



# ABBA RIVER MANAGEMENT STRATEGY

DOCUMENT REFERENCE

DMS-YAL-EMP-2.7

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YALYALUP  
MINERAL SANDS  
PROJECT

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## DOCUMENT DETAILS

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DMS-YAL-EMP-2.7	ABBA RIVER MANAGEMENT STRATEGY	23-Jun-21	Ministerial Statement 1168

## AMENDMENT REGISTER

Date	Rev	Description of Revision	Review	Approved
23/06/2021	V1	Abba River Management Strategy	Craig Bovell	
11/08/2021	V2	Abba River Management Strategy, update wording to Section 3 reference to Conditions 13-3 and 13-6	Craig Bovell	

<b>PROPOSAL TITLE</b>	<b>YALYALUP MINERAL SANDS PROJECT</b>
<b>Proponent</b>	Doral Mineral Sands Pty Ltd
<b>Ministerial Statement No.</b>	1168
<b>Environmental Factor</b>	Inland Waters and Social Surroundings
<b>EPA Objective</b>	Maintain the hydrological regimes and quality of groundwater and surface water so that environmental values are protected.  Protect Social Surroundings from significant harm.
<b>Purpose</b>	To address the requirements of Condition 13 of Ministerial Statement 1168
<b>Outcomes</b>	To ensure the following direct and indirect impacts to the ecological and hydrological functions, as well as social surroundings of the Abba River are avoided where possible or minimised as far as practicable: <ul style="list-style-type: none"> <li>• Erosion;</li> <li>• Sedimentation;</li> <li>• Pollutants;</li> <li>• Weed introduction;</li> <li>• Vegetation clearing;</li> <li>• Loss of habitat;</li> <li>• Changes to ecological values; and</li> <li>• Heritage.</li> </ul>
<b>Key Provisions</b>	Management based provisions for Inland Waters and Social Surroundings

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# 1. CONTEXT, SCOPE AND RATIONALE

## 1.1. PROPOSAL

Doral Mineral Sands Pty Ltd (Doral) proposes to extract ore from the Yalyalup Mineral Sands Deposit (i.e. the Proposal), located ~11km southeast of Busselton, WA (Figure 1). The Proposal includes the development of mine pits and associated infrastructure, wet concentration processing plant, solar evaporation ponds, groundwater abstraction and water management infrastructure and process water dam. The Proposal involves the disturbance of ~451.33ha, comprising predominantly cleared pasture (~448.61ha) and degraded native vegetation (~2.72ha) within a Development Envelope of 924.8ha.

Doral entered into a Noongar Standard Heritage Agreement (NSHA) with the South West Aboriginal Land and Sea Corporation (SWALSC), ICN 3832 for and on behalf of the South West Boojarah #2 Agreement Group on the 17 June 2016 a subsequent version of the NSHA came in to effect 4 June 2021 (Appendix 1). Section 18 consent was granted 12 August 2020 with respect to Aboriginal Site ID 17354 (Abba River) and can be found as Appendix 2. The Section 18 consent contains conditions relating to:

- Inviting two members nominated by the South West Boojarah representatives to be present for ground disturbing works on the land where it intersects with Aboriginal site ID 17354 (Abba River).
- Providing an annual written report to the registrar of Aboriginal Sites advising;
  - What extent the Purpose has impacted on the site located on the Land.

The Abba River crossing site is a Water Corporation asset located on Sussex Lot 821 on Deposited Plan 301731. The agreed crossing location (Figure 2) was determined through consultation with the South West Boojarah People (Appendix 3) and Water Corporation with the aim of avoiding vegetation clearing and impeding surface water flows. Surface water modelling and bridge design recommendations to avoid impeding water flows, were provided by AQ2 and are attached as Appendix 4. Negotiations resulted in a Licence and Indemnity Agreement to access the Abba River Water Corporation Asset for a period of 10 years commencing 1 February 2021. The indemnity agreement (Appendix 5) contains conditions relating to:

- Prohibition of revegetation activities;
- Prohibition of Chemical Storage at the Crossing Site;
- Not damaging Water Corporation Infrastructure;
- Maintaining fire breaks.

This Draft Abba River Management Strategy (ARMS) was provided to SWALSC who were given the opportunity to provide feedback. SWALSC responded with comment agreeing to Doral submitting the document to the Environmental Protection Authority (EPA) for review. The ARMS aims to address the objective of avoiding where possible, or otherwise minimising direct and indirect impacts to the social, ecological and hydrological functions of the Abba River from construction activities.

## 1.2. KEY ENVIRONMENTAL FACTORS

Table 1 provides a summary of the Proposal activity and site-specific environmental value that may affect Inland Water values.

**Table1: Key Proposal activity and site specific environmental value affecting the Abba River**

Key Proposal activity affecting Inland Waters	Site specific environmental factor
Construction of the bridge over the Abba River	Abba River

## 1.3. CONDITION REQUIREMENTS

The ARMS is prepared to satisfy of Ministerial Statement 1168 Condition 13. All conditions related to the Abba River are listed in Table 2 below:

**Table 2: Condition requirements**

Condition	Outcome/Objective	Addressed in section
13-1 The proponent shall implement the proposal to meet the following environmental objective: (1) avoid where possible, otherwise minimise, direct and indirect impacts to the ecological and hydrological functions of the Abba River from construction activities including but not limited to erosion, sedimentation, pollutants, weed introduction, vegetation clearing, loss of habitat and changes to ecological values.	Avoid where possible, otherwise minimise, direct and indirect impacts to the ecological and hydrological functions of the Abba River from construction activities	Section 2 – Table 3 (Management Targets 1-8)
13-2 To achieve the objective of condition 13-1, prior to ground disturbing activities for the purposes of constructing the Abba River crossing, unless otherwise agreed in writing by the CEO, the proponent shall prepare and submit an Abba	Prepare the Abba River Management Strategy (ARMS)	This ARMS has been developed to satisfy condition 13-2 to achieve the objective of condition 13-1.

Condition	Outcome/Objective	Addressed in section
<p>River Management Strategy. This Strategy shall:</p> <p>(1) when implemented, substantiate and ensure that condition 13-1 is being met;</p> <p>(2) be prepared in consultation with the South West Aboriginal Land and Sea Council on the advice of the Department;</p> <p>(3) specify trigger criteria that will trigger the implementation of management and/or contingency actions to prevent further direct or indirect impacts to the Abba River crossing;</p> <p>(4) specify threshold criteria to demonstrate compliance with condition 13-1;</p> <p>(5) specify monitoring methodology to determine if trigger criteria and threshold criteria have been met;</p> <p>(6) specify management and/or contingency actions to be implemented if the trigger criteria required by condition 13-2(3) and/or the threshold criteria required by condition 13-2(4) have not been met; and</p> <p>(7) provide a format and timing for the reporting of monitoring results against trigger criteria and threshold criteria to demonstrate that condition 13-1 has been met over the reporting period in the Compliance Assessment Report required by condition 4-6.</p>		<p>(1) Section 2 – Table 3, EMP Components (Reporting)</p> <p>(2) Section 1.1 - Proposal (Page 5)</p> <p>(3) Section 2 – Table 3, EMP Components (Management actions and timing/frequency of actions)</p> <p>(4) Section 2 – Table 3 (Management Targets 1-8)</p> <p>(5) Section 2 – Table 3, EMP Components (Monitoring)</p> <p>(6) Section 3 – Table 4 (Contingency Actions)</p> <p>(7) Section 2 -Table 3 (Reporting)</p>

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Condition	Outcome/Objective	Addressed in section
<p>13-3 The proponent shall implement the most recent version of the Abba River Management Strategy which the CEO has confirmed by notice in writing addresses the requirements of conditions 13-1 and 13-2.</p>	<p>Implement the most recent version Abba River Management Strategy</p>	<p>Section 2 – Table 3, EMP Components (Management actions, Timing/frequency of actions and Reporting) Section 3 – Adaptive Management and Review of EMP</p>
<p>13-4 In the event that monitoring, or investigations indicate an exceedance of threshold criteria specified in the Abba River Management Strategy, the proponent shall:</p> <p>(1) report the exceedance in writing to the CEO within seven (7) days of the exceedance being identified; and</p> <p>(2) implement the contingency actions required by condition 13-2(6) within seven (7) days of the exceedance being reported, as required by condition 13-4(1) and continue implementation of those actions until the CEO has confirmed by notice in writing that it has been demonstrated that the threshold criteria are being met and implementation of threshold contingency actions are no longer required.</p>	<p>Implement contingency actions and report to the CEO within 7 days of any exceedance of Abba River Management Strategy threshold criteria.</p>	<p>Section 3 – Table 4 (Contingency Actions)</p>
<p>13-5 The proponent:</p> <p>(1) may review and revise the Abba River Management Strategy; or</p> <p>(2) shall review and revise the Abba River Management</p>		<p>Section 3 (page 18)</p>



Condition	Outcome/Objective	Addressed in section
Strategy as and when directed by the CEO.		
13-6 The proponent shall implement the Abba River Management Strategy, or any subsequent revisions as approved by the CEO in condition 13-3, until the CEO has confirmed by notice in writing that the proponent has demonstrated the environmental objective detailed in condition 13-1 has been met.	Implement the most recent version Abba River Management Strategy until confirmed by CEO that the environmental objective detailed in Condition 13-1 has been met.	Section 2 – Table 3, EMP Components (Management actions, Timing/frequency of actions and Reporting) Section 3 – Adaptive Management and Review of EMP

## 1.4. RATIONALE AND APPROACH

Each of the objective components details the following:

- Management Targets Doral aims to achieve;
- Management Actions stating how Doral intends to achieve Management Targets;
- Timing or frequency of actions and
- Reporting of the actions

The development of the ARMS has been informed by the AQ2 Surface Water Assessment – Yalyalup Mine Access Road: Abba River Crossing Memo (Appendix 4) and Water Corporation Licence and Indemnity Agreement (Appendix 5). It is based on assumptions and uncertainties listed in Section 2.4.2.

### 1.4.1. SURVEY AND STUDY FINDINGS

AQ2 were engaged to conduct a Surface Water Assessment for the Yalyalup Mine Access Road: Abba River Crossing. AQ2 consultation with Water Corporation advised the Abba River Main Drain is classed as a rural drain and rural drains are managed to prevent long inundation periods of land (defined as greater than three days). It should be demonstrated that the proposed Doral Abba River Crossing structure will not interfere with the flow in the drain, and it will not impede the bank/flood plain flow significantly.

Water Corporation also advised “The crossing will need to be designed and built in a way it does not impede any flow in the waterway and the adjacent banks that act as a flood plain conveying large flows when the bank breaks out. The proposed bridge will need to be erected above the existing bank level. The designer will need to demonstrate that the structure will not retard the bank flow significantly”.

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AQ2 was supplied with DWER 2018 RORB model to use for the project. The supplied RORB model was run to match the report 1% AEP 24 hr critical peak outflow of 99m<sup>3</sup>/s at the outlet of the Abba River. The model predicts:

- Overtopping of the Western Bank upstream of the road crossing flows when flood levels rise above 38.5mAHD. The West Bank acts as a spillway onto the flood plain, as water over the West Bank is able to flow freely away from the channel area in a north-westerly direction once overtopping the bank. The flow over the flood plain is predicted to return to the Abba river downstream of the Doral tenement. The West Bank overflow limits the flow water levels in the main Abba River Drain channel at the proposed bridge location are by the West Bank spillway.
- A flow of approximately 19m<sup>3</sup>/s to spill over the west bank and be conveyed northwards across a broad 300m section of flood plain.
- At the location of the bridge, the 1% AEP flood water level is predicted to be 28.5mAHD with a peak flow of approximately 21m<sup>3</sup>/s within the channel. The combined channel and east overbank combined flow is 25.5m<sup>3</sup>/s.
- Water spills over the East Overbank initially upstream of the crossing location with overbank flow confined to a 55m flow width from the drain.

A second model was run to reflect the proposed road design information supplied by Coates Civil Engineering.

- Provision of a floodway at existing ground surface level for the western half of the floodplain should allow the flows to continue along existing flow paths (northwards) within the existing catchment. The resultant flood level within the flood plain does not rise above 28.1mAHD, such that the natural catchment divide (at 28.3 to 28.45mAHD) continues to form a barrier to prevent flow to the western catchment.
- The proposed road surface across the east floodplain reduces the capacity for overbank flow withing the Eastern Overbank. Compared with the existing scenario, Eastern Overbank flows generally return back into the channel.
- The peak flow through the channel is predicted to be approximately 24m<sup>3</sup>/s. The 1% AEP flood level in the channel at the bridge remains the same (28.5mAHD) despite the increased flows with the proposed works.
- The peak flow conveyed across the western bank 'floodway area' (Figure 3) is predicted to be 20m<sup>3</sup>/s. The flow has increased slightly due to the reduced capacity across the western overbank and road design has been engineered to mitigate the increased flow.

### 1.4.2. KEY ASSUMPTIONS AND UNCERTAINTIES

Key assumptions and uncertainties within this Strategy are:

- The DWER 2018 RORB Model is accurate;
- The AQ2 model using the modified terrain associated with the bridge installation is correct;

- Routine daily Inspections will be carried out by Doral on the Crossing bridge as per the Mine Safety Regulations 1995;
- The bridge will be constructed as per Coates Civil design endorsed by Water Corporation (Figure 4);
- Two members of the South West Boojarah nominated by SWALSC will be invited to be present for ground disturbing works on the land where it intersects with Aboriginal site ID 17354 (Abba River).

#### 1.4.3. MANAGEMENT APPROACH

Doral have taken the approach of avoiding impacts where possible. As a result, an Objective Based approach has been taken to develop the ARMS.

#### 1.4.4. RATIONALE FOR CHOICE OF PROVISIONS

Recommendations based on the modelling completed to provide for conveyance of flood flows through the Abba River Main Drain and associated overbanks while meeting Water Corporations requirement of not significantly impacting flows, are:

- The bridge soffit should be positioned above the 1% AEP flood level of 28.5mAHD to not impact the conveyance flows. To achieve this, the road may be required to be elevated above the existing ground surface at the bridge approach on both sides.
- A road design needs to include provision of sufficient floodway area to convey approximately 20m<sup>3</sup>/s at a flood level below the evaluation of the natural catchment divide to the west.
- Elevations along the access road should not have a lower elevation than the elevation of the catchment to ensure they do not become a flow for flooding to be diverted away from the Abba River Main Drain to the catchment to the west.

The Water Corporation Licence and Indemnity Agreement contains specific Items relating to the responsibilities of the Occupier. Item 6d states:

- Not to store chemicals, inflammable liquids, acetylenes gas or volatile or explosive oils or compounds or substances or any other hazardous substance upon the premises.

## 2. EMP COMPONENTS

**Table 3: EMP Components**

	<p><b>EPA Factors:</b> Inland Waters and Social Surroundings</p> <p><b>EPA Objectives:</b> Maintain the hydrological regimes and quality of groundwater and surface water so that environmental values are protected and protect social surroundings from significant harm.</p> <p><b>Objective:</b> To ensure direct and indirect impacts including but not limited to erosion, sedimentation, pollutants, weed introduction, vegetation clearing, loss of habitat, changes to ecological values and harm to social surroundings are avoided where possible or minimised as far as practicable.</p> <p><b>Key environmental values:</b> Abba River</p> <p><b>Key impacts and risks:</b> Changes to hydrological and ecological values and harm to social surroundings</p>
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Objective - based				
Management Targets	Management Actions	Monitoring	Timing/frequency of actions	Reporting
<b>Condition clause 13.2</b>				
<p><b>Management Target 1:</b> Avoid Social Impacts</p>	<p>1. Invite two SWALSC nominated representatives of the South West Boojarah #2 Agreement Group to be present during ground disturbing activities</p>	<p><b>Indicator:</b> South West Boojarah representatives to monitor heritage artifacts as per Noongar Standard Heritage Agreement (LEG.853).</p>	<p>Daily during ground disturbing activities extending 10m either side of Abba River banks for the purpose of the Abba River Crossing bridge construction.</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the Compliance Assessment Branch of DWER.</p>

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<b>Objective - based</b>				
<b>Management Targets</b>	<b>Management Actions</b>	<b>Monitoring</b>	<b>Timing/frequency of actions</b>	<b>Reporting</b>
	extending 10m either side of the Abba River banks, for the purpose of the Abba River Crossing bridge construction (Heritage Site ID 17354)			
<p><b>Management Target 2:</b> Avoid impact to Abba River Beds to minimise erosion</p>	<p>2. Install temporary bridge which includes abutments located approximately 7m either side of the Abba River as per Water Corporation agreed design</p>	<p><b>Indicator:</b> Photographs will be taken to demonstrate limited beds disturbance</p>	<p>Photographs to be taken prior to and at the completion of construction.</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the Compliance Assessment Branch of DWER.</p>

ABBA RIVER MANAGEMENT STRATEGY

<b>Objective - based</b>				
<b>Management Targets</b>	<b>Management Actions</b>	<b>Monitoring</b>	<b>Timing/frequency of actions</b>	<b>Reporting</b>
<p><b>Management Target 3:</b> Avoid impact to the Abba River Banks to minimise erosion</p>	<p>3. Apply 200mm thick rock scour protection to Abba River banks beneath bridge installation</p>	<p><b>Indicator:</b> Visual inspection of the rock scour protection</p>	<p>Daily rock scour protection inspections will be performed.</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the Compliance Assessment Branch of DWER.</p>
<p><b>Management Target 4:</b> Avoid impeding flow of the Abba River to limit sedimentation deposits.</p>	<p>4. Install bridge above 1% AEP flood level of 28.5mAHD</p> <p>5. A culvert will be installed under the access road to the east of the bridge preventing banking of flood waters.</p> <p>6. Road design to the west of the bridge will allow</p>	<p><b>Indicator:</b> Survey measurements will be used to maintain construction as per design.</p>	<p>Surveying will be undertaken throughout the construction process.</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the compliance Assessment Branch of DWER.</p>

<b>Objective - based</b>				
<b>Management Targets</b>	<b>Management Actions</b>	<b>Monitoring</b>	<b>Timing/frequency of actions</b>	<b>Reporting</b>
	sufficient floodway to convey 20m <sup>3</sup> /s at a flood level below the elevation of the natural catchment divide to the west (27.9mAHD to 28.3mAHD)			
<p><b>Management Target 5:</b> Avoid pollutants entering the Abba River at the crossing site.</p>	<p>7. As per Item 6d of Water Corporations Licence and Indemnity Agreement, Doral will not store chemicals, inflammable liquids, acetylene gas or volatile or explosive oils or compounds of substances or any other hazardous substance upon the Abba River Site.</p>	<p><b>Indicator:</b> No chemicals will be found at the Abba River Crossing site.</p>	<p>Daily bridge inspections will be performed.</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the compliance Assessment Branch of DWER.</p>

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<b>Objective - based</b>				
<b>Management Targets</b>	<b>Management Actions</b>	<b>Monitoring</b>	<b>Timing/frequency of actions</b>	<b>Reporting</b>
	<p>8. If required implement the Hydrocarbon Management Procedure DMS-EP-8.2 (Appendix 6)</p> <p>9. Bitumen will be installed 25m either side of the Abba River Crossing bridge will be to reduce dust and other debris entering the Abba River.</p>	<p><b>Indicator:</b> Photographs of bitumen installation will be taken</p>	<p>Once installed</p>	
<p><b>Management Target 6:</b> Avoid introducing new weeds species to the Abba River Crossing Site</p>	<p>10. Daily inspections of the Crossing site to identify any new weed species.</p> <p>11. Undertake weed control/removal as required.</p>	<p><b>Indicator:</b> Current weed presence consists primarily of Kikuyu grass. New introduced weed species identified will be controlled as required.</p>	<p>Daily bridge inspections will be performed</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the compliance Assessment Branch of DWER.</p>



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<b>Objective - based</b>				
<b>Management Targets</b>	<b>Management Actions</b>	<b>Monitoring</b>	<b>Timing/frequency of actions</b>	<b>Reporting</b>
<p><b>Management Target 7:</b> Avoid vegetation clearing</p>	<p>12. The Abba River Crossing site location was chosen due to the lack of vegetation present.</p>	<p><b>Indicator:</b> There is currently no vegetation at the Abba River Crossing site. Item 6b of the Indemnity Agreement does not allow for the revegetation of the crossing site.</p>	<p>No action required</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the compliance Assessment Branch of DWER.</p>
<p><b>Management Target 8:</b> Avoid habitat loss and changes to ecological values</p>	<p>13. The chosen Abba River crossing consists of grassy banks with no vegetation present. As no clearing and minimal disturbance of banks is required the bridge installation is not expected to result in habitat loss or change to ecological value.</p>	<p><b>Indicator:</b> There is currently no vegetation at the Abba River Crossing site. Item 6b of the Indemnity Agreement does not allow for the revegetation of the crossing site.</p>	<p>No action required</p>	<p>Reporting will be undertaken annually (17<sup>th</sup> August) in the form of a Compliance Assessment Report. Reports will be sent to the compliance Assessment Branch of DWER.</p>

### 3. ADAPTIVE MANAGEMENT AND REVIEW OF EMP

In accordance with Ministerial Statement 1168 Conditions 13-3 and 13-6, Doral shall implement the most recent version of the Abba River Management Strategy as confirmed by the CEO in writing, and until such time that the CEO has confirmed by notice in writing that the environmental objective detailed in Condition 13-1 has been met.

Triggers, thresholds and contingency for each of the Management Targets is included in Table 4 below. If monitoring identifies a non-conformance/non-compliance with ARMS Targets, the issue will be assessed, and corrective actions implemented. The corrective actions will be aimed at ensuring the bridge and access road is installed as per design and maintained to ensure minimal impact to hydrological and ecological values. The ARMS shall/may be reviewed and updated as directed by the CEO or initiated by Doral and to the satisfaction of the CEO.

**Table 4: Monitoring Triggers, Thresholds and Contingency Actions**

Monitoring Parameter	Trigger	Threshold	Contingency Action
Social Impacts	Heritage artifact found	Boojarah representative not present at time of discovery	<ul style="list-style-type: none"> <li>• Stop work</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement within 7 days Aboriginal Cultural Material Management Procedure DMS-EP14.1 (Appendix 7)</li> <li>• Continue to implement contingency action (Procedure EP-14.1) until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Erosion	Bridge located approximately 7m either side of Abba River as per design	Survey indicates bridge not in design location	<ul style="list-style-type: none"> <li>• Relocate bridge to location as per design</li> <li>• Re-survey</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action</li> </ul>

Monitoring Parameter	Trigger	Threshold	Contingency Action
			until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required
Erosion	Missing scour protection	Visual inspection identifies missing scour protection	<ul style="list-style-type: none"> <li>• Reinstate scour protection</li> <li>• Monitor outcomes</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Sedimentation deposits	Install bridge above 1% AEP level (28.5mAHD)	Survey indicates bridge will not be sited above 1% AEP level of 28.5mAHD	<ul style="list-style-type: none"> <li>• Continue earthworks until bridge will be sited above 28.5mAHD</li> <li>• Re-survey</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Sedimentation deposits	Sediment build-up	Visual inspection identifies the presence of sediment build-up at the crossing site	<ul style="list-style-type: none"> <li>• Investigate cause</li> <li>• Remove sediment build-up and modify infrastructure</li> <li>• Monitor outcomes</li> </ul>

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Monitoring Parameter	Trigger	Threshold	Contingency Action
Do not impede flow	Install culvert to the east of bridge	Visual inspection prior to winter	<ul style="list-style-type: none"> <li>• Remove sediment from around culvert prior to winter</li> <li>• Monitor outcomes</li> </ul>
Do not impede flow	Road to the west not built to design with height between 27.9mAHD and 28.3mAHD)	Survey indicates road construction height not between 27.9mAHD and 28.3mAHD	<ul style="list-style-type: none"> <li>• Re-engineer the road to correct design</li> <li>• Re-survey</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Pollutants	Identification of pollutants at crossing site	Visual inspection identifies chemical storage at bridge crossing	<ul style="list-style-type: none"> <li>• Chemicals will be removed</li> <li>• staff will be re-educated with relation to the storage of chemicals at the location</li> <li>• Continue daily inspections</li> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Introduction of new weeds	New weed species present	New weed species increasing post treatment	<ul style="list-style-type: none"> <li>• Investigate cause</li> <li>• Treat weed occurrence</li> </ul>

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Monitoring Parameter	Trigger	Threshold	Contingency Action
			<ul style="list-style-type: none"> <li>• Report the threshold exceedance to the CEO within 7 days</li> <li>• Implement contingency action within 7 days and continue to implement contingency action until CEO confirmed in writing that threshold criteria are being met and implementation of threshold criteria is no longer required</li> </ul>
Vegetation clearing	There is no vegetation at the Abba River Crossing Site	N/A	Ensure correct location for Abba River bridge crossing prior to ground disturbing activities
Habitat loss	There is no habitat at the Abba River Crossing Site	N/A	Ensure correct location for Abba River bridge crossing prior to ground disturbing activities

## 4. STAKEHOLDER CONSULTATION

**Table 5: Stakeholder consultation**

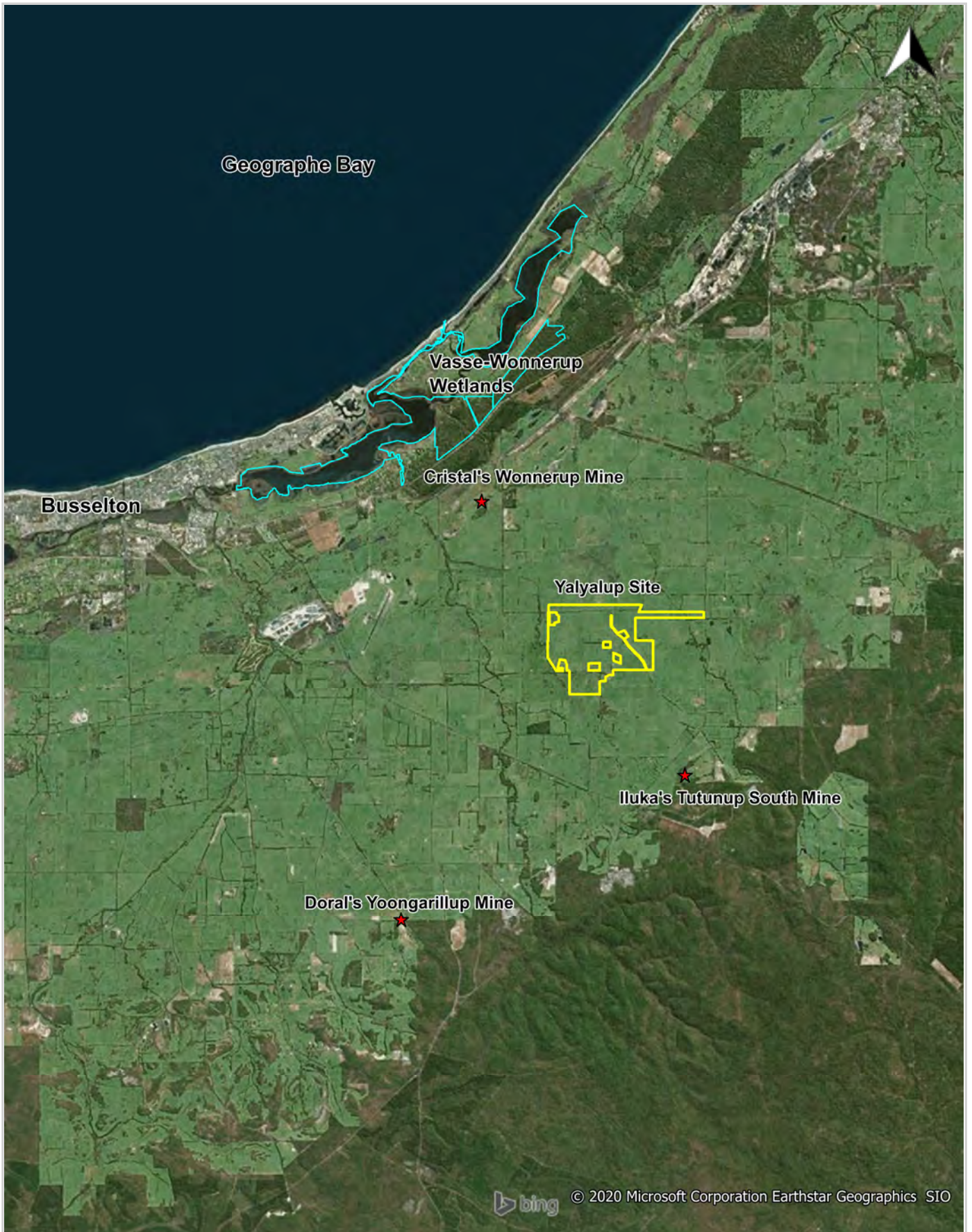
Stakeholder	Date	Advice received on Key Environmental Issues	Responses/Comments/Issues
South West Boorah (SWB)	28 November 2019	Ethnographic Survey conducted with Ethnoscience, Julie Edwards and SWB at Abba River crossing site.	SWB recommended the Yalyalup Development Proceed.
SWALSC	17 June 2016	Noongar Standard Heritage Agreement (NSHA)	Executed by all parties
SWALSC	25 May 2021	Discussion around proposed activity and heritage Monitor presence during bridge construction	No working group meetings at present due to transition period between Native Title and Indigenous Land Use Agreements. Doral to liaise with SWALSC who will circulate the Abba River Management Strategy internally and respond with pathway forward.
SWALSC	4 June 2021	Second Noongar Standard Heritage Agreement (NSHA)	Executed by all parties
SWALSC	28 May and 17 June 2021	Phone call and email discussion to determine steps for consultation as no working group meetings at present	SWALSC reviewed the ARMS. Consultation via Ethnographic Survey and NHA deemed sufficient consultation. SWALSC agreed to Doral submitting the ARMS for OEPA review
Water Corporation	31 Jan 2020	Initial contact (Anne O'Hern) to discuss access for Section 18 AHA Application.	Water Corporation had further questions relating to the intent of activity at the site.
	1 Feb 2020 – 17 Mar 2020	Many emails and phone call discussions with Ann O'Hern relating to Water Corporation procedures and requirements for access to Water Corporation Asset (Abba River) for the purpose of bridge construction.	Advised that engineering design for the bridge and surface water assessment was required.

ABBA RIVER MANAGEMENT STRATEGY

Stakeholder	Date	Advice received on Key Environmental Issues	Responses/Comments/Issues
	20 Mar 2020	Forwarded application to access Water Corporation asset through to <a href="mailto:enquiries@watercorporation.com.au">enquiries@watercorporation.com.au</a> for assessment.	Information forwarded to Water Corporation Stakeholders internally by Jordan Hodge from Water Corporation.
	2 April 2020	Draft Licence and Indemnity Agreement received from Lee Fleck of Water Corporation	Review and accepted by Doral.
	8 April 2020	Final Water Corporation Licence and Indemnity Agreement received	Document signed by Doral and returned to Lee Fleck.
	9 April 2020	Fully executed Licence and Indemnity Agreement received from Lee Fleck	Acknowledged.

FIGURE 1: REGIONAL SITE LOCATION





LOCATION MAP



Location: F:\136\4.GIS\Workspaces\

Legend

— Proposed Yalyalup Disturbance Boundary

Scale



kilometres  
Scale 1:150,000

AUTHOR: GC  
DRAWN: GC  
DATE: 04/05/20

REPORT NO: 022  
REVISION: A  
JOB NO: 136H

NOTES & DATA SOURCES:  
Mine outline provided by Doral



FIGURE 1  
REGIONAL LOCATION  
OF THE YALYALUP  
MINERAL SANDS  
PROJECT

FIGURE 2: ABBA RIVER CROSSING SITE (ID17354)

# Ethnoscience

ABN 47 065 099 228

## Ethnography, Heritage & Cultural Interpretation

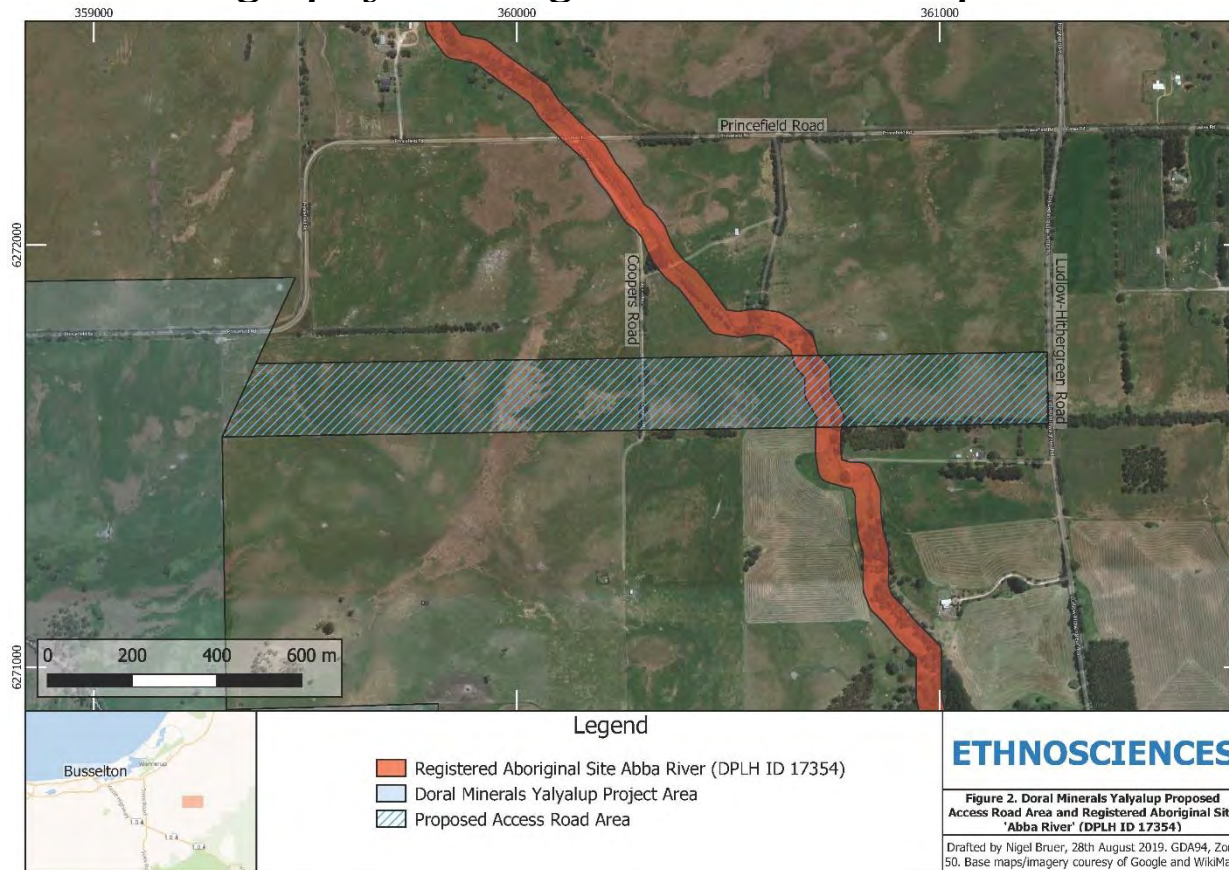


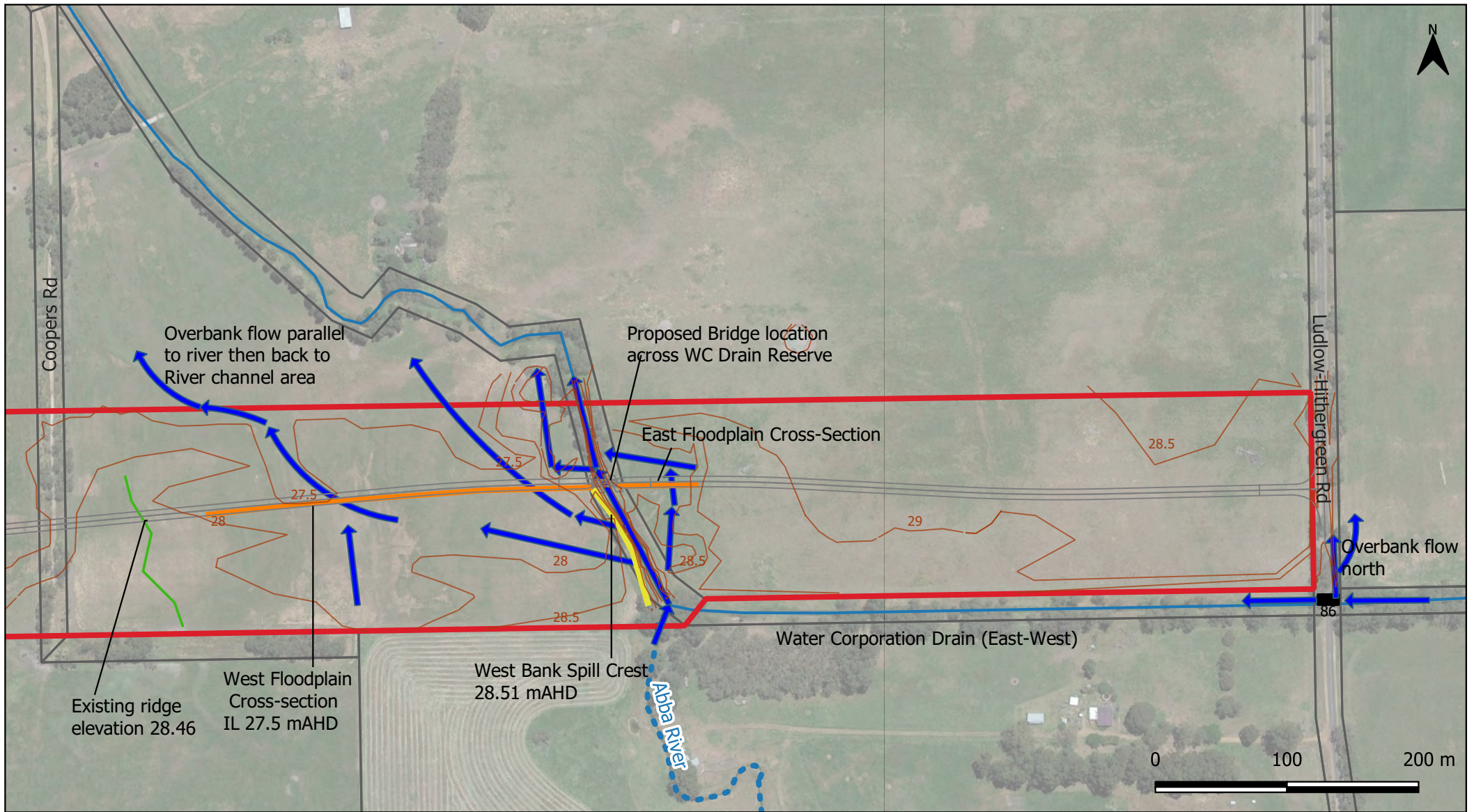
Figure 3: Doral's Yalyalup project area showing the intersection of the mine access corridor with the Abba River (ID 17354) ) (Source: McDonald 2019)

### Report of an Ethnographic Survey of Doral's Yalyalup Project



Figure 2: Yalyalup Road access showing reduced width of road at point of Abba River Crossing bridge site to avoid impact on Native Vegetation.

FIGURE 3: WESTERN BANK FLOOD PLAIN AREA



**Legend**

- Doral Site Boundary
- Proposed Road/Bridge Alignment
- Topographic Contours (mAHD)
- - - Abba River Upstream
- Water Corporation Drainage Open Channel
- Water Corporation Bridge & No
- ➔ Existing Flow Direction
- West Bank Existing Upstream Spill Crest Location
- Existing Flood Plain Width along road alignment

AUTHOR: WM  
 DRAWN: WM  
 DATE: 8/5/2020

REPORT No: 008a  
 JOB No: 136E  
 Coordinates: MGA Zone 50

Notes and Data Sources:  
 Water Corporation (2020) Drainage Open Channel  
 Survey of Topographic Points by Doral and draft road design provided by  
 Contours developed from Points.



Figure 2:  
**Topography and Existing  
 Drainage Flow Direction**

## FIGURE 4: COATES CIVIL BRIDGE AND ACCESS ROAD DESIGN



LOCALITY PLAN  
N.T.S.

# YALYALUP MINERAL SANDS MINE DEVELOPMENT

## PRINCEFIELD ROAD, YALYALUP

### MINE ACCESS ROADS CONSTRUCTION

**CONTENTS:**

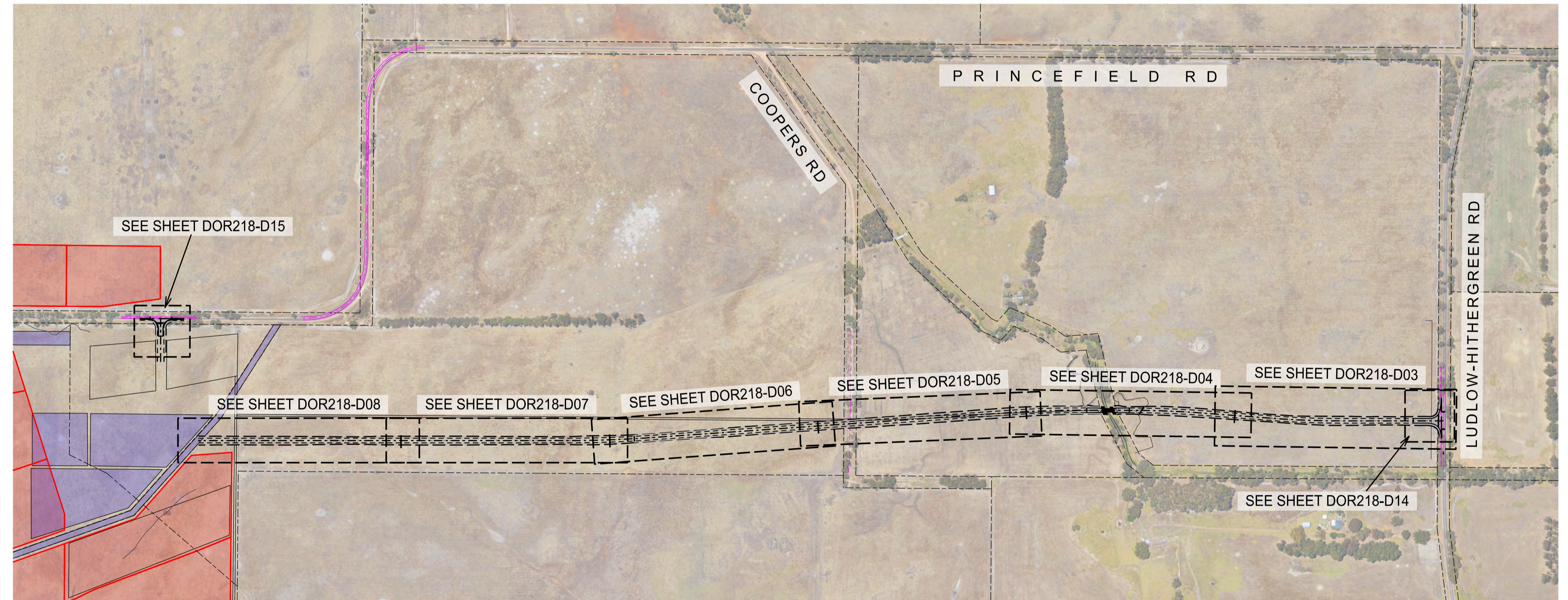
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- SHEET DOR218-D02 / 0 - TYPICAL DETAILS
- SHEET DOR218-D03 / 0 - ROAD 1 PLAN-PROFILE CH0-340m
- SHEET DOR218-D04 / 0 - ROAD 1 PLAN-PROFILE CH340-680m
- SHEET DOR218-D05 / 0 - ROAD 1 PLAN-PROFILE CH680-1020m
- SHEET DOR218-D06 / 0 - ROAD 1 PLAN-PROFILE CH1020-1360m
- SHEET DOR218-D07 / 0 - ROAD 1 PLAN-PROFILE CH1360-1700m
- SHEET DOR218-D08 / 0 - ROAD 1 PLAN-PROFILE CH1700-2030m
- SHEET DOR218-D09 / 0 - ROAD 1 - ABBA RIVER BRIDGE LAYOUT
- SHEET DOR218-D10 / 0 - ROAD 1 CROSS-SECTIONS CH40-520m
- SHEET DOR218-D11 / 0 - ROAD 1 CROSS-SECTIONS CH540-1020m
- SHEET DOR218-D12 / 0 - ROAD 1 CROSS-SECTIONS CH1040-1520m
- SHEET DOR218-D13 / 0 - ROAD 1 CROSS-SECTIONS CH1540-2020m
- SHEET DOR218-D14 / 0 - LUDLOW-HITHERGREEN ROAD 1 NEW ACCESS
- SHEET DOR218-D15 / 0 - PRINCEFIELD ROAD NEW LV ACCESS

**GENERAL NOTES:**

- 1) A TRAFFIC MANAGEMENT PLAN IS TO BE PREPARED AND APPROVED BY THE SHIRE PRIOR TO THE COMMENCEMENT OF WORKS.
- 2) CONFIRM LOCATION OF ALL SERVICES PRIOR TO COMMENCEMENT OF WORKS. SHOULD ANY SERVICE CLASHES BECOME EVIDENT, NOTIFY THE SUPERVISOR IMMEDIATELY.
- 3) DO NOT SCALE FROM DRAWINGS. IF IN DOUBT, ASK.
- 4) THESE DRAWINGS DO NOT DEFINE PROPERTY BOUNDARIES.
- 5) ENSURE WORKSITE IS LEFT CLEAN AND TIDY.

