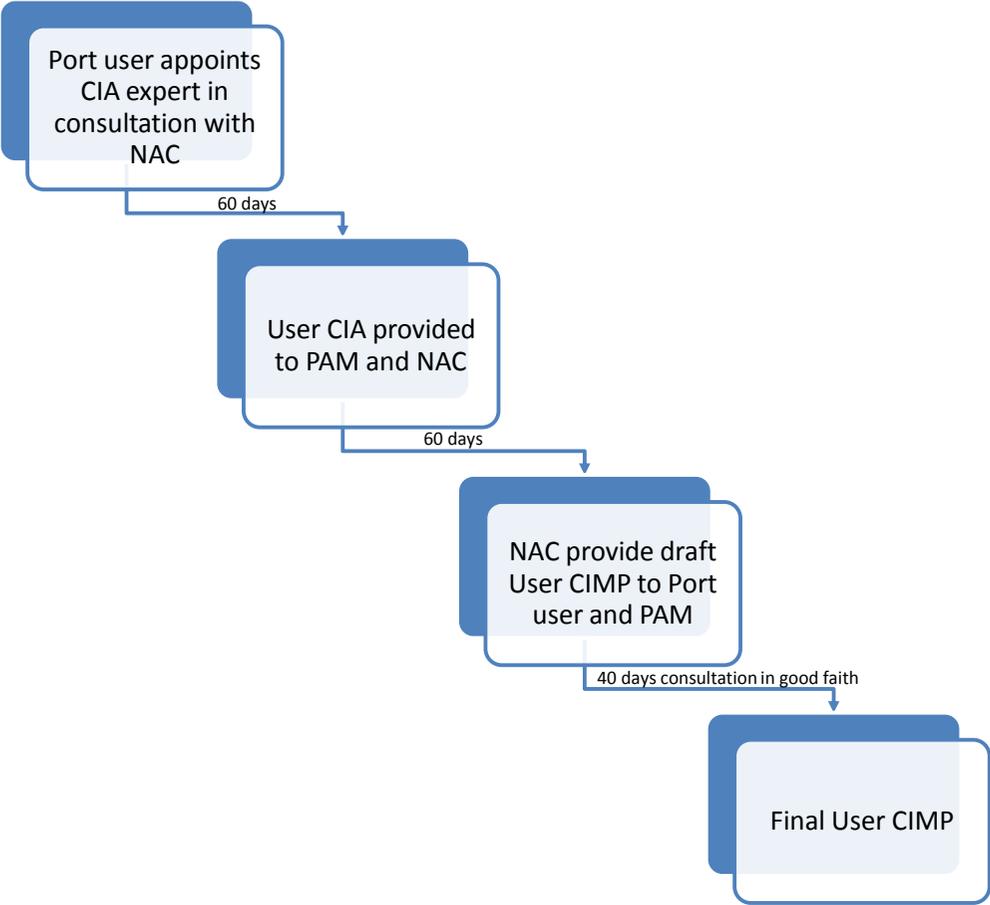
## **SCOPE OF WORK REQUESTED**

The CIA Framework Consultant (**Consultant**) will produce a report and associated materials that will guide future project Cultural Impact Assessments (**CIAs**) and Cultural Impact Management Plans (**CIMPs**) that will be required over the life of the Anketell Project. The CIA Framework should provide clear guidance to Project participants on both the structure and content of CIAs and CIMPs that are required to be prepared pursuant to the Anketell ILUA.

## Cultural Impact Management Plans – Port Area and Industrial Areas



**User Cultural Impact Assessment/ User Cultural Impact Management Plan  
(Port Area and Infrastructure Corridor)**



The Scope of the CIA Framework, as defined in the ILUA requires the:

- a) outline of the cultural values of the Agreement Area to the Ngarluma People, including (to the extent relevant):
  - i. Aboriginal heritage;
  - ii. access;
  - iii. hunting, gathering and fishing;
  - iv. performance of ceremonies; and
  - v. transmission of cultural knowledge;
  
- b) an identification of the ways in which those cultural values may be affected by:
  - i. construction of a port and associated infrastructure within that part of the Port Area and Infrastructure Corridor the subject of the Environmental Approval Statement<sup>3</sup>; and
  - ii. individual and cumulative impacts of further development within the Agreement Area;
  