**EARTHWORKS NOTES:**

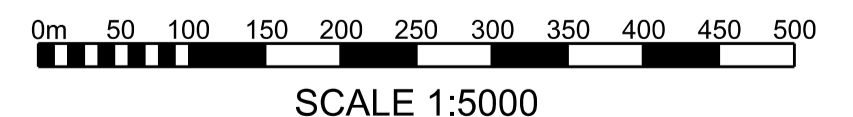
- 1) PRIOR TO UNDERTAKING OF BULK EARTHWORKS, TOPSOIL AND ANY VEGETABLE MATTER IS TO BE STRIPPED AND REMOVED FROM SITE. ALL VEGETATION CLEARING IS TO BE CARRIED OUT TO THE SUPERINTENDENT'S SATISFACTION PRIOR TO COMMENCEMENT OF EARTHWORKS.
- 2) ANY SOFT SPOTS OR POOR SUBGRADES ENCOUNTERED ARE TO BE INVESTIGATED AND REMEDIAL TREATMENT APPLIED AS DIRECTED BY CONTRACT SUPERINTENDENT.
- 3) ALL EARTHWORKS ARE TO BE UNDERTAKEN IN ACCORDANCE WITH THE SPECIFICATION AND/OR CLIENT REQUIREMENTS.
- 4) ALL FILL MATERIAL IS TO BE CLEAN AND FREE OF ANY VEGETABLE MATTER.
- 5) FILL SHALL BE COMPACTED IN MAX. 200mm LOOSE THICKNESS LAYERS TO DENSITIES AS SPECIFIED.
- 6) FINISHED EARTHWORKS LEVELS ARE TO BE GRADED EVENLY BETWEEN DESIGN SPOT HEIGHTS AND STRINGS.



OVERALL LAYOUT  
SCALE 1:5,000

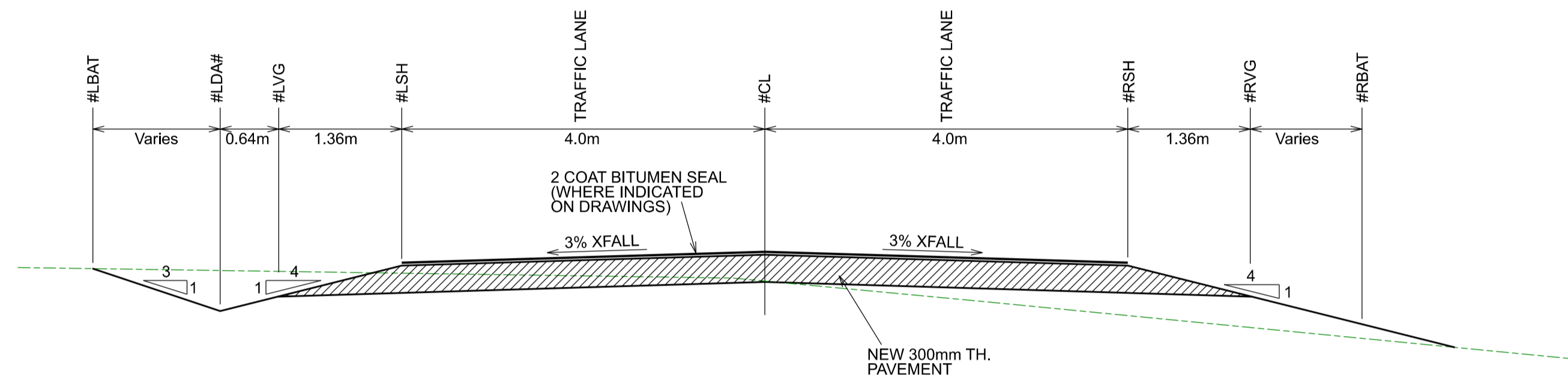
**ROAD & DRAINAGE CONSTRUCTION NOTES:**

- 1) UNDERTAKE ALL ROAD AND DRAINAGE CONSTRUCTION WORKS TO REQUIREMENTS OF DRAWINGS & SPECIFICATIONS AND/OR CLIENT REQUIREMENTS.
- 2) DO NOT DISTURB VEGETATION OR TREES THAT ARE TO REMAIN.
- 3) EXISTING BITUMEN SEAL IS TO BE REMOVED AND DISPOSED OF OR ALTERNATELY PULVERISED AND MIXED INTO THE EXISTING PAVEMENT MATERIAL.
- 4) NEW DRAINAGE CULVERTS ARE TO INCLUDE PROVISION OF PRECAST HEADWALLS AS PER DETAIL ON DWG DOR218-D02.
- 5) DOWNSTREAM SIDE OF CULVERTS ARE TO BE GRADED OUT INTO ADJACENT ROAD VERGE AND/OR FARMLAND (WITH PERMISSION OF LANDOWNER) TO ENABLE FREE FLOW OF WATER FROM CULVERT.
- 6) THE CONTRACTOR IS TO ENSURE THAT ALL ROADSIDE DRAINAGE IS FREE FLOWING AND THERE IS NO PONDING OF WATER ALONG THE ROAD FORMATION.

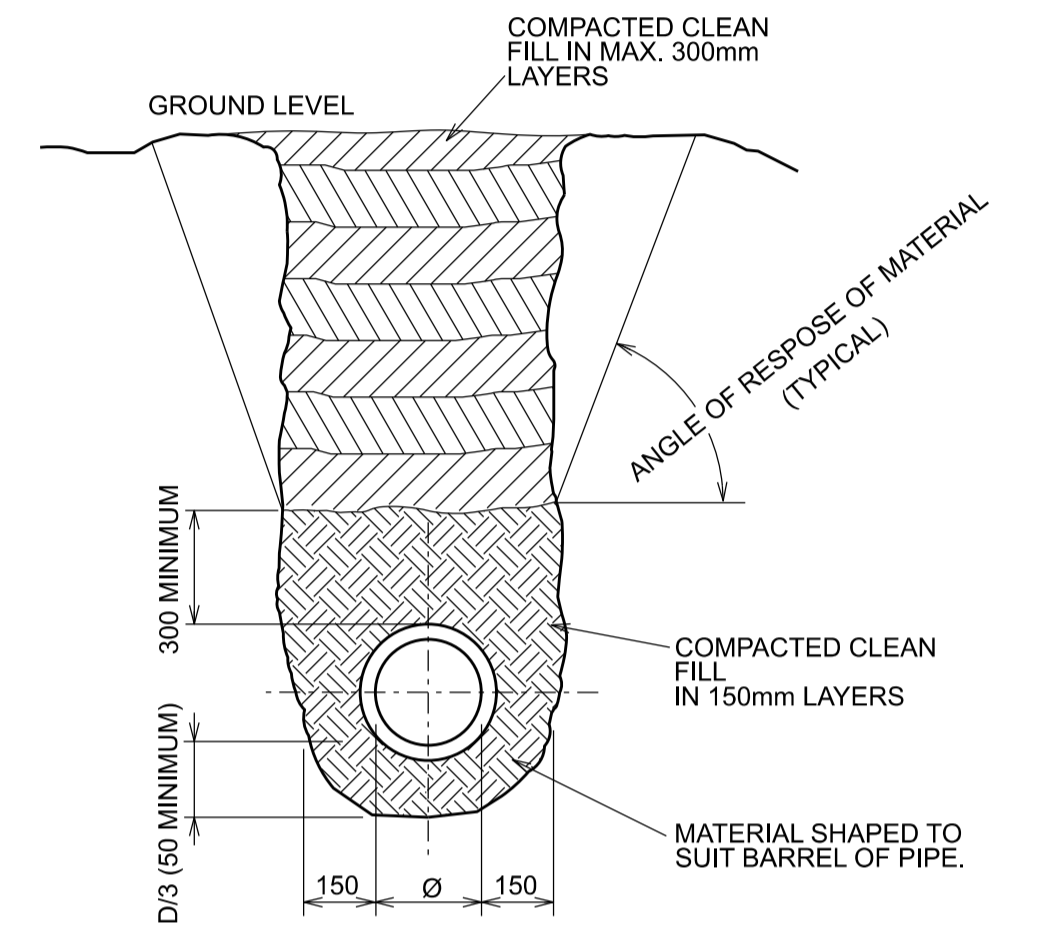


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MK	DETAILS OF AMENDMENTS	APPROVED	DATE							

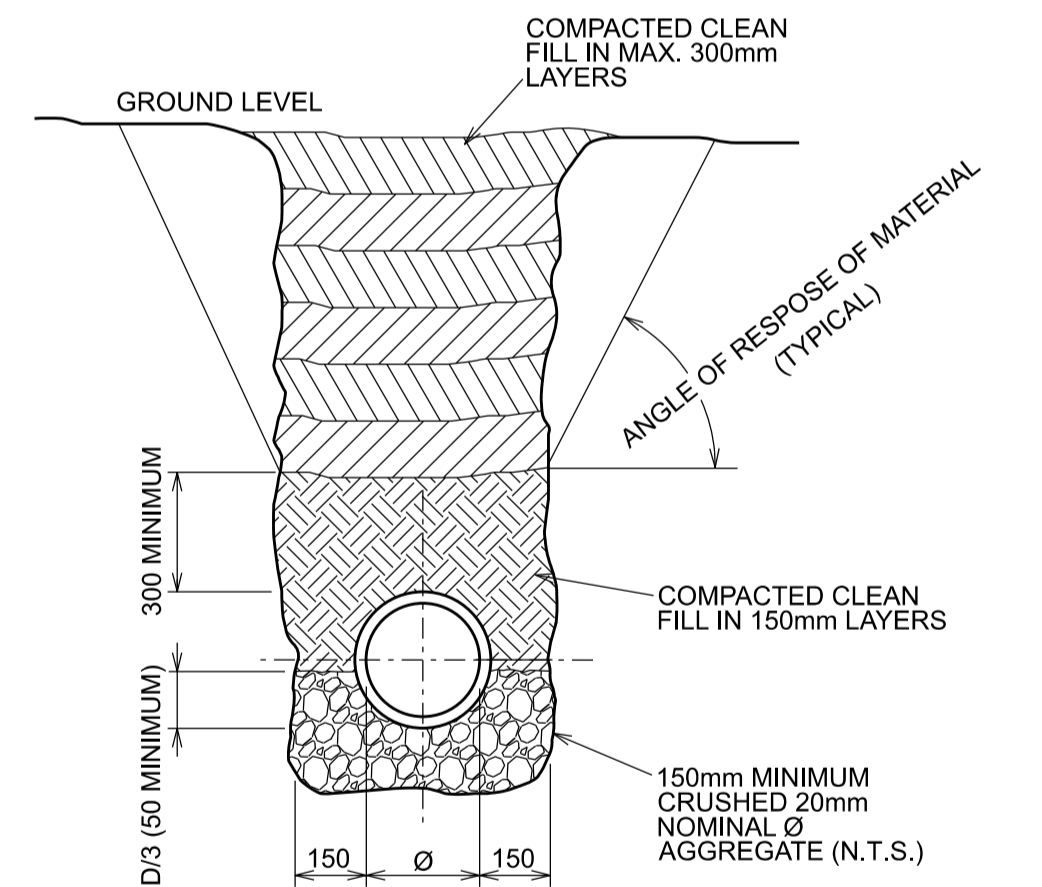




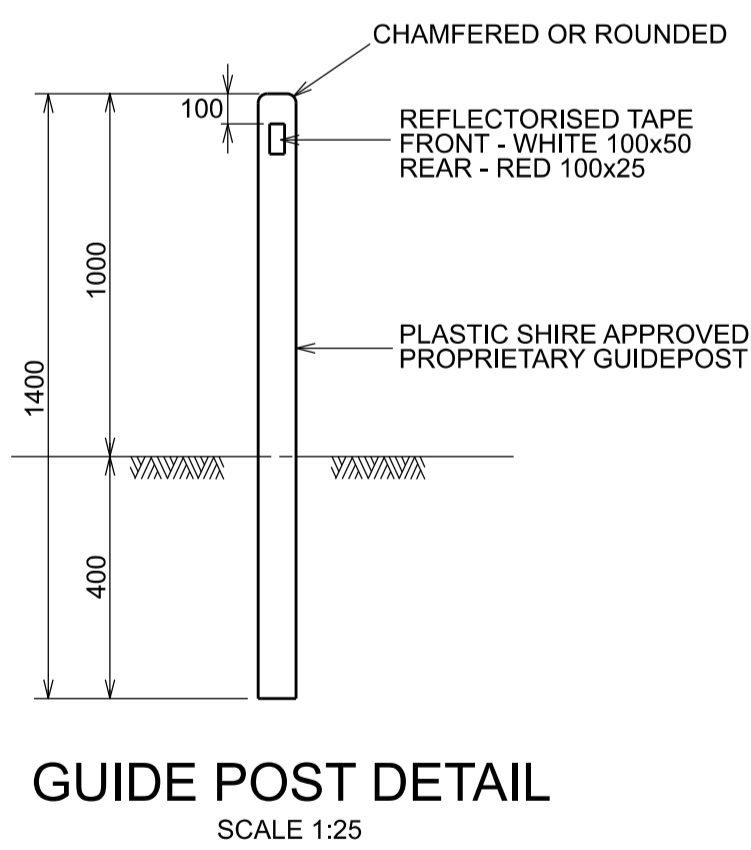
TYPICAL ROAD SECTION  
N.T.S.



DRY GROUND BEDDING



WET GROUND BEDDING

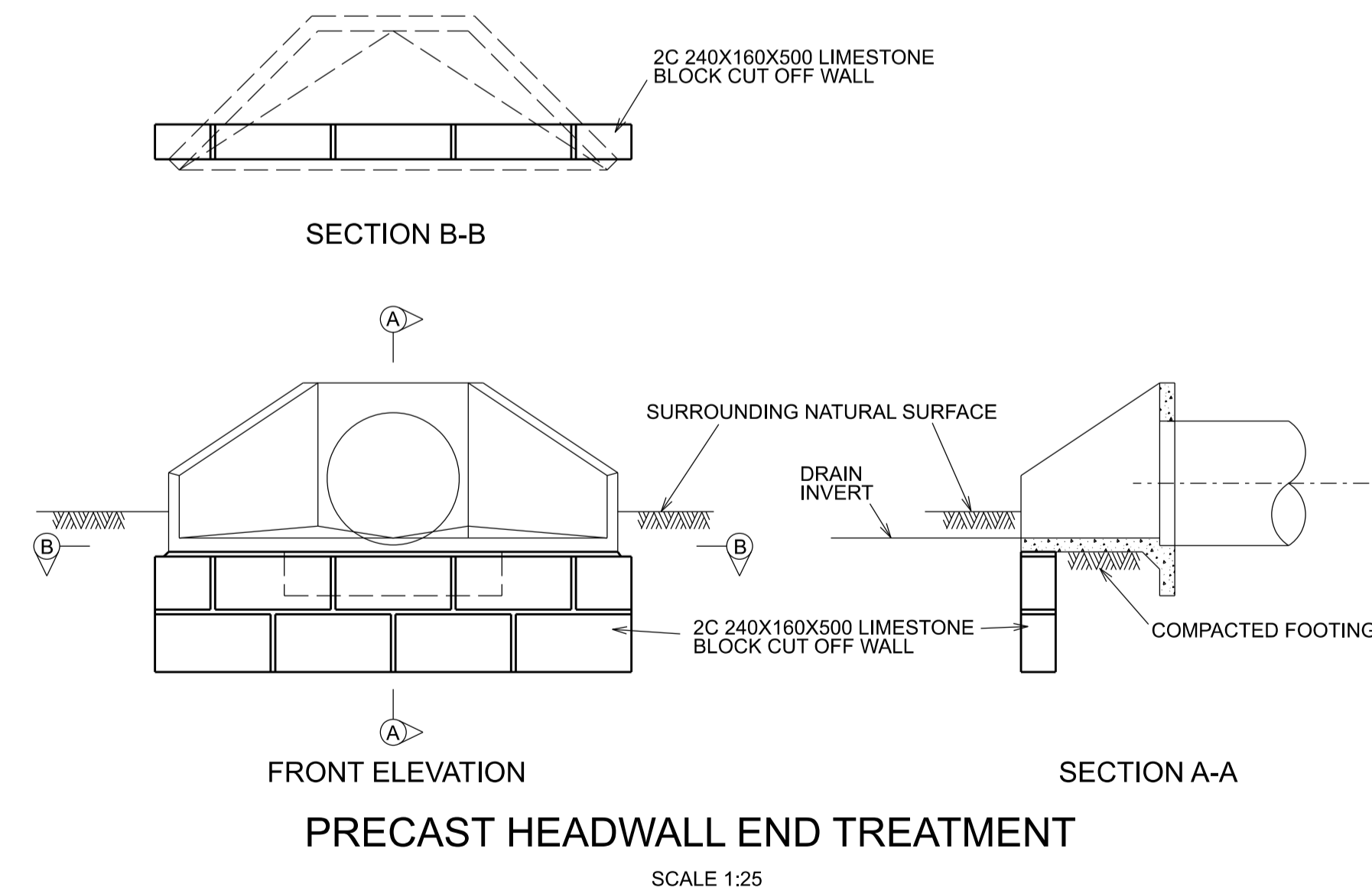


GUIDE POST DETAIL  
SCALE 1:25

DELINEATORS SHALL BE PLACED WITH RED ON THE L.H.S. AND WHITE ON THE R.H.S. AS SEEN BY APPROACHING TRAFFIC.

GUIDE POSTS SHALL, UNLESS SHOWN OTHERWISE, BE ERECTED AT 150m SPACING ON STRAIGHTS, 30m SPACING ON CURVES, EITHER SIDE OF ALL CULVERTS, CROSSOVERS & AT KERB TERMINI.

GUIDEPOSTS TO BE WHITE IN COLOUR EXCEPT FOR PLACEMENT OF BLUE GUIDEPOSTS TO MARK LATERAL CULVERT LOCATIONS.

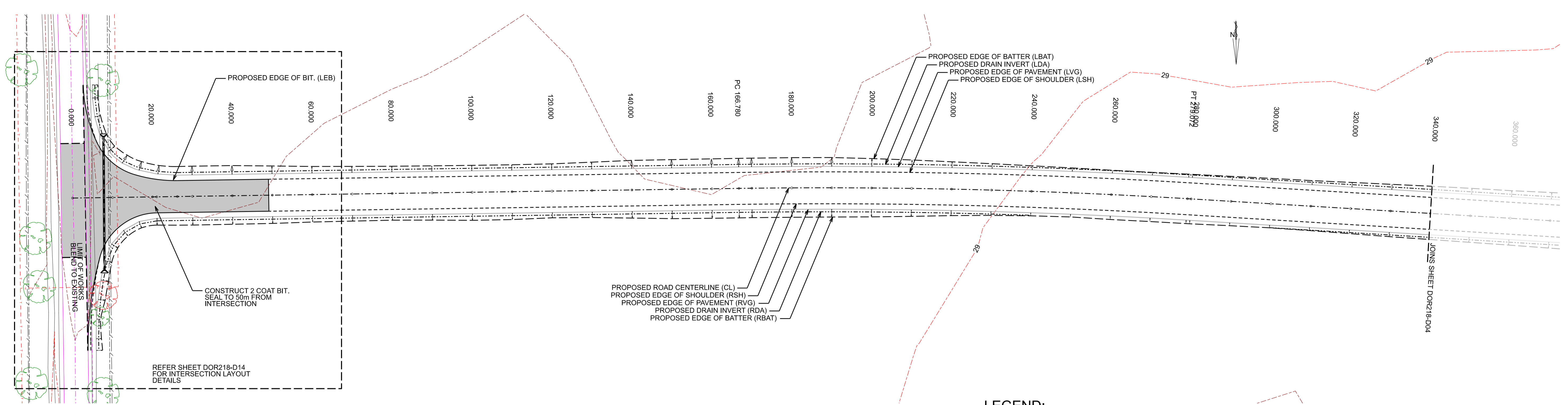


PRECAST HEADWALL END TREATMENT  
SCALE 1:25

PIPE BEDDING NOTES:

- FILL SHALL BE COMPACTED TO MINIMUM 98%MMDD UNDER ROADS AND MINIMUM 95% MMDD FOR VERGES.
- WET GROUND BEDDING IS TO BE USED WHERE DIRECTED BY THE SHIRE AND WHEN WATER IS ENCOUNTERED IN TRENCHES.
- CONCRETE ENCASEMENT TO BE USED WHERE DIRECTED BY THE SHIRE.

0 A1	ISSUE FOR TENDER/CONSTRUCTION FULL SET DRAFT FOR CLIENT REVIEW	16-12-20 23-6-20	 Civil Infrastructure Design - Project & Asset Management P.O. Box 2209 BUNBURY WA 6231 Phone : 0409 879 059 Email : coatescivilconsulting@bigpond.com	SCALE As Shown	SURVEYED: L.B. F.B. DATE:	THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION UNLESS SIGNED BELOW.	CLIENT: 	YALYALUP MINERAL SANDS MINE DEVELOPMENT PRINCEFIELD ROAD, YALYALUP MINE ACCESS ROAD CONSTRUCTION TYPICAL DETAILS	DRAWING No. DOR218-D02
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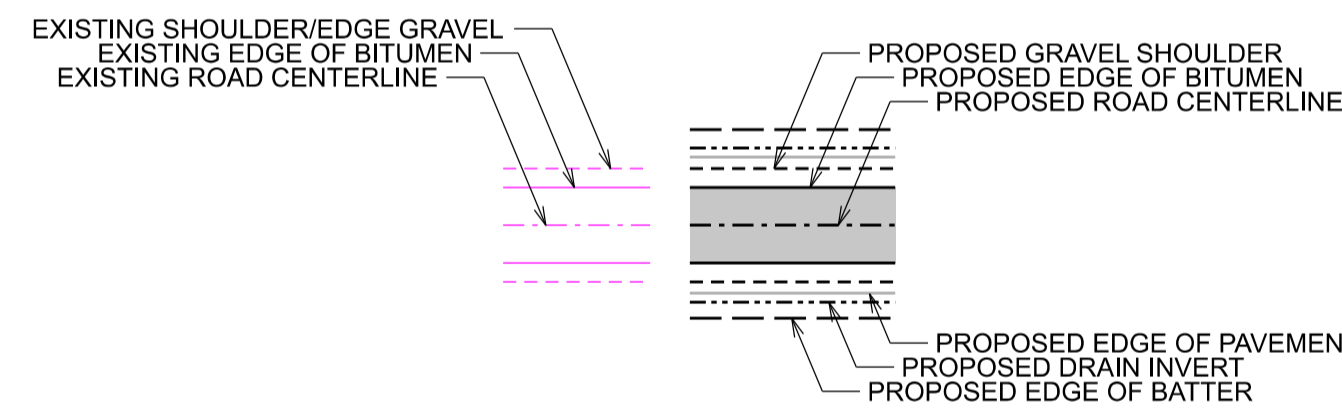


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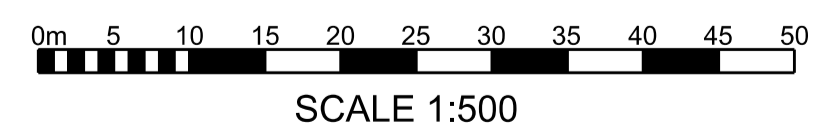
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- D --- DRAINAGE PIPE (DASHED UNVERIFIED)
- NEW DRAINAGE PIPE
- NEW ROCK SCOUR PROTECTION
- S --- SEWER PIPE (DASHED UNVERIFIED)
- T --- COMMS CABLES (DASHED UNVERIFIED)
- G --- GAS PIPE (DASHED UNVERIFIED)
- E --- U/GROUND ELECTRICITY (DASHED UNVERIFIED)
- POWER POLE & STAY WIRE
- TREE (TO BE REMOVED)
- DESIGN FINISHED SURFACE LEVEL CONTOUR
- EXISTING FENCELINE
- CADASTRAL BOUNDARY (UNVERIFIED)
- DESIGN FINISHED SURFACE LEVEL
- EARTHWORKS BATTER ARROW (POINTS UP-SLOPE)

ROAD LEGEND:

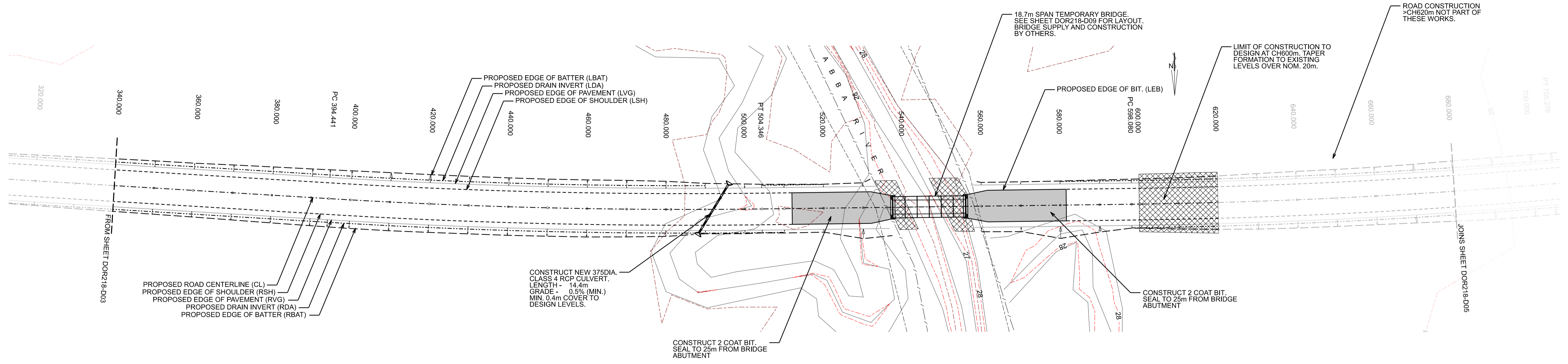


Station	Chainage	Natural Surface	DESIGN ROAD CL	CUT (-) / FILL (+)
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0+25	3.25			
10+00	10.00	29.443	29.704	+0.26
20+00	20.00	29.507	29.704	+0.20
21+06	21.06	29.514	29.704	+0.19
26+23	26.23	29.528	29.704	+0.18
30+00	30.00	29.537	29.704	+0.17
40+00	40.00	29.533	29.703	+0.17
50+00	50.00	29.479	29.703	+0.22
60+00	60.00	29.392	29.703	+0.31
70+00	70.00	29.365	29.703	+0.34
80+00	80.00	29.331	29.702	+0.37
90+00	90.00	29.348	29.699	+0.35
100+00	100.00	29.368	29.695	+0.33
110+00	110.00	29.359	29.690	+0.33
120+00	120.00	29.278	29.683	+0.41
130+00	130.00	29.361	29.675	+0.31
140+00	140.00	29.448	29.666	+0.22
150+00	150.00	29.498	29.654	+0.16
160+00	160.00	29.504	29.642	+0.14
166.78	166.78	29.492	29.633	+0.14
170+00	170.00	29.485	29.628	+0.14
180+00	180.00	29.480	29.613	+0.13
190+00	190.00	29.457	29.596	+0.14
200+00	200.00	29.392	29.576	+0.19
210+00	210.00	29.296	29.558	+0.26
220+00	220.00	29.153	29.537	+0.38
230+00	230.00	29.047	29.514	+0.47
240+00	240.00	28.954	29.490	+0.54
250+00	250.00	28.876	29.465	+0.59
260+00	260.00	28.806	29.438	+0.63
270+00	270.00	28.770	29.409	+0.64
279.07	279.07	28.761	29.393	+0.62
280+00	280.00	28.761	29.380	+0.62
290+00	290.00	28.761	29.351	+0.59
300+00	300.00	28.763	29.322	+0.56
310+00	310.00	28.756	29.293	+0.54
320+00	320.00	28.778	29.264	+0.49
330+00	330.00	28.798	29.235	+0.44
340+00	340.00	28.806	29.206	+0.40

ROAD LONGSECTION



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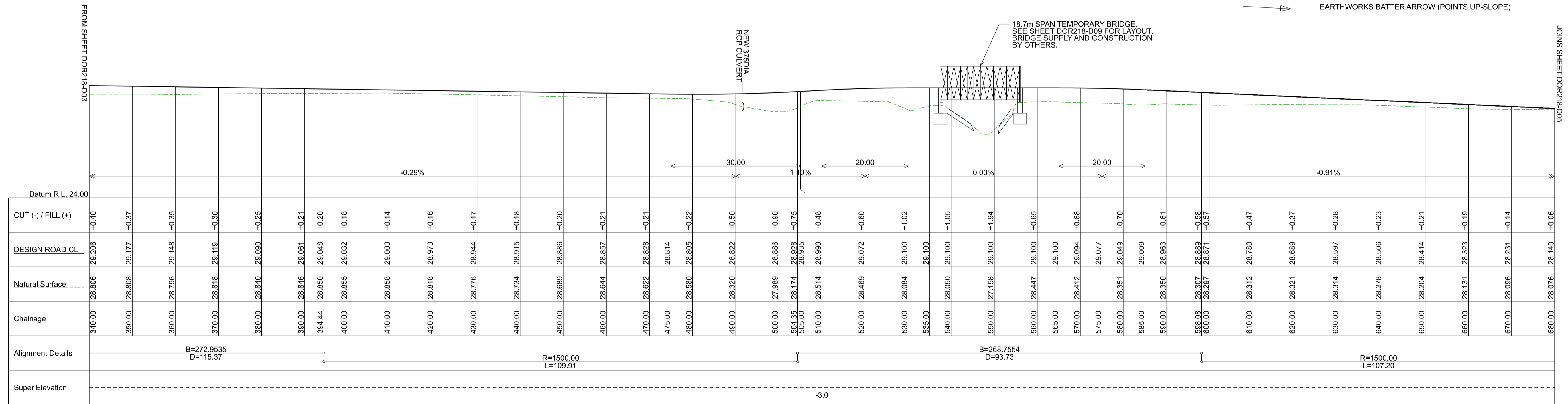
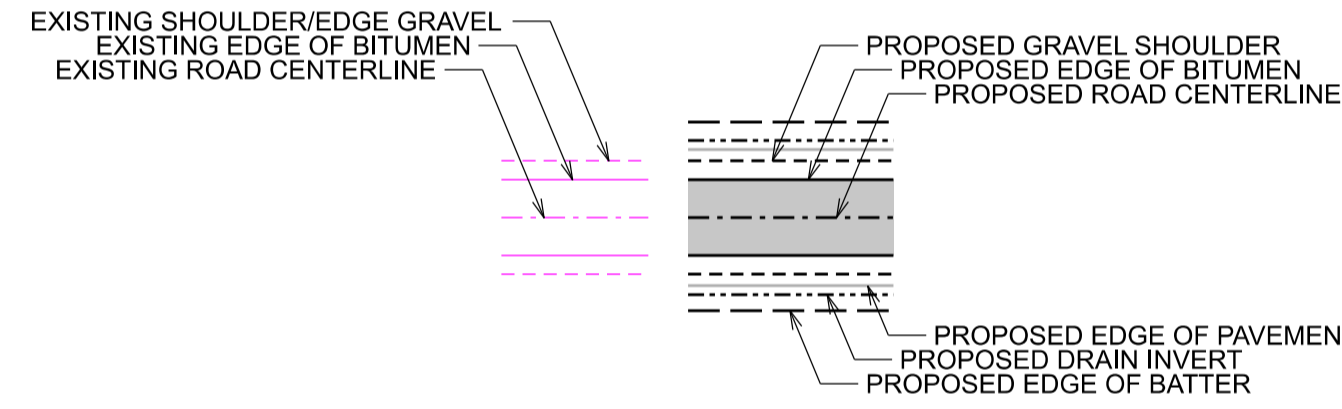
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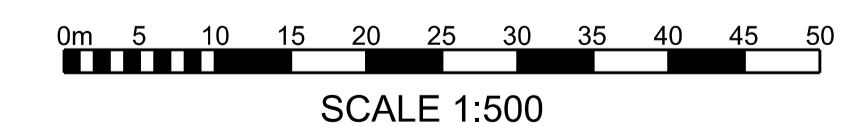
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- D - - - DRAINAGE PIPE (DASHED UNVERIFIED)
- NEW DRAINAGE PIPE
- NEW ROCK SCOUR PROTECTION
- S - - - SEWER PIPE (DASHED UNVERIFIED)
- T - - - COMMS CABLES (DASHED UNVERIFIED)
- G - - - GAS PIPE (DASHED UNVERIFIED)
- E - - - U/GROUND ELECTRICITY (DASHED UNVERIFIED)
- POWER POLE & STAY WIRE
- TREE (TO BE REMOVED)
- DESIGN FINISHED SURFACE LEVEL CONTOUR
- EXISTING FENCELINE
- CADASTRAL BOUNDARY (UNVERIFIED)
- DESIGN FINISHED SURFACE LEVEL
- EARTHWORKS BATTER ARROW (POINTS UP-SLOPE)



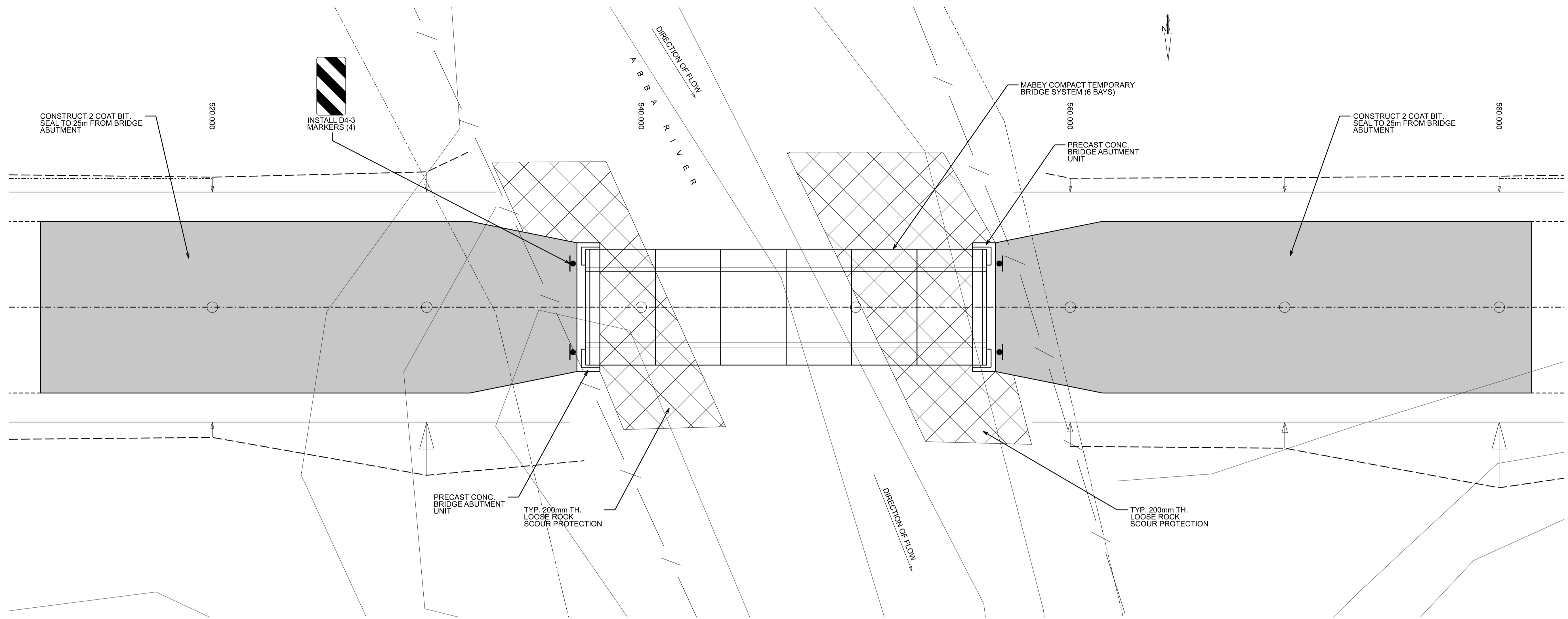
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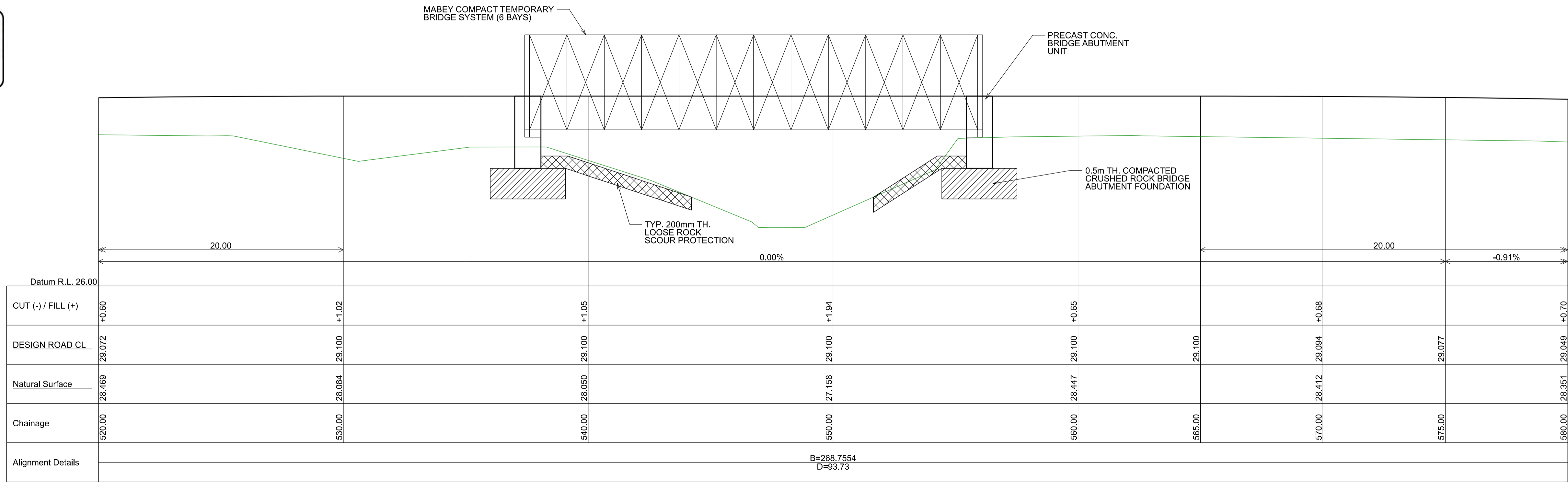
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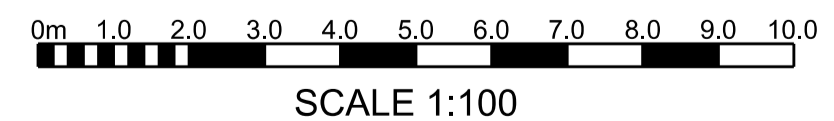
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MK	DETAILS OF AMENDMENTS	APPROVED	DATE	ORIGIN OF LEVELS: PM xxxx RL xxx.xxx	CHECKED: DATE:	DATE: .....		ROAD 1 PLAN-PROFILE CH340-680m	ISSUE DATE: DEC 2020



GENERAL LAYOUT  
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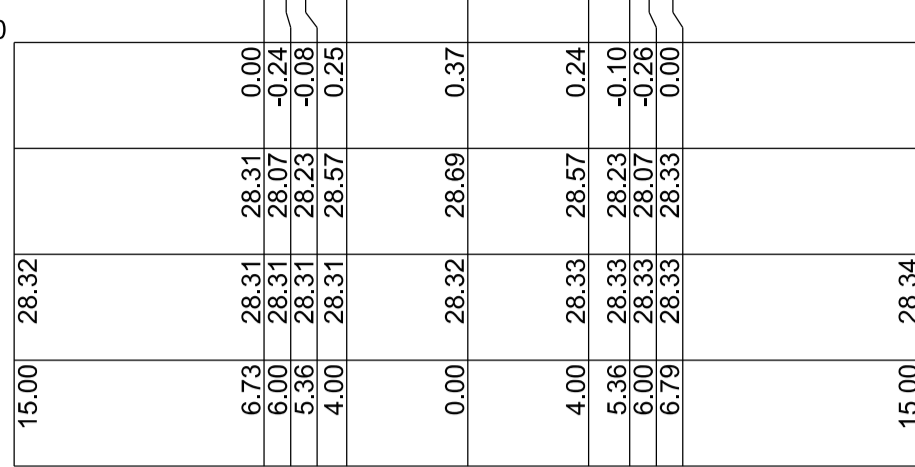
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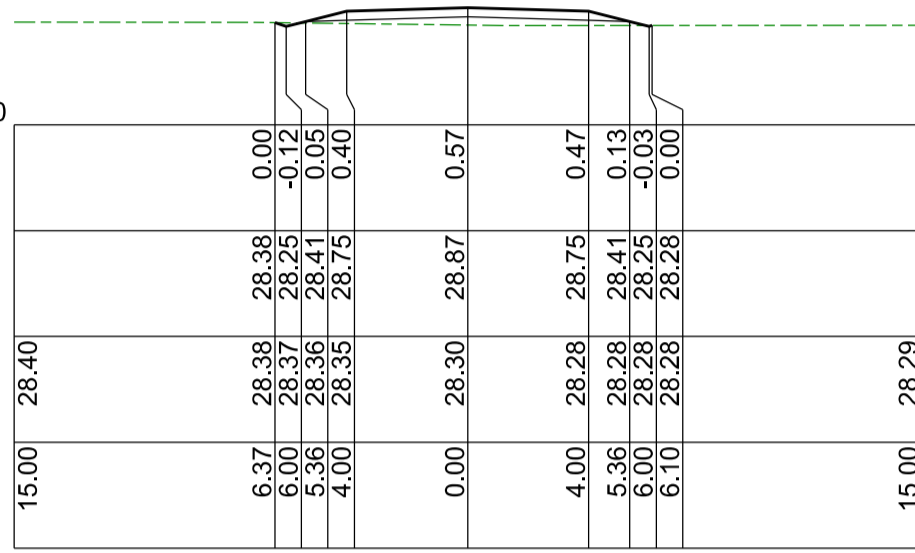
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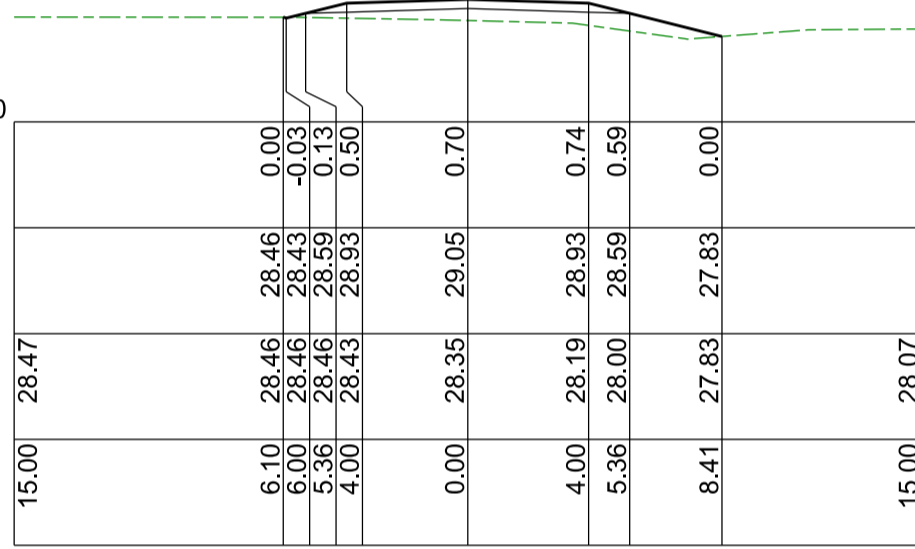
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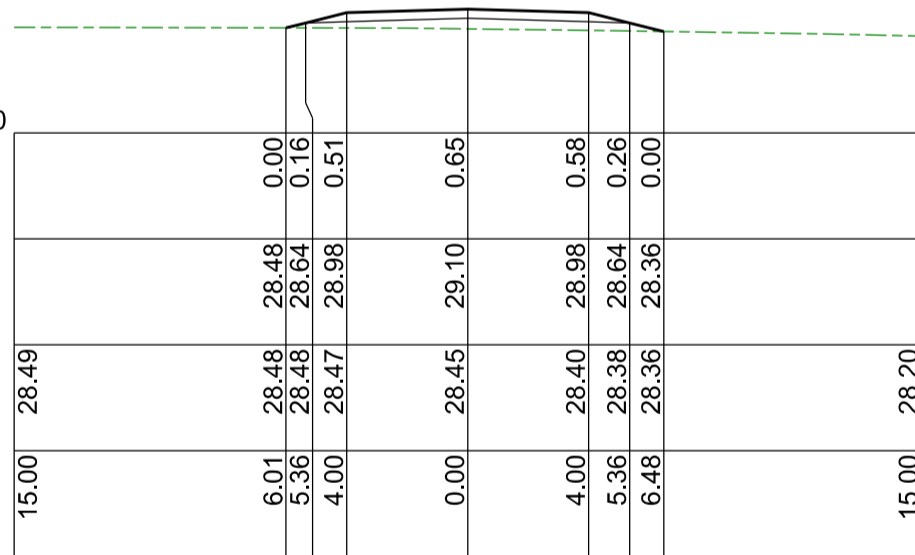
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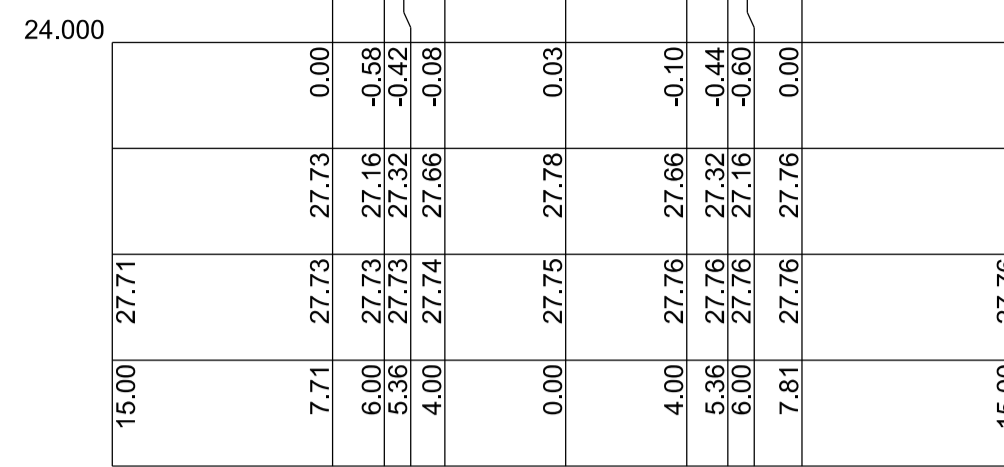
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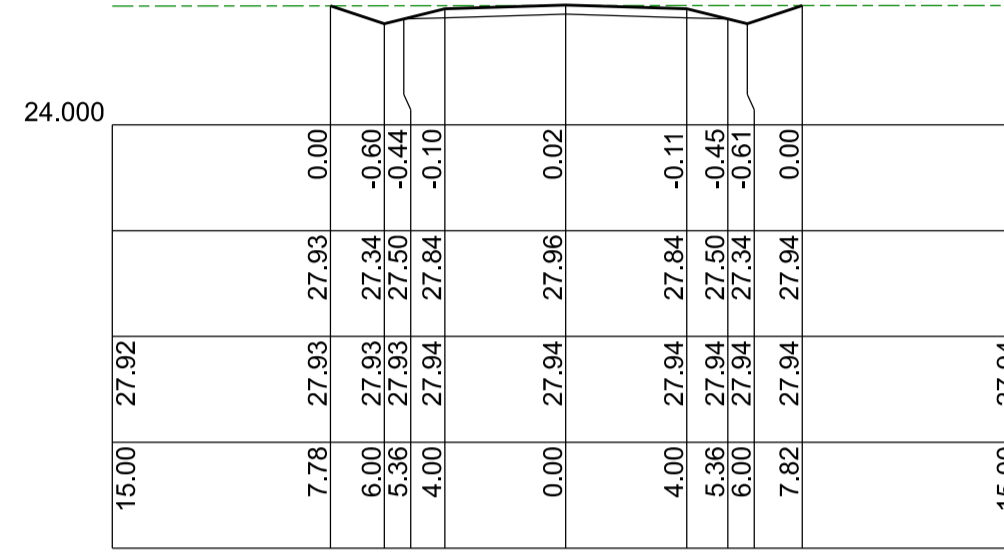
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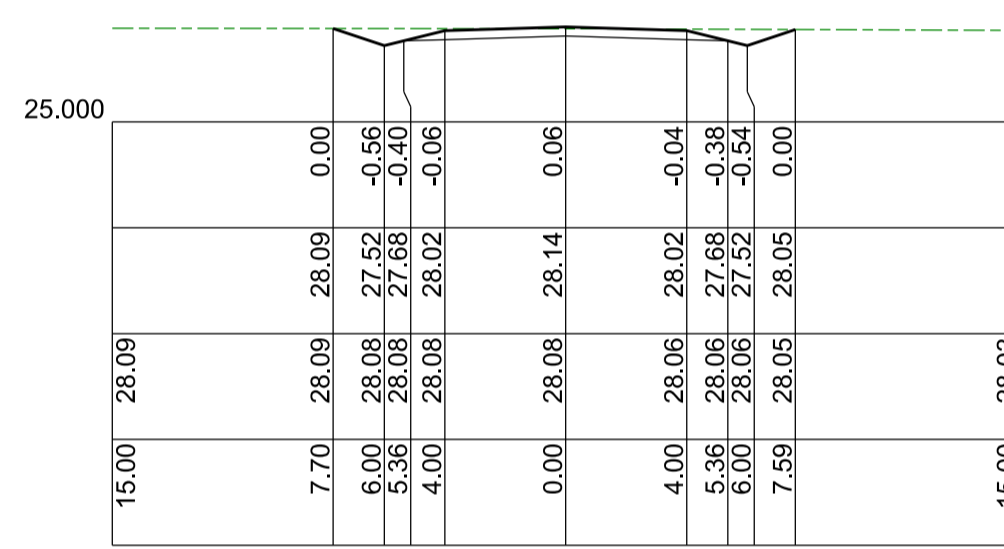
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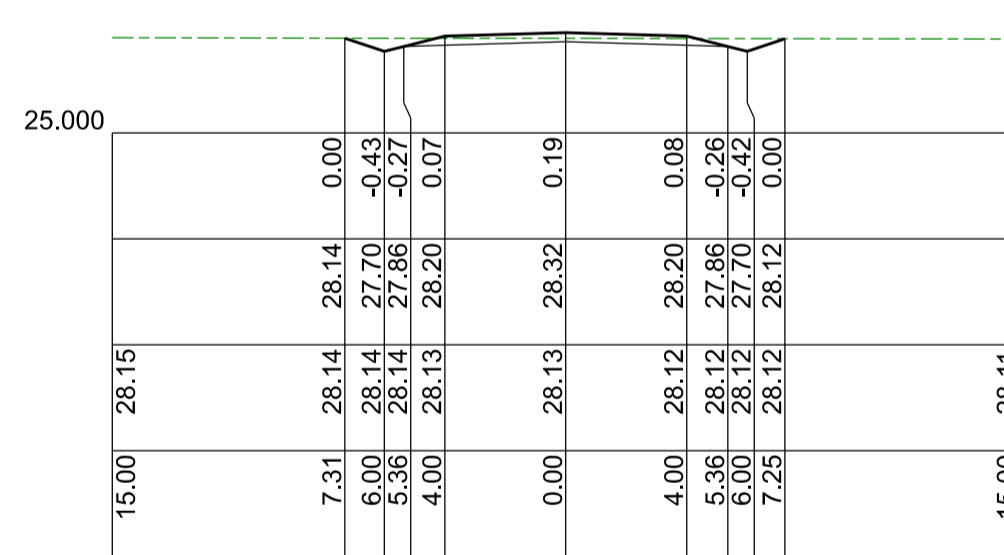
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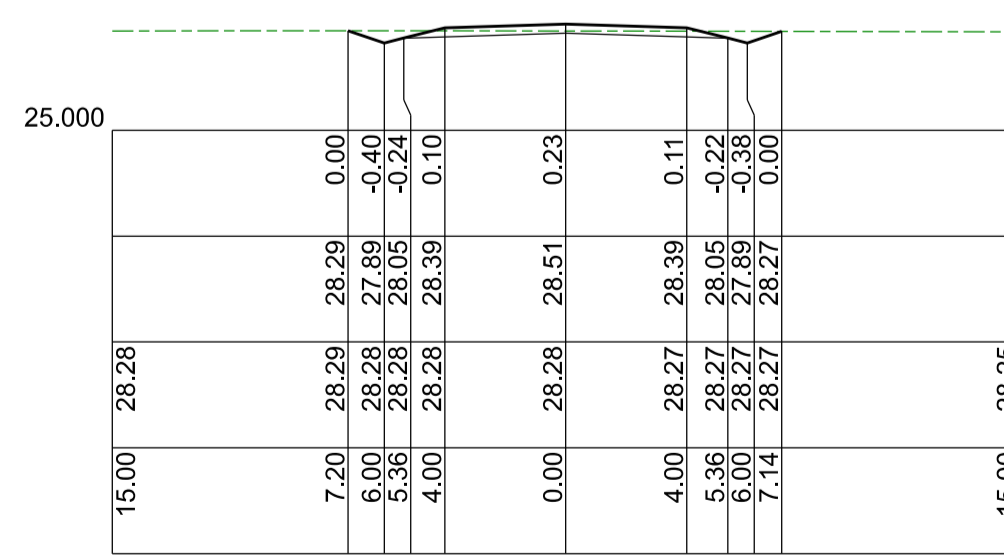
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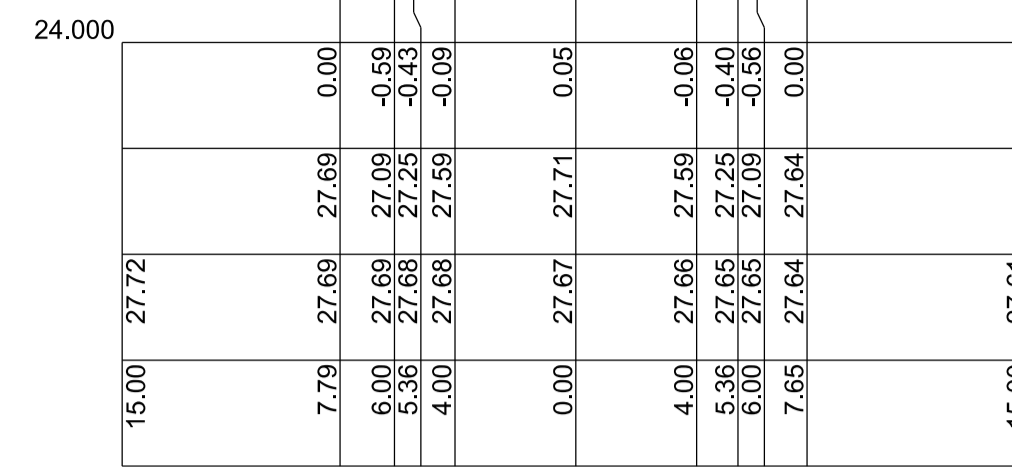
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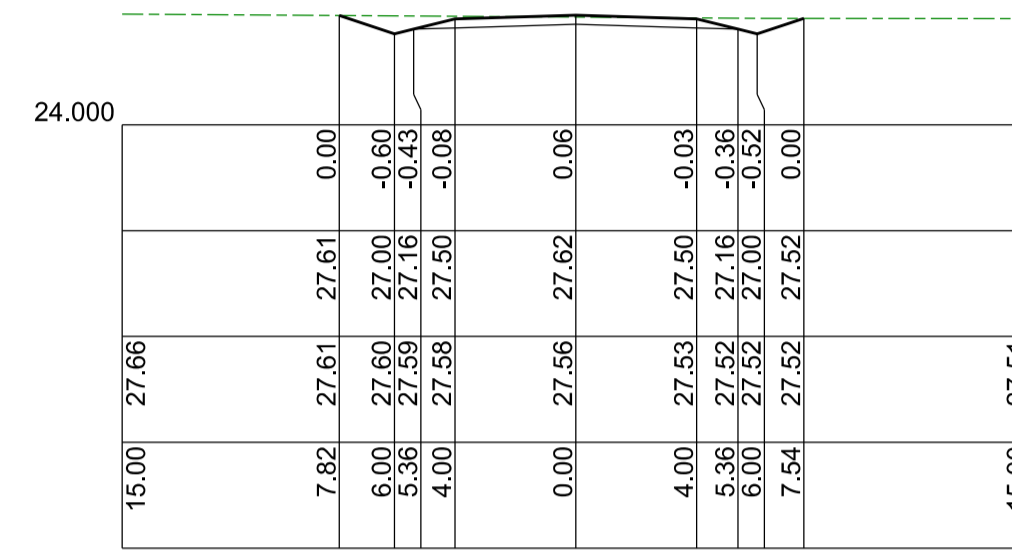
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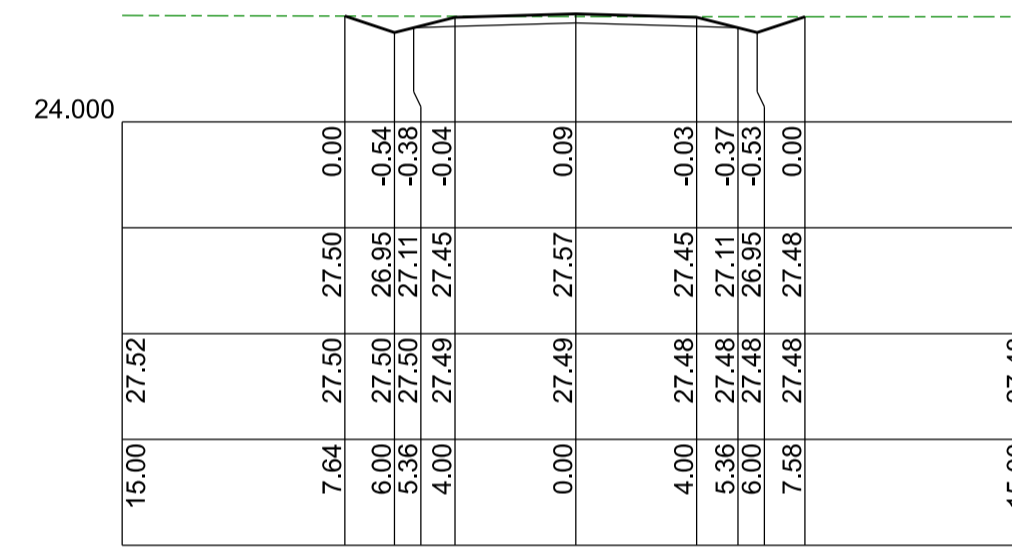
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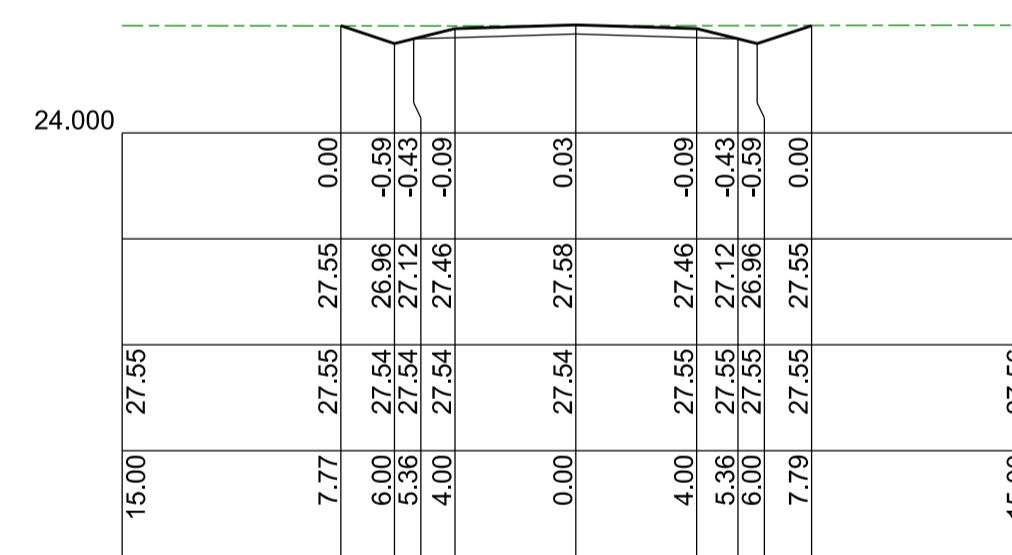
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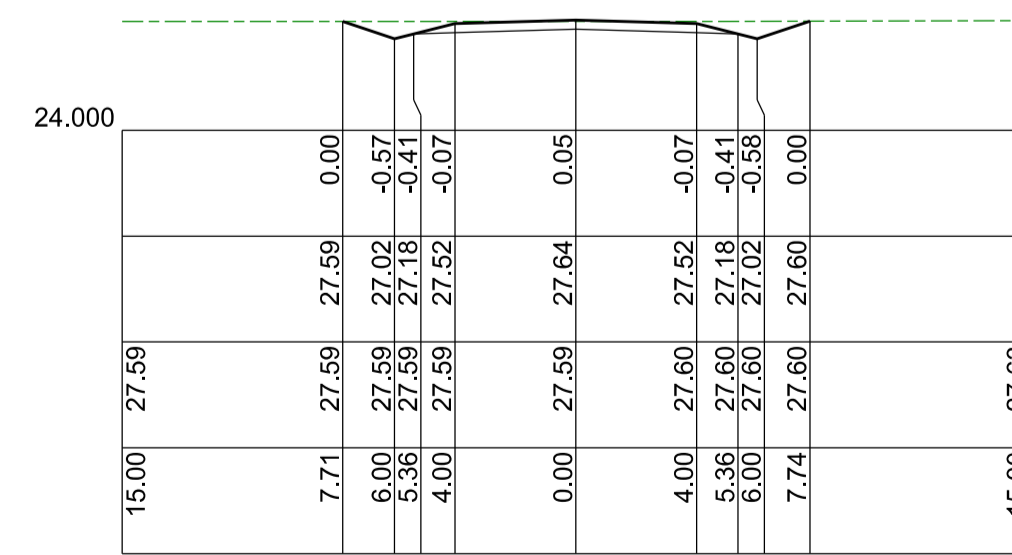
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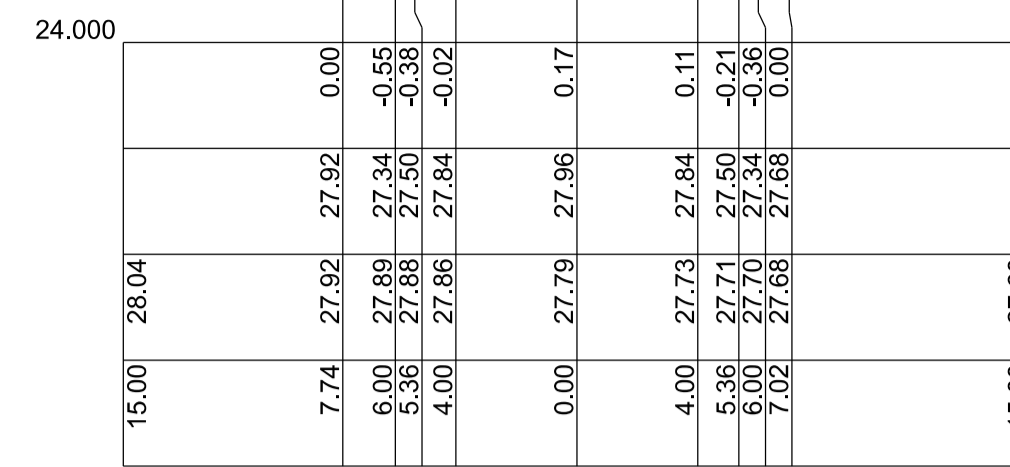
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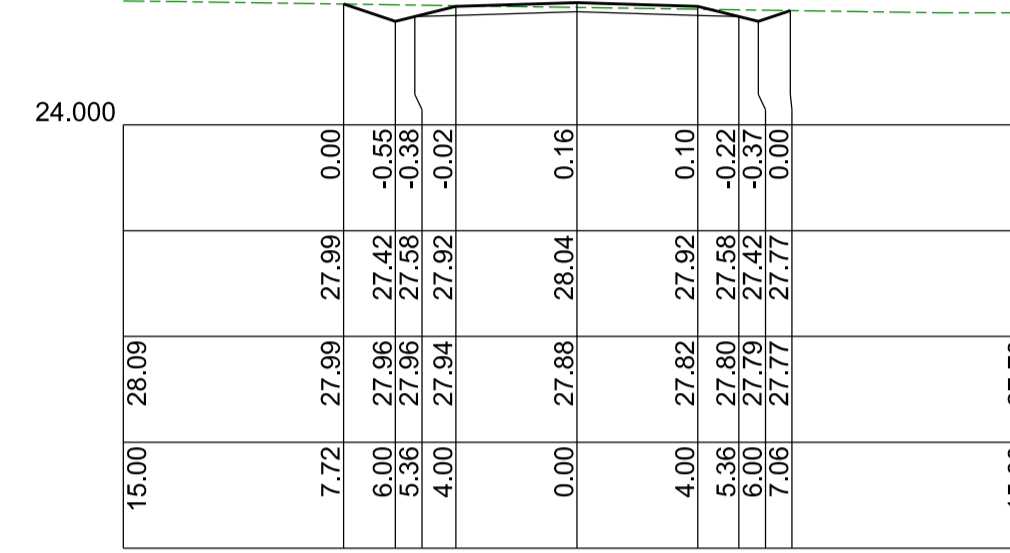
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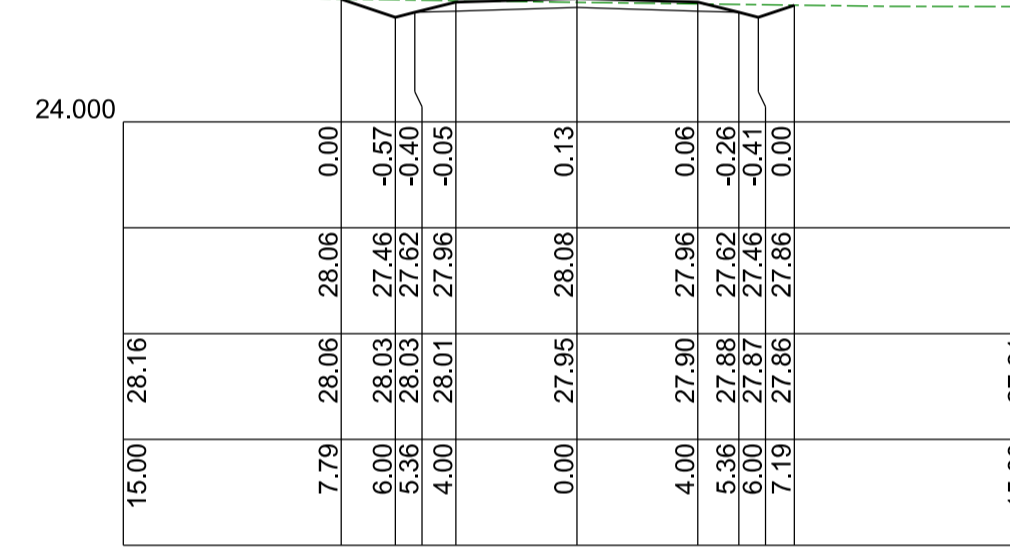
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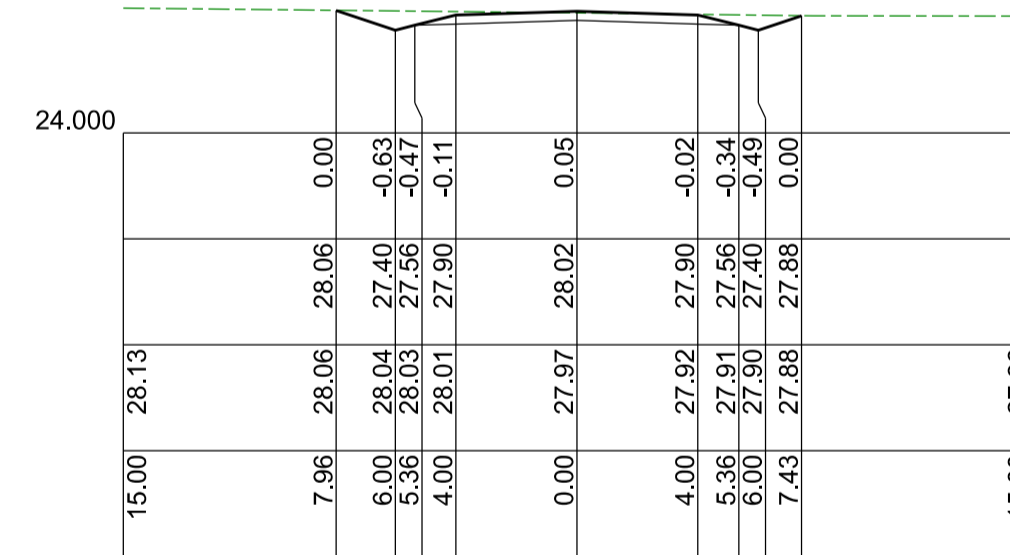
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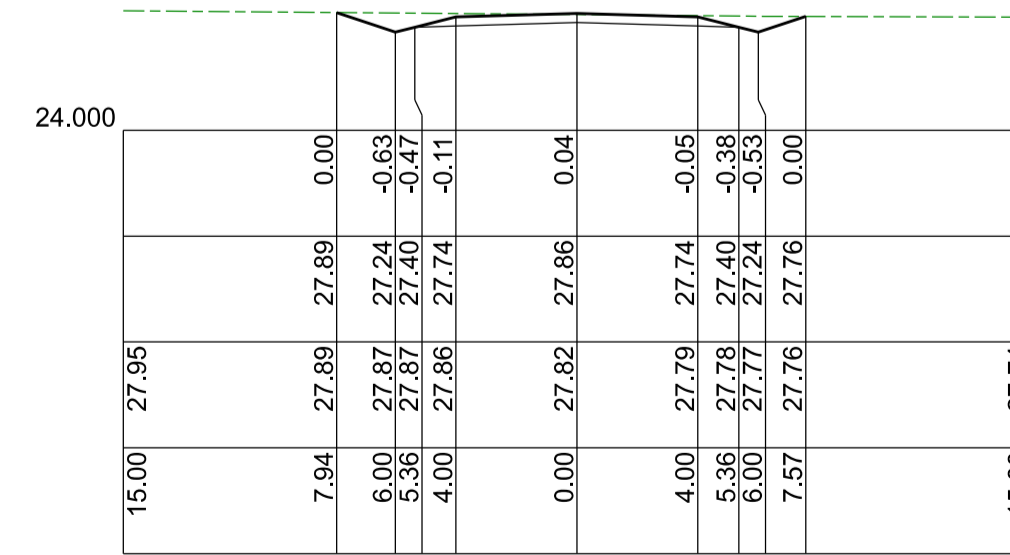
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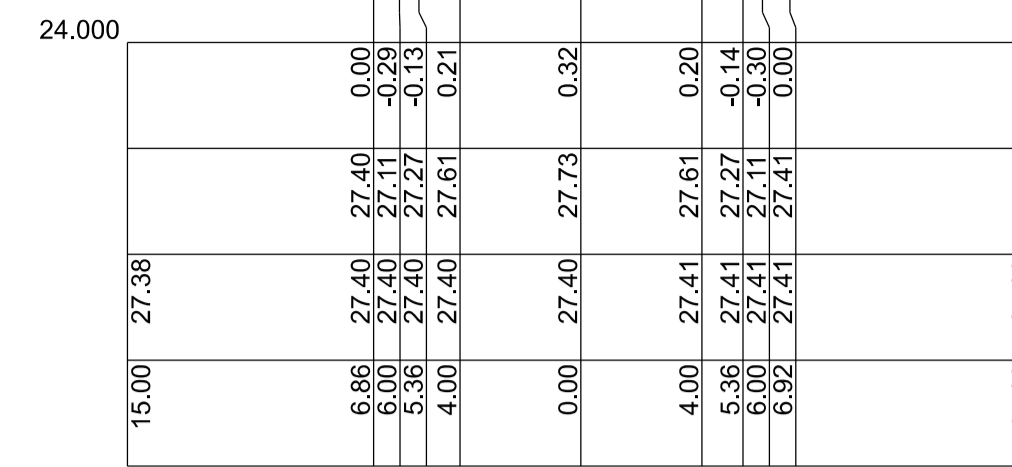
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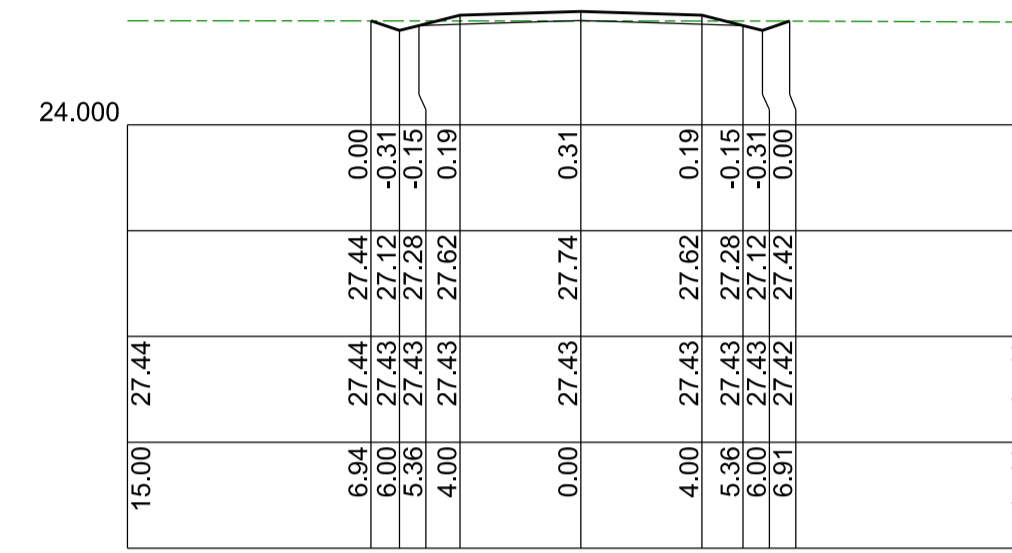
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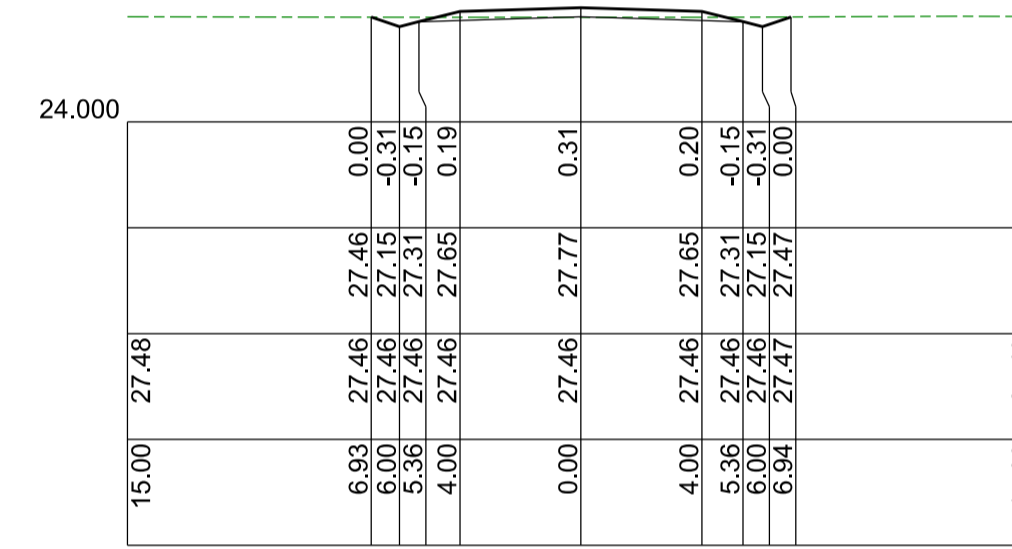
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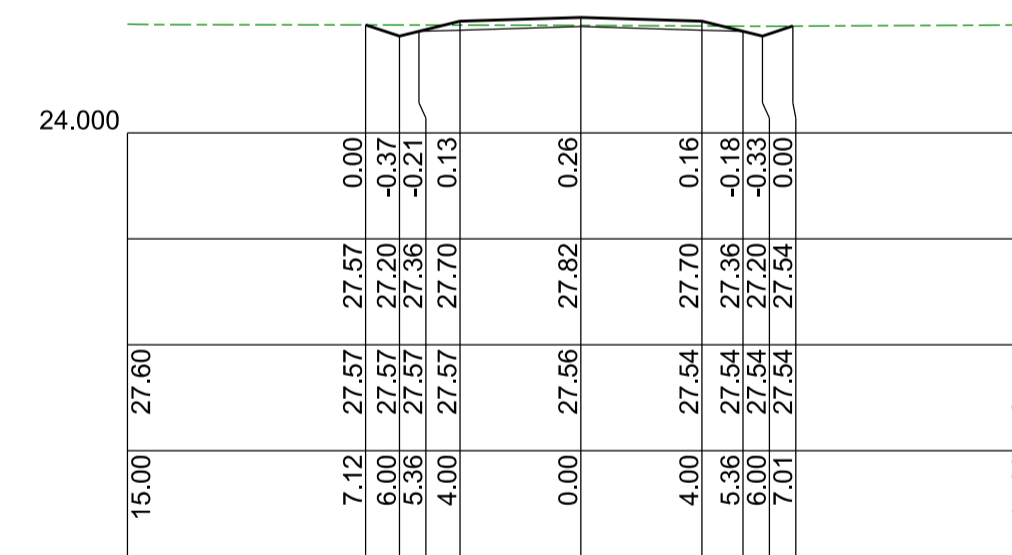
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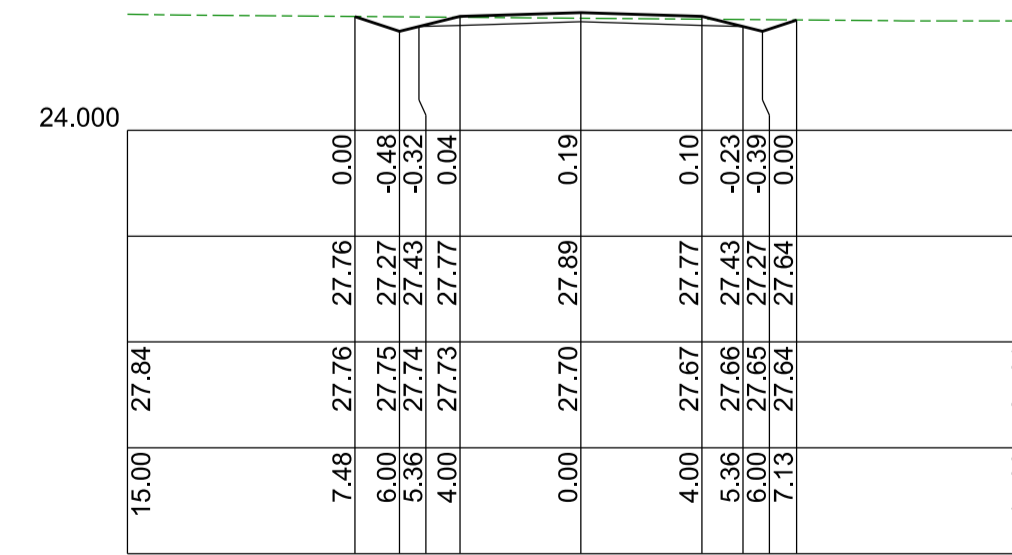
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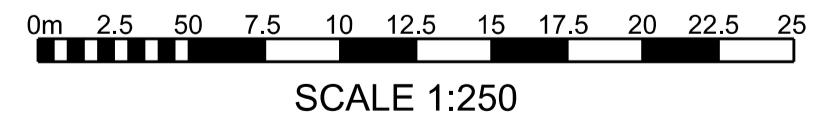
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0 A1 MK

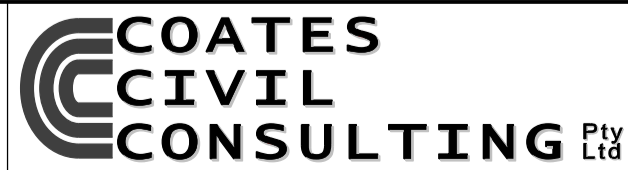
ISSUE FOR TENDER/CONSTRUCTION FULL SET DRAFT FOR CLIENT REVIEW

DETAILS OF AMENDMENTS

APPROVED

DATE

16-12-20  
23-6-20



Civil Infrastructure Design - Project & Asset Management  
P.O. Box 2209 BUNBURY WA 6231  
Phone : 0409 879 059  
Email : coatescivilconsulting@bigpond.com

SCALE  
1 : 250 (A1)

DATUM: AHD  
ORIGIN OF LEVELS: PM xxxx RL xxx.xxx

SURVEYED: L.B. F.B. DATE:  
DESIGNED & DRAWN: C Coates DATE: MAR 2020  
CHECKED: DATE:

APPROVED: DATE:  
DATE: .....

THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION UNLESS SIGNED BELOW.

CLIENT:



YALYALUP MINERAL SANDS MINE DEVELOPMENT  
PRINCEFIELD ROAD, YALYALUP  
MINE ACCESS ROAD CONSTRUCTION  
ROAD 1 CROSS-SECTIONS CH540-1020m

DRAWING No.

DOR218-D11

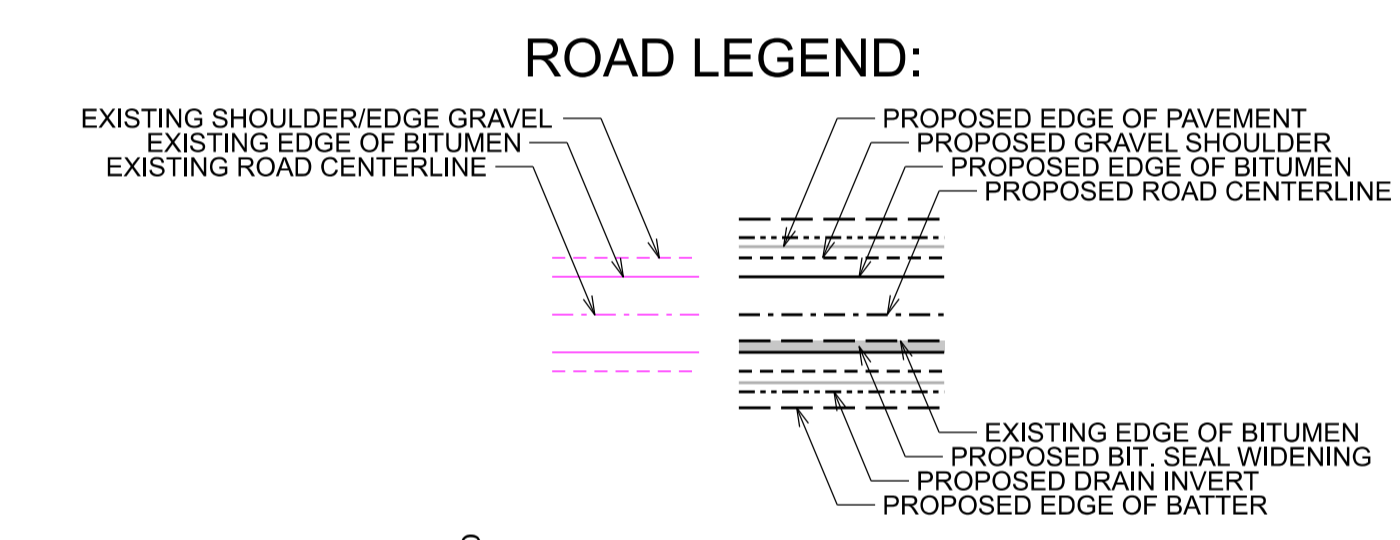
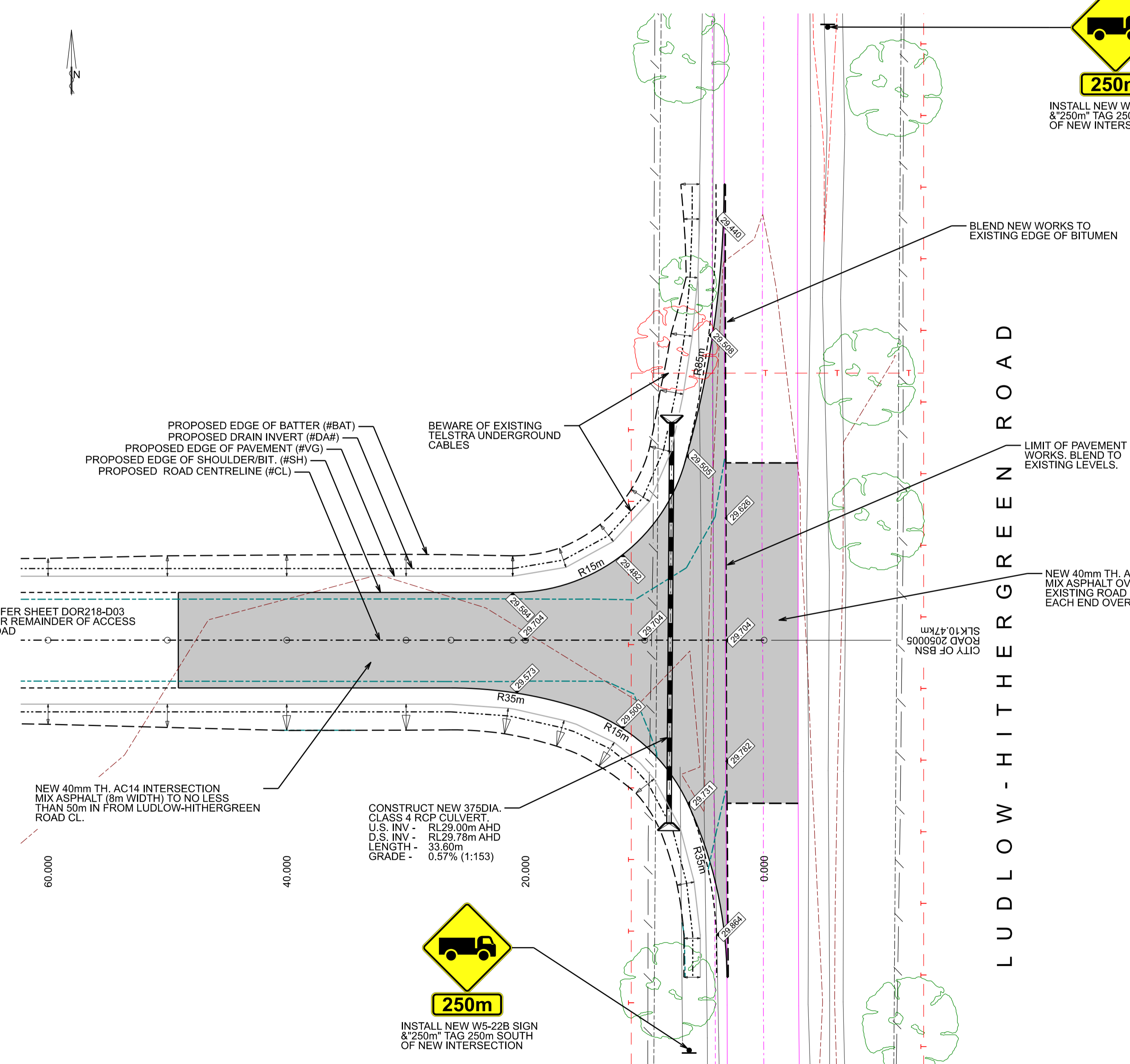
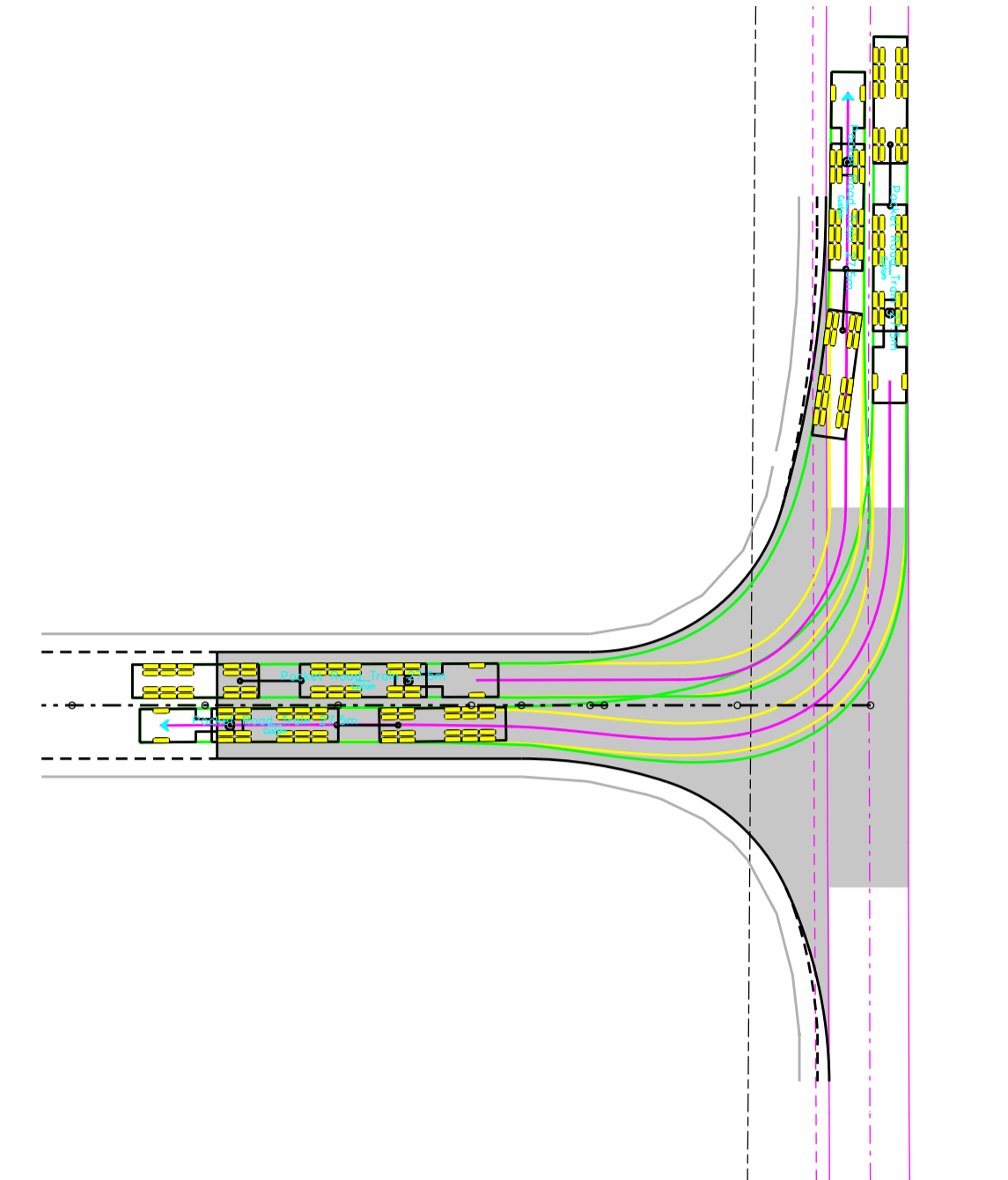
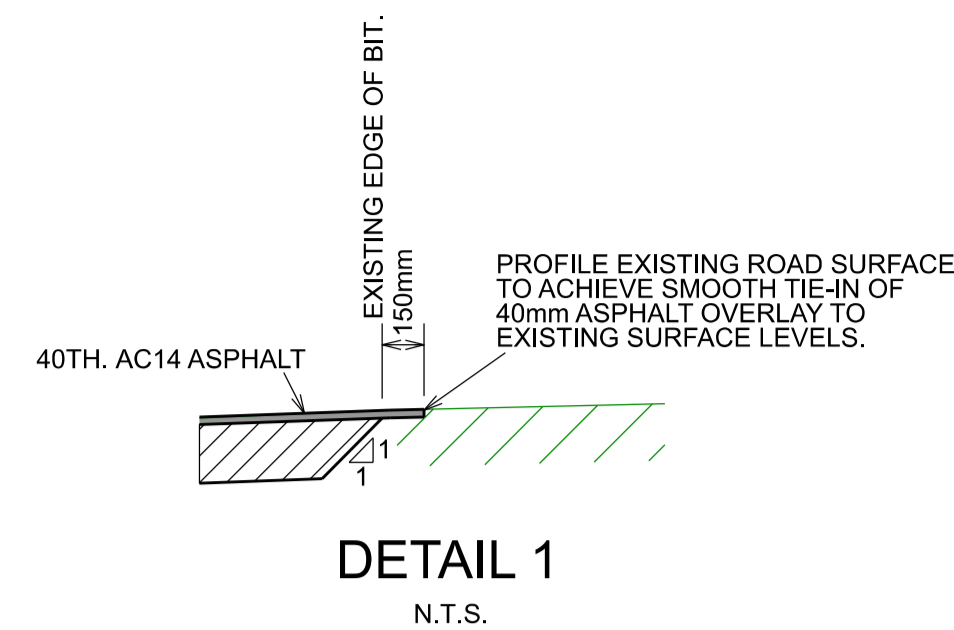
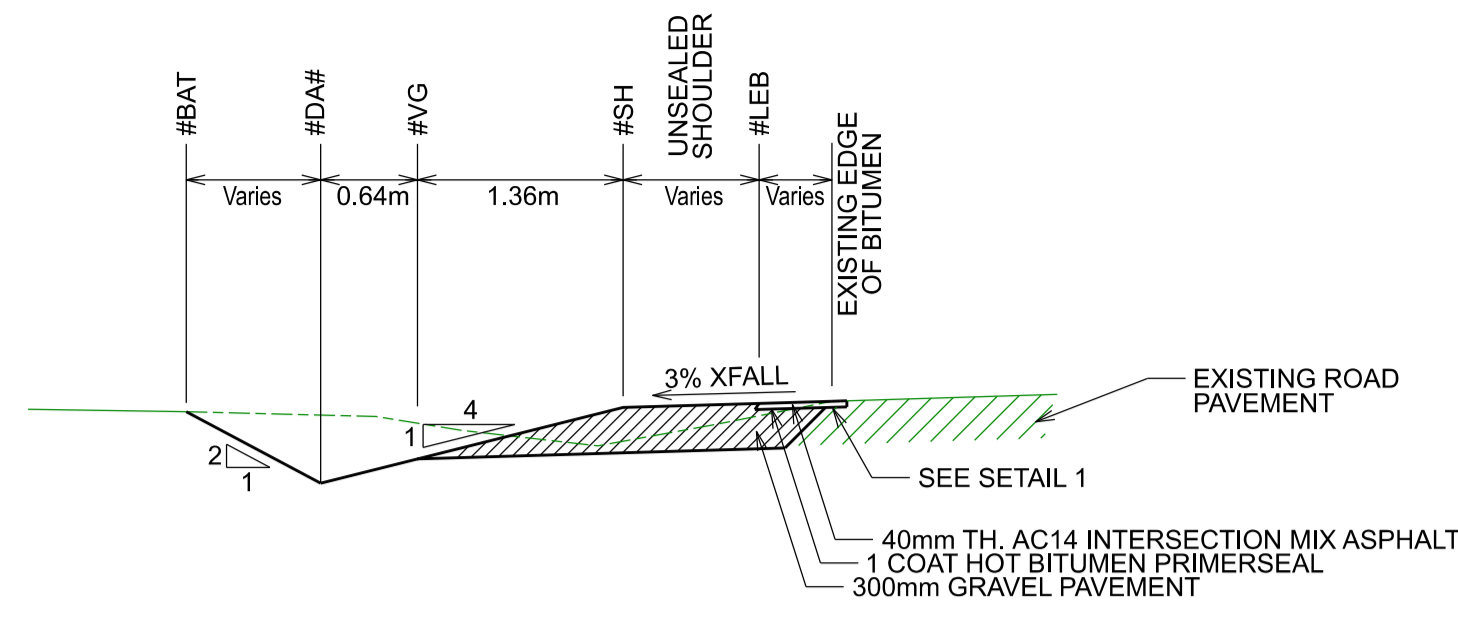
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ISSUE DATE: DEC 2020