- c) identification of any further information which should be gathered at various stages of the Project in order to identify and manage the impact of the Project on the cultural values;
  
- d) development of clear guidance for future cultural impact management plans;
  
- e) development of clear guidance for the ongoing management by Port Users and Industrial Area Lessees of separate cultural impact assessments and cultural impact management;

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<sup>3</sup> This area is identified in the map contained within Attachment A

The CIA Framework will provide three key outputs:

- a baseline of the Ngarluma cultural values that pertain to the Project Area,
- Identification and an assessment of the likely project impacts on these cultural values.
- The identification of concrete adaptive cultural impact management measures that can be consistently integrated into the cultural impact assessment processes for the entire Project. This will include model CIA and CIMP documents that can be relied upon by the Port Area Manager (**PAM**) and the Industrial Areas Manager (**IAM**), and future Port Users and Industrial Area Lessees, in meeting their CIA and CIMP commitments pursuant to the Anketell ILUA.

In summary, the CIA Framework will provide the content and form that the PAM and IAM will use to prepare their own CIMPs in relation to the Port Precinct and the Industrial Areas respectively. In turn, the future Port Users and Industrial Lessees will rely upon the CIA Framework to provide the content and form of their own CIAs and CIMPs.

## **DETAILS OF THE SCOPE OF WORK**

### **Section A - Baseline**

This section will be comprised of a descriptive account of the cultural practices that are specific to Ngarluma people. This account is to consist of, to the extent that it is relevant, details relating to:

- Aboriginal heritage

- Ngarluma access to the Agreement Area
- Hunting, gathering and fishing in the Agreement Area
- Performance of ceremonies in the Agreement Area; and
- Transmission of cultural knowledge that is directly related to the Agreement Area

The CIA Framework will be drawn substantially from cultural impact research that has already been undertaken with reference to Ngarluma people and the proposed Anketell Project, specifically:

- the report by Fitzgerald Applied Sociology, *An Assessment of the Cultural Impacts on the Ngarluma Native Title Holders of the Proposed Anketell Port, Industrial Area, and Infrastructure Corridor Development* prepared for the NAC and dated 10 October 2012 (the **CIA Report**);
- the study by Fitzgerald Applied Sociology, *Anketell Port and Strategic Industrial Area Social and Cultural Impacts Screening Study* prepared for the State's Department of State Development and dated June 2011;

The preparation of the CIA Framework will require some face-to-face consultation with Ngarluma people; however the specific purpose of such consultation will need to be clearly articulated by the Consultant in the methodology that is submitted prior to the awarding of the CIA Framework Brief.

With regard to the issues listed above, the CIA Framework will report on the following:

### Aboriginal heritage

The CIA Framework will detail the sites and areas of Aboriginal heritage significance within the Anketell Project Area. The data and relevant descriptions for this aspect are to be primarily drawn from the Anketell Aboriginal Site Location and Assessment Survey (**Anketell Survey**), a study that has comprehensively recorded all areas and sites of Aboriginal heritage significance within the Project Area.

Where information additional to that already provided in the Anketell Survey is provided, the CIA Framework must clearly describe how this additional information is relevant to the overall goals and purposes of the CIA Framework.

### Access to the Agreement Area

The consultant will identify the principal physical routes of access to the Agreement Area that are currently used by Ngarluma people. In this section, it needs to be clarified if there is anything significant that access to the Project Area provides to Ngarluma people that cannot be provided in other areas of the Ngarluma determination area. In other words, if access to the Anketell Project Area is restricted, what is *distinctive* about the benefits of this access that is not available in other areas over which the Ngarluma have determined native title rights and interests?

### Hunting, gathering and fishing

The consultant will describe the areas within the Project Area in which Ngarluma people currently exercise their native title rights. Those rights include:

- A right to fish from the waters, limited to the coastal areas landward of the low water mark, and inland water courses;

- A right to collect and forage for bush medicine;
- A right to hunt and forage for and take fauna, limited in the case of water fauna to coastal waters landward of the low water mark and inland water courses;
- A right to forage for and take flora (including timber logs, branches, bark and leaves, gum, wax, Aboriginal tobacco, fruit, peas, pods, melons, bush cucumber, seeds, nuts, grasses, potatoes, wild onion and honey);
- A right to take black, yellow, white, and red ochre;
- A right to take water for drinking and domestic use; and
- A right to the cook on the land, including light a fire for this purpose, limited to the proximity of river courses.