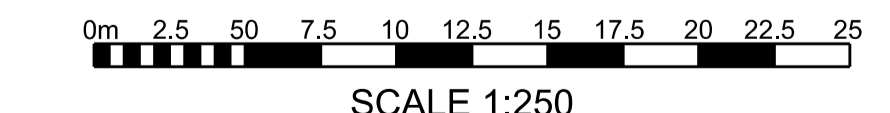
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**LEGEND:**

- WATER PIPE (DASHED UNVERIFIED)
- DRAINAGE PIPE (DASHED UNVERIFIED)
- NEW DRAINAGE PIPE
- NEW ROCK SCOUR PROTECTION
- SEWER PIPE (DASHED UNVERIFIED)
- COMMS CABLES (DASHED UNVERIFIED)
- GAS PIPE (DASHED UNVERIFIED)
- U/GROUND ELECTRICITY(DASHED UNVERIFIED)
- POWER POLE & STAY WIRE
- TREE (TO BE REMOVED)
- DESIGN FINISHED SURFACE LEVEL CONTOUR
- EXISTING FENCELINE
- CADASTRAL BOUNDARY (UNVERIFIED)
- DESIGN FINISHED SURFACE LEVEL
- EARTHWORKS BATTER ARROW (POINTS UP-SLOPE)



		NEW EASTERN ACCESS ROAD									
		Datum R.L. 28.00									
CUT (-) / FILL (+)											
DESIGN ROAD CL	29.704	29.704	29.704	29.704	29.704	29.704	29.704	29.703	29.703	29.703	29.703
Natural Surface	29.713	29.443	29.507	29.514	29.528	29.537	29.533	29.479	29.392	29.382	29.382
Chainage	0.00	3.25	10.00	20.00	21.06	26.23	30.00	40.00	50.00	60.00	60.00
Alignment Details	B=268.6643 D=166.78										
Super Elevation	-3.0										



0	ISSUE FOR TENDER/CONSTRUCTION INITIAL DRAFT FOR CLIENT REVIEW	16-12-20	29-04-20
1	DETAILS OF AMENDMENTS	APPROVED	DATE

**COATES CIVIL CONSULTING** Pty Ltd  
 Civil Infrastructure Design - Project & Asset Management  
 P.O. Box 2209 BUNBURY WA 6231  
 Phone : 0409 879 059  
 Email : coatescivilconsulting@bigpond.com

SCALE	1 : 250 (A1)
DATUM:	AHD
ORIGIN OF LEVELS:	PM xxxx RL xxx.xxx

SURVEYED:	L.B. F.B. DATE:
DESIGNED & DRAWN:	C Coates DATE: MAR 2020
CHECKED:	DATE:
APPROVED:	DATE:

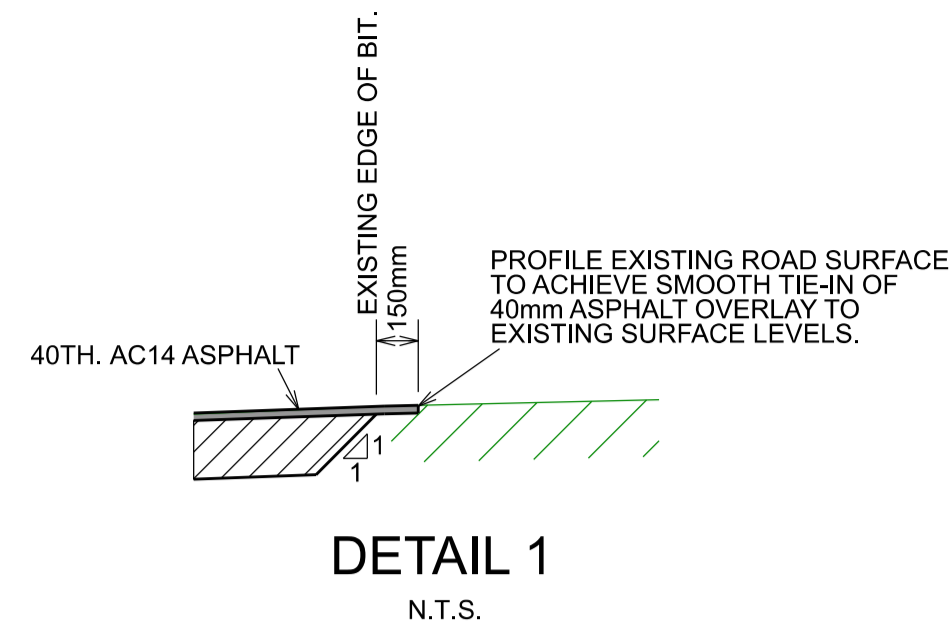
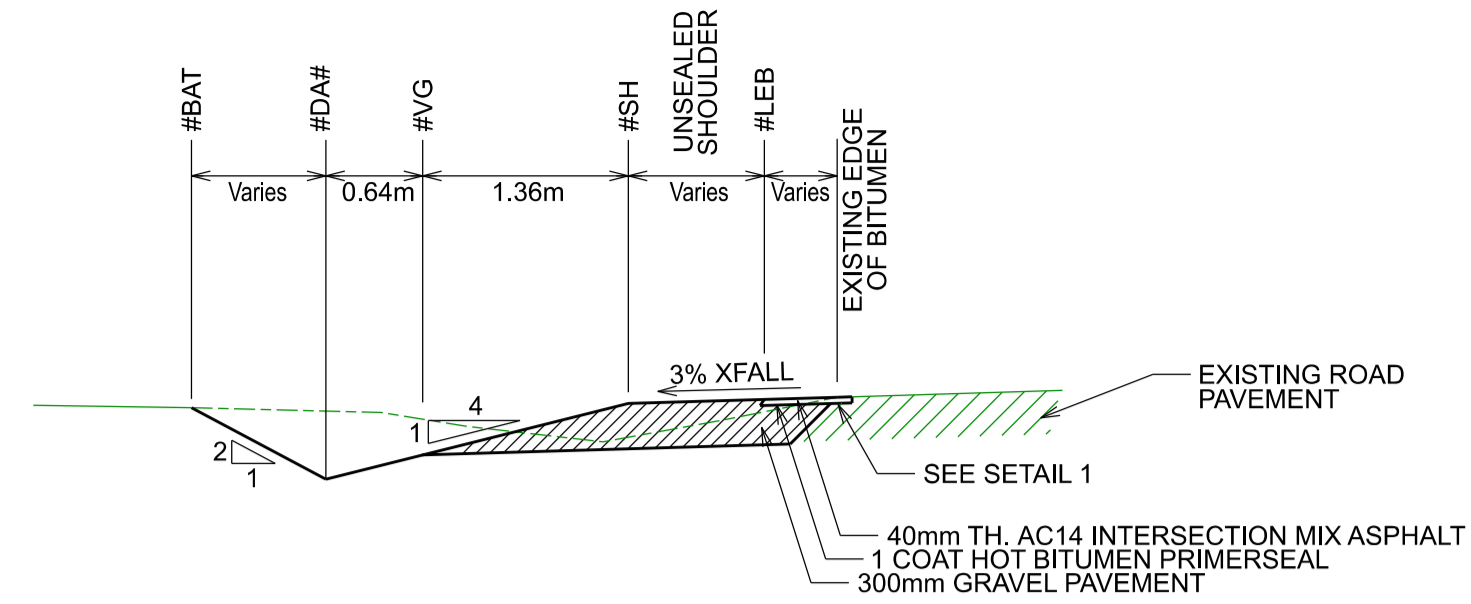
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DATE : .....

CLIENT:

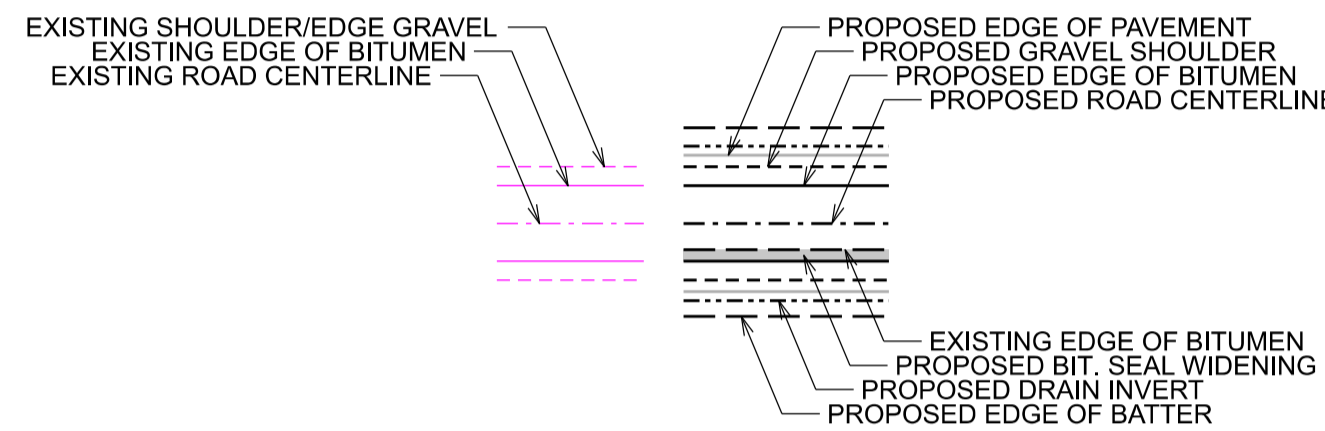
**YALYALUP MINERAL SANDS MINE DEVELOPMENT**  
 PRINCEFIELD ROAD, YALYALUP  
**MINE ACCESS ROAD CONSTRUCTION**  
 LUDLOW-HITHERGREEN ROAD NEW ACCESS

DRAWING No.	DOR218-D14
SHEET No. 14 OF	15
ISSUE DATE:	DEC 2020
	0

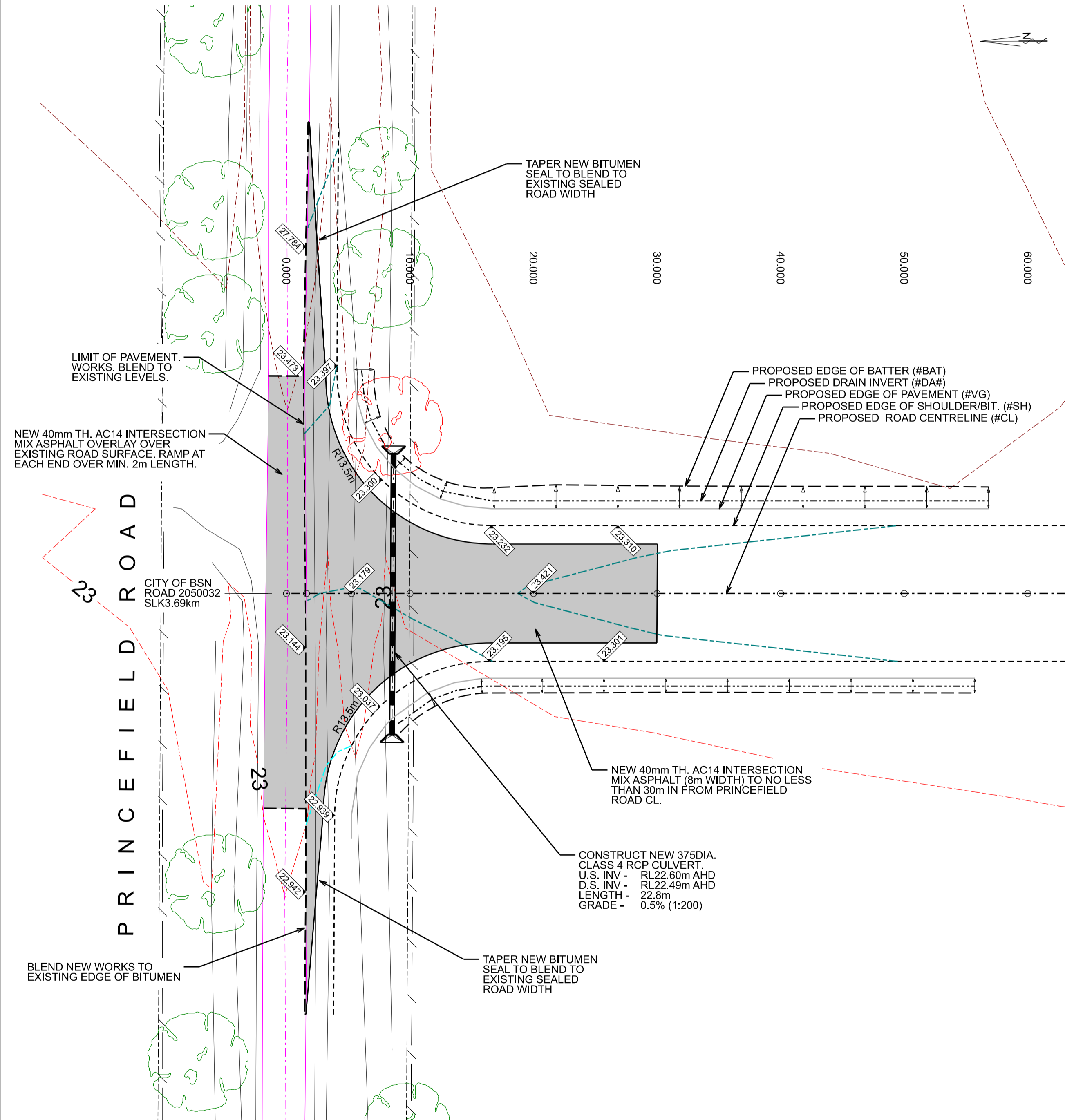
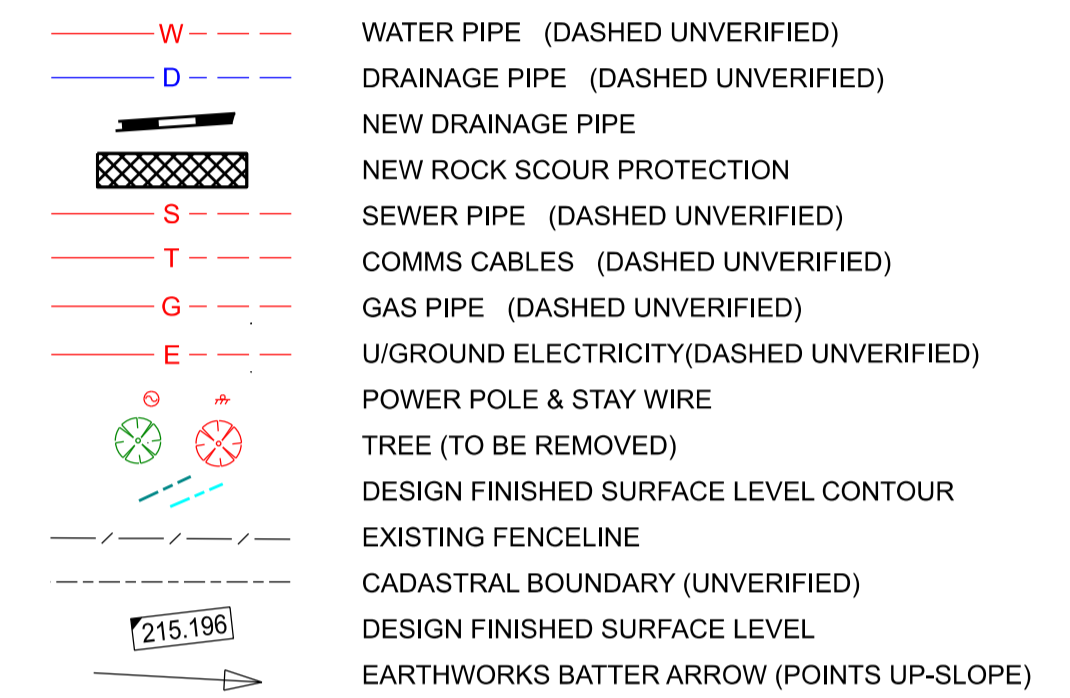


TYPICAL ROAD WIDENING SECTION  
N.T.S.

ROAD LEGEND:



LEGEND:

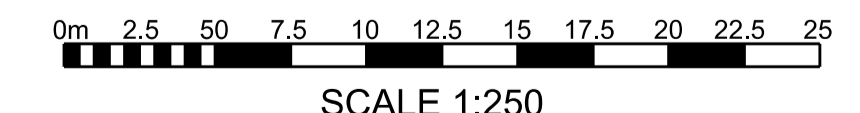


GENERAL LAYOUT  
SCALE 1:500

NEW ACCESS ROAD LONGSECTION

Station	Chainage	Natural Surface	DESIGN ROAD CL	CUT (-) / FILL (+)
0+00	0.00	23.279	23.209	-0.00
0+15	1.63	23.209	23.209	0.00
0+30	4.00	23.185	23.179	-0.03
0+45	5.00	23.209	23.179	-0.03
0+60	6.00	23.181	23.181	0.00
0+75	9.00	23.208	23.208	0.00
0+90	10.00	23.030	23.251	+0.22
1+05	15.00	23.153	23.348	+0.20
1+20	20.00	23.228	23.421	+0.19
1+35	25.00	23.265	23.472	+0.21
1+50	30.00	23.286	23.500	+0.21
1+65	35.00	23.306	23.517	+0.21
1+80	40.00	23.322	23.534	+0.21
1+95	45.00	23.334	23.550	+0.22
2+10	50.00	23.356	23.567	+0.21
2+25	55.00	23.378	23.583	+0.20
2+40	60.00	23.400	23.600	+0.20
2+55	65.00	23.382	23.600	+0.20
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2+85	71.59	23.330	23.600	+0.20

Scale Horizontal 1:250 Vertical 1:50



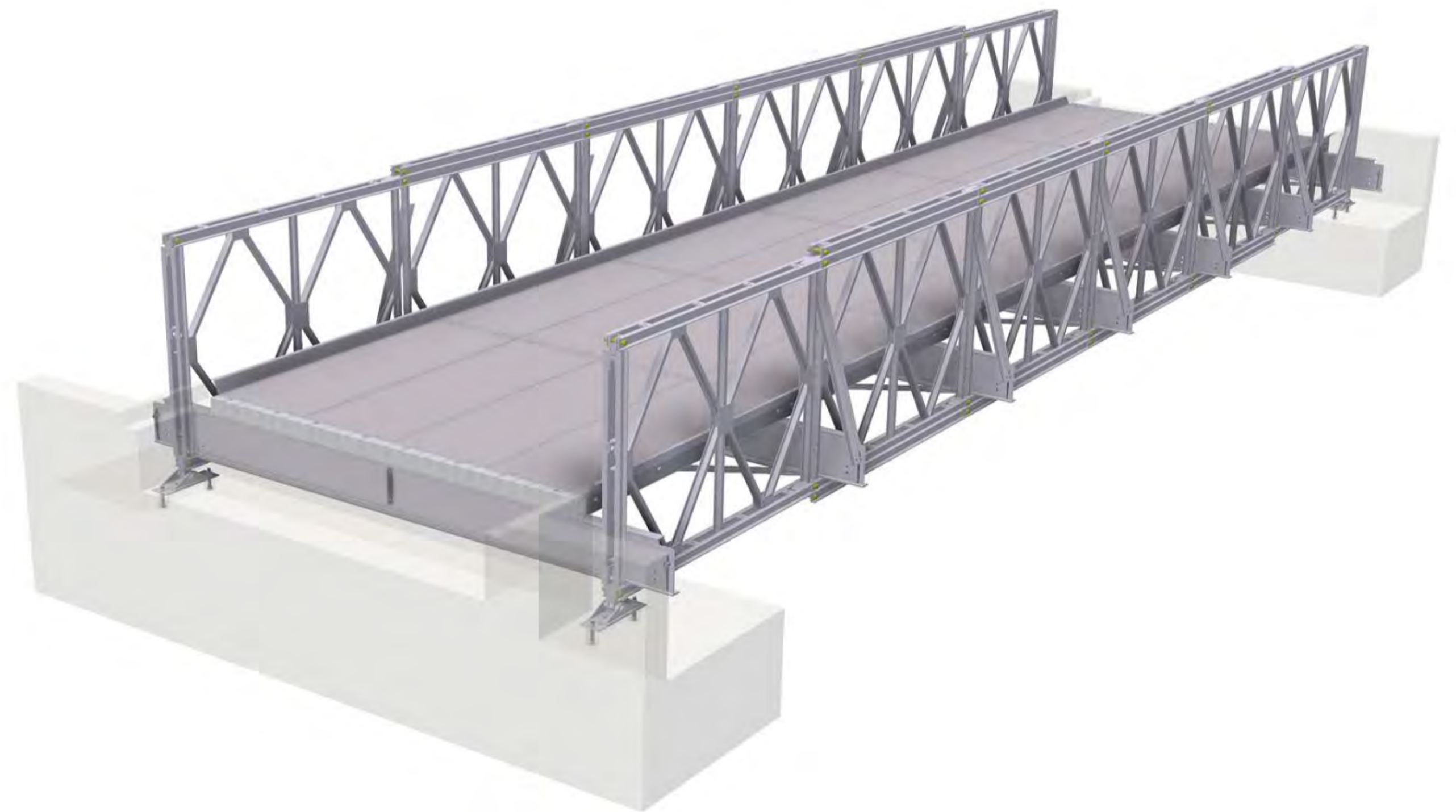
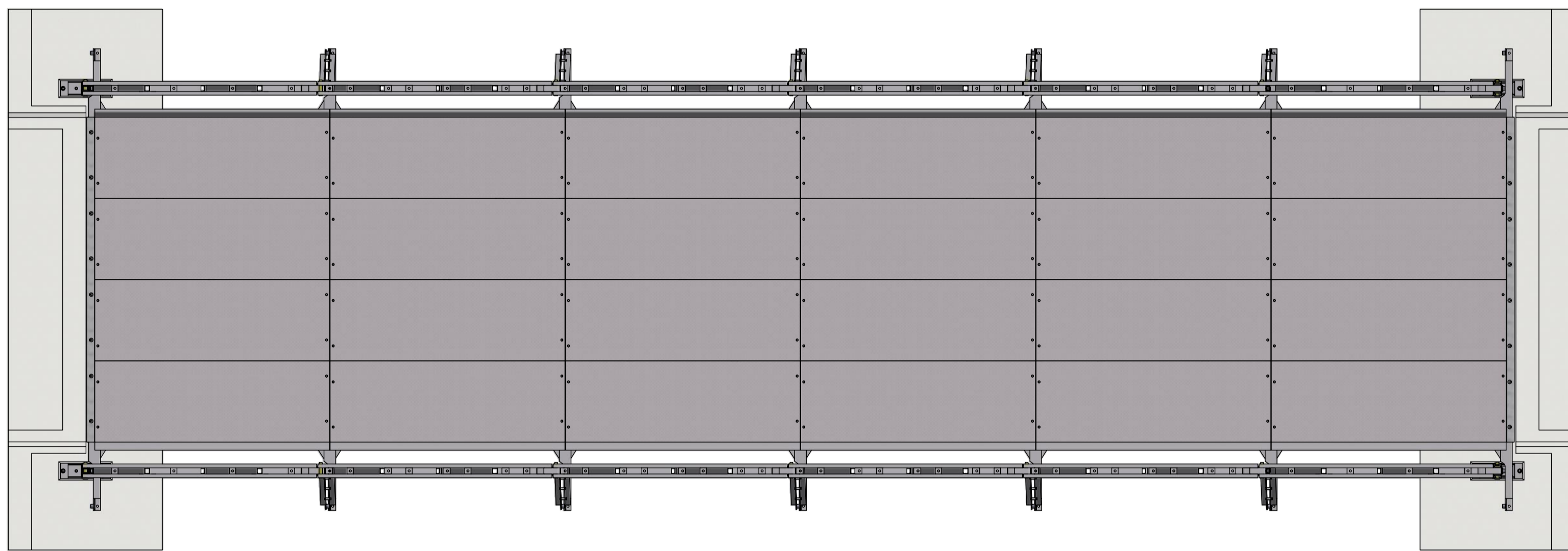
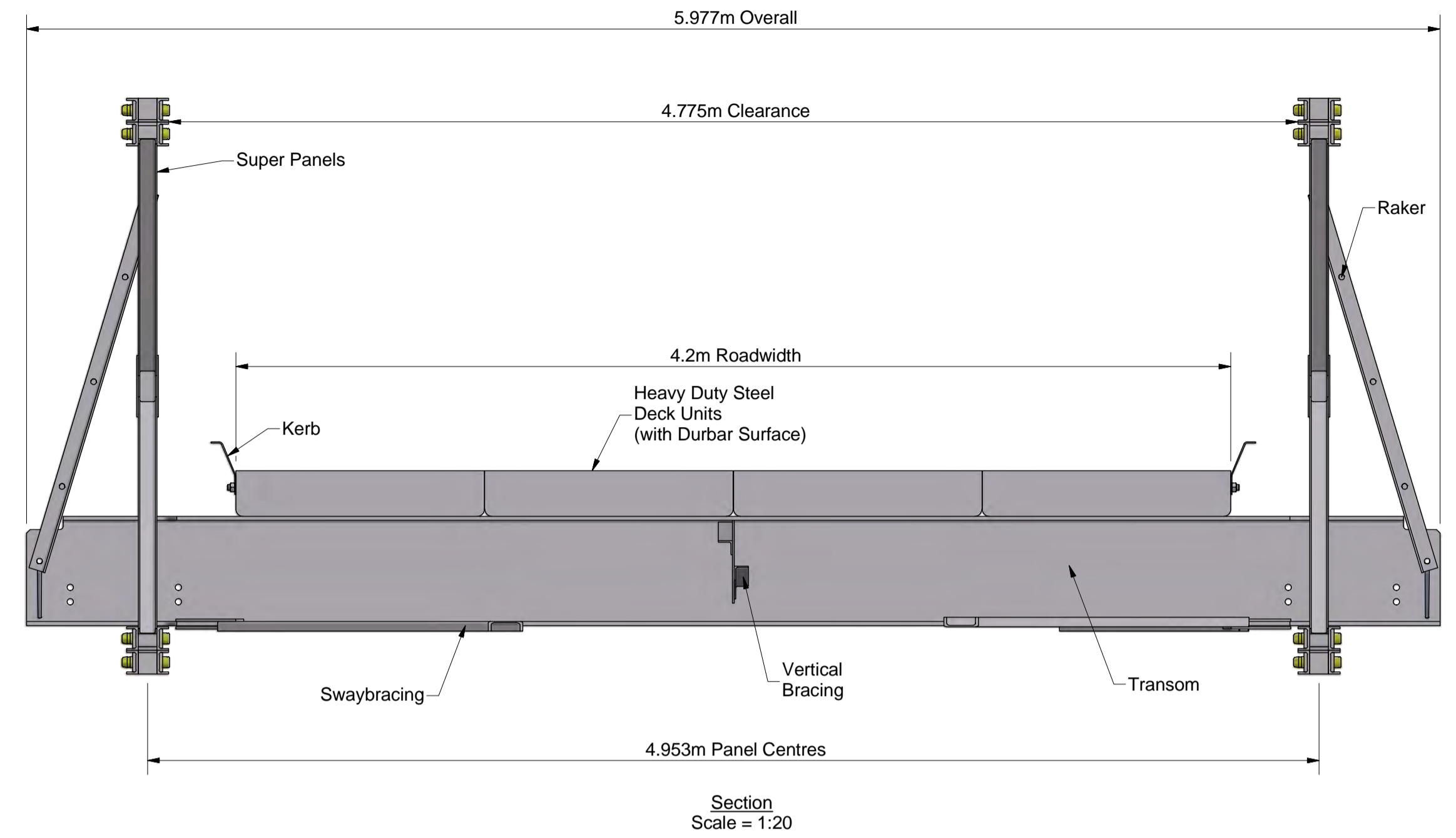
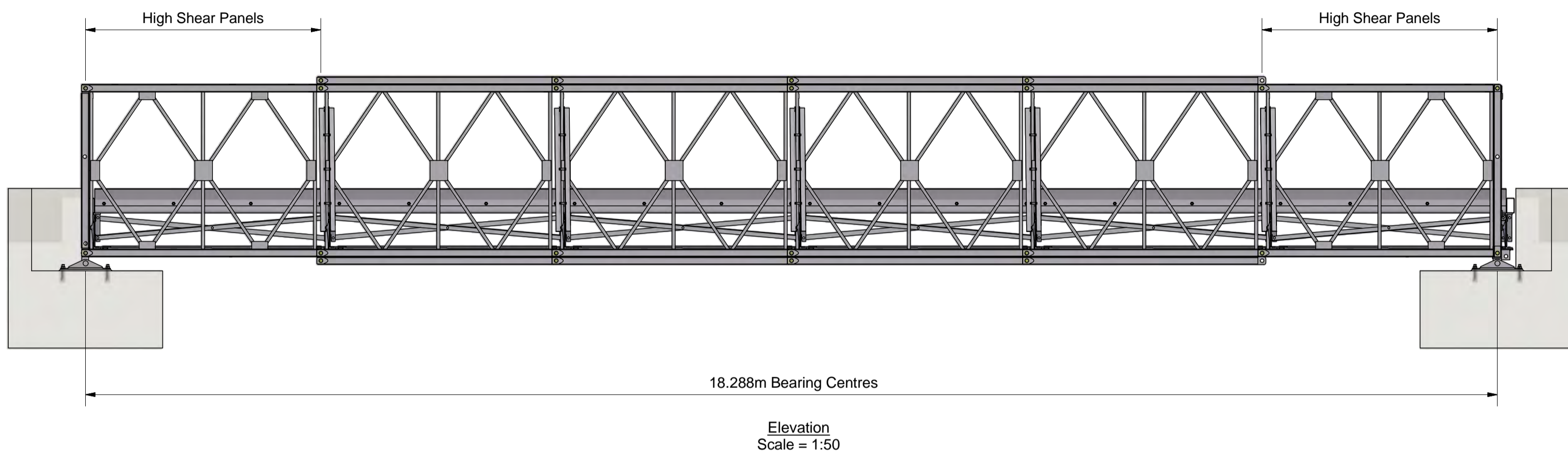
SCALE 1:250

0 A	ISSUE FOR TENDER/CONSTRUCTION INITIAL DRAFT FOR CLIENT REVIEW	16-12-20 29-04-20	<p>Civil Infrastructure Design - Project &amp; Asset Management P.O. Box 2209 BUNBURY WA 6231 Phone : 0409 879 059 Email : coatescivilconsulting@bigpond.com</p>	SCALE 1:250 (A1)	SURVEYED: L.B. F.B. DATE:	THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION UNLESS SIGNED BELOW.	CLIENT: 	YALYALUP MINERAL SANDS MINE DEVELOPMENT PRINCEFIELD ROAD, YALYALUP MINE ACCESS ROAD CONSTRUCTION PRINCEFIELD ROAD NEW LV ACCESS	DRAWING No. DOR218-D15
	DETAILS OF AMENDMENTS	APPROVED		DATE	DESIGNED & DRAWN: C Coates DATE: MAR 2020				CHECKED:
MK				DATUM: AHD	APPROVED:	DATE:			ISSUE DATE: DEC 2020
				ORIGIN OF LEVELS: PM xxxx RL xxx.xxx		DATE:			0



Abutment 1  
Female End of Bridge  
(Fixed Bearings)

Abutment 2  
Male End of Bridge  
(Sliding Bearings)



A	Original	BD	IAM	-	16/08/2018
Revision	Details	Drawn By	Checked By	Auth By	Date

**Preliminary**  
This drawing is indicative only.  
All details may be subject to change at final design stage.

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The apparatus as shown in this drawing is of a proprietary nature to Mabey Bridge Ltd and is covered by patents.  
Scale: As shown  
Do not scale from this drawing  
Original sheet size = A1 (841x594mm)



Title: **Mabey Compact (200) Bridging**  
General Arrangement for a Single Span (6 Bay) 18.288m Bridge  
4.2m Roadwidth - SSHRH+ Construction - Heavy Duty Steel Deck Units with Durbar Surface

Mabey Australia Pty. Australia

Mabey Bridge Limited  
Unit 9 Lydney Harbour Estate  
Harbour Road  
Lydney  
GL15 4EJ  
United Kingdom

Tel: +44 (0)1291 623 801  
Fax: +44 (0)1291 625 453  
sales@mabeybridge.co.uk  
www.mabey.com

Drawing No: 22423-P-100

enabling global infrastructure

Rev. **A**

## APPENDIX 1: NOONGAR STANDARD HERITAGE AGREEMENT

# Noongar Standard Heritage Agreement

**South West Aboriginal Land & Sea Council Aboriginal  
Corporation, ICN 3832 for and on behalf of the South  
West Boojarah #2 Agreement Group.**

**Name of Proponent/Company:** Doral Minerals Sands Pty Ltd

**NSHA Reference Number:** LEG.853

**Date:** 17 June 2016

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## Date

THIS AGREEMENT is made on

10<sup>th</sup>

day of February 20 17

## Parties

**South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832 (SWALSC)** for and on behalf of the **South West Boojarah #2 Agreement Group.**

**Proponent/Company:** Doral Mineral Sands Pty Ltd

**ABN or ACN:** 096 342 451

## Recitals

- A. SWALSC represents the South West Boojarah #2 Agreement Group in relation to Aboriginal Heritage matters in the Agreement Area.
- B. The Proponent wishes to conduct Activities in the Agreement Area.
- C. The Parties have entered into this Agreement to ensure that the Activities are carried out in a manner that protects Aboriginal Sites and Aboriginal Objects to the greatest extent possible.
- D. Under the *Aboriginal Heritage Act 1972 (WA)* the Minister for Aboriginal Affairs and his delegated officers have the responsibility for recording, preserving and protecting places that are of significance in Western Australia. Officers in DAA may provide the Parties with information about the evaluation and recording of sites upon request to assist with the processes set out in this NSHA.

The Parties agree as follows:

## Agreed Terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this NSHA, unless the contrary intention appears:

**Aboriginal Consultants** means:

- (a) those members of the Agreement Group or Noongar persons who have been identified by SWALSC as persons who can speak about the Survey Area; and, where applicable
- (b) persons identified by DAA in consultation with SWALSC who have previously been recorded on the Aboriginal Heritage Act Register in relation to particular sites in the Survey Area.

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Agreement Group are required to attend or that prevents the members of the Agreement Group from attending to day to day business.

**Aboriginal Heritage** means the cultural heritage value of an Aboriginal Site or of an Aboriginal Object.

**Aboriginal Heritage Act** means the *Aboriginal Heritage Act 1972 (WA)*.

**Aboriginal Heritage Act Minister** means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Register** means the register of places and objects established and maintained under section 38 of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Registrar** means the 'Registrar of Aboriginal Sites' appointed under section 37(1) of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Section 16 Application** means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove anything on or under the site.

**Aboriginal Heritage Act Section 18 Application** means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

**Aboriginal Heritage Agreement** means an agreement with SWALSC or one or more members of the Agreement Group concerning Aboriginal Heritage Surveys in the Agreement Area. To avoid doubt, this NSHA is a form of Aboriginal Heritage Agreement.

**Aboriginal Heritage Liaison Officer** means the person appointed under clause 10.1(a)(ii).



**Aboriginal Heritage Service Provider** means the person or company engaged by SWALSC, or by the Proponent, to plan and carry out a Survey or Surveys in the Agreement Area. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity or person. The Aboriginal Heritage Service Provider may also be SWALSC.

**Aboriginal Heritage Survey** means a survey conducted to assess the potential impacts of Activities on Aboriginal Heritage, whether or not conducted under this NSHA and may include anthropological, ethnographic or archaeological investigations as appropriate. To avoid doubt, an Aboriginal Heritage Survey includes a Survey.

**Aboriginal Object** means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

**Aboriginal Site** means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act, including sites that are not on the Aboriginal Heritage Act Register.

**ACMC** means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

**Activity** means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).

**Activity Notice** means a notice issued by the Proponent to SWALSC under clause 8.2.

**Activity Notice Response** means notice given by SWALSC to the Proponent under clause 8.3(a).

**Activity Program** means all Activities described in an Activity Notice.

**Agreement Area** means the area to which this NSHA applies, being the land and waters described in Schedule 3.

**Agreement Group** means the Native Title Agreement Group as defined in the ILUA.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**CATS I Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Confidential Information** has the meaning given in clause 19.1.

**CPI** means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then CPI shall mean such other index as represents the rise in the cost of living in Perth, Western Australia, as the State reasonably determines after consulting with SWALSC.

**CPI Calculation** means:

$$A \times \frac{CPI_n}{CPI_{base}}$$

where:

*A* = the initial base payment under this NSHA as set out in Schedule 5;

*CPI<sub>n</sub>* = the latest June quarterly CPI number as published each year by the Australian Bureau of Statistics;

*CPI<sub>base</sub>* = the June 2014 quarterly CPI number as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

**DAA** has the meaning given to Department in section 4 of the Aboriginal Heritage Act and as at the Effective Date is the State's Department of Aboriginal Affairs.

**DAA Guidelines** means the Guidelines with respect to preparing Aboriginal Heritage Survey reports and applications to the ACMC under section 18 of the Aboriginal Heritage Act published on the DAA website as modified from time to time.

**Due Diligence Guidelines** means the Aboriginal heritage due diligence guidelines issued by the Department of the Premier and Cabinet and DAA dated 30 April 2013.

**Effective Date** means the date on which this NSHA comes into force and effect as an agreement between the Parties, as more particularly described in clause 4.1.

**Estimated Survey Costs** has the meaning given in clause 9.5(b).

**Event of Default** means any of the events described in clause 17.1(b).

**Force Majeure** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by a government authority or official by law.

**Government Proponent** includes a department, agency or instrumentality of the State which is proposing to conduct Activities in the Agreement Area.

**GPS** means a global positioning system device.

**Ground Disturbing Activity** means any Activity that is not Low Ground Disturbance Activity or Minimal Impact Activity.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

**Heritage Information Submission Form** means the form referred to in Schedule 7 and, if that form is up-dated by DAA, that form as set out at the relevant time on the DAA website.

**ILUA** means the Indigenous Land Use Agreement described in items 1 to 4 of Schedule 2.

**Insolvency Event** means where a Party:

- (a) commits an act of insolvency under and for the purposes of the Corporations Act 2001 (Cth) or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the Corporations Act 2001 (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

**Last Fieldwork Day** has the meaning given in clause 12.1.

**Low Ground Disturbance Activity** means any Activity that involves only minor ground disturbance. Low Ground Disturbance Activity includes the following:

- (a) sampling using hand methods (including hand augering); and
- (b) geophysical, biological, environmental or conservation surveys, including installing monitoring plots and marker posts; and
- (c) establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle and only on cleared tracks; and
- (f) drilling using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots); and
- (g) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
- (h) removing soil and flora samples and cores up to 20 kilograms, and up to a depth of two metres from the natural surface; and
- (i) collecting and removing loose rocks, firewood, flora or fauna; and
- (j) fossicking for rocks and gemstones; and

- (k) conducting tests for water, site contamination, or other scientific or conservation purposes; and
- (l) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (m) maintaining but not widening existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (n) erecting signage and barriers using hand and mechanical augers; and
- (o) revegetating of degraded areas, including fencing areas of vegetation; and
- (p) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (q) carrying out species recovery programs; and
- (r) erosion control activities around existing roads, infrastructure or facilities; and
- (s) weed control using hand, mechanical and chemical methods of control excluding excavation or furrowing of soil; and
- (t) conducting tourism operations that:
  - (i) are based in established facilities; or
  - (ii) require the establishment of new facilities that require no, or only minor, ground disturbance; and
- (u) any other use of hand-held tools, not referred to in the preceding paragraphs; and
- (v) events such as car rallies and marathons using existing roads, stock routes or pastoral lease tracks; and
- (w) walking, driving or riding tours using existing roads, stock routes, pastoral lease tracks or historical trails (official or unofficial); and
- (x) exercise of grazing rights permitted under Division 3, Subdivision G of the *Native Title Act 1993*; and
- (y) the laying of water pipelines across the ground where no excavation is required; and
- (z) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

**Minimal Impact Activity** means any Activity that involves minimal or no ground disturbance. Minimal Impact Activity includes the following:

- (a) Walking, photography, filming; and
- (b) Aerial surveying and magnetic surveys; and
- (c) Use of existing tracks and water courses; and
- (d) Environmental monitoring; and
- (e) Water and soils sampling; and
- (f) Fossicking using hand held instruments; and
- (g) Spatial measurement; and
- (h) Scientific research, using hand held tools; and
- (i) Cultivation and grazing in previously cultivated/grazed areas; and
- (j) Maintenance of existing paths, walls, fences, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas; and
- (k) Feral animal eradication, weed, vermin and pest control, vegetation control and fire prevention; but excluding construction of fences, infrastructure and clearing of native vegetation; and
- (l) Light vehicular access and camping using existing tracks and involving no clearance of vegetation.

**Noongar Boodja Trust Deed** means the Trust Deed as defined in the ILUA.

**Noongar Boodja Trustee** means the Trustee appointed under the Noongar Boodja Trust Deed from time to time.

**NSHA** means this Noongar Standard Heritage Agreement.

**Party** means a party to this NSHA and **Parties** mean any 2 or more of them as the case requires.

**Preliminary Advice** means advice, in writing, complying with clause 12.3(a).

**Principal Aboriginal Heritage Consultant** means the anthropologist, archaeologist or other appropriately qualified professional nominated and agreed under clauses 8.3(d) or 9.6.

**Program of Proposed Works** means the program of proposed works for a specified period prepared by a Proponent that will be carried out, wholly or partially, in the Agreement Area.

**Regional Corporation** has the meaning given in the Noongar Boodja Trust Deed.

**Related Agreement Areas** has the same meaning as given in the ILUA.

**Related Agreement Group** means the Related Native Title Agreement Group as defined in the ILUA

**Sensitive Heritage Information** means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by the Aboriginal Consultants during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

**Site Avoidance Model** means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site within that area.

**Site Avoidance Survey** means a Survey carried out using the Site Avoidance Model.

**Site Identification Model** means a Survey methodology involving the identification of Aboriginal Sites.

**Site Identification Survey** means a Survey carried out using the Site Identification Model.

**Survey** means an Aboriginal Heritage Survey conducted under this NSHA.

**Survey Agreement Date** has the meaning given in clauses 9.1(a) or 9.1(b).

**Survey Agreement Period** has the meaning given in clause 9.1(d).

**Survey Area** means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

**Survey Methodology** means either a Site Avoidance Model or a Site Identification Model.

**Survey Report** means a report of the results of a Survey, containing the information set out in clause 12.4 and Schedule 6.

**Survey Team** has the meaning given in clause 10.1.

## 1.2 Interpretation — general

In this NSHA, unless the contrary intention appears:

- (a) the headings and subheadings in this NSHA are inserted for guidance only and do not govern the meaning or construction of any provision of this NSHA;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this NSHA and a reference to this NSHA includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this NSHA) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Proponent;
- (f) a reference to a 'person' (including a Party to this NSHA) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) 'including' means 'including but not limited to';
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next

calendar month or if there is no such day, at the end of the next calendar month;

- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this NSHA is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this NSHA and any recitals, schedules or annexures to this NSHA, the terms and conditions of the clauses of this NSHA shall prevail.

### **1.3 Interpretation — liabilities and benefits**

In this NSHA, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity set out in this NSHA which is in favour of SWALSC and the members of the Agreement Group is for the benefit of them jointly and severally; and
- (b) any agreement, representation, warranty or indemnity in favour of the Proponent, where the Proponent comprises more than one entity, is for the benefit of them jointly and severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the Proponent, where the Proponent comprises more than one entity, binds them jointly and severally.

## **2. No Application of this NSHA to Emergency Activities**

This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person.

## **3. Execution and effect of this NSHA**

- (a) Execution of this NSHA may take place by SWALSC and the Proponent executing any number of counterparts of this NSHA, with all counterparts together constituting the one instrument.
- (b) If this NSHA is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
- (c) Notwithstanding the prior provisions of this clause 3, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).



## **4. Term and termination**

### **4.1 Commencement**

This NSHA comes into force and effect as between the Proponent and SWALSC on the date that the last of those Parties executes this NSHA.

### **4.2 Termination**

This NSHA shall terminate on the occurrence of whichever of the following events is first to occur:

- (a) all Parties agree in writing to end this NSHA;
- (b) as referred to in clause 17.2(d), a court order is made to wind up either Party as the result of an Event of Default.

### **4.3 Termination or de-registration of ILUA does not affect NSHA**

Notwithstanding the termination or de-registration of the ILUA, this NSHA shall continue to apply to the Parties with full force and effect, to the extent that this NSHA has commenced under clause 4.1.

### **4.4 Survival of provisions and entitlements upon termination**

This NSHA ceases to have any force or effect on and from the date of termination, save that:

- (a) any entitlements, obligations or causes of action which accrued under this NSHA prior to termination survive termination;
- (b) clauses 1, 4.4, 6, 12.7, 13, 18, 19, 21, 22, 25.2, 25.3, 25.4 and 25.6 survive termination.

## **5. Area to which this NSHA applies**

This NSHA applies to the Agreement Area.

## **6. Authority, representations and warranties**

### **6.1 SWALSC representations and warranties**

SWALSC represents and warrants, for the benefit of the Proponent, that:

- (a) it represents the members of the Agreement Group in respect of Aboriginal Heritage matters within the Agreement Area; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it

lawfully to enter into, exercise its rights and perform its obligations under, this NSHA have been fulfilled or done; and

- (c) it knows of no impediment to it performing its obligations under this NSHA.

## **6.2 Proponent representations and warranties**

The Proponent represents and warrants, for the benefit of SWALSC and the members of the Agreement Group, that:

- (a) it is authorised to enter into this NSHA; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Proponent lawfully to enter into, exercise its rights and perform its obligations under, this NSHA have been fulfilled or done; and
- (c) it knows of no impediment to the Proponent performing its obligations under this NSHA.

## **6.3 Reliance on warranties**

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 6.1 or 6.2 (as the case may be) to enter into this NSHA.

## **6.4 Acknowledgement regarding legal advice**

Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of this NSHA and the effect of it on the rights, obligations and liabilities of each of the Parties to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this NSHA before entering into it.

# **7. Cooperation regarding Aboriginal Sites and proposed Activities**

## **7.1 Early exchange of information — Program of Proposed Works**

The Parties acknowledge the importance of an early exchange of information between the Proponent and SWALSC about proposed Activities in the Agreement Area to enable informed decisions to be made. In accordance with this objective:

- (a) wherever practical, the Proponent shall provide SWALSC with a Program of Proposed Works for which Activity Notices are likely to be provided in the foreseeable future; and
- (b) where, as a result of receiving the Program of Proposed Works SWALSC becomes aware of any particular cultural heritage concern arising from a

proposal to conduct an Activity (including concerns as to the extent of the proposed Activity and the number of sites that may be affected), SWALSC will use its best endeavours to raise those concerns with the Proponent as soon as practicable after receipt of the Program of Proposed Works.

## **7.2 Due Diligence Guidelines**

- (a) The Parties acknowledge the application of the Due Diligence Guidelines as part of the assessment process for considering the impact of any proposed Activity on Aboriginal Heritage; and
- (b) Following the issuing of the Activity Notice if there is any doubt as to the impact of any proposed Activity on Aboriginal Heritage after considering the Due Diligence Guidelines, the Parties may seek the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA, with respect to the provision of further information if appropriate.

## **7.3 No breach of Heritage Act**

- (a) Nothing in this NSHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (b) If the Proponent carries out any Activities through contractors, then the Proponent shall ensure that such contractors are made aware of the obligations of the Aboriginal Heritage Act and of this NSHA.

# **8. The Activity Notice**

## **8.1 Circumstances where no Activity Notice needs to be given**

- (a) If the Proponent has reasonable grounds to form the opinion that no Survey is required (taking into account the matters referred to in clause 8.1(b) and the Due Diligence Guidelines), the Proponent may elect not to issue an Activity Notice in respect of a proposed Activity Program.
- (b) The Proponent does not have to issue an Activity Notice where the Activities proposed to be conducted consist entirely of:
  - (i) Minimal Impact Activities; or
  - (ii) Low Ground Disturbance Activities of a class that SWALSC has notified in writing to the Proponent need not be the subject of an Activity Notice.
- (c) If the Proponent has any doubt, including because of consideration of the Due Diligence Guidelines, as to whether clauses 8.1(a) and 8.1(b) operate to exempt the Proponent from issuing an Activity Notice, then the Proponent shall issue the Activity Notice in any event.

## 8.2 Giving the Activity Notice

- (a) Except where clause 8.1(a) or (b) applies, if the Proponent intends to undertake an Activity in the Agreement Area, it shall issue a notice in writing to SWALSC in accordance with this clause 8.2 (Activity Notice).
- (b) The main purposes of an Activity Notice are:
  - (i) to provide adequate information to assist SWALSC to make an assessment as to whether a Survey is required and if so, whether a Site Identification Survey or a Site Avoidance Survey; and
  - (ii) if a Survey is required, to provide information relevant to the conduct of that Survey.
- (c) The Activity Notice shall contain:
  - (i) the basic information specified in part 1.1 of Schedule 4; and
  - (ii) the key statements and nominations specified in part 1.2 and the detailed contents specified in part 1.3 of Schedule 4; andmay also contain:
  - (iii) the additional contents specified in part 2 of Schedule 4.
- (d) If the Proponent omits to specify or nominate, in an Activity Notice, any of the particular items referred to in parts 1.2 and 1.3 of Schedule 4, then the default provisions provided in part 3 of Schedule 4 shall apply.
- (e) The Parties acknowledge that the Proponent may require compliance with the DAA Guidelines where the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application.
- (f) SWALSC acknowledges that the inclusion in an Activity Notice of the matters described in parts 1.2(c) to (f) of Schedule 4 does not prejudice any statement by the Proponent that it considers that no Survey is required.
- (g) To avoid doubt, the Proponent may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Parties but, acting reasonably, SWALSC shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. If a fresh Activity Notice is issued the time limits in clause 16.1(a) shall apply as if that were a new Activity Notice. The Proponent may also request any of the items referred to in part 1.2(f) of Schedule 4 at any later time, in accordance with clause 12.2.

### 8.3 Considering the Activity Notice and deciding whether a Survey is required

- (a) SWALSC will consider the Activity Notice and shall, within 15 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Proponent in writing as to whether SWALSC considers that a Survey is required (**Activity Notice Response**). In coming to its decision SWALSC shall take into account:
  - (iii) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; and
  - (iv) the extent to which the land and waters the subject of the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, SWALSC will consider whether it is clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without damaging Aboriginal Heritage; and
  - (v) any relevant previous decisions by SWALSC under clause 8.3(b); and
  - (vi) any other matter SWALSC reasonably considers relevant, including if appropriate a visit to the Agreement Area with representatives from the Proponent and from DAA.
- (b) The Proponent shall be free to carry out any Activity in the Agreement Area without conducting a Survey where:
  - (i) SWALSC so agrees in writing; or
  - (ii) SWALSC waives its right under this NSHA to require a Survey of the proposed Activity;whether in an Activity Notice Response or otherwise.
- (c) Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response SWALSC indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
  - (i) if different to the opinion given by the Proponent in the Activity Notice in accordance with part 1.2(a) of Schedule 4 a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in SWALSC's opinion; and
  - (ii) if different to the nomination by the Proponent in the Activity Notice in accordance with part 1.2(c) Schedule 4, a nomination of SWALSC's proposed Survey Methodology; and

- (iii) if different to the date or dates nominated by the Proponent in the Activity Notice in accordance with part 1.2(e) of Schedule 4, a nomination of a proposed Survey start date or finish date taking into account the availability of the Aboriginal Heritage Service Provider, if contracted by SWALSC; and
- (iv) if practicable, and subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
- (v) an election, or not, by SWALSC as to whether it will:
  - (A) contract the Aboriginal Heritage Service Provider; or
  - (B) perform the functions of the Aboriginal Heritage Service Provider itself and, if so, whether it will need to contract a Principal Aboriginal Heritage Consultant; and
- (vi) if electing to contract the Aboriginal Heritage Service Provider, a nomination of SWALSC's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
- (vii) if SWALSC does not elect either to be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Survey Provider under clause 8.3(d)(v), the names and contact details of the proposed Aboriginal Consultants for the Survey. If these details are not provided to the Proponent either in the Activity Notice Response or within 10 Business Days after the Survey Agreement Date, the Proponent may contact DAA for details of persons identified by DAA who have previously been recorded on the Aboriginal Heritage Register in relation to particular sites in the Survey Area.

#### **8.4 Disagreements following Activity Notice Response**

If, following receipt by the Proponent of the Activity Notice Response, the Parties are in disagreement on any matter concerning the conduct of a proposed Survey, the Parties shall then endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until the Parties have consulted under clause 9 during the period of 20 Business Days referred to in clause 9.1(d), no Party is entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8.

## 9. Survey agreement and planning

### 9.1 Operation of this clause 9 – Survey Agreement Date

- (a) Subject to clause 9.1(b), the date on which agreement is reached on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.
- (b) If after receipt by the Proponent of the Activity Notice Response under clause 8.3(a) the Parties are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity Notice Response shall be deemed to be the Survey Agreement Date referred to in clause 9.1(a).
- (c) The Parties' discussions under this clause 9 shall be conducted reasonably and in good faith.
- (d) The Parties shall ensure that the Survey Agreement Date occurs within 20 Business Days after the date of receipt by the Proponent of the Activity Notice Response (**Survey Agreement Period**).
- (e) If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day after the expiry of the 20 Business Days comprising the Survey Agreement Period referred to in 9.1(d).

### 9.2 Whether a Survey is required

- (a) The Parties' discussions regarding whether a Survey is required will be guided by the matters in clauses 8.3(a), and 9.2(b).
- (b) The following provisions shall apply to the Parties' discussions about whether a Survey is required.
  - (i) Where no previous Aboriginal Heritage Survey (whether under this NSHA or otherwise) has been undertaken in relation to the area of land and waters the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
  - (ii) Where this NSHA does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
  - (iii) Where a previous Aboriginal Heritage Survey (whether conducted under this NSHA or otherwise) has, or if not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Proponent must (if it is in their possession

or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to SWALSC (if such copy has not already been provided with the Activity Notice).

- (iv) Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Parties will have regard to the following matters:
  - (A) the nature of the Activities outlined in the Activity Notice; and
  - (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey; and
  - (C) the extent to which the land has been affected by previous ground disturbing activities; and
  - (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
  - (E) any relevant matters relating to Noongar practices, laws and customs; and
  - (F) any other relevant matters raised by any of the Parties.

### **9.3 Agreements regarding Low Ground Disturbance Activity**

- (a) The Parties' discussions to confirm the extent of Low Ground Disturbance Activity, and whether a Survey is required in respect of such Activity, will be guided by the definition of Low Ground Disturbance Activity in this NSHA.
- (b) If SWALSC considers that a Survey in respect of any Low Ground Disturbance Activity is required, then SWALSC and the Proponent will each use their reasonable endeavours to address the concerns of SWALSC, by modifying the proposed Low Ground Disturbance Activity to limit the impact it may have on Aboriginal Heritage to the extent necessary to remove the need to conduct a Survey.

### **9.4 Selection of Survey Methodology**

The discussions between SWALSC and the Proponent about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to SWALSC's concerns for the Survey Area and the Activities proposed by the Proponent.



## **9.5 Estimate of costs of Survey when SWALSC is contracting Aboriginal Heritage Service Provider**

Where SWALSC has elected to be the Aboriginal Heritage Service Provider or to contract an Aboriginal Heritage Service Provider under 8.3(d)(v), the following provisions apply:

- (a) the Parties acknowledge that it may not always be possible for SWALSC or SWALSC's nominated Aboriginal Heritage Service Provider to provide an accurate cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.
- (b) if an estimate of Survey costs has not been provided earlier, then SWALSC must ensure that by the end of the Survey Agreement Period, the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Proponent for approval by the Proponent (the **Estimated Survey Costs**).

## **9.6 Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant**

- (a) If SWALSC is contracting an Aboriginal Heritage Service Provider, and SWALSC's Activity Notice Response does not identify SWALSC's nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) the Principal Aboriginal Heritage Consultant, then SWALSC will advise the Proponent of these nominations during the Survey Agreement Period.
- (b) The Parties acknowledge that, if SWALSC is contracting an Aboriginal Heritage Service Provider, the Proponent will not usually have any role in nominating an Aboriginal Heritage Service Provider or a Principal Aboriginal Heritage Consultant (if different), subject however to the rights of the Proponent under clause 16.1(e) in the event of delays.
- (c) If the Proponent or SWALSC has reasonable concerns about the expense, competence or impartiality of the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Proponent (as the case may be), it may request the other Party to consider another anthropologist, archaeologist or appropriately qualified professional to act as Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).
- (d) If the Parties cannot reach agreement on the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Proponent within the Survey Agreement Period, then in addition to and without limiting the Proponent's general rights under clause 16.1(e), SWALSC or the Proponent (whichever

is the non-contracting party) may nominate an alternative proposed Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant and the other Party shall promptly respond to any such nomination and shall ensure that it does not unreasonably withhold its approval to appointing such nominee as the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).

### **9.7 Estimate of time for Survey commencement or completion**

If following the Activity Notice Response and where SWALSC is contracting the Aboriginal Heritage Service Provider the Parties are not in agreement about the date of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, the Parties shall agree on such date or dates.

## **10. Survey Team and commencement of Survey**

### **10.1 Survey team**

- (a) As soon as possible after the Survey Agreement Date, and where either SWALSC or the Proponent is contracting the Aboriginal Heritage Service Provider, the Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant if appointed, after receiving names and contact details of the Aboriginal Consultants from SWALSC in accordance with 8.3(d)(vii), will organise a Survey Team (Survey Team), which shall consist of:
  - (i) up to 8 Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider in consultation with SWALSC, to examine the Survey Area and assist in the Survey; and
  - (ii) if considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
  - (iii) where considered necessary by the Aboriginal Heritage Consultants, SWALSC or the Aboriginal Heritage Service Provider, and agreed to by the Parties, another anthropologist of a specific gender; and
  - (iv) where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, including during the course of the Survey, an archaeologist.
- (b) Where considered necessary by the Aboriginal Heritage Service Provider and agreed to by SWALSC and the Proponent, more than one archaeologist may be appointed to the Survey Team.

- (c) The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i) unless particular circumstances can be demonstrated to exist including, for example:
  - (i) a large number of registered Aboriginal Sites are known to exist within a Survey Area and the number of Aboriginal people who have authority to speak for those Aboriginal Sites and should be consulted about them is greater than 8; and/or
  - (ii) the Survey Area crosses the boundary of the Agreement Area and one or more Related Agreement Areas.

In these circumstances the Proponent and SWALSC must agree on the number of additional Aboriginal Consultants for the Survey Team.

- (d) Additional Aboriginal Consultants may accompany the Survey Team but the Proponent will not be liable for additional costs.
- (e) The Proponent may send one or two nominees with appropriate authority on the Survey to assist the Survey Team conducting the Survey with provision of information and requests where required.

## **10.2 Commencement and conduct of Survey**

- (a) If SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC will use its, and must ensure that the Aboriginal Heritage Service Provider and the Principal Aboriginal Heritage Consultant (if different to the Aboriginal Heritage Service Provider) each uses its best endeavours to commence the Survey within the time agreed by the Parties, or in the absence of agreement within 30 Business Days after the Survey Agreement Date unless clauses 11(c) and 18.9 apply, in which case the time for commencement of the Survey will be extended in accordance with the timeframes set out in the relevant clauses if the Dispute is resolved.
- (b) SWALSC and/or the Proponent (depending upon which is contracting the Aboriginal Heritage Service Provider) will ensure that the Survey Team observes and complies with any safety and other procedures and policies implemented from time to time by the Proponent over the Survey Area. The Proponent will provide SWALSC with details of and explain these procedures and policies in order for SWALSC to provide these details and explain the procedures and policies to the Aboriginal Consultants before the Survey commences. The Proponent will also provide members of the Survey Team (and any other attending members of the Agreement Group) with protective clothing and equipment if reasonably necessary in all the circumstances. To the extent that the Proponent has control of the Survey Area, the Proponent shall take such measures as are practicable to ensure that the members of the Survey Team are not exposed to hazards.

- (c) SWALSC acknowledges that the members of the Survey Team are not employees of the Proponent, and that the Proponent is not required to have insurance in place for the protection of Survey Team members. The onus is on the Party contracting the Aboriginal Heritage Service Provider to ensure that the Aboriginal Heritage Service Provider has insurance in place to adequately cover the Survey Team.
- (d) The Survey Team will as appropriate in the circumstances:
  - (i) visit the Survey Area; and
  - (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and
  - (iii) provide sufficient information to the Aboriginal Heritage Service Provider, or any other heritage consultant accompanying the Survey Team, to enable them to:
    - (A) record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using a GPS; and
    - (B) record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided, on a Heritage Information Submission Form; and
    - (C) mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map; and
    - (D) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
    - (E) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to Aboriginal Heritage concerns raised by the Aboriginal Consultants, the representatives of the Proponent nominated under clause 10.1(e):
  - (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information or other information pertaining to Aboriginal Sites; and
  - (ii) may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.

## **11. Payment for Surveys when SWALSC is contracting the Aboriginal Heritage Service Provider**

Where SWALSC has elected to contract an Aboriginal Heritage Service Provider or to perform the functions of the Aboriginal Heritage Service Provider under clause 8.3(d)(v), the following provisions apply:

- (a) The Proponent shall pay the costs and expenses of the Survey at the rates set out in Schedule 5.
- (b) The Proponent agrees to pay 100% of the approved Estimated Survey Costs to SWALSC:
  - (i) within 10 Business Days before the commencement of the Survey, or
  - (ii) within 10 Business Days after the approval of the Estimated Survey Costs under clause 9.5(b),whichever is the earlier (the Relevant Period).
- (c) If the Proponent fails to pay the Estimated Survey Costs within the Relevant Period SWALSC may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day following the end of the Relevant Period.
- (d) The monies constituting the Estimated Survey Costs must be:
  - (i) held by SWALSC in an account established specifically for survey costs at a bank and must be kept separate from all other bank accounts of, or monies received or held by, SWALSC; and
  - (ii) used only for the payment of the Estimated Survey Costs and any repayment to the Proponent under clause 11(e) or 11(g).
- (e) If the Survey is cancelled by the Proponent before it is completed, the part of the Estimated Survey Costs that has been expended and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Proponent.
- (f) SWALSC must provide a tax invoice of the Survey costs to the Proponent that reconciles the Estimated Survey Costs with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by the chief executive officer of SWALSC or their delegate.
- (g) If the costs incurred are less than the Estimated Survey Costs, SWALSC shall refund the balance of the monies paid in accordance with clause 11(b) to the Proponent.
- (h) If the costs incurred exceed the Estimated Survey Costs by 5% or less, the Proponent shall pay the additional amount to SWALSC within 20 Business Days of receiving a tax invoice (accompanied by all relevant receipts and

invoices and any other relevant supporting documentation) that must be certified as correct by the chief executive officer of SWALSC or their delegate.

- (i) If the Proponent receives notification of revised costs from SWALSC under clause 12.2(b), the Proponent will pay 100% of any additional costs to SWALSC within 10 Business Days of their approval by the Proponent. Once paid, these monies will be added to the Estimated Survey Costs and dealt with in accordance with (c) – (h) above.

## **12. Survey Report**

### **12.1 Timing of Preliminary Advice and Survey Report**

After the last day of fieldwork for a Survey (**Last Fieldwork Day**) if either the Proponent or SWALSC is contracting the Aboriginal Heritage Service Provider, the Proponent or SWALSC, as the case may be, will ensure that Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant provides the Parties with:

- (a) Preliminary Advice (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 5 Business Days after the Last Fieldwork Day and, after taking into account any comments from SWALSC, to the Proponent within 12 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 15 Business Days after the Last Fieldwork Day, to enable SWALSC to comment on it; and after taking into account any comments from SWALSC, to the Proponent within 25 Business Days after the Last Fieldwork Day;
- (c) a final Survey Report, taking into account any comments from the Proponent about any identified technical, factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of Schedule 6, within 35 Business Days after the Last Fieldwork Day.

### **12.2 Requests for reports and compliance with DAA Guidelines at any time**

- (a) Notwithstanding the relevant nominations by the Proponent in the Activity Notice under:
  - (i) part 1.2(f)(i) and (ii) of Schedule 4 the Proponent may by notice in writing at any time ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to provide a Preliminary Advice or draft Survey Report.

- (ii) part 1.2(f)(iii) of Schedule 4, the Proponent may by notice in writing at any time advise SWALSC that it has become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made and ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. The Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
  - (iii) part 1.2(f)(iii) of Schedule 4, if the party contracting the Aboriginal Heritage Service Provider is notified by the Aboriginal Heritage Service Provider that they have become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made, the contracting Party shall by notice in writing advise the other Party, and the Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DAA Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
- (b) The Proponent acknowledges that a notification under clause 12.2(a)(i) – (iii), may impact on the times and costs for the Survey, and, if SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC shall ensure that any revised times and costs (together with supporting documentation) are notified promptly to the Proponent.

### **12.3 Preliminary Advice**

- (a) The Preliminary Advice should provide sufficient information (without disclosing any Sensitive Heritage Information) to allow the Proponent to know whether to proceed or not with any Activities, with or without conditions.
- (b) Upon receipt by the Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Proponent may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).

## 12.4 Contents of Survey Report

The Party contracting the Aboriginal Heritage Service Provider must ensure the following:

- (a) that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will, in consultation with the Survey Team, prepare a Survey Report in accordance with the guidelines:
  - (i) in part 1 and part 2 of Schedule 6, where the Survey being conducted is a Site Avoidance Survey; or
  - (ii) in part 1 and part 3 of Schedule 6, where the Survey is a Site Identification Survey.
- (b) where the Proponent has requested in writing (whether in the Activity Notice or at any other time allowable under clause 12.2) that the Survey Report complies with the DAA Guidelines and the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application, that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant includes sufficient information in the Survey Report to assist:
  - (i) the ACMC in considering an Aboriginal Heritage Act Section 18 Application; or
  - (ii) the Aboriginal Heritage Act Registrar in considering an Aboriginal Heritage Act Section 16 Application.
- (c) that in addition to the matters described in Schedule 6, the Survey Report:
  - (i) describes which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, would be likely to result in a breach of the Aboriginal Heritage Act;
  - (ii) records sufficient information to enable the Proponent to plan and, subject to the law and this NSHA to comply with the Aboriginal Heritage Act in the course of undertaking the things that are the subject of the Activity Notice; and
  - (iii) complies with the DAA Guidelines.



## **12.5 Provision of Aboriginal Heritage Information to DAA**

Following the preparation of the Survey Report:

- (a) if SWALSC is the Aboriginal Heritage Service Provider it must provide: or
- (b) if SWALSC is not the Aboriginal Heritage Service Provider the Party contracting the Aboriginal Heritage Service Provider must ensure that the Aboriginal Heritage Service Provider provides,

the following information to the Aboriginal Heritage Act Registrar:

- (c) a copy of the Survey Report; and
- (d) if Aboriginal Sites have been identified during the Survey, a Heritage Information Submission Form (as attached at Schedule 7, or as amended from time to time) with respect to each site.

## **12.6 Provision of Survey Information to DAA**

- (a) If the Proponent contracted the Aboriginal Heritage Service Provider, the Proponent must, within 15 Business Days after the preparation of the Survey Report, provide to SWALSC, in writing, the details required by items 24 and 25 of Schedule 8.
- (b) Subject to clause 12.6(a), following the preparation of the Survey Report SWALSC must ensure that the information set out in Schedule 8 is provided to the Aboriginal Heritage Act Registrar.

## **12.7 Reliance on Survey Report**

The Parties each acknowledge that they may rely upon the contents of a Survey Report.

## **13. Intellectual property**

### **13.1 Intellectual property of the Proponent to be assigned to SWALSC**

If the Proponent is contracting the Aboriginal Heritage Service Provider, the Proponent assigns all intellectual property rights it holds in the Survey Report to SWALSC upon its creation.

### **13.2 Licence to use Survey Report**

Subject to clause 19, SWALSC shall grant to the Proponent an irrevocable, transferable, non exclusive, royalty-free licence to use any Survey Report for the purposes of the Proponent:

- (a) conducting its Activities as set out in the Activity Notice; or

- (b) seeking any necessary or desirable statutory approvals relevant to its Activities including under the Aboriginal Heritage Act; or
- (c) enforcing, defending or establishing its rights, including through court proceedings, and complying with its obligations, under this NSHA or any relevant statutory approvals.

#### **14. Effect of NSHA on other Aboriginal Heritage Agreements**

If the Proponent:

- (a) has entered into one or more Aboriginal Heritage Agreements (other than this NSHA) prior to the Effective Date (including ones entered into prior to the ILUA, and which is or are specified in item 5 of Schedule 2; and
- (b) the pre-existing Aboriginal Heritage Agreement applies to an Activity to which this NSHA relates,

then the provisions of this NSHA shall prevail over the provisions of any such pre-existing Aboriginal Heritage Agreement unless otherwise provided in item 6 of Schedule 2.

#### **15. Proponent must consult about Aboriginal Heritage Act applications**

- (a) The Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application in respect of any area within the Agreement Area without first giving SWALSC at least 30 Business Days' notice of its intention to do so.
- (b) The Proponent must consult, including by making reasonable efforts to meet with SWALSC, about any proposal that is the subject of such an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application.
- (c) Prior to the APMC considering the Aboriginal Heritage Act Section 18 Application or the Aboriginal Heritage Act Registrar considering the Aboriginal Heritage Act Section 16 Application, as the case may be, the Proponent must give reasonable notice to the APMC (or the Aboriginal Heritage Act Registrar as the case may be) and to the Aboriginal Heritage Service Provider of the detail of the consultation that has taken place.
- (d) Subject to clause 15(a), nothing in this NSHA prevents the Proponent lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.

## 16. Time limits

### 16.1 Time for compliance and consequences of non-compliance

- (a) The Parties, as applicable, must each meet the time limits imposed under the following provisions of this NSHA:
  - (i) the receipt by the Proponent of an Activity Notice Response (clause 8.3(a)); and
  - (ii) subject to clauses 9.1(e) and 18.9, the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
  - (iii) the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clauses 8.3(d)(iii) or 9.7; and
  - (iv) the receipt by the Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
  - (v) the receipt by SWALSC and by the Proponent of the draft Survey Report (clause 12.1(b));
  - (vi) the receipt by the Proponent of the final Survey Report (clause 12.1(c)).
- (b) The time limits on the steps referred to in clause 16.1(a) may be extended by agreement in writing between the Parties. Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.
- (c) To avoid doubt, any failure to comply with the time limits for the steps described in clause 16.1(a) does not give a Party a right to terminate this NSHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 16.1.
- (d) If SWALSC does not meet, or, if SWALSC is contracting the Aboriginal Heritage Service Provider, fails to ensure that the Aboriginal Heritage Service Provider meets, any applicable time limits on the steps listed in clause 16.1(a), then the Proponent may provide a written notice to SWALSC, with such a notice to nominate a date by which the non-compliance with the time limits must be rectified. The date nominated by the Proponent must allow a reasonable period, in all the circumstances, for rectification of the non-compliance with the time limits, and in any event the date must not be less than 10 Business Days after the date on which the notice of non-compliance is sent.
- (e) If SWALSC fails to comply with a notice sent by the Proponent under clause 16.1(d), then the Proponent may notify SWALSC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NSHA in respect of the

relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Proponent may then at its election:

- (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (f) If the Parties to a Dispute referred to mediation under clause 18.9 fail to resolve that Dispute, then the Proponent may notify SWALSC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NSHA in respect of the relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Proponent may then at its election:
- (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DAA if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (g) In the circumstances described in clauses 16.1(e) and (f), where the Proponent makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
- (i) the Proponent shall inform SWALSC of the alternative arrangements made (including any advice and assistance obtained from DAA); and
  - (ii) SWALSC shall not have any claim against the Proponent arising from the making of those alternative arrangements.
- (h) To avoid doubt:
- (i) the effect of this clause 16.1 is not limited by any dispute resolution processes under clause 18 of this NSHA other than those set out in clause 18.9, and in particular the time limits on the steps referred to in clause 16.1 continue to apply where a dispute resolution process is commenced under clause 18.1; and
  - (ii) the dispute resolution provisions in clause 18 of this NSHA do not apply to any decision by the Proponent to issue a notice of non-compliance under clause 16.1(d). However, the Proponent may elect, by notice in writing to SWALSC, to allow use of the dispute resolution provisions in clause 18.

- (i) The Proponent will act reasonably in asserting its rights under this clause 16.1.

## 16.2 Justifiable delay

- (a) Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.1.
- (b) A Party asserting the existence of a delay to which clause 16.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

## 17. Default and enforcement

### 17.1 Interpretation

- (a) In this clause 17 a reference to a Party means a party to the default or dispute.
- (b) An **Event of Default** occurs where a Party:
  - (i) breaches an obligation under this NSHA; or
  - (ii) commits an Insolvency Event.

### 17.2 Default

- (a) If a Party (the **Defaulting Party**) commits an Event of Default, the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 5 Business Days after receiving the Default Notice.
- (b) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to SWALSC, then SWALSC shall as soon as possible notify the Proponent:
  - (i) that the Event of Default has occurred; and
  - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of SWALSC; and
  - (iii) when the relevant Event of Default ceases to exist.
- (c) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the Proponent, then the Proponent shall as soon as possible notify SWALSC:
  - (i) that the Event of Default has occurred; and

- (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the Proponent; and
  - (iii) when the relevant Event of Default ceases to exist.
- (d) Where the Event of Default results in a court order to wind up either Party, this NSHA shall by force of this clause terminate with effect from the date of the court order.
- (e) The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this NSHA until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (f) Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this NSHA or otherwise at law (including the right to seek interlocutory relief and specific performance).

## **18. Dispute resolution**

### **18.1 No arbitration or court proceedings**

- (a) Subject to clause 18.1(b) and 18.9, if a dispute arises under this NSHA including a dispute in respect of this clause 18.1 (Dispute), a Party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 18 are subject to clause 8.4.

### **18.2 Notification**

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

### **18.3 Parties to resolve Dispute**

During the 20 Business Days after a notice is given under clause 18.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 18.4.

### **18.4 Mediation**

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chairman of LEADR will appoint a mediator at the request of either Party.

- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.4. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 18.6) referring the matter to arbitration or commencing legal proceedings.

### **18.5 Arbitration**

- (a) If the Parties to a Dispute have complied with clauses 18.2 to 18.4 then the Dispute may be referred to arbitration by either Party under the *Commercial Arbitration Act 2012 (WA)*.
- (b) The arbitration will be held within the Agreement Area or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

### **18.6 Breach of this clause**

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

## **18.7 Obligations continue**

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this NSHA so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

## **18.8 Extension of time**

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this NSHA, in order to preserve the rights of a Party to a Dispute, the Parties to the Dispute will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

## **18.9 Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)**

- (a) A Party claiming a Dispute has arisen in relation to any matter to be agreed under clauses 9, 11(b), or 12.2(a)(ii) and (iii) must give the other Parties to the Dispute notice setting out details of the Dispute, and at the same time as the notice is served upon the other Parties must request the chairman of LEADR to appoint a mediator within 5 Business Days.
- (b) The role of the mediator with respect to a Dispute arising in relation to any matter to be agreed under clauses 9, 11(b), or clause 12.2(a)(ii) and (iii), is to assist in negotiating a resolution of the Dispute. A mediator cannot make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18.9:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.9. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. To the extent possible, all issues identified under clauses 9, 11(b), and 12.2(a)(ii) and (iii) should be dealt with and resolved in the one mediation.
- (f) If the Parties fail to achieve a resolution of the Dispute by mediation within 15 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, the provisions of clause 16.1(f) – (g) will apply.



## 19. Confidentiality

### 19.1 Confidential information

Each Party agrees that the following information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 19.2:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this NSHA, including any Sensitive Heritage Information; and
- (b) information given by the Proponent to SWALSC in respect of the Activities of the Proponent where the Proponent advises SWALSC that the relevant information is confidential; and
- (c) any other information disclosed by one Party to another under this NSHA which is identified by the Disclosing Party as confidential,

but not including information:

- (d) the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

### 19.2 Permitted disclosure

- (a) Subject to clauses 19.2(b) and 19.2(c), a Receiving Party may disclose Confidential Information:
  - (i) if it has the prior consent of the Party which provided the information;
  - (ii) to the extent required by any law or applicable securities regulation or rule;
  - (iii) to the extent that the information is reasonably necessary for any processes or applications or related to any statutory approvals;
  - (iv) in connection with any dispute or litigation concerning this NSHA or its subject matter;
  - (v) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers, partners and related bodies corporate, or an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant appointed under this NSHA;

- (vi) where the Receiving Party is the Proponent, to a bona fide proposed assignee of the Proponent's rights or obligations under this NSHA;
  - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
  - (viii) to a proposed Regional Corporation assignee of SWALSC's rights, title and interests under this NSHA;
  - (ix) in accordance with clauses 12.5 and 12.6;
  - (x) where disclosure is required by the Proponent to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
  - (xi) as otherwise permitted or required by the terms of this NSHA.
- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Proponent may disclose that Confidential Information to the DAA and APMC, including for the purposes of the Proponent:
- (i) making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application;
  - (ii) providing a copy of each Survey Report to the DAA for DAA's collection of Aboriginal Heritage Survey reports; and
  - (iii) seeking any necessary or desirable statutory approvals or enforcing, defending or establishing its rights, including through court proceedings, under this NSHA or any relevant statutory approvals, including under the Aboriginal Heritage Act.
- (c) To avoid doubt, except for the circumstances described in clause 19.2(b), disclosure of Sensitive Heritage Information may only occur if SWALSC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) SWALSC must inform the Proponent of any information contained in a Survey Report, which comprises Sensitive Heritage Information.

### **19.3 Disclosure requirements**

Before making any disclosure to a person under clause 19.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this NSHA;
- (b) at least 10 Business Days before any disclosure, notify the Disclosing Party of its intention to disclose the Confidential Information and give the

Disclosing Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and

- (c) in the case of a disclosure to a person or entity under clauses 19.2(a)(v), 19.2(a)(vi), 19.2(a)(vii), or 19.2(a)(viii), but with the exception of employees or officers of a Receiving Party, procure that the person or entity executes a deed with the Disclosing Party in such form acceptable to the Disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 19.

## **20. Assignment**

### **20.1 Generally**

Neither SWALSC nor the Proponent may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this NSHA except in accordance with this NSHA.

### **20.2 Assignment or Novation by Proponent**

- (a) The Proponent may from time to time assign or transfer all or part of its rights, title, and interests under this NSHA to any person (whether by farm out, joint venture, sale or otherwise) where the Proponent is assigning all or part of its interest in the tenure in the Agreement Area to which this NSHA applies.
- (b) Before such assignment or novation, the Proponent must:
  - (i) give SWALSC at least 20 Business Days' notice prior to the proposed assignment or novation;
  - (ii) provide a draft of the proposed deed of assignment or novation for SWALSC's approval, which approval must not be unreasonably withheld, and the Proponent must take into account any reasonable amendments put forward by SWALSC;
  - (iii) within 20 Business Days after receiving SWALSC's approval to the terms of the draft deed of assignment or novation provide to SWALSC either:
    - (A) the deed of assignment in the form approved by SWALSC executed by the outgoing Proponent and the incoming proponent in favour of SWALSC by which the assignee agrees to be bound, alone or jointly with the Proponent, by the provisions of this NSHA and to assume, observe and perform (alone or jointly with the Proponent) the rights and obligations of the Proponent under this NSHA to the extent of the rights, title and interest assigned in accordance with clause 20.2(a); or

- (B) the deed of novation in the form approved by SWALSC executed by the outgoing Proponent and the incoming proponent in which the incoming proponent agrees to obtain the rights and obligations of the Proponent under this NSHA, the incoming proponent being bound by this NSHA and the outgoing Proponent being released from its obligations under this NSHA to the extent of the rights, title and interest transferred in accordance with clause 20.2(a); and
- (c) SWALSC will then execute the deed of assignment or the deed of novation as the case may be and return copies of the fully executed deed to both the outgoing Proponent and the incoming proponent.

### **20.3 Assignment by SWALSC**

- (a) SWALSC must assign its rights (including intellectual property rights assigned to SWALSC pursuant to clause 13.1), title and interests under this NSHA to a Regional Corporation if:
  - (i) a Regional corporation is appointed by the Noongar Boodja Trustee as the Regional Corporation for land and waters including the land and waters within the Agreement Area; and
  - (ii) the Regional Corporation agrees to enter into a deed, in a form acceptable to the Proponent (each acting reasonably), by which it agrees to be bound by this NSHA and to assume all of SWALSC's obligations under this NSHA, and provides a copy of that deed to the Proponent.
- (b) If the requirements of clause 20.3(a)(i) and (ii) are satisfied, SWALSC must do all other things necessary to give effect to the assumption by the Regional Corporation of the obligations under this NSHA.

### **20.4 Effect of Assignment or Novation**

- (a) Once an assignment or novation by a Proponent of all or any part of its rights, title and interests under this NSHA has occurred under clause 20.2, then the assigning or outgoing Proponent will be deemed to have been released to the extent of the assignment or transfer from all claims and liabilities arising under or in respect of this NSHA arising after the effective date of the assignment or novation, but without affecting any claim or liability arising prior to such date.
- (b) Once an assignment of this NSHA has occurred under clause 20.3, SWALSC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this NSHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.

- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 20 shall not affect the operation of this NSHA.

## **20.5 No encumbrance**

- (a) Except as permitted by clause 20.5(b), no Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NSHA.
- (b) The Proponent may with the prior written consent of SWALSC grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NSHA provided that clause 20.2 shall apply with necessary changes to any assignment upon enforcement of such encumbrance, mortgage or charge.

## **21. Notices**

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must be delivered to the intended recipient by registered post or by hand or fax to the intended recipient's address or fax number specified in Schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to SWALSC under clause 8.2);
- (c) will be taken to be received by the recipient:
  - (i) in the case of delivery in person, when delivered; and
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting; and
  - (iii) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

## **22. GST**

### **22.1 Interpretation**

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

### **22.2 GST Payable**

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this NSHA (whether that amount is specified or can be calculated in accordance with this NSHA), it does not include GST and must be increased by the GST Rate.
- (b) The Party making a Taxable Supply under this NSHA must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act. Notwithstanding any provision to the contrary in this NSHA, payment will be due within 20 Business Days of a Party receiving a Tax Invoice in accordance with this clause 22.
- (c) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this NSHA, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (d) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

## **23. Costs and duties**

- (a) The Proponent shall bear any duties or fees or taxes of a similar nature associated with this NSHA.
- (b) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this NSHA.

## **24. Force Majeure and Aboriginal Cultural Business**

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this NSHA as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and

- (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the delay caused by the Aboriginal Cultural Business.
- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this NSHA shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this NSHA as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this NSHA.

## **25. General**

### **25.1 Review and variation**

Where this NSHA is to be amended or varied, then this NSHA may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

### **25.2 Entire agreement**

Subject to clause 14, this NSHA constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **25.3 Governing law and jurisdiction**

- (a) This NSHA is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **25.4 Severance**

If any provisions of this NSHA is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this NSHA to the extent necessary unless it would materially change the intended effect and objectives of this NSHA.

### **25.5 Waiver**

A right or power under this NSHA shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

### **25.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this NSHA. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **25.7 Further action**

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this NSHA and the matters contemplated by it.