The CIA Framework will identify the location of these activities, and outline any specific forms of cultural knowledge that significantly underpin these practical activities. There is also a requirement to demonstrate the specific Ngarluma cultural knowledge that is central to the operational aspects of the economic and cultural use of the land and its resources.

#### *Performance of ceremonies*

The Consultant is required to identify the areas that are routinely used for culturally-based activities in which Ngarluma people participate in ceremonial activity that has a special significance within Ngarluma culture. Some description of the fundamental shape of these activities; their location, their duration, their frequency, and their general social configuration (i.e., who typically participates in these activities) is required, so that a reliable 'base line' for current cultural activity can be discerned.

### Transmission of cultural knowledge

The Consultant is required to identify the ways in which Ngarluma understandings and observances of heritage, access, tradition-based economic use of the land, and performance of ceremonies, are critically involved in the transmission of cultural knowledge. It should be noted that the Ngarluma people's determined native title rights include:

*A right to protect and care for sites and objects of significance in the Ngarluma Native Title Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others so as to perpetuate the benefits of the area and warn against behaviour which may result in harm (Daniel v State of Western Australia [2003] FCA 666, 510)*

The Consultant will be guided by this description in completing this section, and, inasmuch as it is relevant, the material prepared in the previous 'Aboriginal heritage' and 'Access to the Agreement Area' sections.

### **Section B – Forecast of Impacts**

The range of potential impacts of the proposed Anketell Project on the Ngarluma people's cultural association with the project area is covered in substantial detail in Section 6 of the CIA Report, which has identified the following cultural impacts:

- Alienation of country;
- Impacts on significant Ngarluma sites;
- Loss of access to country;
- Loss of rights;

- Damage to pastoral farming and pastoral history;
- Damage to fauna and flora and other natural values; and
- Consequential effects.

The Consultant is to revisit the CIA Report and provide any additional elaboration of the issues raised in this section. The Consultant will focus on the impacts that are likely to be experienced by Ngarluma people, but if impacts are likely to spread beyond the Ngarluma community, then this is to be noted. The Consultant will focus on categorising the likely impacts that are described in Section 6 of the CIA Report in terms of their *phase*; that is, whether these impacts are most likely to occur in the pre-construction, construction, or operational phase, and in terms of their *source*, that is, from what source are these impacts likely to emanate.

This section must also include a categorisation of each forecasted impact in terms of their significance, consequence, probability, and risk. This will enable discussion to focus on the risks in a proportionate manner.

In preparing this section the Consultant must consider the study by Fitzgerald Applied Sociology, *Anketell Port and Strategic Industrial Area Social and Cultural Impacts Screening Study* (June 2011). Where findings of this report still have relevance to the Anketell Project they are to be included in this section.

## Section C –Adaptive Management

In the CIA Framework, the Consultant will identify the ways in which the Ngarluma interests described in Section A can be protected, or enhanced within the Project Area:

In this section the Consultant will:

- Detail specific strategies to mitigate and manage the impacts identified in Section B;
- Specify procedures for monitoring and reporting these impacts; and
- Identify the parties responsible for impact management and mitigation.

In this section the Consultant will focus on the specific form of cultural impact tools and techniques that can contribute to the management and enhancement of the Ngarluma interests described in Section A as they are spatially manifested in the Project Area. Section C will document these values or activities, the impacts on them, and the strategies to avoid or manage impacts in the following format (example):

Goals	Timing	Phase <sup>4</sup>
Responsible management of the access needs of Ngarluma people for recreational and cultural fishing in the near vicinity of the Anketell	ongoing	<u>Pre-construction</u>  <u>Construction</u>  <u>Operational</u>

<sup>4</sup> The management of these impacts through the CIA and CIMP process is the responsibility of the Port User (with respect the Port Precinct, including the Infrastructure Corridor) or the Industrial Area Lessee (with respect to the Industrial Areas).