## Schedule 1 — Party Details

(Clause 21 – Notices)

### **South West Aboriginal Land & Sea Council Aboriginal Corporation Notice Details**

Address HomeTown Centre  
1490 Albany Highway  
Cannington WA 6107

Fax (08) 9358 7499

### **Proponent Notice Details**

Proponent Name Doral Mineral Sands Pty Ltd  
Address C/- McMahon Mining Title Services Pty Ltd  
PO Box 592  
MAYLANDS WA 6931

Fax

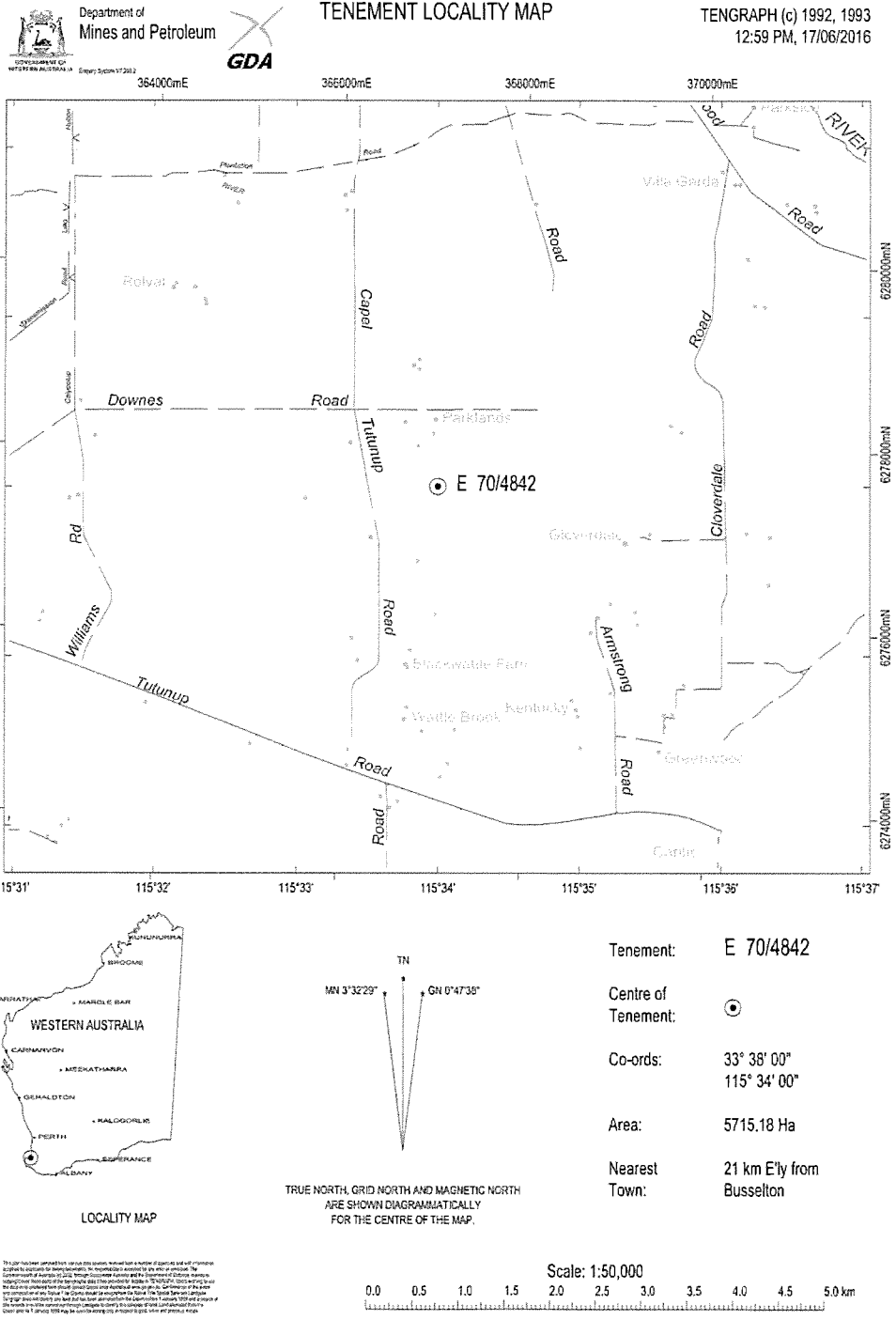
## Schedule 2 — Details of ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
<b>Details of ILUA</b>		
Item 1	Short name of ILUA	South West Boojarah #2 ILUA
Item 2	National Native Title Tribunal file number	Not applicable until the ILUA is registered
Item 3	Date registered	Not applicable until the ILUA is registered
Item 4	Local government region(s)	Not applicable until the ILUA is registered
<b>Pre-existing Aboriginal Heritage Agreements</b>		
Item 5	Details of all pre-existing Aboriginal Heritage Agreements to which clause 14 applies.	
Item 6	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this NSHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write 'whole agreement').	

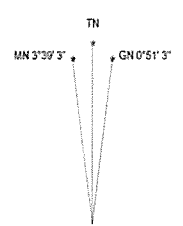
# Schedule 3 — Agreement Area

(Clause 1.1 Definition of Agreement Area)

Map 1: E 70/4842



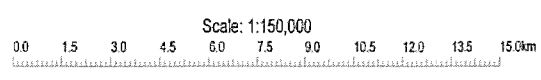
Map 2: R 70/52



TRUE NORTH, GRID NORTH AND MAGNETIC NORTH ARE SHOWN DIAGRAMMATICALLY FOR THE CENTRE OF THE MAP.

Tenement: R 70/52  
 Centre of Tenement:   
 Co-ords: 33° 41' 59" 115° 28' 00"  
 Area: 3010.51 Ha  
 Nearest Town: 13 km SE'ly from Busselton

The information on this map was obtained from the Department of Mines and Petroleum and the Department of Land Administration. The Department of Land Administration is responsible for the accuracy of the information on this map. The Department of Mines and Petroleum is responsible for the accuracy of the information on this map. The Department of Land Administration is responsible for the accuracy of the information on this map. The Department of Mines and Petroleum is responsible for the accuracy of the information on this map.



## **Schedule 4 — Contents of Activity Notice**

### **Part 1 — Primary contents of Activity Notice**

(Clause 8.2 Giving the Activity Notice)

#### **1.1 Basic information**

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this NSHA (by reference to the name of the ILUA as set out in item 1 of Schedule 2);
- (b) the name of the Proponent, and:
  - (i) an address in Western Australia for service of notices, under this NSHA, on the Proponent (if no address for service has previously been given by the Proponent); and
  - (ii) full contact details for a primary contact person within the Proponent (if a body corporate).

#### **1.2 Key statements and nominations under clause 8.2**

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(f), contain the following required key statements:

- (a) a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Proponent; and
- (b) a statement of whether the Proponent considers that a Survey is required (taking into consideration the matters referred to in clauses 8.1(b) and 8.3); and
- (c) a nomination, by the Proponent, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model; and
- (d) where a Site Avoidance Model is nominated, a statement of whether the Proponent requires any Survey to be conducted in respect of:
  - (i) only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice; or
  - (ii) a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice; and
- (e) a nomination, by the Proponent, of a proposed Survey fieldwork start date or end date; and
- (f) a nomination, by the Proponent, as to whether it requires:

- (i) a Preliminary Advice (see clause 12.1(a));
- (ii) a draft of the Survey Report (see clause 12.1(b));
- (iii) an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application (if known at the relevant time) (see clause 8.2(e)).

Where any of those key statements are omitted, Part 3 of this Schedule 4 provides default provisions.

### **1.3 – Detailed contents of Activity Notice**

(Clause 8.2(c)(ii))

In accordance with clause 8 of this NSHA, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

- (a) a map showing clearly the area the subject of the Activity Notice, identifying the location of the area the subject of the Activity Notice within the Agreement Area and including scale, zone and north point, as well as nearby towns, roads and landscape features; and
- (b) aerial photographs (if available) or smaller scale maps of the area the subject of the Activity Notice which must contain UTM Grid Coordinates (eastings and northings), datum, north point and, where applicable, land tenure details such as parcel identifier, plan or lot, reserve numbers, and coordinates and/or polygon defining the area the subject of the Activity Notice; and
- (c) where applicable, identifying numbers (or other identifying information) of each tenure to which the Activity Notice relates; and
- (d) all known vehicular access routes to the area the subject of the Activity Notice; and
- (e) any ground disturbing notice provided to any government agency including (where mining exploration Activities are proposed) to the District Mining Engineer; and
- (f) details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
- (g) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and
- (h) the approximate number of personnel who will be involved in any proposed Activity; and

- (i) any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.
- (j) Where any of the detailed content is omitted, the default provisions of Part 3 of this Schedule 4 will apply.

## Part 2 – Additional contents of Activity Notice

(Clause 8.2(c)(iii))

An Activity Notice may also set out:

- (a) whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report; and
- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
- (d) any additional information which explains what sort of Survey outcome is being sought (if a Survey is required), including whether an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is intended to be made (if known at the relevant time) (see clause 8.2(e)); and
- (e) any other background material which will better help SWALSC to understand the potential impacts of what is proposed.

### Part 3 – Default provisions of Activity Notice

(Clauses 8.2(c)(ii) and 8.2(d))

For the purposes of clause 8.2(d), the following default provisions apply in respect of any item in part 1.2 of this Schedule 4 that is not specified or nominated in the Activity Notice.

#### Clause No. Default Provision

Item (a)	The Activity Program contains Ground Disturbing Activity.
Item (b)	A Survey is required.
Item (c)	Site Avoidance Model.
Item (d)	Only the areas of specific Activities described in the Activity Notice are required to be Surveyed.
Item (e)	Not applicable (Parties to discuss and agree proposed Survey fieldwork start date or end date).
Item (f)	There is no requirement for a Preliminary Advice or a draft of the Survey Report.



## Schedule 5 — Costs for conduct of a Survey

(Clauses 8.3(d)(iv), 9.5 and 11)

No.	Item	Rate	GST	Description
<b>Ethnographic Assessment</b>				
1	Aboriginal Heritage Service Provider	At cost [Usually \$900-\$1000 (Indexed to CPI)] + Administration Fee of 15% of total expenditure capped at \$5,000 (Indexed to CPI) + Disbursements At cost	+GST	per person per day or pro rata for part thereof
2	Principal Aboriginal Heritage Consultant	At cost [Usually \$900-\$1000 (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
3	Aboriginal Heritage Liaison Officer (if necessary and agreed)	\$500 (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Archaeological Assessment (if necessary and agreed)</b>				
4	Archaeologist (archaeological team external contractors)	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
5	Fieldwork and reporting	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
<b>Aboriginal Consultants</b>				
6	Aboriginal Consultants – up to 8 unless otherwise agreed	\$500 (max) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof

No.	Item	Rate	GST	Description
<b>Field Expenses</b>				
7	Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
8	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
9	Aboriginal Consultants accommodation/meals	At cost	+GST	
<b>Travel Expenses</b>				
10	Vehicle mileage (km)	\$ As per tax schedule for location	+GST	per km
11	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel	+GST	
12	Aboriginal Consultants travel expenses (if required)	Rate as per tax schedule for location	+GST	per km
13	Airfares	At cost	+GST	
14	Taxi travel (to and from airports or meetings)	At cost	+GST	
<b>Incidental Expenses</b>				
15	Film, maps, report production and expendables	At cost	+GST	

Initials: Aboriginal Heritage Service Provider: \_\_\_\_\_

Initials: Proponent/Authorised officer of the Proponent: \_\_\_\_\_

#### **CPI Indexation**

Where a rate listed in this annexure is indicated to be "*Indexed to CPI*" it shall be varied annually on 31 August of each year in accordance with the CPI Calculation.

## **Schedule 6 — Contents of Survey Report**

(Clause 12.4)

### **Part 1 – Guidelines for all Survey Reports**

#### **1.1 Copyright and confidentiality**

Insert a statement to the effect that the report may only be copied in accordance with this NSHA and subject to any other restrictions agreed to, from time to time, by the Proponent and SWALSC.

#### **1.2 Survey personnel**

- (a) Author's name in full and occupation and author's business or company name.
- (b) Full name and gender of each Aboriginal Consultant, and the group they represent.
- (c) Full names and gender of other personnel participating in the Survey and their role.
- (d) Explanation as to how Aboriginal Consultants were selected.

#### **1.3 Survey date(s)**

Insert the date(s) on which fieldwork was conducted.

#### **1.4 Spatial information**

- (a) The general location of the area within which the Survey was undertaken (e.g. title numbers 'x' to 'z', or the 'abc' pastoral lease, or the area shown on a map contained in the Survey Report).
- (b) Grid references of the Survey Area.
- (c) A map of the Survey Area.

#### **1.5 Other information**

- (a) Summary of results of searches of the Aboriginal Heritage Act Register at the DAA including the site number and name, if given, and the reference number.
- (b) A general description of the fieldwork undertaken.
- (c) Details of ethnographic and (if relevant) archaeological work carried out during the Survey.
- (d) Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.

- (e) In respect of any Aboriginal Objects identified:
  - (i) a description of such Aboriginal Objects;
  - (ii) the location of any Aboriginal Objects so identified; and
  - (iii) the date on which each Aboriginal Object was identified.
- (f) Any discussion and recommendations.

## Part 2 – Additional guidelines for Survey Reports where Site Avoidance Model is used

### 2.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information

- (a) Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
- (b) Grid references of the area where Activity should not be carried out, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (c) Dimensions of the area, e.g. approximately 100m east-west and 50m north-south.
- (d) Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (e) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified, and date site identified.

## Part 3 – Additional guidelines for Survey Reports where Site Identification Model is used

### 3.1 Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information

- (a) Site name and number, if given to existing sites, and DAA reference number, if known.
- (b) Site type, e.g. archaeological or ethnographic or both.
- (c) Grid references of the site, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (d) Dimensions of the site, e.g. approximately 10m east-west and 5m north-south.
- (e) Location, i.e. where the site is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (f) Description, e.g. rock pool, granite outcrop.
- (g) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified and date site identified.
- (h) Significance, if known.

### 3.2 Recommendations and comments

Recommendations regarding the Aboriginal Site, e.g. whether the site is:

a place of importance or significance where persons of Aboriginal descent have, or appear to have left any object used for or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or

- (a) a sacred/ ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
- (b) a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or
- (c) a place where Aboriginal objects are traditionally stored; and

recommendations for how the Aboriginal Site(s) should be protected.

## **Schedule 7 — DAA Heritage Information Submission Form**

(Clause 12.5 Provision of Aboriginal Heritage Information to DAA)

Complete and submit the form entitled 'Heritage Information Submission Form' that is available on the DAA website ([www.daa.wa.gov.au](http://www.daa.wa.gov.au)):

## **Schedule 8 — Noongar Standard Heritage Process Information**

(Clause 12.6 Provision of Survey Information to DAA)

SWALSC will report the following information to DAA:

**Details of the person filling in this form and the Agreement Group SWALSC is acting on behalf of**

1. Name:
2. Job Title:
3. Name of Agreement Group SWALSC is acting on behalf of:

### **About the Proponent**

4. Proponent Name:
5. Contact phone number:
6. Brief summary of the project or activity:
7. Does the Project also fall within one or more Related Agreement Areas: Y/N
8. Please list any affected Related Agreement Group:

### **Activity Notice**

9. Did the Activity Notice contain all requisite information (As per Schedule 4):  
Y/N
10. If not did SWALSC:
  - (c) Utilise the Default Provisions:
  - (d) Request a new notice:
11. When considering whether or not a survey was required did SWALSC seek advice from the DAA:

### **Survey**

12. Select the survey methodology used: Site ID/Site Avoidance

### **Composition of the Survey Team**

13. Name of the Aboriginal Heritage Service Provider:
14. Name of the Principal Aboriginal Heritage Consultant:
15. Number of paid Aboriginal Consultants (If more than eight, detail why):
16. Number of additional (unpaid) Aboriginal Consultants (detail why there was additional Consultants):
17. Was an Aboriginal Heritage Liaison Officer appointed: Y/N
18. Was an additional anthropologist/archaeologist or heritage specialist appointed:
19. Were there any proponent nominees on the survey team:

### **Survey Reporting**

20. If Preliminary Advice was requested was it received by SWALSC within the time period of 5 days after the last day of fieldwork:
21. Did SWALSC provide any additional comments about the Preliminary Advice:
22. If a draft Survey Report was requested was it received by SWALSC within 15 Business Days after the last day of Fieldwork:
23. Did SWALSC provide any additional comments:

### **Cost and Payments**

24. What was the total cost paid to the Aboriginal Heritage Service Provider (if SWALSC was acting as the Aboriginal Heritage Service Provider or was contracting them):
25. What was the total cost of the Aboriginal Consultants:

### **Other Circumstances**

26. Do you know if the proponent lodged or intended to lodge a section 16 or section 18 application under the Aboriginal Heritage Act 1972:
27. If yes, did SWALSC receive a Notice of this intention at least 30 days before the approval was lodged with the DAA:
28. During the process did either party access the dispute resolution process: Y/N
29. Did SWALSC access the provisions under 'Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)':

### **Additional Comments**

30. Please provide any additional details about the process worth noting. All comments welcomed.



## Signing Pages

EXECUTED as a deed

Executed by **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** in accordance with its constitution in the presence of:



Signature of authorised representative

Signature of authorised representative

WAYNE NANNUP

STEFAN LE ROUX

Full name of authorised representative

Full name of authorised representative

Date

10/2/2017

Date

10/02/17

Executed by Doral Mineral Sands Pty Ltd )  
ACN: 096 342 451 )  
in accordance with section 127(1) of )  
the *Corporations Act 2001* )  
(Commonwealth): )

Handwritten signature of Hiroaki Ichisato in Japanese characters: 市里 浩章.

Director's signature

Hiroaki Ichisato

(print name)

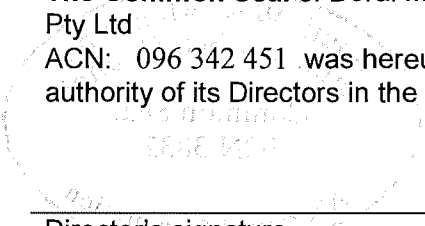
Handwritten signature of Neil Raine.

Director/Secretary's signature

**Neil Raine**

(print name)  
**Chief Financial Officer  
and Company Secretary**

The Common Seal of Doral Mineral Sands )  
Pty Ltd )  
ACN: 096 342 451 was hereunto affixed by )  
authority of its Directors in the presence of: )



\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Director/Secretary's signature

\_\_\_\_\_  
(print name)

Executed by Doral Mineral Sands Pty Ltd in )  
the presence of:

\_\_\_\_\_  
Witness' signature

EMI OSTUNI

\_\_\_\_\_  
(print name)

*[Faint handwritten text, possibly a date or reference number]*

South West Aboriginal Land and Sea Council Aboriginal Corporation

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PO Box 585 | Cannington | WA | 6987

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F 08 9358 7499

W noongar.org.au

ICN 3832

ABN 42 485 265 673



Our Ref: LEG.1842

4 June 2021

Doral Mineral Sands Pty Ltd  
c/- McMahon Mining Title Services Pty Ltd  
PO Box 592  
MAYLANDS WA 6931

Dear Sir or Madam

**Re: Noongar Alternative Heritage Agreement – M 70/1400 & L 70/214 – Doral Mineral Sands Pty Ltd / South West Boojarah #2 Agreement Group**

Please find enclosed for your records the original Noongar Alternative Heritage Agreement (**the Agreement**) which has been duly executed by all parties.

**We specifically draw your attention to the provisions of Clause 8.1 and 8.2 with regards to notifying the South West Aboriginal Land & Sea Council on any intended works on the tenement.**

Should you have any queries in this regard, please do not hesitate to contact this office.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Victoria Johnson', written in a cursive style.

Victoria Johnson  
Senior Heritage Projects Officer  
**South West Aboriginal Land & Sea Council**

# Noongar Alternative Heritage Agreement

**South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832 for and on behalf of the South West Boojarah #2 Agreement Group.**

**Name of Proponent/Company:** Doral Mineral Sands Pty Ltd

**NAHA Reference Number:** LEG.1842

**Date:** 13 April 2021

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## Date

THIS AGREEMENT is made on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

## Parties

**South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832 (SWALSC)** for and on behalf of the **South West Boojarah #2 Agreement Group.**

**Proponent/Company:** Doral Mineral Sands Pty Ltd

**ABN or ACN:** 096 342 451

## Recitals

- A. SWALSC represents the South West Boojarah #2 Agreement Group in relation to Aboriginal Heritage matters in the Agreement Area.
- B. The Proponent wishes to conduct Activities in the Agreement Area.
- C. The Parties have entered into this Agreement to ensure that the Activities are carried out in a manner that protects Aboriginal Sites and Aboriginal Objects to the greatest extent possible.
- D. Under the *Aboriginal Heritage Act 1972 (WA)* the Minister for Aboriginal Affairs and his delegated officers have the responsibility for recording, preserving and protecting places that are of significance in Western Australia. Officers in DPLH may provide the Parties with information about the evaluation and recording of sites upon request to assist with the processes set out in this NAHA.



The Parties agree as follows:

## Agreed Terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this NAHA, unless the contrary intention appears:

**Aboriginal Consultants** means:

- (a) those members of the Agreement Group or Noongar persons who have been identified by SWALSC as persons who can speak about the Survey Area; and, where applicable
- (b) persons identified by DPLH in consultation with SWALSC who have previously been recorded on the Aboriginal Heritage Act Register in relation to particular sites in the Survey Area.

**Aboriginal Cultural Business** means a funeral, event or other ceremony that, in accordance with traditional laws and customs, the members of the Agreement Group are required to attend or that prevents the members of the Agreement Group from attending to day to day business.

**Aboriginal Heritage** means the cultural heritage value of an Aboriginal Site or of an Aboriginal Object.

**Aboriginal Heritage Act** means the *Aboriginal Heritage Act 1972 (WA)*.

**Aboriginal Heritage Act Minister** means the Minister in the Government of the State from time to time responsible for the administration of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Register** means the register of places and objects established and maintained under section 38 of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Registrar** means the 'Registrar of Aboriginal Sites' appointed under section 37(1) of the Aboriginal Heritage Act.

**Aboriginal Heritage Act Section 16 Application** means an application to the Aboriginal Heritage Act Registrar for authorisation under section 16 of the Aboriginal Heritage Act to enter upon an Aboriginal Site and to excavate the site or to examine or remove anything on or under the site.

**Aboriginal Heritage Act Section 18 Application** means an application to the Aboriginal Heritage Act Minister for consent under section 18 of the Aboriginal Heritage Act to use land.

**Aboriginal Heritage Agreement** means an agreement with SWALSC or one or more members of the Agreement Group concerning Aboriginal Heritage Surveys in the Agreement Area. To avoid doubt, this NAHA is a form of Aboriginal Heritage Agreement.

**Aboriginal Heritage Liaison Officer** means the person appointed under clause 10.1(a)(ii).

**Aboriginal Heritage Service Provider** means the person or company engaged by SWALSC, or by the Proponent, to plan and carry out a Survey or Surveys in the Agreement Area. The Aboriginal Heritage Service Provider may be the same as the Principal Aboriginal Heritage Consultant, or may be a separate entity or person. The Aboriginal Heritage Service Provider may also be SWALSC.

**Aboriginal Heritage Survey** means a survey conducted to assess the potential impacts of Activities on Aboriginal Heritage, whether or not conducted under this NAHA and may include anthropological, ethnographic or archaeological investigations as appropriate. To avoid doubt, an Aboriginal Heritage Survey includes a Survey.

**Aboriginal Object** means an object to which the Aboriginal Heritage Act applies by operation of section 6 of the Aboriginal Heritage Act.

**Aboriginal Site** means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the Aboriginal Heritage Act, including sites that are not on the Aboriginal Heritage Act Register.

**ACMC** means the Aboriginal Cultural Material Committee established under section 28 of the Aboriginal Heritage Act.

**Activity** means physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters, or under or over that surface).

**Activity Notice** means a notice issued by the Proponent to SWALSC under clause 8.2.

**Activity Notice Response** means notice given by SWALSC to the Proponent under clause 8.3(a).

**Activity Program** means all Activities described in an Activity Notice.

**Agreement Area** means the area to which this NAHA applies, being the land and waters described in Schedule 3.

**Agreement Group** means the Native Title Agreement Group as defined in the ILUA.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Confidential Information** has the meaning given in clause 19.1.

**CPI** means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then CPI shall mean such other index as represents the rise in the cost of living in Perth, Western Australia, as the State reasonably determines after consulting with SWALSC.

**CPI Calculation** means:

$$\frac{CPI_n}{A \times CPI_{base}}$$

where:

*A* = the initial base payment under this NAHA as set out in Schedule 5;

*CPI<sub>n</sub>* = the latest June quarterly CPI number as published each year by the Australian Bureau of Statistics;

*CPI<sub>base</sub>* = the June 2014 quarterly CPI number as published by the Australian Bureau of Statistics in the second half of the 2014 calendar year.

**DPLH** has the meaning given to Department in section 4 of the Aboriginal Heritage Act and as at the Effective Date is the State's Department of Planning, Lands and Heritage.

**DPLH Guidelines** means the Guidelines with respect to preparing Aboriginal Heritage Survey reports and applications to the ACMC under section 18 of the Aboriginal Heritage Act published on the DPLH website as modified from time to time.

**Due Diligence Guidelines** means the Aboriginal heritage due diligence guidelines issued by the Department of the Premier and Cabinet and DPLH dated 30 April 2013.

**Effective Date** means the date on which this NAHA comes into force and effect as an agreement between the Parties, as more particularly described in clause 4.1.

**Estimated Survey Costs** has the meaning given in clause 9.5(b).

**Event of Default** means any of the events described in clause 17.1(b).

**Force Majeure** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by a government authority or official by law.

**Government Proponent** includes a department, agency or instrumentality of the State which is proposing to conduct Activities in the Agreement Area.

**GPS** means a global positioning system device.

**Ground Disturbing Activity** means any Activity that is not Low Ground Disturbance Activity or Minimal Impact Activity.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

**ILUA** means the Indigenous Land Use Agreement described in items 1 to 4 of Schedule 2.

**Insolvency Event** means where a Party:

- (a) commits an act of insolvency under and for the purposes of the Corporations Act 2001 (Cth) or the CATSI Act; or
- (b) is placed under external administration under and for the purposes of Chapter 5 of the Corporations Act 2001 (Cth); or
- (c) is placed under external administration under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is unable to pay all its debts as and when they become due and payable.

**Last Fieldwork Day** has the meaning given in clause 12.1.

**Low Ground Disturbance Activity** means any Activity that involves only minor ground disturbance. Low Ground Disturbance Activity includes the following:

- (a) sampling using hand methods (including hand augering); and
- (b) geophysical, biological, environmental or conservation surveys, including installing monitoring plots and marker posts; and
- (c) establishing temporary camps for exploration, environment or conservation purposes, where the establishment of the temporary camp does not require the removal of trees or shrubs and does not require any earthworks; and
- (d) reconnaissance and patrol in light vehicles; and
- (e) drilling using hand held rig or rig mounted on 4 wheel vehicle and only on cleared tracks; and
- (f) drilling using existing access and without the construction of new roads and tracks (and where use of the existing roads or tracks involves no disturbance to plant roots); and
- (g) digging pitfall traps and temporary trenches for small animals; baiting and installation of temporary fences and nest boxes; and
- (h) removing soil and flora samples and cores up to 20 kilograms, and up to a depth of two metres from the natural surface; and
- (i) collecting and removing loose rocks, firewood, flora or fauna; and
- (j) fossicking for rocks and gemstones; and
- (k) conducting tests for water, site contamination, or other scientific or conservation purposes; and

- (l) maintaining and refurbishing existing facilities, including recreation and camping facilities, water points, signs and other structures; and
- (m) maintaining but not widening existing roads, drains, culverts, bridges, trails, tracks, fence lines and firebreaks; and
- (n) erecting signage and barriers using hand and mechanical augers; and
- (o) revegetating of degraded areas, including fencing areas of vegetation; and
- (p) rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing, seeding and planting; and
- (q) carrying out species recovery programs; and
- (r) erosion control activities around existing roads, infrastructure or facilities; and
- (s) weed control using hand, mechanical and chemical methods of control excluding excavation or furrowing of soil; and
- (t) conducting tourism operations that:
  - (i) are based in established facilities; or
  - (ii) require the establishment of new facilities that require no, or only minor, ground disturbance; and
- (u) any other use of hand-held tools, not referred to in the preceding paragraphs; and
- (v) events such as car rallies and marathons using existing roads, stock routes or pastoral lease tracks; and
- (w) walking, driving or riding tours using existing roads, stock routes, pastoral lease tracks or historical trails (official or unofficial); and
- (x) exercise of grazing rights permitted under Division 3, Subdivision G of the *Native Title Act 1993*; and
- (y) the laying of water pipelines across the ground where no excavation is required; and
- (z) any other Activities agreed in writing by the Parties to be Low Ground Disturbance Activities.

**Minimal Impact Activity** means any Activity that involves minimal or no ground disturbance. Minimal Impact Activity includes the following:

- (a) Walking, photography, filming; and
- (b) Aerial surveying and magnetic surveys; and
- (c) Use of existing tracks and water courses; and
- (d) Environmental monitoring; and
- (e) Water and soils sampling; and
- (f) Fossicking using hand held instruments; and
- (g) Spatial measurement; and
- (h) Scientific research, using hand held tools; and
- (i) Cultivation and grazing in previously cultivated/grazed areas; and
- (j) Maintenance of existing paths, walls, fences, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas; and
- (k) Feral animal eradication, weed, vermin and pest control, vegetation control and fire prevention; but excluding construction of fences, infrastructure and clearing of native vegetation; and
- (l) Light vehicular access and camping using existing tracks and involving no clearance of vegetation.

**Noongar Boodja Trust Deed** means the Trust Deed as defined in the ILUA.

**Noongar Boodja Trustee** means the Trustee appointed under the Noongar Boodja Trust Deed from time to time.

**NAHA** means this Heritage Agreement.

**Party** means a party to this NAHA and **Parties** mean any 2 or more of them as the case requires.

**Preliminary Advice** means advice, in writing, complying with clause 12.3(a).

**Principal Aboriginal Heritage Consultant** means the anthropologist, archaeologist or other appropriately qualified professional nominated and agreed under clauses 8.3(d) or 9.6.

**Program of Proposed Works** means the program of proposed works for a specified period prepared by a Proponent that will be carried out, wholly or partially, in the Agreement Area.

**Regional Corporation** has the meaning given in the Noongar Boodja Trust Deed.

**Related Agreement Areas** has the same meaning as given in the ILUA.

**Related Agreement Group** means the Related Native Title Agreement Group as defined in the ILUA

**Sensitive Heritage Information** means culturally restricted information about Aboriginal Sites or any other items of Aboriginal Heritage, provided by the Aboriginal Consultants during the course of or in relation to a Survey, including where such information is contained in any Survey Report.

**Site Avoidance Model** means a Survey methodology involving the identification of areas where Activity should not be undertaken because of the presence of an Aboriginal Site within that area.

**Site Avoidance Survey** means a Survey carried out using the Site Avoidance Model.

**Site Identification Model** means a Survey methodology involving the identification of Aboriginal Sites.

**Site Identification Survey** means a Survey carried out using the Site Identification Model.

**Survey** means an Aboriginal Heritage Survey conducted under this NAHA.

**Survey Agreement Date** has the meaning given in clauses 9.1(a) or 9.1(b).

**Survey Agreement Period** has the meaning given in clause 9.1(d).

**Survey Area** means the area of land or waters the subject of a Survey, or proposed to be the subject of a Survey.

**Survey Methodology** means either a Site Avoidance Model or a Site Identification Model.

**Survey Report** means a report of the results of a Survey, containing the information set out in clause 12.4 and Schedule 6.

**Survey Team** has the meaning given in clause 10.1.

## 1.2 Interpretation — general

In this NAHA, unless the contrary intention appears:

- (a) the headings and subheadings in this NAHA are inserted for guidance only and do not govern the meaning or construction of any provision of this NAHA;
- (b) words expressed in the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this NAHA and a reference to this NAHA includes any recital, schedule or annexure;
- (d) a reference to a document, agreement (including this NAHA) or instrument is to that document, agreement or instrument as varied, amended, supplemented, or replaced;
- (e) a 'person' includes a company, partnership, firm, joint venture, association, authority, corporation or other body corporate, trust, public body or Government Proponent;
- (f) a reference to a 'person' (including a Party to this NAHA) includes a reference to the person's executors, administrators, successors and permitted assigns, transferees or substitutes (including persons taking by permitted novation);
- (g) a reference to a person, statutory authority or government body (corporate or unincorporate) established under any statute, ordinance, code, legislation or other law includes a reference to any person (corporate or unincorporate) established or continuing to perform the same or substantially similar function;
- (h) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not it is in writing;
- (i) 'including' means 'including but not limited to';
- (j) a reference to a statute, ordinance, code, legislation or other law includes regulations and other instruments under it and amendments, re-enactments, consolidations or replacements of any of them;
- (k) a reference to dollars or \$ is a reference to the currency of Australia;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to a month is to be interpreted as the period of time commencing at the start of any day in one of the calendar months and ending immediately before the start of the corresponding day of the next



calendar month or if there is no such day, at the end of the next calendar month;

- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (p) if the day on or by which a person must do something under this NAHA is not a Business Day, the person must do it on or by the next Business Day; and
- (q) if any conflict arises between the terms and conditions contained in the clauses of this NAHA and any recitals, schedules or annexures to this NAHA, the terms and conditions of the clauses of this NAHA shall prevail.

### **1.3 Interpretation — liabilities and benefits**

In this NAHA, unless the contrary intention appears:

- (a) any agreement, representation, warranty or indemnity set out in this NAHA which is in favour of SWALSC and the members of the Agreement Group is for the benefit of them jointly and severally; and
- (b) any agreement, representation, warranty or indemnity in favour of the Proponent, where the Proponent comprises more than one entity, is for the benefit of them jointly and severally; and
- (c) any agreement, representation, warranty or indemnity which is given by the Proponent, where the Proponent comprises more than one entity, binds them jointly and severally.

## **2. No Application of this NAHA to Emergency Activities**

This Agreement does not apply to Activities which are urgently required to secure life, health or property, or to prevent or address an imminent hazard to life, health or property of any person.

## **3. Execution and effect of this NAHA**

- (a) Execution of this NAHA may take place by SWALSC and the Proponent executing any number of counterparts of this NAHA, with all counterparts together constituting the one instrument.
- (b) If this NAHA is to be executed in counterparts, the Parties must execute sufficient numbers for each of them to retain one instrument (constituted by the counterparts).
- (c) Notwithstanding the prior provisions of this clause 3, the Parties acknowledge that, in order to avoid possible confusion, it is their intention that all Parties shall execute one instrument (in sufficient copies for each Party to retain an executed copy).

## **4. Term and termination**

### **4.1 Commencement**

This NAHA comes into force and effect as between the Proponent and SWALSC on the date that the last of those Parties executes this NAHA.

### **4.2 Termination**

This NAHA shall terminate on the occurrence of whichever of the following events is first to occur:

- (a) all Parties agree in writing to end this NAHA;
- (b) as referred to in clause 17.2(d), a court order is made to wind up either Party as the result of an Event of Default.

### **4.3 Termination or de-registration of ILUA does not affect NAHA**

Notwithstanding the termination or de-registration of the ILUA, this NAHA shall continue to apply to the Parties with full force and effect, to the extent that this NAHA has commenced under clause 4.1.

### **4.4 Survival of provisions and entitlements upon termination**

This NAHA ceases to have any force or effect on and from the date of termination, save that:

- (a) any entitlements, obligations or causes of action which accrued under this NAHA prior to termination survive termination;
- (b) clauses 1, 4.4, 6, 12.7, 13, 18, 19, 21, 22, 25.2, 25.3, 25.4 and 25.6 survive termination.

## **5. Area to which this NAHA applies**

This NAHA applies to the Agreement Area.

## **6. Authority, representations and warranties**

### **6.1 SWALSC representations and warranties**

SWALSC represents and warrants, for the benefit of the Proponent, that:

- (a) it represents the members of the Agreement Group in respect of Aboriginal Heritage matters within the Agreement Area; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable it

lawfully to enter into, exercise its rights and perform its obligations under, this NAHA have been fulfilled or done; and

- (c) it knows of no impediment to it performing its obligations under this NAHA.

## **6.2 Proponent representations and warranties**

The Proponent represents and warrants, for the benefit of SWALSC and the members of the Agreement Group, that:

- (a) it is authorised to enter into this NAHA; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary authorisations) in order to enable the Proponent lawfully to enter into, exercise its rights and perform its obligations under, this NAHA have been fulfilled or done; and
- (c) it knows of no impediment to the Proponent performing its obligations under this NAHA.

## **6.3 Reliance on warranties**

Each Party acknowledges that the other Parties have relied on the warranties provided in clauses 6.1 or 6.2 (as the case may be) to enter into this NAHA.

## **6.4 Acknowledgement regarding legal advice**

Each Party acknowledges that it has:

- (a) had the benefit of legal advice in respect of this NAHA and the effect of it on the rights, obligations and liabilities of each of the Parties to it; and
- (b) been provided with an opportunity to consider that advice and all of the provisions of this NAHA before entering into it.

# **7. Cooperation regarding Aboriginal Sites and proposed Activities**

## **7.1 Early exchange of information — Program of Proposed Works**

The Parties acknowledge the importance of an early exchange of information between the Proponent and SWALSC about proposed Activities in the Agreement Area to enable informed decisions to be made. In accordance with this objective:

- (a) wherever practical, the Proponent shall provide SWALSC with a Program of Proposed Works for which Activity Notices are likely to be provided in the foreseeable future; and
- (b) where, as a result of receiving the Program of Proposed Works SWALSC becomes aware of any particular cultural heritage concern arising from a

proposal to conduct an Activity (including concerns as to the extent of the proposed Activity and the number of sites that may be affected), SWALSC will use its best endeavours to raise those concerns with the Proponent as soon as practicable after receipt of the Program of Proposed Works.

## **7.2 Due Diligence Guidelines**

- (a) The Parties acknowledge the application of the Due Diligence Guidelines as part of the assessment process for considering the impact of any proposed Activity on Aboriginal Heritage; and
- (b) Following the issuing of the Activity Notice if there is any doubt as to the impact of any proposed Activity on Aboriginal Heritage after considering the Due Diligence Guidelines, the Parties may seek the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH, with respect to the provision of further information if appropriate.

## **7.3 No breach of Heritage Act**

- (a) Nothing in this NAHA purports to authorise any act or omission that would be in breach of the Aboriginal Heritage Act.
- (b) If the Proponent carries out any Activities through contractors, then the Proponent shall ensure that such contractors are made aware of the obligations of the Aboriginal Heritage Act and of this NAHA.

# **8. The Activity Notice**

## **8.1 Circumstances where no Activity Notice needs to be given**

- (a) If the Proponent has reasonable grounds to form the opinion that no Survey is required (taking into account the matters referred to in clause 8.1(b) and the Due Diligence Guidelines), the Proponent may elect not to issue an Activity Notice in respect of a proposed Activity Program.
- (b) The Proponent does not have to issue an Activity Notice where the Activities proposed to be conducted consist entirely of:
  - (i) Minimal Impact Activities; or
  - (ii) Low Ground Disturbance Activities of a class that SWALSC has notified in writing to the Proponent need not be the subject of an Activity Notice.
- (c) If the Proponent has any doubt, including because of consideration of the Due Diligence Guidelines, as to whether clauses 8.1(a) and 8.1(b) operate to exempt the Proponent from issuing an Activity Notice, then the Proponent shall issue the Activity Notice in any event.

## 8.2 Giving the Activity Notice

- (a) Except where clause 8.1(a) or (b) applies, if the Proponent intends to undertake an Activity in the Agreement Area, it shall issue a notice in writing to SWALSC in accordance with this clause 8.2 (Activity Notice).
- (b) The main purposes of an Activity Notice are:
  - (i) to provide adequate information to assist SWALSC to make an assessment as to whether a Survey is required and if so, whether a Site Identification Survey or a Site Avoidance Survey; and
  - (ii) if a Survey is required, to provide information relevant to the conduct of that Survey.
- (c) The Activity Notice shall contain:
  - (i) the basic information specified in part 1.1 of Schedule 4; and
  - (ii) the key statements and nominations specified in part 1.2 and the detailed contents specified in part 1.3 of Schedule 4; andmay also contain:
  - (iii) the additional contents specified in part 2 of Schedule 4.
- (d) If the Proponent omits to specify or nominate, in an Activity Notice, any of the particular items referred to in parts 1.2 and 1.3 of Schedule 4, then the default provisions provided in part 3 of Schedule 4 shall apply.
- (e) The Parties acknowledge that the Proponent may require compliance with the DPLH Guidelines where the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal Heritage Act Section 16 Application.
- (f) SWALSC acknowledges that the inclusion in an Activity Notice of the matters described in parts 1.2(c) to (f) of Schedule 4 does not prejudice any statement by the Proponent that it considers that no Survey is required.
- (g) To avoid doubt, the Proponent may modify any aspect of the Activity Notice up to the time of receiving the Activity Notice Response. Proposed modifications to the Activity Notice after receipt of the Activity Notice Response shall be discussed between the Parties but, acting reasonably, SWALSC shall have the right to request a fresh Activity Notice instead of dealing with the proposed modified Activity Notice. If a fresh Activity Notice is issued the time limits in clause 16.1(a) shall apply as if that were a new Activity Notice. The Proponent may also request any of the items referred to in part 1.2(f) of Schedule 4 at any later time, in accordance with clause 12.2.

### 8.3 Considering the Activity Notice and deciding whether a Survey is required

- (a) SWALSC will consider the Activity Notice and shall, within 15 Business Days after receipt of such Activity Notice or modified Activity Notice, notify the Proponent in writing as to whether SWALSC considers that a Survey is required (**Activity Notice Response**). In coming to its decision SWALSC shall take into account:
- (i) the extent to which the Activity Program described in the Activity Notice consists of Low Ground Disturbance Activities; and
  - (ii) the extent to which the land and waters the subject of the Activity Notice have been the subject of a previous Aboriginal Heritage Survey. In considering this factor, SWALSC will consider whether it is clear from the reported results of the previous Aboriginal Heritage Survey that the Activities disclosed in the Activity Notice can be carried out without damaging Aboriginal Heritage; and
  - (iii) any relevant previous decisions by SWALSC under clause 8.3(b); and
  - (iv) any other matter SWALSC reasonably considers relevant, including if appropriate a visit to the Agreement Area with representatives from the Proponent and from DPLH.
- (b) The Proponent shall be free to carry out any Activity in the Agreement Area without conducting a Survey where:
- (i) SWALSC so agrees in writing; or
  - (ii) SWALSC waives its right under this NAHA to require a Survey of the proposed Activity;
- whether in an Activity Notice Response or otherwise.
- (c) Either Party may request additional information from the other at any time to enable discussion and proper consideration of the Activity Notice.
- (d) If in its Activity Notice Response SWALSC indicates that it considers that a Survey is required, then the Activity Notice Response shall set out the following additional information:
- (i) if different to the opinion given by the Proponent in the Activity Notice in accordance with part 1.2(a) of Schedule 4 a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in SWALSC's opinion; and
  - (ii) if different to the nomination by the Proponent in the Activity Notice in accordance with part 1.2(c) Schedule 4, a nomination of SWALSC's proposed Survey Methodology; and

- (iii) if different to the date or dates nominated by the Proponent in the Activity Notice in accordance with part 1.2(e) of Schedule 4, a nomination of a proposed Survey start date or finish date taking into account the availability of the Aboriginal Heritage Service Provider, if contracted by SWALSC; and
- (iv) if practicable, and subject to clause 9.5(a), an estimate of costs to conduct the Survey; and
- (v) an election, or not, by SWALSC as to whether it will:
  - (A) contract the Aboriginal Heritage Service Provider; or
  - (B) perform the functions of the Aboriginal Heritage Service Provider itself and, if so, whether it will need to contract a Principal Aboriginal Heritage Consultant; and
- (vi) if electing to contract the Aboriginal Heritage Service Provider, a nomination of SWALSC's preferred proposed Aboriginal Heritage Service Providers and (if different to the Aboriginal Heritage Service Provider,) Principal Aboriginal Heritage Consultants; and
- (vii) if SWALSC does not elect either to be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Survey Provider under clause 8.3(d)(v), the names and contact details of the proposed Aboriginal Consultants for the Survey. If these details are not provided to the Proponent either in the Activity Notice Response or within 10 Business Days after the Survey Agreement Date, the Proponent may contact DPLH for details of persons identified by DPLH who have previously been recorded on the Aboriginal Heritage Register in relation to particular sites in the Survey Area.

#### **8.4 Disagreements following Activity Notice Response**

If, following receipt by the Proponent of the Activity Notice Response, the Parties are in disagreement on any matter concerning the conduct of a proposed Survey, the Parties shall then endeavour to agree on all outstanding matters by following the provisions of clause 9. To avoid doubt, until the Parties have consulted under clause 9 during the period of 20 Business Days referred to in clause 9.1(d), no Party is entitled to invoke the dispute resolution provisions of clause 18 in respect of any matter the subject of this clause 8.

### **9. Survey agreement and planning**

#### **9.1 Operation of this clause 9 – Survey Agreement Date**

- (a) Subject to clause 9.1(b), the date on which agreement is reached on all matters referred to in clauses 9.2 to 9.7 (inclusive) is the **Survey Agreement Date**.

- (b) If after receipt by the Proponent of the Activity Notice Response under clause 8.3(a) the Parties are in agreement about all matters regarding a proposed Survey, then the date of receipt of the Activity Notice Response shall be deemed to be the Survey Agreement Date referred to in clause 9.1(a).
- (c) The Parties' discussions under this clause 9 shall be conducted reasonably and in good faith.
- (d) The Parties shall ensure that the Survey Agreement Date occurs within 20 Business Days after the date of receipt by the Proponent of the Activity Notice Response (**Survey Agreement Period**).
- (e) If any of the matters referred to in clauses 9.2 to 9.7 (inclusive) cannot be agreed during the Survey Agreement Period, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day after the expiry of the 20 Business Days comprising the Survey Agreement Period referred to in 9.1(d).