Project		
<b>Output</b>		
Management Plan	<u>Pre-construction</u>	<u>Pre-construction</u>

DSD's ISA Framework includes a local governance/stakeholder engagement structure tasked with monitoring and adapting implementation/management plans (and CIMPs) developed under the ISA Framework. This structure will be established at a future point in time.

As part of Section C the consultant should:

- Develop and articulate a purpose and principles (including recommended procedures) that should apply to stakeholder engagement, including the local governance/stakeholder engagement structure, in consultation with the State. These should include:
  - Stakeholder Concerns: Mechanisms to address stakeholder inquiries and complaints; and
  - Monitoring and Review: How the implementation plans will be tracked, their effectiveness monitored and the need for adaptations to the plans assessed.

## **MILESTONES AND DELIVERABLES**

The Consultant will be required to submit:

- An Interim Draft CIA Framework report (3 months after the commencement of the Contract);
- A Draft CIA Framework (6 months after the commencement of the Contract); and

- A Final CIA Framework (8 months after the commencement of the Contract).
- The Final CIA Framework is to include template CIAs and CIMPs that can be the basis for any other CIMPs and CIAs that are required to be developed pursuant to the Anketell ILUA
- The Final CIA Framework must include the location information as required in Section A. This location information, as well as being described in the CIA Framework report, must also be provided in the form of electronic shape files.

The Consultant, in their proposal will describe the methodology intended to be used to complete the CIA Framework, and will submit a budget that details the component parts of the CIA Framework research, consultation, and report production. The Consultant will also designate payment schedules to correspond to the anticipated delivery of the deliverables described above and these payment schedules will need to be agreed by both DSD and the NAC. At all times these milestones and deliverables must be consistent with the Anketell ILUA and accepted industry standards.

## **KEY PERFORMANCE INDICATORS AND REPORTING**

The quality of work produced will be the sole responsibility of the nominated Consultant. The key reporting requirements will be:

- Implement the methodology and deliver the CIA Framework as per the conditions of the Anketell ILUA and this Brief;
- Any variations to these conditions to be submitted to the contract manager for approval; and
- Reports and ancillary documents should be free from factual errors.

The Consultant will email all reports described above in 'Milestones and Deliverables' to the Contract Manager who will distribute them to the Program Panel for review. The contract manager will provide DSD's formal response to the Consultant.

At the conclusion of the contract, the Consultant will provide 5 bound hard copies of each finalised report, in addition to digital copies.

This contract will be managed by DSD. DSD will assemble a Project Panel to provide technical oversight of the contract and its deliverables.

## **OUT OF SCOPE**

The following are out of scope:

- Environmental Assessment;
- Aboriginal Heritage Assessment; and
- Cultural Heritage Management Plans

## **MATERIALS TO BE PROVIDED TO THE CONSULTANT**

- Map of the Agreement Area
- The report by Fitzgerald Applied Sociology, *An Assessment of the Cultural Impacts on the Ngarluma Native Title Holders of the Proposed Anketell Port, Industrial Area, and Infrastructure Corridor Development* prepared for the NAC and dated 10 October 2012 (the **CIA Report**).
- The study by Fitzgerald Applied Sociology, *Anketell Port and Strategic Industrial Area Social and Cultural Impacts Screening*

*Study* prepared for the State's Department of State Development and dated June 2011;

- Anketell Port Master Plan
- Relevant excerpts from the Anketell ILUA

## **INTELLECTUAL PROPERTY**

The intellectual property for the CIA Framework is held jointly by the Department of State Development, the Western Australian Land Authority, the Ngarluma people and the NAC.

Any sensitive cultural content relating to the Ngarluma remains the property of the Ngarluma with ongoing permission provided to allow the content to be used by DSD for purposes that arise out of the Anketell ILUA.

The CIA Framework can be used by the State, the Port Area Manager, or the Industrial Areas Manager, or by Port Users or Industrial Area Lessees proposing to conduct Project Activities within or associated with the Anketell Project development. Access to the CIA Framework is available to these parties on an irrevocable, transferrable, non-exclusive, unrestricted, royalty-free basis.