## **9.2 Whether a Survey is required**

- (a) The Parties' discussions regarding whether a Survey is required will be guided by the matters in clauses 8.3(a), and 9.2(b).
- (b) The following provisions shall apply to the Parties' discussions about whether a Survey is required.
  - (i) Where no previous Aboriginal Heritage Survey (whether under this NAHA or otherwise) has been undertaken in relation to the area of land and waters the subject of the Activity Notice, there is a non-binding presumption that a Survey is required unless otherwise agreed or waived in accordance with clause 8.3(b).
  - (ii) Where this NAHA does not deal with the particular circumstance as to whether a Survey is required, there is a non-binding presumption that a Survey is required.
  - (iii) Where a previous Aboriginal Heritage Survey (whether conducted under this NAHA or otherwise) has, or if not clear, reasonably appears to have, covered the area the subject of the Activity Notice, there is no presumption either way as to whether a Survey is required. Subject to confidentiality provisions, the Proponent must (if it is in their possession or control) provide by way of notice a copy of the written report of the previous Aboriginal Heritage Survey to SWALSC (if such copy has not already been provided with the Activity Notice).
  - (iv) Subject to the presumptions in clauses 9.2(b)(i) and 9.2(b)(ii), and the matters described in clause 9.2(b)(iii), in determining whether a Survey is required, the Parties will have regard to the following matters:



- (A) the nature of the Activities outlined in the Activity Notice; and
- (B) whether there has been any previous Aboriginal Heritage Survey and the age, methodology, participants, standard and results of that survey; and
- (C) the extent to which the land has been affected by previous ground disturbing activities; and
- (D) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the land the subject of the Activity Notice; and
- (E) any relevant matters relating to Noongar practices, laws and customs; and
- (F) any other relevant matters raised by any of the Parties.

### **9.3 Agreements regarding Low Ground Disturbance Activity**

- (a) The Parties' discussions to confirm the extent of Low Ground Disturbance Activity, and whether a Survey is required in respect of such Activity, will be guided by the definition of Low Ground Disturbance Activity in this NAHA.
- (b) If SWALSC considers that a Survey in respect of any Low Ground Disturbance Activity is required, then SWALSC and the Proponent will each use their reasonable endeavours to address the concerns of SWALSC, by modifying the proposed Low Ground Disturbance Activity to limit the impact it may have on Aboriginal Heritage to the extent necessary to remove the need to conduct a Survey.

### **9.4 Selection of Survey Methodology**

The discussions between SWALSC and the Proponent about Survey Methodology shall be conducted with a view to reaching agreement on a Survey Methodology that is fit for purpose, having regard to SWALSC's concerns for the Survey Area and the Activities proposed by the Proponent.

### **9.5 Estimate of costs of Survey when SWALSC is contracting Aboriginal Heritage Service Provider**

Where SWALSC has elected to be the Aboriginal Heritage Service Provider or to contract an Aboriginal Heritage Service Provider under 8.3(d)(v), the following provisions apply:

- (a) the Parties acknowledge that it may not always be possible for SWALSC or SWALSC's nominated Aboriginal Heritage Service Provider to provide an accurate cost estimate at the time of providing an Activity Notice Response, and that a cost estimate in many cases may need to be provided, or revised, following resolution of all other matters under this clause 9.

- (b) if an estimate of Survey costs has not been provided earlier, then SWALSC must ensure that by the end of the Survey Agreement Period, the Aboriginal Heritage Service Provider submits a written and itemised estimate of Survey costs to the Proponent for approval by the Proponent (the **Estimated Survey Costs**).

#### **9.6 Selection of Aboriginal Heritage Service Provider and Principal Aboriginal Heritage Consultant**

- (a) If SWALSC is contracting an Aboriginal Heritage Service Provider, and SWALSC's Activity Notice Response does not identify SWALSC's nominated Aboriginal Heritage Service Provider and (if different to the Aboriginal Heritage Service Provider) the Principal Aboriginal Heritage Consultant, then SWALSC will advise the Proponent of these nominations during the Survey Agreement Period.
- (b) The Parties acknowledge that, if SWALSC is contracting an Aboriginal Heritage Service Provider, the Proponent will not usually have any role in nominating an Aboriginal Heritage Service Provider or a Principal Aboriginal Heritage Consultant (if different), subject however to the rights of the Proponent under clause 16.1(e) in the event of delays.
- (c) If the Proponent or SWALSC has reasonable concerns about the expense, competence or impartiality of the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Proponent (as the case may be), it may request the other Party to consider another anthropologist, archaeologist or appropriately qualified professional to act as Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).
- (d) If the Parties cannot reach agreement on the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be) to be contracted by SWALSC or the Proponent within the Survey Agreement Period, then in addition to and without limiting the Proponent's general rights under clause 16.1(e), SWALSC or the Proponent (whichever is the non-contracting party) may nominate an alternative proposed Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant and the other Party shall promptly respond to any such nomination and shall ensure that it does not unreasonably withhold its approval to appointing such nominee as the Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant (as the case may be).

#### **9.7 Estimate of time for Survey commencement or completion**

If following the Activity Notice Response and where SWALSC is contracting the Aboriginal Heritage Service Provider the Parties are not in agreement about the date

of commencement of fieldwork for the Survey or the date of completion of fieldwork for the Survey (as the case may be), then during the Survey Agreement Period, the Parties shall agree on such date or dates.

## **10. Survey Team and commencement of Survey**

### **10.1 Survey team**

- (a) As soon as possible after the Survey Agreement Date, and where either SWALSC or the Proponent is contracting the Aboriginal Heritage Service Provider, the Aboriginal Heritage Service Provider, in conjunction with the Principal Aboriginal Heritage Consultant if appointed, after receiving names and contact details of the Aboriginal Consultants from SWALSC in accordance with 8.3(d)(vii), will organise a Survey Team (Survey Team), which shall consist of:
  - (i) up to 8 Aboriginal Consultants, with appropriate experience and authority, as are necessary, in the opinion of the Aboriginal Heritage Service Provider in consultation with SWALSC, to examine the Survey Area and assist in the Survey; and
  - (ii) if considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, an Aboriginal Heritage Liaison Officer, who will be responsible for Survey logistics and on-ground operations; and
  - (iii) where considered necessary by the Aboriginal Heritage Consultants, SWALSC or the Aboriginal Heritage Service Provider, and agreed to by the Parties, another anthropologist of a specific gender; and
  - (iv) where the Survey being conducted is a Site Identification Survey, or where considered necessary by the Aboriginal Heritage Service Provider and agreed to by the Parties, including during the course of the Survey, an archaeologist.
- (b) Where considered necessary by the Aboriginal Heritage Service Provider and agreed to by SWALSC and the Proponent, more than one archaeologist may be appointed to the Survey Team.
- (c) The number of paid Aboriginal Consultants to be appointed to the Survey Team will not be more than the number specified in clause 10.1(a)(i) unless particular circumstances can be demonstrated to exist including, for example:
  - (i) a large number of registered Aboriginal Sites are known to exist within a Survey Area and the number of Aboriginal people who have authority to speak for those Aboriginal Sites and should be consulted about them is greater than 8; and/or
  - (ii) the Survey Area crosses the boundary of the Agreement Area and one or more Related Agreement Areas.

In these circumstances the Proponent and SWALSC must agree on the number of additional Aboriginal Consultants for the Survey Team.

- (d) Additional Aboriginal Consultants may accompany the Survey Team but the Proponent will not be liable for additional costs.
- (e) The Proponent may send one or two nominees with appropriate authority on the Survey to assist the Survey Team conducting the Survey with provision of information and requests where required.

## **10.2 Commencement and conduct of Survey**

- (a) If SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC will use its, and must ensure that the Aboriginal Heritage Service Provider and the Principal Aboriginal Heritage Consultant (if different to the Aboriginal Heritage Service Provider) each uses its best endeavours to commence the Survey within the time agreed by the Parties, or in the absence of agreement within 30 Business Days after the Survey Agreement Date unless clauses 11(c) and 18.9 apply, in which case the time for commencement of the Survey will be extended in accordance with the timeframes set out in the relevant clauses if the Dispute is resolved.
- (b) SWALSC and/or the Proponent (depending upon which is contracting the Aboriginal Heritage Service Provider) will ensure that the Survey Team observes and complies with any safety and other procedures and policies implemented from time to time by the Proponent over the Survey Area. The Proponent will provide SWALSC with details of and explain these procedures and policies in order for SWALSC to provide these details and explain the procedures and policies to the Aboriginal Consultants before the Survey commences. The Proponent will also provide members of the Survey Team (and any other attending members of the Agreement Group) with protective clothing and equipment if reasonably necessary in all the circumstances. To the extent that the Proponent has control of the Survey Area, the Proponent shall take such measures as are practicable to ensure that the members of the Survey Team are not exposed to hazards.
- (c) SWALSC acknowledges that the members of the Survey Team are not employees of the Proponent, and that the Proponent is not required to have insurance in place for the protection of Survey Team members. The onus is on the Party contracting the Aboriginal Heritage Service Provider to ensure that the Aboriginal Heritage Service Provider has insurance in place to adequately cover the Survey Team.
- (d) The Survey Team will as appropriate in the circumstances:
  - (i) visit the Survey Area; and
  - (ii) identify any Aboriginal Sites in the Survey Area or, in the case of a Site Avoidance Survey, determine the area to be avoided due to the presence of an Aboriginal Site; and

- (iii) provide sufficient information to the Aboriginal Heritage Service Provider, or any other heritage consultant accompanying the Survey Team, to enable them to:
  - (A) record the external boundaries of all Aboriginal Sites or, in the case of a Site Avoidance Survey, the area to be avoided due to the presence of an Aboriginal Site, using a GPS; and
  - (B) record relevant Aboriginal Site information or, in the case of a Site Avoidance Survey, the area to be avoided; and
  - (C) mark the external boundaries of identified Aboriginal Sites or, in the case of a Site Avoidance Survey, the external boundaries of the area to be avoided due to the presence of an Aboriginal Site, on a map; and
  - (D) make recommendations for the protection and management of any Aboriginal Site identified by the Survey Team; and
  - (E) generally, prepare a Survey Report that complies with the requirements of clause 12.
- (e) When in the field, and in response to Aboriginal Heritage concerns raised by the Aboriginal Consultants, the representatives of the Proponent nominated under clause 10.1(e):
  - (i) shall withdraw from discussion and inspections in order to ensure the confidentiality of Sensitive Heritage Information or other information pertaining to Aboriginal Sites; and
  - (ii) may make modifications to the Activity Program and the Survey Team will then proceed to assess the Aboriginal Heritage significance of the modified Activity Program in accordance with the applicable Survey Methodology.

## **11. Payment for Surveys when SWALSC is contracting the Aboriginal Heritage Service Provider**

Where SWALSC has elected to contract an Aboriginal Heritage Service Provider or to perform the functions of the Aboriginal Heritage Service Provider under clause 8.3(d)(v), the following provisions apply:

- (a) The Proponent shall pay the costs and expenses of the Survey at the rates set out in Schedule 5.
- (b) The Proponent agrees to pay 100% of the approved Estimated Survey Costs to SWALSC:
  - (i) within 10 Business Days before the commencement of the Survey, or
  - (ii) within 10 Business Days after the approval of the Estimated Survey Costs under clause 9.5(b),

whichever is the earlier (the Relevant Period).

- (c) If the Proponent fails to pay the Estimated Survey Costs within the Relevant Period SWALSC may serve a notice of Dispute in accordance with clause 18.9(a) on or after the first Business Day following the end of the Relevant Period.
- (d) The monies constituting the Estimated Survey Costs must be:
  - (i) held by SWALSC in an account established specifically for survey costs at a bank and must be kept separate from all other bank accounts of, or monies received or held by, SWALSC; and
  - (ii) used only for the payment of the Estimated Survey Costs and any repayment to the Proponent under clause 11(e) or 11(g).
- (e) If the Survey is cancelled by the Proponent before it is completed, the part of the Estimated Survey Costs that has been expended and any of the disbursements that have been paid and cannot be recovered will be forfeited and the balance will be refunded to the Proponent.
- (f) SWALSC must provide a tax invoice of the Survey costs to the Proponent that reconciles the Estimated Survey Costs with the costs incurred. This tax invoice must be accompanied by all relevant receipts and invoices, and any other relevant supporting documentation, and must be certified as correct by the chief executive officer of SWALSC or their delegate.
- (g) If the costs incurred are less than the Estimated Survey Costs, SWALSC shall refund the balance of the monies paid in accordance with clause 11(b) to the Proponent.
- (h) If the costs incurred exceed the Estimated Survey Costs by 5% or less, the Proponent shall pay the additional amount to SWALSC within 20 Business Days of receiving a tax invoice (accompanied by all relevant receipts and invoices and any other relevant supporting documentation) that must be certified as correct by the chief executive officer of SWALSC or their delegate.
- (i) If the Proponent receives notification of revised costs from SWALSC under clause 12.2(b), the Proponent will pay 100% of any additional costs to SWALSC within 10 Business Days of their approval by the Proponent. Once paid, these monies will be added to the Estimated Survey Costs and dealt with in accordance with (c) – (h) above.

## **12. Survey Report**

### **12.1 Timing of Preliminary Advice and Survey Report**

After the last day of fieldwork for a Survey (**Last Fieldwork Day**) if either the Proponent or SWALSC is contracting the Aboriginal Heritage Service Provider, the

Proponent or SWALSC, as the case may be, will ensure that Aboriginal Heritage Service Provider or the Principal Aboriginal Heritage Consultant provides the Parties with:

- (a) Preliminary Advice (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 15 Business Days after the Last Fieldwork Day and, after taking into account any comments from SWALSC, to the Proponent within 22 Business Days after the Last Fieldwork Day;
- (b) a draft Survey Report (if requested by the Proponent in the Activity Notice or at any other time under clause 12.2), as soon as reasonably practicable, and in any event to SWALSC within 25 Business Days after the Last Fieldwork Day, to enable SWALSC to comment on it; and after taking into account any comments from SWALSC, to the Proponent within 35 Business Days after the Last Fieldwork Day;
- (c) a final Survey Report, taking into account any comments from the Proponent about any identified technical, factual or typographical errors or any issues of non-compliance with the guidelines in part 1, part 2 and/or part 3 of Schedule 6, within 45 Business Days after the Last Fieldwork Day.

## **12.2 Requests for reports and compliance with DPLH Guidelines at any time**

- (a) Notwithstanding the relevant nominations by the Proponent in the Activity Notice under:
  - (i) part 1.2(f)(i) and (ii) of Schedule 4 the Proponent may by notice in writing at any time ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to provide a Preliminary Advice or draft Survey Report.
  - (ii) part 1.2(f)(iii) of Schedule 4, the Proponent may by notice in writing at any time advise SWALSC that it has become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made and ask that SWALSC (if contracting the Aboriginal Heritage Service Provider) request the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. The Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.
  - (iii) part 1.2(f)(iii) of Schedule 4, if the party contracting the Aboriginal Heritage Service Provider is notified by the Aboriginal Heritage Service

Provider that they have become aware that an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application may need to be made, the contracting Party shall by notice in writing advise the other Party, and the Parties shall discuss any changes required to matters previously agreed under clause 9 and clause 10, to enable the Aboriginal Heritage Service Provider to comply with the DPLH Guidelines when preparing the Survey Report. If the Parties cannot agree on any changes required, then either Party may serve a notice of Dispute in accordance with clause 18.9(a) 5 Business Days after receiving the notice in writing.

- (b) The Proponent acknowledges that a notification under clause 12.2(a)(i) – (iii), may impact on the times and costs for the Survey, and, if SWALSC is contracting the Aboriginal Heritage Service Provider, SWALSC shall ensure that any revised times and costs (together with supporting documentation) are notified promptly to the Proponent.

### **12.3 Preliminary Advice**

- (a) The Preliminary Advice should provide sufficient information (without disclosing any Sensitive Heritage Information) to allow the Proponent to know whether to proceed or not with any Activities, with or without conditions.
- (b) Upon receipt by the Proponent of the Preliminary Advice, and subject to any reasonable recommendations in the Preliminary Advice, the Proponent may commence the Activities described in the relevant Activity Program (except any Activities indicated in the Preliminary Advice as potentially resulting in a breach of the Aboriginal Heritage Act).

### **12.4 Contents of Survey Report**

The Party contracting the Aboriginal Heritage Service Provider must ensure the following:

- (a) that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant will, in consultation with the Survey Team, prepare a Survey Report in accordance with the guidelines:
  - (i) in part 1 and part 2 of Schedule 6, where the Survey being conducted is a Site Avoidance Survey; or
  - (ii) in part 1 and part 3 of Schedule 6, where the Survey is a Site Identification Survey.
- (b) where the Proponent has requested in writing (whether in the Activity Notice or at any other time allowable under clause 12.2) that the Survey Report complies with the DPLH Guidelines and the Proponent envisages that it may wish to file an Aboriginal Heritage Act Section 18 Application or Aboriginal



Heritage Act Section 16 Application, that the Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant includes sufficient information in the Survey Report to assist:

- (i) the APMC in considering an Aboriginal Heritage Act Section 18 Application; or
  - (ii) the Aboriginal Heritage Act Registrar in considering an Aboriginal Heritage Act Section 16 Application.
- (c) that in addition to the matters described in Schedule 6, the Survey Report:
- (i) describes which aspects (if any) of the Activity Program described in an Activity Notice, if carried out, would be likely to result in a breach of the Aboriginal Heritage Act;
  - (ii) records sufficient information to enable the Proponent to plan and, subject to the law and this NAHA to comply with the Aboriginal Heritage Act in the course of undertaking the things that are the subject of the Activity Notice; and
  - (iii) complies with the DPLH Guidelines.

## **12.5 Reliance on Survey Report**

The Parties each acknowledge that they may rely upon the contents of a Survey Report.

## **13. Intellectual property**

### **13.1 Intellectual property of the Proponent to be assigned to SWALSC**

If the Proponent is contracting the Aboriginal Heritage Service Provider, the Proponent assigns all intellectual property rights it holds in the Survey Report to SWALSC upon its creation.

### **13.2 Licence to use Survey Report**

Subject to clause 19, SWALSC shall grant to the Proponent an irrevocable, transferable, non exclusive, royalty-free licence to use the Survey Report for the purposes of the Proponent:

- (a) conducting its Activities as set out in the Activity Notice; or
- (b) seeking any necessary or desirable statutory approvals relevant to its Activities including under the Aboriginal Heritage Act; or

- (c) enforcing, defending or establishing its rights, including through court proceedings, and complying with its obligations, under this NAHA or any relevant statutory approvals.

#### **14. Effect of NAHA on other Aboriginal Heritage Agreements**

If the Proponent:

- (a) has entered into one or more Aboriginal Heritage Agreements (other than this NAHA) prior to the Effective Date (including ones entered into prior to the ILUA, and which is or are specified in item 5 of Schedule 2; and
- (b) the pre-existing Aboriginal Heritage Agreement applies to an Activity to which this NAHA relates,

then the provisions of this NAHA shall prevail over the provisions of any such pre-existing Aboriginal Heritage Agreement unless otherwise provided in item 6 of Schedule 2.

#### **15. Proponent must consult about Aboriginal Heritage Act applications**

- (a) The Proponent shall not lodge an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application in respect of any area within the Agreement Area without first giving SWALSC at least 30 Business Days' notice of its intention to do so.
- (b) The Proponent must consult, including by making reasonable efforts to meet with SWALSC, about any proposal that is the subject of such an Aboriginal Heritage Act Section 16 Application or Aboriginal Heritage Act Section 18 Application.
- (c) Prior to the ACMC considering the Aboriginal Heritage Act Section 18 Application or the Aboriginal Heritage Act Registrar considering the Aboriginal Heritage Act Section 16 Application, as the case may be, the Proponent must give reasonable notice to the ACMC (or the Aboriginal Heritage Act Registrar as the case may be) and to the Aboriginal Heritage Service Provider of the detail of the consultation that has taken place.
- (d) Subject to clause 15(a), nothing in this NAHA prevents the Proponent lodging an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application.

## **16. Time limits**

### **16.1 Time for compliance and consequences of non-compliance**

- (a) The Parties, as applicable, must each meet the time limits imposed under the following provisions of this NAHA:
  - (i) the receipt by the Proponent of an Activity Notice Response (clause 8.3(a)); and
  - (ii) subject to clauses 9.1(e) and 18.9, the reaching of the Survey Agreement Date within the Survey Agreement Period (clause 9.1(d)); and
  - (iii) the commencement of fieldwork for a Survey (clause 10.2(a)) and the agreed date (if any) for completion of the fieldwork for a Survey (clauses 8.3(d)(iii) or 9.7; and
  - (iv) the receipt by the Proponent of the Preliminary Advice following completion of a Survey (clause 12.1(a)); and
  - (v) the receipt by SWALSC and by the Proponent of the draft Survey Report (clause 12.1(b));
  - (vi) the receipt by the Proponent of the final Survey Report (clause 12.1(c)).
- (b) The time limits on the steps referred to in clause 16.1(a) may be extended by agreement in writing between the Parties. Any such agreed extension will apply only to a single Activity Program, unless expressly agreed otherwise in the written agreement under this clause.
- (c) To avoid doubt, any failure to comply with the time limits for the steps described in clause 16.1(a) does not give a Party a right to terminate this NAHA, but failure to comply with those time limits has the consequences described in the following provisions of this clause 16.1.
- (d) If SWALSC does not meet, or, if SWALSC is contracting the Aboriginal Heritage Service Provider, fails to ensure that the Aboriginal Heritage Service Provider meets, any applicable time limits on the steps listed in clause 16.1(a), then the Proponent may provide a written notice to SWALSC, with such a notice to nominate a date by which the non-compliance with the time limits must be rectified. The date nominated by the Proponent must allow a reasonable period, in all the circumstances, for rectification of the non-compliance with the time limits, and in any event the date must not be less than 10 Business Days after the date on which the notice of non-compliance is sent.
- (e) If SWALSC fails to comply with a notice sent by the Proponent under clause 16.1(d), then the Proponent may notify SWALSC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NAHA in respect of the

relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Proponent may then at its election:

- (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (f) If the Parties to a Dispute referred to mediation under clause 18.9 fail to resolve that Dispute, then the Proponent may notify SWALSC that the Proponent is no longer bound by clauses 9 to 12 inclusive of this NAHA in respect of the relevant Activity Program with effect from the date on which SWALSC receives the latter notice. The Proponent may then at its election:
- (i) decide not to proceed with the relevant Activity Program; or
  - (ii) after seeking the advice and assistance of the Aboriginal Heritage Act Registrar or other relevant officer from DPLH if appropriate, make alternative arrangements for the carrying out of Aboriginal Heritage Surveys, including appointing an independent anthropologist or archaeologist, or other appropriately qualified professional, to conduct such surveys.
- (g) In the circumstances described in clauses 16.1(e) and (f), where the Proponent makes arrangements for an Aboriginal Heritage Survey to be conducted by an independent anthropologist, archaeologist or other professional, then:
- (i) the Proponent shall inform SWALSC of the alternative arrangements made (including any advice and assistance obtained from DPLH); and
  - (ii) SWALSC shall not have any claim against the Proponent arising from the making of those alternative arrangements.
- (h) To avoid doubt:
- (i) the effect of this clause 16.1 is not limited by any dispute resolution processes under clause 18 of this NAHA other than those set out in clause 18.9, and in particular the time limits on the steps referred to in clause 16.1 continue to apply where a dispute resolution process is commenced under clause 18.1; and
  - (ii) the dispute resolution provisions in clause 18 of this NAHA do not apply to any decision by the Proponent to issue a notice of non-compliance under clause 16.1(d). However, the Proponent may elect, by notice in writing to SWALSC, to allow use of the dispute resolution provisions in clause 18.

- (i) The Proponent will act reasonably in asserting its rights under this clause 16.1.

## **16.2 Justifiable delay**

- (a) Delay caused by any event of Force Majeure or Aboriginal Cultural Business notified under clause 24 will be excluded from the time limits referred to in clause 16.1.
- (b) A Party asserting the existence of a delay to which clause 16.2(a) applies must advise the other Party of that delay and take reasonable steps to mitigate that delay.

## **17. Default and enforcement**

### **17.1 Interpretation**

- (a) In this clause 17 a reference to a Party means a party to the default or dispute.
- (b) An **Event of Default** occurs where a Party:
  - (i) breaches an obligation under this NAHA; or
  - (ii) commits an Insolvency Event.

### **17.2 Default**

- (a) If a Party (the **Defaulting Party**) commits an Event of Default, the other Party (the **Non-defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the Event of Default and, on receiving the Default Notice, the Defaulting Party must remedy the Event of Default within 5 Business Days after receiving the Default Notice.
- (b) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to SWALSC, then SWALSC shall as soon as possible notify the Proponent:
  - (i) that the Event of Default has occurred; and
  - (ii) of the appointment of any administrator, receiver or manager to manage the affairs of SWALSC; and
  - (iii) when the relevant Event of Default ceases to exist.
- (c) If the Event of Default is of the kind described in clause 17.1(b)(ii) and applies to the Proponent, then the Proponent shall as soon as possible notify SWALSC:
  - (i) that the Event of Default has occurred; and

- (ii) of the appointment of any administrator, receiver or manager to manage the affairs of the Proponent; and
- (iii) when the relevant Event of Default ceases to exist.
- (d) Where the Event of Default results in a court order to wind up either Party, this NAHA shall by force of this clause terminate with effect from the date of the court order.
- (e) The Non-defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of its obligations and the Defaulting Party's rights under this NAHA until either clause 17.2(a) is complied with or the Event of Default no longer exists, as applicable.
- (f) Any remedy exercised under this clause 17 is without prejudice to any other rights a Party may have under this NAHA or otherwise at law (including the right to seek interlocutory relief and specific performance).

## **18. Dispute resolution**

### **18.1 No arbitration or court proceedings**

- (a) Subject to clause 18.1(b) and 18.9, if a dispute arises under this NAHA including a dispute in respect of this clause 18.1 (Dispute), a Party must comply with clauses 18.2 to 18.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).
- (b) The provisions of this clause 18 are subject to clause 8.4.

### **18.2 Notification**

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

### **18.3 Parties to resolve Dispute**

During the 20 Business Days after a notice is given under clause 18.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 18.4.

### **18.4 Mediation**

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 18.3, the chairman of LEADR will appoint a mediator at the request of either Party.

- (b) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.4. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 18.6) referring the matter to arbitration or commencing legal proceedings.

## **18.5 Arbitration**

- (a) If the Parties to a Dispute have complied with clauses 18.2 to 18.4 then the Dispute may be referred to arbitration by either Party under the *Commercial Arbitration Act 2012 (WA)*.
- (b) The arbitration will be held within the Agreement Area or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 18.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Any Party to a Dispute may appeal to the Supreme Court of Western Australia on any question of law arising out of an interim or final award in the arbitration.

## **18.6 Breach of this clause**

If a Party to a Dispute breaches clauses 18.1 to 18.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

## **18.7 Obligations continue**

Subject to clause 18.8, if a Dispute is referred for mediation or arbitration under any part of this clause 18 or court proceedings are started in respect of it, the Parties must, during the period of such mediation, arbitration or litigation and pending the making of a decision, determination or judgment as the case may be, continue to perform their respective obligations under this NAHA so far as circumstances will allow and such performance will be without prejudice to the final decision, determination or judgment made in respect of the matter in dispute.

## **18.8 Extension of time**

Without prejudice to the power of a mediator, arbitrator or court to grant any extension of any period or variation of any date referred to in this NAHA, in order to preserve the rights of a Party to a Dispute, the Parties to the Dispute will consult with each other and use all reasonable endeavours to agree such extension or variation so required.

## **18.9 Dispute in relation to clauses 9, 11(b) or 12.2(a)(ii) and (iii)**

- (a) A Party claiming a Dispute has arisen in relation to any matter to be agreed under clauses 9, 11(b), or 12.2(a)(ii) and (iii) must give the other Parties to the Dispute notice setting out details of the Dispute, and at the same time as the notice is served upon the other Parties must request the chairman of LEADR to appoint a mediator within 5 Business Days.
- (b) The role of the mediator with respect to a Dispute arising in relation to any matter to be agreed under clauses 9, 11(b), or clause 12.2(a)(ii) and (iii), is to assist in negotiating a resolution of the Dispute. A mediator cannot make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 18.9:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 18.9. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. To the extent possible, all issues identified under clauses 9, 11(b), and 12.2(a)(ii) and (iii) should be dealt with and resolved in the one mediation.
- (f) If the Parties fail to achieve a resolution of the Dispute by mediation within 15 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, the provisions of clause 16.1(f) – (g) will apply.



## **19. Confidentiality**

### **19.1 Confidential information**

Each Party agrees that the following information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) is confidential (**Confidential Information**) and may not be disclosed except in accordance with clause 19.2:

- (a) information disclosed during the course of a Survey and the contents of any Survey Report provided under this NAHA, including any Sensitive Heritage Information; and
- (b) information given by the Proponent to SWALSC in respect of the Activities of the Proponent where the Proponent advises SWALSC that the relevant information is confidential; and
- (c) any other information disclosed by one Party to another under this NAHA, which is identified by the Disclosing Party as confidential,

but not including information:

- (d) the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

### **19.2 Permitted disclosure**

- (a) Subject to clauses 19.2(b) and 19.2(c), a Receiving Party may disclose Confidential Information:
  - (i) if it has the prior consent of the Party which provided the information;
  - (ii) to the extent required by any law or applicable securities regulation or rule;
  - (iii) to the extent that the information is reasonably necessary for any processes or applications or related to any statutory approvals;
  - (iv) in connection with any dispute or litigation concerning this NAHA or its subject matter;
  - (v) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers, partners and related bodies corporate, or an Aboriginal Heritage Service Provider or Principal Aboriginal Heritage Consultant appointed under this NAHA;

- (vi) where the Receiving Party is the Proponent, to a bona fide proposed assignee of the Proponent's rights or obligations under this NAHA;
  - (vii) where the disclosure is for the purpose of managing or planning any existing, planned or potential Activity;
  - (viii) to a proposed Regional Corporation assignee of SWALSC's rights, title and interests under this NAHA;
  - (ix) in accordance with clauses 12.5 and 12.6;
  - (x) where disclosure is required by the Proponent to any judicial, legislative or executive arm of the Government of Western Australia or of the Commonwealth of Australia; and
  - (xi) as otherwise permitted or required by the terms of this NAHA.
- (b) To avoid doubt, where the Confidential Information is contained in a Survey Report, then the Proponent may disclose that Confidential Information to the DPLH and ACMC, including for the purposes of the Proponent:
- (i) making an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application;
  - (ii) providing a copy of each Survey Report to the DPLH for DPLH's collection of Aboriginal Heritage Survey reports; and
  - (iii) seeking any necessary or desirable statutory approvals or enforcing, defending or establishing its rights, including through court proceedings, under this NAHA or any relevant statutory approvals, including under the Aboriginal Heritage Act.
- (c) To avoid doubt, except for the circumstances described in clause 19.2(b), disclosure of Sensitive Heritage Information may only occur if SWALSC consents to the form and content of the disclosure or the disclosure is required by any law or applicable securities regulation or rule.
- (d) SWALSC must inform the Proponent of any information contained in a Survey Report, which comprises Sensitive Heritage Information.

### **19.3 Disclosure requirements**

Before making any disclosure to a person under clause 19.2, the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this NAHA;
- (b) at least 10 Business Days before any disclosure, notify the Disclosing Party of its intention to disclose the Confidential Information and give the

Disclosing Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and

- (c) in the case of a disclosure to a person or entity under clauses 19.2(a)(v), 19.2(a)(vi), 19.2(a)(vii), or 19.2(a)(viii), but with the exception of employees or officers of a Receiving Party, procure that the person or entity executes a deed with the Disclosing Party in such form acceptable to the Disclosing Party (acting reasonably) imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 19.

## **20. Assignment**

### **20.1 Generally**

Neither SWALSC nor the Proponent may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this NAHA except in accordance with this NAHA.

### **20.2 Assignment or Novation by Proponent**

- (a) The Proponent may from time to time assign or transfer all or part of its rights, title, and interests under this NAHA to any person (whether by farm out, joint venture, sale or otherwise) where the Proponent is assigning all or part of its interest in the tenure in the Agreement Area to which this NAHA applies.
- (b) Before such assignment or novation, the Proponent must:
  - (i) give SWALSC at least 20 Business Days' notice prior to the proposed assignment or novation;
  - (ii) provide a draft of the proposed deed of assignment or novation for SWALSC's approval, which approval must not be unreasonably withheld, and the Proponent must take into account any reasonable amendments put forward by SWALSC;
  - (iii) within 20 Business Days after receiving SWALSC's approval to the terms of the draft deed of assignment or novation provide to SWALSC either:
    - (A) the deed of assignment in the form approved by SWALSC executed by the outgoing Proponent and the incoming proponent in favour of SWALSC by which the assignee agrees to be bound, alone or jointly with the Proponent, by the provisions of this NAHA and to assume, observe and perform (alone or jointly with the Proponent) the rights and obligations of the Proponent under this NAHA to the extent of the rights, title and interest assigned in accordance with clause 20.2(a); or

- (B) the deed of novation in the form approved by SWALSC executed by the outgoing Proponent and the incoming proponent in which the incoming proponent agrees to obtain the rights and obligations of the Proponent under this NAHA, the incoming proponent being bound by this NAHA and the outgoing Proponent being released from its obligations under this NAHA to the extent of the rights, title and interest transferred in accordance with clause 20.2(a); and
- (c) SWALSC will then execute the deed of assignment or the deed of novation as the case may be and return copies of the fully executed deed to both the outgoing Proponent and the incoming proponent.

### **20.3 Assignment by SWALSC**

- (a) SWALSC must assign its rights (including intellectual property rights assigned to SWALSC pursuant to clause 13.1), title and interests under this NAHA to a Regional Corporation if:
  - (i) a Regional corporation is appointed by the Noongar Boodja Trustee as the Regional Corporation for land and waters including the land and waters within the Agreement Area; and
  - (ii) the Regional Corporation agrees to enter into a deed, in a form acceptable to the Proponent (each acting reasonably), by which it agrees to be bound by this NAHA and to assume all of SWALSC's obligations under this NAHA and provides a copy of that deed to the Proponent.
- (b) If the requirements of clause 20.3(a)(i) and (ii) are satisfied, SWALSC must do all other things necessary to give effect to the assumption by the Regional Corporation of the obligations under this NAHA.

### **20.4 Effect of Assignment or Novation**

- (a) Once an assignment or novation by a Proponent of all or any part of its rights, title and interests under this NAHA has occurred under clause 20.2, then the assigning or outgoing Proponent will be deemed to have been released to the extent of the assignment or transfer from all claims and liabilities arising under or in respect of this NAHA arising after the effective date of the assignment or novation, but without affecting any claim or liability arising prior to such date.
- (b) Once an assignment of this NAHA has occurred under clause 20.3, SWALSC will be deemed to have been released, to the extent of the assignment from all claims and liabilities arising under or in respect of this NAHA arising after the effective date of the assignment, but without affecting any claim or liability arising prior to such date.

- (c) Unless otherwise agreed by the Parties in writing or required by law, an assignment under this clause 20 shall not affect the operation of this NAHA.

## **20.5 No encumbrance**

- (a) Except as permitted by clause 20.5(b), no Party may grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NAHA.
- (b) The Proponent may with the prior written consent of SWALSC grant an encumbrance, mortgage or charge in respect of the whole or any part of its rights, title and interests under this NAHA provided that clause 20.2 shall apply with necessary changes to any assignment upon enforcement of such encumbrance, mortgage or charge.

## **21. Notices**

Any notice:

- (a) must be in writing and signed by a person duly authorised by the sender;  
and
- (b) must be delivered to the intended recipient by registered post or by hand or fax to the intended recipient's address or fax number specified in Schedule 1 (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender, including where so notified in an Activity Notice given to SWALSC under clause 8.2);
- (c) will be taken to be received by the recipient:
  - (i) in the case of delivery in person, when delivered; and
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting; and
  - (iii) in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

## **22. GST**

### **22.1 Interpretation**

Words capitalised in this clause 22 and not otherwise defined have the meaning given in the GST Act.

### **22.2 GST Payable**

- (a) Where an amount of Consideration is payable for a Taxable Supply made under this NAHA (whether that amount is specified or can be calculated in accordance with this NAHA), it does not include GST and must be increased by the GST Rate.
- (b) The Party making a Taxable Supply under this NAHA must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Act. Notwithstanding any provision to the contrary in this NAHA, payment will be due within 20 Business Days of a Party receiving a Tax Invoice in accordance with this clause 22.
- (c) If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this NAHA, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.
- (d) A Party may issue a Recipient-created Tax Invoice in respect of payment made to it by the other Party.

## **23. Costs and duties**

- (a) The Proponent shall bear any duties or fees or taxes of a similar nature associated with this NAHA.
- (b) Each Party shall bear their own costs including legal costs associated with the negotiation, drafting and execution of this NAHA.

## **24. Force Majeure and Aboriginal Cultural Business**

- (a) If a Party is prevented in whole or in part from carrying out its obligations under this NAHA as a result of an event of Force Majeure or Aboriginal Cultural Business, it must promptly notify the other Party accordingly. The notice must:
  - (i) specify the obligations it cannot perform;
  - (ii) sufficiently describe the event of Force Majeure or Aboriginal Cultural Business;
  - (iii) estimate the time during which the Force Majeure or Aboriginal Cultural Business will continue; and

- (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure or the delay caused by the Aboriginal Cultural Business.
- (b) Following this notice, and while the Force Majeure or Aboriginal Cultural Business continues, this NAHA shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Force Majeure or Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Force Majeure or Aboriginal Cultural Business.
- (c) The Party that is prevented from carrying out its obligations under this NAHA as a result of an event of Force Majeure or Aboriginal Cultural Business must take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this NAHA.

## **25. General**

### **25.1 Review and variation**

Where this NAHA is to be amended or varied, then this NAHA may only be amended or varied by a document in writing signed by each of the Parties to the agreed amendment or variation.

### **25.2 Entire agreement**

Subject to clause 14, this NAHA constitutes the entire agreement between all of the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### **25.3 Governing law and jurisdiction**

- (a) This NAHA is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **25.4 Severance**

If any provisions of this NAHA is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this NAHA to the extent necessary unless it would materially change the intended effect and objectives of this NAHA.

## **25.5 Waiver**

A right or power under this NAHA shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

## **25.6 No merger**

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this NAHA. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **25.7 Further action**

Each Party must use all reasonable efforts to do all things necessary or desirable to give full effect to this NAHA and the matters contemplated by it.



## Schedule 1 — Party Details

(Clause 21 – Notices)

### South West Aboriginal Land & Sea Council Aboriginal Corporation Notice Details

Address Eastbrook Tower  
Level 2, 100 Royal Street  
East Perth WA 6004

Postal Address PO Box 545  
Cannington WA 6107

Fax (08) 9358 7499

### Proponent Notice Details

Proponent Name Doral Mineral Sands Pty Ltd  
Address c/- McMahon Mining Title Services Pty Ltd  
PO Box 592  
MAYLANDS WA 6931

Fax

## Schedule 2 — Details of ILUA and Pre-existing Aboriginal Heritage Agreements

Item No.	Item Description	Details
<b>Details of ILUA</b>		
Item 1	Short name of ILUA	South West Boojarah #2 ILUA
Item 2	National Native Title Tribunal file number	Not applicable until the ILUA is registered
Item 3	Date registered	Not applicable until the ILUA is registered
Item 4	Local government region(s)	Not applicable until the ILUA is registered
<b>Pre-existing Aboriginal Heritage Agreements</b>		
Item 5	Details of all pre-existing Aboriginal Heritage Agreements to which clause 14 applies.	
Item 6	List of provisions of a pre-existing Aboriginal Heritage Agreement which will prevail over this NAHA (if the entire pre-existing Aboriginal Heritage Agreement prevails, write 'whole agreement').	

# Schedule 3 — Agreement Area

(Clause 1.1 Definition of Agreement Area)

Map 1: M 70/1400 as amended from time to time (including any variation, substitution, renewal, extension or replacement)

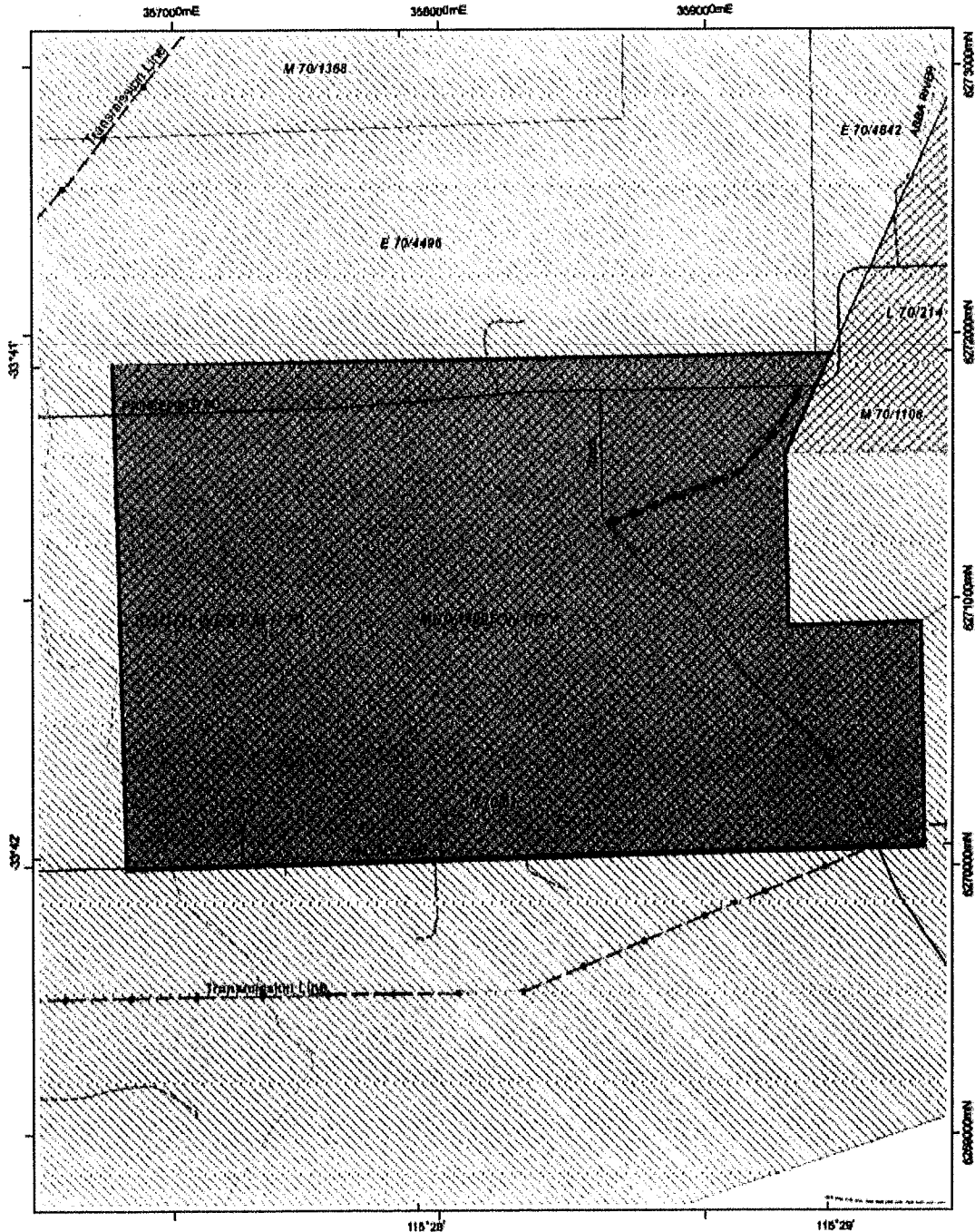


Government of Western Australia  
Department of Mines, Industry Regulation and Safety

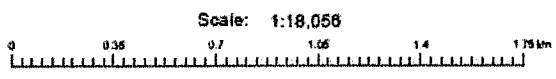
GDA 1994 MGA Zone 50

- Pending Application
- Live Tenement
- Application or Live Tenement

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v: 0020  
[Version Status (Public)]



This plan may be amended from time to time without notice and any amendments shall be published in the same manner as this plan. The Department of Mines, Industry Regulation and Safety (DMIRS) is not responsible for any errors or omissions in this plan. The Department of Mines, Industry Regulation and Safety (DMIRS) is not responsible for any errors or omissions in this plan. The Department of Mines, Industry Regulation and Safety (DMIRS) is not responsible for any errors or omissions in this plan.



Map 2: L 70/214 as amended from time to time (including any variation, substitution, renewal, extension or replacement)



Government of Western Australia  
Department of Mines, Industry Regulation and Safety

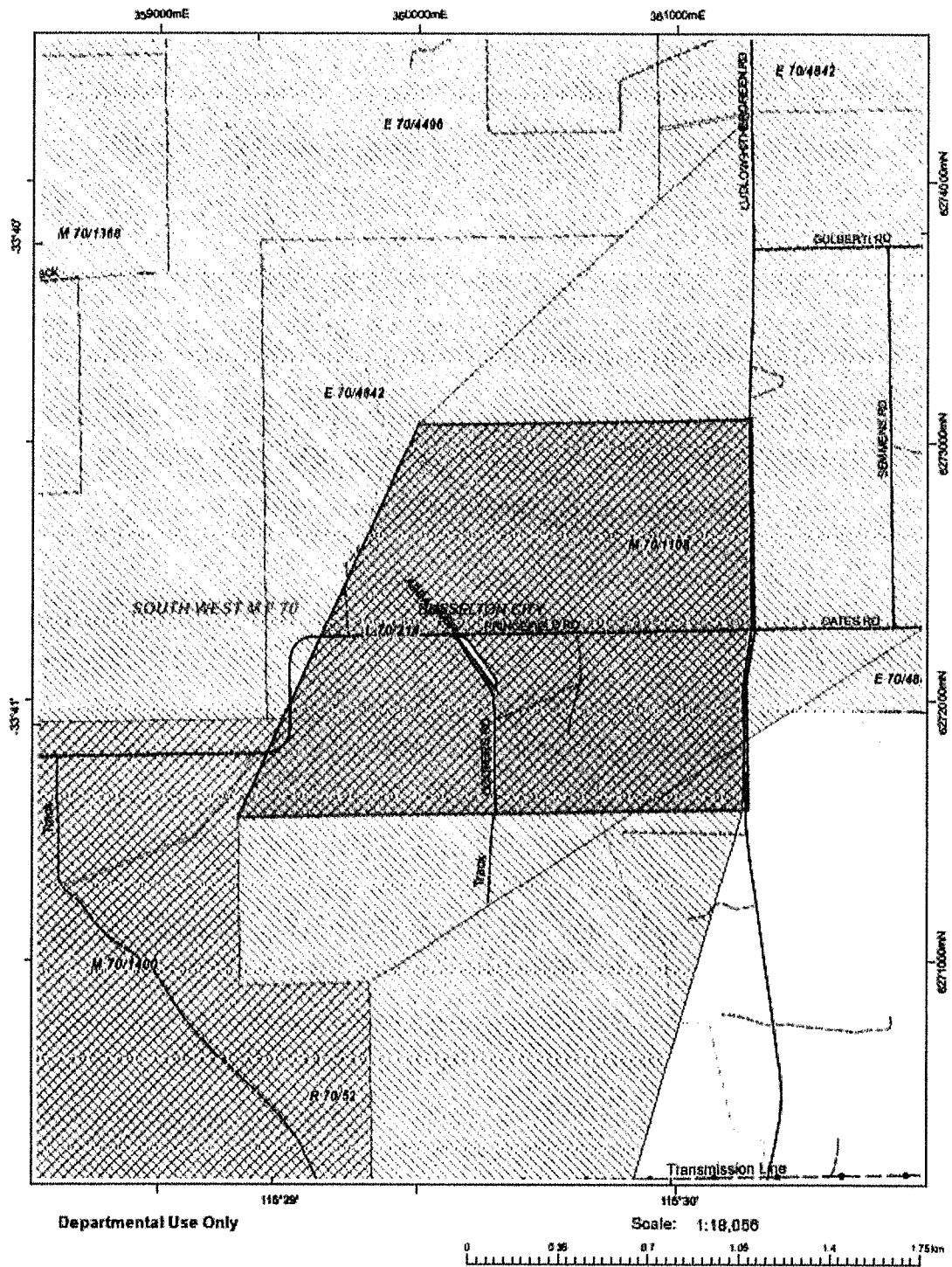
GDA 1994 MGA Zone 50

- Pending Application
- Live Tenement
- Application over Live Tenement

TENGRAPH (c) 2014

08:51 AM, 23/03/2021

MAPD04  
(Tenement Sheet)



## **Schedule 4 — Contents of Activity Notice**

### **Part 1 — Primary contents of Activity Notice**

(Clause 8.2 Giving the Activity Notice)

#### **1.1 Basic information**

Every Activity Notice must contain:

- (a) a statement that it is an Activity Notice issued under this NAHA (by reference to the name of the ILUA as set out in item 1 of Schedule 2);
- (b) the name of the Proponent, and:
  - (i) an address in Western Australia for service of notices, under this NAHA, on the Proponent (if no address for service has previously been given by the Proponent); and
  - (ii) full contact details for a primary contact person within the Proponent (if a body corporate).

#### **1.2 Key statements and nominations under clause 8.2**

(Clause 8.2(c)(ii))

Every Activity Notice must, subject to clause 8.2(f), contain the following required key statements:

- (a) a statement of the extent to which the Activity Program consists of Low Ground Disturbance Activity, in the opinion of the Proponent; and
- (b) a statement of whether the Proponent considers that a Survey is required (taking into consideration the matters referred to in clauses 8.1(b) and 8.3); and
- (c) a nomination, by the Proponent, of a preferred Survey Methodology, being either a Site Avoidance Model or a Site Identification Model; and
- (d) where a Site Avoidance Model is nominated, a statement of whether the Proponent requires any Survey to be conducted in respect of:
  - (i) only the area or areas to be impacted by specific Activities as described and mapped in the Activity Notice; or
  - (ii) a broader area or areas, encompassing the Activities and surrounding land as described and mapped in the Activity Notice; and
- (e) a nomination, by the Proponent, of a proposed Survey fieldwork start date or end date; and
- (f) a nomination, by the Proponent, as to whether it requires:

- (i) a Preliminary Advice (see clause 12.1(a));
- (ii) a draft of the Survey Report (see clause 12.1(b));
- (iii) an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application (if known at the relevant time) (see clause 8.2(e)).

Where any of those key statements are omitted, Part 3 of this Schedule 4 provides default provisions.

### **1.3 – Detailed contents of Activity Notice**

(Clause 8.2(c)(ii))

In accordance with clause 8 of this NAHA, the purpose of the information provided in and with the Activity Notice is to determine whether a Survey is required and if so, its nature and extent. In order to facilitate this objective, an Activity Notice must contain the following additional details where applicable:

- (a) a map showing clearly the area the subject of the Activity Notice, identifying the location of the area the subject of the Activity Notice within the Agreement Area and including scale, zone and north point, as well as nearby towns, roads and landscape features; and
- (b) aerial photographs (if available) or smaller scale maps of the area the subject of the Activity Notice which must contain UTM Grid Coordinates (eastings and northings), datum, north point and, where applicable, land tenure details such as parcel identifier, plan or lot, reserve numbers, and coordinates and/or polygon defining the area the subject of the Activity Notice; and
- (c) where applicable, identifying numbers (or other identifying information) of each tenure to which the Activity Notice relates; and
- (d) all known vehicular access routes to the area the subject of the Activity Notice; and
- (e) any ground disturbing notice provided to any government agency including (where mining exploration Activities are proposed) to the District Mining Engineer; and
- (f) details of any Activity Program, and the area and level of potential Activity, on the area the subject of the Activity Notice; and
- (g) the techniques and types of infrastructure, items of equipment and vehicles to be used in relation to any proposed Activity; and
- (h) the approximate number of personnel who will be involved in any proposed Activity; and

- (i) any water, biological or other materials or resources proposed to be obtained from the area the subject of the Activity Notice, in relation to any proposed Activity.
- (j) Where any of the detailed content is omitted, the default provisions of Part 3 of this Schedule 4 will apply.

## Part 2 – Additional contents of Activity Notice

(Clause 8.2(c)(iii))

An Activity Notice may also set out:

- (a) whether there has been any previous Aboriginal Heritage Survey and, subject to any confidentiality restrictions, the age, methodology, participants, standard and results of that survey. If a written report of that previous Aboriginal Heritage Survey is in the possession or control of the giver of the Activity Notice, then (subject to confidentiality provisions) the Activity Notice shall be accompanied by a copy of the written report; and
- (b) the extent to which the area the subject of the Activity Notice has been affected by previous ground disturbing activities; and
- (c) whether the Aboriginal Heritage Act Register discloses any Aboriginal Sites on the area the subject of the Activity Notice; and
- (d) any additional information which explains what sort of Survey outcome is being sought (if a Survey is required), including whether an Aboriginal Heritage Act Section 16 Application or an Aboriginal Heritage Act Section 18 Application is intended to be made (if known at the relevant time) (see clause 8.2(e)); and
- (e) any other background material which will better help SWALSC to understand the potential impacts of what is proposed.

### Part 3 – Default provisions of Activity Notice

(Clauses 8.2(c)(ii) and 8.2(d))

For the purposes of clause 8.2(d), the following default provisions apply in respect of any item in part 1.2 of this Schedule 4 that is not specified or nominated in the Activity Notice.

<b>Clause No.</b>	<b>Default Provision</b>
Item (a)	The Activity Program contains Ground Disturbing Activity.
Item (b)	A Survey is required.
Item (c)	Site Avoidance Model.
Item (d)	Only the areas of specific Activities described in the Activity Notice are required to be Surveyed.
Item (e)	Not applicable (Parties to discuss and agree proposed Survey fieldwork start date or end date).
Item (f)	There is no requirement for a Preliminary Advice or a draft of the Survey Report.



## Schedule 5 — Costs for conduct of a Survey

(Clauses 8.3(d)(iv), 9.5 and 11)

No.	Item	Rate	GST	Description
<b>Ethnographic Assessment</b>				
1	Aboriginal Heritage Service Provider	At cost [Usually \$900-\$1000 (Indexed to CPI)] + Administration Fee of 15% of total expenditure capped at \$5,000 (Indexed to CPI) + Disbursements At cost	+GST	per person per day or pro rata for part thereof
2	Principal Aboriginal Heritage Consultant	At cost [Usually \$900-\$1000 (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
3	Aboriginal Heritage Liaison Officer (if necessary and agreed)	\$500 (Indexed to CPI)	+GST	per person per day or pro rata for part thereof
<b>Archaeological Assessment (if necessary and agreed)</b>				
4	Archaeologist (archaeological team external contractors)	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
5	Fieldwork and reporting	At cost [Usually \$900 - \$1000] (Indexed to CPI)]	+GST	per person per day or pro rata for part thereof
<b>Aboriginal Consultants</b>				
6	Aboriginal Consultants – up to 8 unless otherwise agreed	\$500 (max) (Indexed to CPI)	+GST	per person per day or pro rata for part thereof

No.	Item	Rate	GST	Description
<b>Field Expenses</b>				
7	Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals	At cost	+GST	
8	Archaeologist or Archaeological Team accommodation/meals	At cost	+GST	
9	Aboriginal Consultants accommodation/meals	At cost	+GST	
<b>Travel Expenses</b>				
10	Vehicle mileage (km)	\$ As per tax schedule for location	+GST	per km for such distance as is reasonable in the circumstances
11	Hire Vehicle (if survey vehicle is hired)	commercial rates, plus fuel	+GST	
12	Aboriginal Consultants travel expenses (if required)	Rate as per tax schedule for location	+GST	per km for such distance as is reasonable in the circumstances
13	Airfares	At cost	+GST	
14	Taxi travel (to and from airports or meetings)	At cost	+GST	
<b>Incidental Expenses</b>				
15	Film, maps, report production and expendables	At cost	+GST	

Initials: Aboriginal Heritage Service Provider: \_\_\_\_\_

Initials: Proponent/Authorised officer of the Proponent: \_\_\_\_\_

### **CPI Indexation**

Where a rate listed in this annexure is indicated to be "*Indexed to CPI*" it shall be varied annually on 31 August of each year in accordance with the CPI Calculation.

# **Schedule 6 — Contents of Survey Report**

(Clause 12.4)

## **Part 1 – Guidelines for all Survey Reports**

### **1.1 Copyright and confidentiality**

Insert a statement to the effect that the report may only be copied in accordance with this NAHA and subject to any other restrictions agreed to, from time to time, by the Proponent and SWALSC.

### **1.2 Survey personnel**

- (a) Author's name in full and occupation and author's business or company name.
- (b) Full name and gender of each Aboriginal Consultant, and the group they represent.
- (c) Full names and gender of other personnel participating in the Survey and their role.
- (d) Explanation as to how Aboriginal Consultants were selected.

### **1.3 Survey date(s)**

Insert the date(s) on which fieldwork was conducted.

### **1.4 Spatial information**

- (a) The general location of the area within which the Survey was undertaken (e.g. title numbers 'x' to 'z', or the 'abc' pastoral lease, or the area shown on a map contained in the Survey Report).
- (b) Grid references of the Survey Area.
- (c) A map of the Survey Area.

### **1.5 Other information**

- (a) Summary of results of searches of the Aboriginal Heritage Act Register at the DPLH including the site number and name, if given, and the reference number.
- (b) A general description of the fieldwork undertaken.
- (c) Details of ethnographic and (if relevant) archaeological work carried out during the Survey.
- (d) Description of the Survey Methodology used by the Survey Team (that is, a Site Avoidance Model or a Site Identification Model) and any other relevant methodological notes.

- (e) In respect of any Aboriginal Objects identified:
  - (i) a description of such Aboriginal Objects;
  - (ii) the location of any Aboriginal Objects so identified; and
  - (iii) the date on which each Aboriginal Object was identified.
- (f) Any discussion and recommendations.

## Part 2 – Additional guidelines for Survey Reports where Site Avoidance Model is used

### **2.1 Details of areas where Activity should not be undertaken (because of the presences of an Aboriginal Site within that area) and other Survey information**

- (a) Description of any areas where Activity should not be carried out because of the presence of an Aboriginal Site within that area.
- (b) Grid references of the area where Activity should not be carried out, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (c) Dimensions of the area, e.g. approximately 100m east-west and 50m north-south.
- (d) Location, i.e. where the area to be avoided is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (e) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified, and date site identified.

## Part 3 – Additional guidelines for Survey Reports where Site Identification Model is used

### 3.1 Details of new or registered Aboriginal Sites recorded during the Survey and other Survey information

- (a) Site name and number, if given to existing sites, and DPLH reference number, if known.
- (b) Site type, e.g. archaeological or ethnographic or both.
- (c) Grid references of the site, i.e. Eastings and Northings (of the coordinate description e.g. AMG/MGA), the AMG Zone (i.e. Zone 51) and the type of equipment used – GPS or DGPS or other.
- (d) Dimensions of the site, e.g. approximately 10m east-west and 5m north-south.
- (e) Location, i.e. where the site is located in relation to tenure or significant topographical feature, e.g. the northern corner of mining lease X about 100m east of the prominent hill.
- (f) Description, e.g. rock pool, granite outcrop.
- (g) Full names of person(s) who identified each Aboriginal Site and other persons present when site identified and date site identified.
- (h) Significance, if known.

### 3.2 Recommendations and comments

Recommendations regarding the Aboriginal Site, e.g. whether the site is:

a place of importance or significance where persons of Aboriginal descent have, or appear to have left any object used for or made or adapted for use for any purpose connected with traditional cultural life of Aboriginal people (past or present); and/or

- (a) a sacred/ ritual or ceremonial site of importance and special significance to persons of Aboriginal descent; and/or
- (b) a place of historical, anthropological, archaeological or ethnographic importance and/or significance; and/or
- (c) a place where Aboriginal objects are traditionally stored; and

recommendations for how the Aboriginal Site(s) should be protected.

# Signing Pages

EXECUTED as a deed



Executed by **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** in accordance with its constitution in the presence of:

A handwritten signature in black ink, appearing to be "DAVID ASHTON".

Signature of authorised representative

A handwritten signature in black ink, appearing to be "NOELENE MCCORMICK".

Signature of authorised representative

DAVID ASHTON

Full name of authorised representative

NOELENE MCCORMICK

Full name of authorised representative

28/05/2021  
Date

28/05/2021  
Date

Executed by Doral Mineral Sands Pty Ltd )  
ACN: 096 342 451 )  
in accordance with section 127(1) of )  
the *Corporations Act 2001* )  
(Commonwealth): )

A handwritten signature in black ink, appearing to be "Hiroaki Ichisato" in Japanese characters.

Director's signature

Hiroaki Ichisato  
(print name)

A handwritten signature in black ink, appearing to be "Neil Raine".

Director/Secretary's signature

**Neil Raine**

(print name)

**Chief Financial Officer  
and Company Secretary**

**The Common Seal** of Doral Mineral  
Sands Pty Ltd )  
ACN: 096 342 451 was hereunto affixed )  
by authority of its Directors in the )  
presence of: )

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
Director/Secretary's signature

\_\_\_\_\_  
(print name)

APPENDIX 2: ABORIGINAL HERITAGE ACT SECTION 18  
CONSENT





**Hon Ben Wyatt MLA**  
**Treasurer; Minister for Finance; Aboriginal Affairs; Lands**

---

Our Ref: 69-20647

Ms Julie Edwards  
Environmental Advisor  
Doral Mineral Sands Pty Ltd  
25 Picton Road  
PICTON WA 6229

Dear Ms Edwards

I refer to the Notice submitted under Section 18(2) of the *Aboriginal Heritage Act 1972*, dated 19 May 2020 by Doral Mineral Sands Pty Ltd on behalf of Peter Marvey McCleay and Anne Maree McCleay, Paperbark Farm Pty Ltd, Wisecall Investments Pty Ltd, Doral Minerals Sands Pty Ltd and the State of Western Australia (Notice).

The Notice advised that you wish to use the Land described as Lot 758 on Plan 134090, Certificate of Title 1170/957, 193 Yalyalup Road, Abba River, Busselton, Lot 843 on Plan 134692, Certificate of Title 1841/682, 115 Yalyalup Road, Abba River, Busselton, Lot 1426 on Plan 140184, Certificate of Title 1155/672, 220 Yalyalup Road, Yoongarillup, Busselton, Lot 3773 on Plan 140318, Certificate of Title 1319/491, Busselton, Lot 820 on Plan 301731, Certificate of Title 990/191, 550 Princefield Road, Abba River, Busselton, Lot 1293 on Plan 140033, Certificate of Title 1890/913, Busselton, Lot 1609 on Plan 140670, Certificate of Title 1141/184, Busselton, Lot 3752 on Plan 140670, Certificate of Title 1141/184, Busselton, Lot 44 on Plan 140670, Certificate of Title 3009/167, Busselton, Lot 821 on Plan 301731, Certificate of Title 965/21, Busselton, McGibbon Track on Plan 140670, Abba River, Busselton, Coopers Road on Plan 140670, Abba River, Busselton (Land) for the Purpose being;

Yalyalup Mineral Sands Project. To develop, mine, decommission & rehabilitate the Yalyalup Mineral Sands Mine within Retention Licence R70/0052. The proposal includes the development of mine pits (approx 10.5m deep) and associated infrastructure, wet concentration processing plant, solar evaporation ponds, groundwater abstraction and water management infrastructure and process water ponds, with a disturbance area of approx 453.34ha. In addition a crossing of the Abba River is required for the project access corridor to the Ludlow-Hithergreen Road (Purpose).

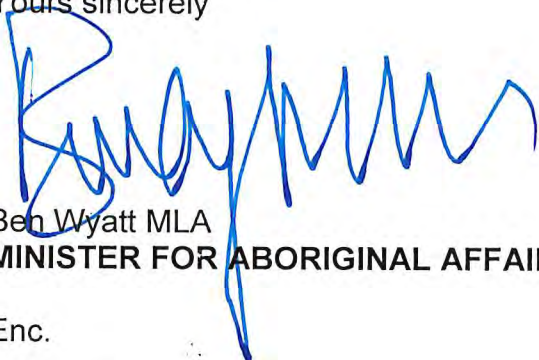
I am advised that your intended use will impact upon the Aboriginal site within the meaning Section 5 of the *Aboriginal Heritage Act 1972*. The Aboriginal site is ID 17354 (Abba River).

Pursuant to Section 18(3) of the *Aboriginal Heritage Act 1972*, and having regard to the recommendation of the ACMC and in the general interest of the community, I have granted consent with conditions. The form of Consent is enclosed.

I take this opportunity to acknowledge and support agreements reached with those consulted as specified in the Notice. I also draw your attention to the additional information attached, which is provided for your assistance.

If you have any queries in relation to this matter, please contact Mr James Dobson, Team Leader, Aboriginal Heritage, Department of Planning, Lands and Heritage, on (08) 6551 8000.

Yours sincerely



Ben Wyatt MLA

**MINISTER FOR ABORIGINAL AFFAIRS**

Enc.

12 AUG 2020

**ABORIGINAL HERITAGE ACT 1972**

**CONSENT PURSUANT TO SECTION 18(3)**

**CONSENT GRANTED TO:** Doral Mineral Sands Pty Ltd on behalf of Peter Marvey McCleay and Anne Maree McCleay, Paperbark Farm Pty Ltd, Wisecall Investments Pty Ltd, Doral Minerals Sands Pty Ltd and the State of Western Australia.

**IN RESPECT OF THE LAND:** Lot 758 on Plan 134090, Certificate of Title 1170/957, 193 Yalyalup Road, Abba River, Busselton, Lot 843 on Plan 134692, Certificate of Title 1841/682, 115 Yalyalup Road, Abba River, Busselton, Lot 1426 on Plan 140184, Certificate of Title 1155/672, 220 Yalyalup Road, Yoongarillup, Busselton, Lot 3773 on Plan 140318, Certificate of Title 1319/491, Busselton, Lot 820 on Plan 301731, Certificate of Title 990/191, 550 Princefield Road, Abba River, Busselton, Lot 1293 on Plan 140033, Certificate of Title 1890/913, Busselton, Lot 1609 on Plan 140670, Certificate of Title 1141/184, Busselton, Lot 3752 on Plan 140670, Certificate of Title 1141/184, Busselton, Lot 44 on Plan 140670, Certificate of Title 3009/167, Busselton, Lot 821 on Plan 301731, Certificate of Title 965/21, Busselton, McGibbon Track on Plan 140670, Abba River, Busselton, Coopers Road on Plan 140670, Abba River, Busselton.

**THE PURPOSE:** Yalyalup Mineral Sands Project. To develop, mine, decommission & rehabilitate the Yalyalup Mineral Sands Mine within Retention Licence R70/0052. The proposal includes the development of mine pits (approx 10.5m deep) and associated infrastructure, wet concentration processing plant, solar evaporation ponds, groundwater abstraction and water management infrastructure and process water ponds, with a disturbance area of approx 453.34ha. In addition a crossing of the Abba River is required for the project access corridor to the Ludlow-Hithergreen Road.

**REFERENCE:** 69-20647

**SITE(S) TO BE IMPACTED:** ID 17354 (Abba River)

## CONDITIONS OF CONSENT

That the consent holder:

1. Invites, in writing two members nominated by the South West Boojarah representatives to be present for ground disturbing works on the Land where it intersects with Aboriginal site ID 17354 (Abba River).
2. Provides an annual written report to the Registrar of Aboriginal sites advising;
  - a. what extent the Purpose has impacted on the site located on the Land.
1. Provides a written report to the Registrar of Aboriginal Sites (the Registrar) within 60 days of the completion of the Purpose, advising whether and to what extent the Purpose has impacted on all or any sites located on the Land. The final report should include a detailed description of:
  - a. what extent the Purpose has impacted any Aboriginal site on the Land;
  - b. where any Aboriginal site has been impacted, whether such site has been partially or wholly impacted by the Purpose, and the level, effect and type of any such impact – preferably by the provision of photographs taken before and after the impact;
  - c. where any Aboriginal site has been subject to archaeological or cultural salvage, when and how such salvage took place, who was present at the salvage and where the material was re-located, the results of the salvage and any subsequent analysis conducted;
  - d. the results and findings of any monitoring of ground disturbing works associated with the Purpose.

## SECTION 18 CONSENTS

### ADDITIONAL INFORMATION

The following information is provided for the guidance of the consent holder and does not constitute conditions of consent.

#### 1. Right of Review of Decision

Where a consent holder is aggrieved by a decision of the Minister made under Section 18(3) of the *Aboriginal Heritage Act 1972*, including the conditions to which the consent is subject, application may be made to the State Administrative Tribunal for a review. The Tribunal's website is [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au).

#### 2. Consent is Non-Transferable

Consent may be relied upon only by the named consent holder in respect of the named land. Any successor in title must give its own notice under the *Aboriginal Heritage Act 1972*.

#### 3. Traditional Knowledge Holder

Agreements reached with Traditional Owners and knowledge holders entered into on behalf of the consent holders are acknowledged and supported.

#### 4. Conditions of Consent

- The Department of Planning, Lands and Heritage (DPLH) carries out routine audits on compliance with the conditions of consent.
- Failure to comply with the conditions of consent may constitute an offence under Section 55 of the *Aboriginal Heritage Act 1972*.
- It is recommended that the consent holder informs all employees and others engaged in the development of their obligations under the *Aboriginal Heritage Act 1972*, especially with regard to skeletal material.
- Reports to the Registrar of Aboriginal Sites (the Registrar) should use the Section 18 Report Back template which can be downloaded from the DPLH website at <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/land-use-under-the-aha/section-18-notices>.
- The Registrar welcomes any additional information about Aboriginal sites within the meaning of Section 5 of the *Aboriginal Heritage Act 1972*, or objects within the meaning of Section 6 of the *Aboriginal Heritage Act 1972*.

#### 5. Legislation

The *Aboriginal Heritage Act 1972*, the *Aboriginal Heritage Regulations 1974* and the *State Administrative Tribunal Act 2004* may be viewed and downloaded from the State Law Publisher website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

## APPENDIX 3: YALYALUP ETHNOGRAPHIC SURVEY

# *Ethnoscience*

ABN 47 065 099 228

## *Ethnography, Heritage & Cultural Interpretation*

### Report of an Ethnographic Survey of Doral's Yalyalup Project near Busselton, Western Australia

---

*Prepared for Doral Mineral Sands*

Edward M. McDonald & Tania Phillips

January 2020

PO Box 121, MELVILLE WA 6956  
Phone (08) 9339 8431; Mobile: 0419957140  
Email: dredward@iinet.net.au

# *Ethnoscience*

ABN 47 065 099 228

## *Aboriginal Heritage*

### **Disclaimer**

The results, conclusions and recommendations contained within this report are based on information available at the time of its preparation. Whilst every effort has been made to ensure that all relevant data has been collated, the author can take no responsibility for omissions and/or inconsistencies that may result from information becoming available subsequent to the report's completion.

© Ethnoscience, Doral Mineral Sands Pty Ltd and South West Boojarah #2 (WC06/4)  
Claimants 2012



# *Ethnoscience*

ABN 47 065 099 228

## *Aboriginal Heritage*

### **Abbreviations**

ACMC:	Aboriginal Cultural Material Committee
AHA:	<i>Aboriginal Heritage Act 1972</i>
AHIS:	Aboriginal Heritage Inquiry System
DPLH:	Department of Planning Lands and Heritage
Doral:	Doral Mineral Sands Pty Ltd
EST:	Ethnographic survey team
NSHA:	Noongar Standard Heritage Agreement
SWALSC:	South West Aboriginal Land and Sea Council
SWB:	South West Boojarah #2 (WC06/4) Native title claim

### **Acknowledgements**

Wayne Webb (SWB)

Jack Hill (SWB)

Tim Kumanjii Harris (SWB)

Pearl Councillor (SWB)

Franklyn Nannup (SWB)

Mark Blurton (SWB)

Barry Peel (SWB)

Julie Edwards (Doral)

Craig Bovell (Doral)

Peter Nettleton (SWALSC)

13 Baal Street, PALMYRA WA 6157  
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# *Ethnoscience*s

ABN 47 065 099 228

## *Aboriginal Heritage*

### **Summary & Recommendations**

Doral Mineral Sands Pty Ltd (Doral) commissioned Ethnoscience in 2017 to undertake a desktop study of its proposed Yalyalup mineral sands project area. The desktop study was undated in 2019 to include an access corridor across the Abba River to the Ludlow-Hithergreen Road.

The Abba River (DPLH 17354) was the only Aboriginal site identified in the study area, which also did not contain any 'Other Heritage Places'.

Doral entered into a Noongar Standard Heritage Agreement with SWALSC, on behalf of the SWB claimants within whose native title claim (South West Boojarah #2 WC06/4) the survey area is wholly located.

Ethnoscience was then commissioned by Doral to undertake a field heritage investigation. Snappy Gum conducted archaeological survey of the project area, behalf of Ethnoscience. The archaeological survey did not record any archaeological sites with the project area. However, thirty-three (33) isolated artefacts were recorded (Cue & Hovingh, 2019).

SWALSC then provided a list of eight SWB consultants nominated for the ethnographic survey, which Edward McDonald and Tania Phillips of Ethnoscience conducted on November 28, 2019 with seven of those nominated or their proxies. A site identification methodology was used for the survey. Following a short briefing session on Busselton provided by the EST inspected the Yalyalup project area by vehicle, stopping at various vantage points to view the land and discuss the proposed project and the results of the archaeological survey. Particular attention was paid to the location of the proposed crossing of the Abba River (DPLH 17354), which was the only ethnographic site with the project area identified during the field survey.

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# *Ethnoscience*

ABN 47 065 099 228

## *Aboriginal Heritage*

The SWB consultants were supportive of and did not raise any objections to Doral's mine development and rehabilitation plans. In particular they expressed their satisfaction with the proposed location for the access corridor crossing of the Abba River.

They noted their satisfaction with the results of the archaeological survey and agreed that archaeological monitoring should be restricted to areas of archaeological potential, especially the location of the proposed Abba River crossing. They requested, however, that any archaeological material that is to be disturbed is salvaged and suitable stored.

A number of SWB consultants raised questions regarding the economic benefits that might flow from the development to the Nyungar community and expressed the hope that the project would provide employment opportunities for local Nyungars.

### Recommendations

1. It is recommended that Doral's planned Yalyalup development proceed.
2. It is also recommended that that areas of archaeological potential are monitored during the removal of the topsoil and that any archaeological material discovered is salvaged and suitable stored.
3. It is further recommended that Doral consult SWALSC regarding Nyungar employment opportunities and benefits that might flow to the community from the Yalyalup project.

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Email: dredward@iinet.net.au

# *Ethnoscience*

ABN 47 065 099 228

## *Aboriginal Heritage*

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# *Ethnoscience*

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## *Aboriginal Heritage*

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# *Ethnoscience*s

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## *Ethnography, Heritage & Cultural Interpretation*

### **Introduction**

In June 2017, Ethnoscience was commissioned by Doral Mineral Sands Pty Ltd (Doral) to undertake a desktop Aboriginal heritage survey of the Yalyalup Project Area which is located approximately 8.5km southeast of Busselton (Figure 1) and is located wholly within the South West Boojarah #2 (WC06/4) (SWB) native title claim, which is represented by the South West Aboriginal Land and Sea Council (SWALSC). Doral plans to mine the Yalyalup project area for mineral sands (Figure 1).

The objectives of the 2017 desktop survey were (a) identify any known Aboriginal heritage issues that may affect the proposed Yalyalup mine development; and (b) make recommendations for any further research and/or consultation that may be required to meet the requirements of the Aboriginal Heritage Act 1972 (AHA). The desktop found that there are no Registered Aboriginal Sites or 'Other Heritage Places' currently listed within or in close proximity to the proposed Yalyalup Project Area (Figure 1). However, there are a number of ethnographic sites recorded in the surrounding area, including the Sabina River (DPLH 17353) and Abba River (DPLH 17354), as well as a number of archaeological sites (McDonald and Coldrick 2017). The desktop study recommended that ethnographic and archaeological surveys of the project area were undertaken with the participation of the SWB native title claimants.

In August 2019, Doral requested that Ethnoscience examine an additional area not included in the original Development Envelope for which Doral now need to apply for an amendment under the EP Act. This area is for a proposed mine access corridor, which would cross the Abba River (Figure 2). The updated desktop study found that the Abba River (DPLH 17354), a registered Aboriginal site, was intersected by the proposed mine access corridor (McDonald 2019) (Figure 3).

Doral, which had entered into Noongar Standard Heritage Agreement (NSHA) with SWALSC and SWB, commissioned Ethnoscience to undertake ethnographic and archaeological surveys of the Yalyalup project area on November 5, 2019

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Ethnosciences subcontracted Snappy Gum Heritage Services (Snappy Gum) to undertake the archaeological survey, which was conducted November 18 to 21, 2019.

The results of the archaeological survey are presented under a separate cover (Snappy Gum in prep). The ethnographic survey was conducted Edward McDonald and Tania Phillips of Ethnosciences on November 28, 2019.

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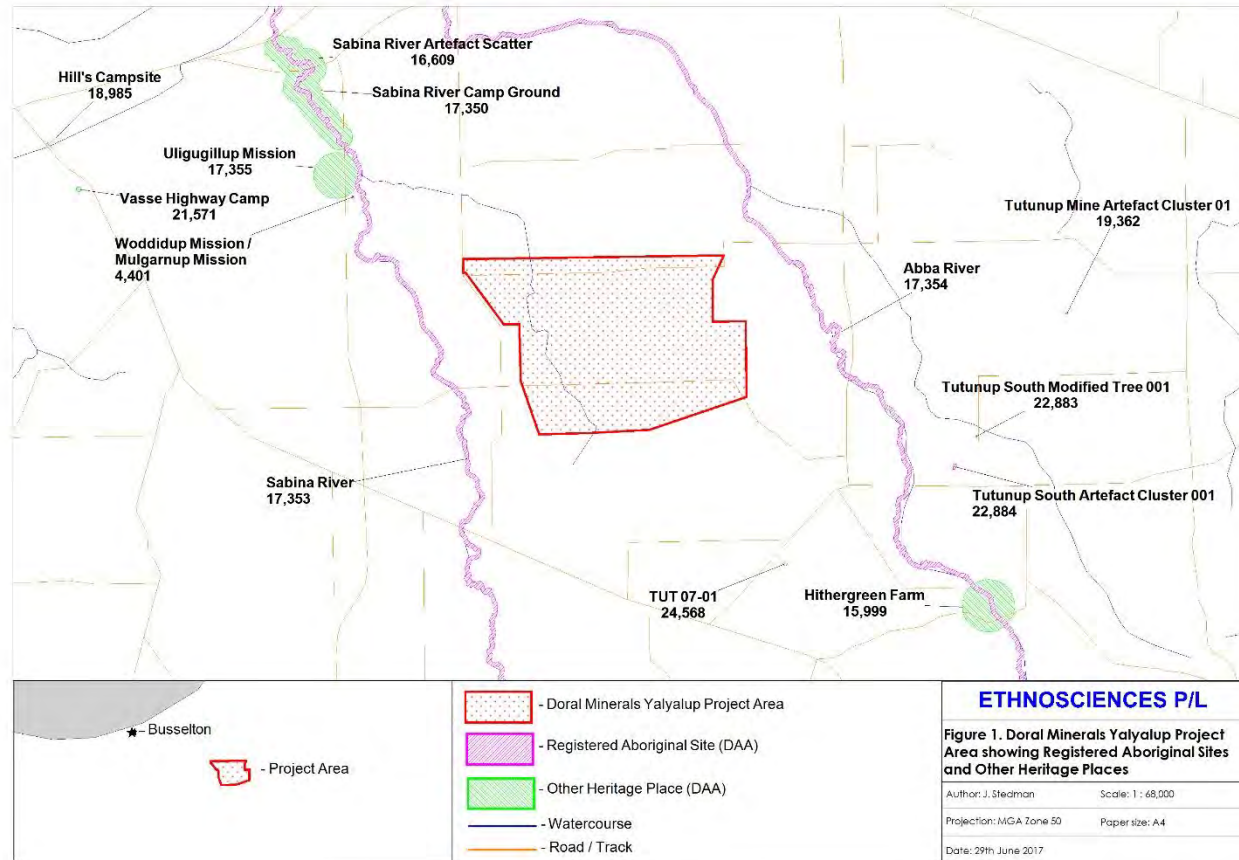


Figure 1: The Yalyalup Project area showing Registered Aboriginal Sites and 'Other Heritage Places' in the vicinity ( Source: McDonald & Coldrick 2017)

### Report of an Ethnographic Survey of Doral's Yalyalup Project



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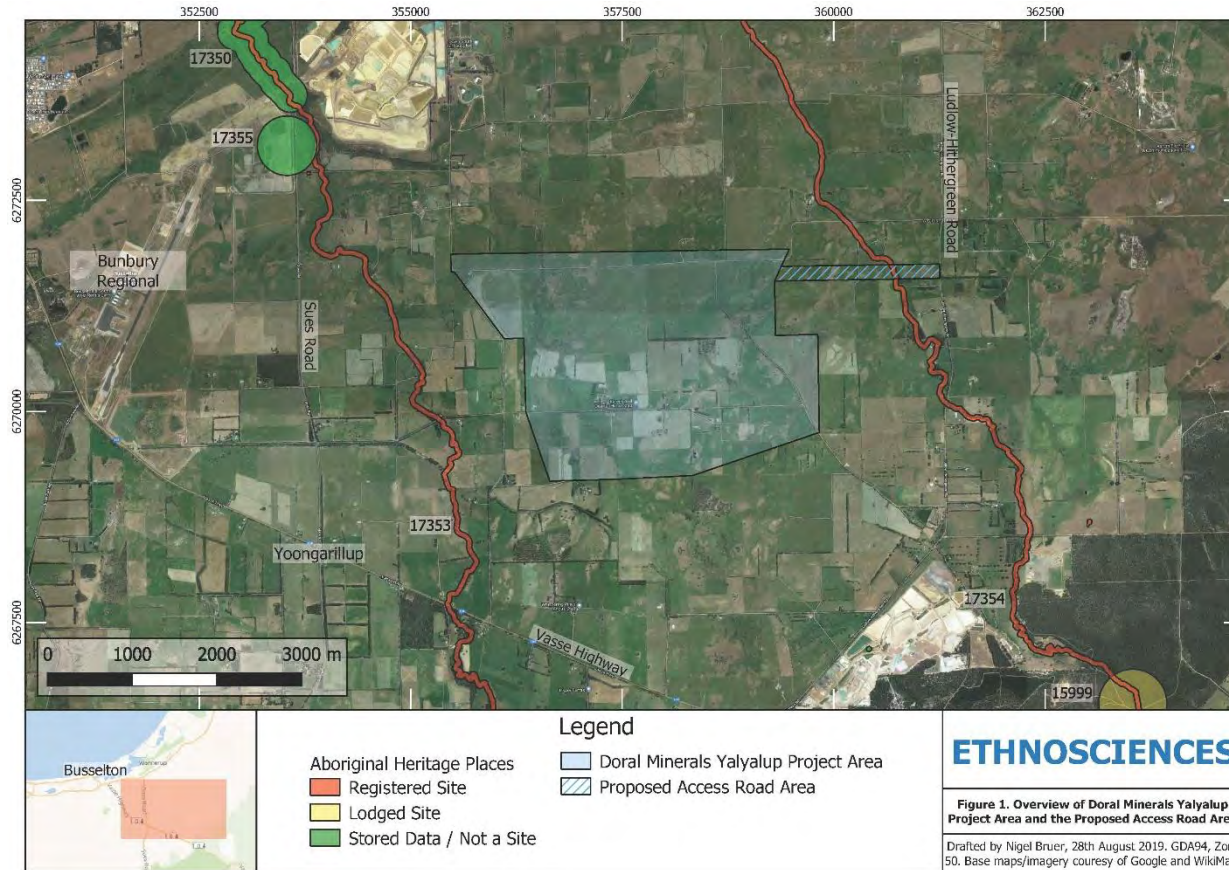


Figure 2: Doral Yalyalup project area including mine access corridor (Source: McDonald 2019)

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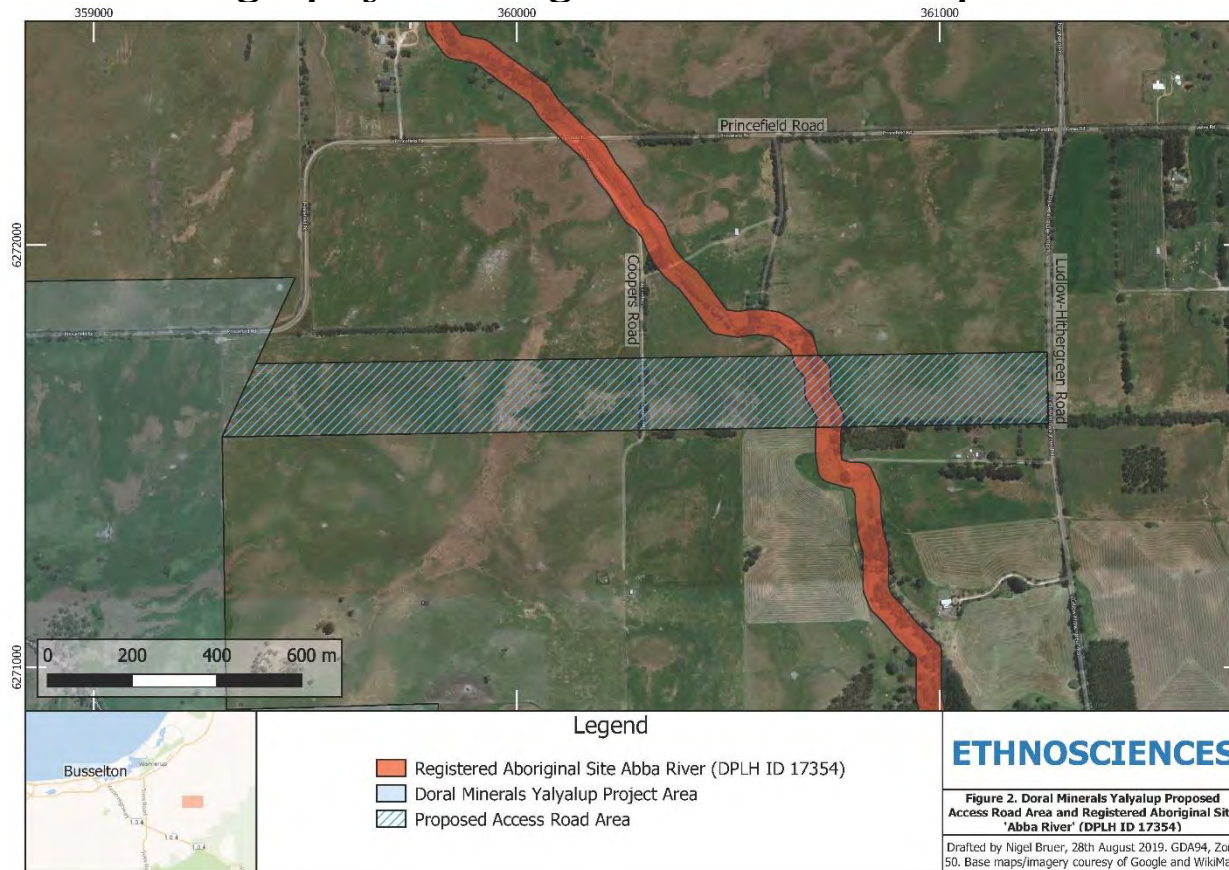


Figure 3: Doral's Yalyalup project area showing the intersection of the mine access corridor with the Abba River (ID 17354) ) (Source: McDonald 2019)

### Report of an Ethnographic Survey of Doral's Yalyalup Project

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### **Ethnographic Survey Methods**

The ethnographic survey was conducted in the following stages:

- ❖ Desktop research;
- ❖ Preliminary consultation with the SWB Aboriginal consultants nominated by SWALAC & the SWB Working Party;
- ❖ Site inspections with the SWB Aboriginal consultants;
- ❖ Consultation regarding the results of the archaeological survey; and
- ❖ Report preparation.

As noted, McDonald and Coldrick undertook the desktop research in 2017 which McDonald updated in 2019 (McDonald and Coldrick 2017 and McDonald 2019). The desktop studies included an examination of the Register of Aboriginal Sites using the online Aboriginal Heritage Inquiry System (AHIS) operated by the Department of Planning Lands and Heritage (DPLH). A review of previous published and unpublished ethnohistorical and ethnographic material, including previous heritage reports was also undertaken and particularly of survey of other mineral sands (for example, Goode 2003, McDonald, Hales and Associates 2002; McDonald 2007, 2012 & 2018 and McDonald and Coldrick 2010 and 2011). These also include several broadscale ethnographic studies, such as McDonald, Hales & Associates (1994) and CSR, Edith Cowan University and McDonald, Hales & Associates (1997).

The SWB Working Party through SWALAC provided a list of eight (8) Aboriginal consultants to Doral in October 2019. When contacted about the planned ethnographic survey, one was reported that she was not available because of family commitments. Another of those nominated was not available because of work commitments. Another member of the family was nominated to take his place. Mrs Van Leeuwin of the Harris Family native Title claim (WC1996/041). was nominated to participate in the survey. However, members of her family insisted that she not be contacted as she is elderly and has been infirm for some years. Her nephew, Mark Blurton, was nominated by

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senior family members as her proxy. Mr Barry Pell proxied for Kelton Pell who was unable to participate because of work commitments.

The ethnographic field survey was undertaken on November 28, 2019 with seven SWB consultants comprising the ethnographic survey team (EST):

- ❖ Wayne Webb
- ❖ Jack Hill
- ❖ Tim Kumanjii Harris
- ❖ Pearl Councillor
- ❖ Franklyn Nannup
- ❖ Mark Blurton
- ❖ Barry Peel

McDonald conducted the ethnographic field survey with the assistance of Ms Tania Phillips using a site identification methodology. The ethnographic survey team was assisted in the field by Ms Julie Edwards (Environmental Advisor, Doral Mineral Sands) (Plate 1). The survey commenced in Busselton with a quick overview by Ms Edwards of the proposed mine development. The EST then proceeded to the Yalyalup mine development area, stopping at various vantage points to inspect the land, with particular attention been paid to the location of the proposed Abba River crossing (Plate 2). At various stops Ms Edwards discussed various aspects of the mining process and the rehabilitation of the land when mining was complete. She responded to the range of queries raised by the SWB consultants regarding such matters the land to be impacted, the mining and ore treatment processes, the stages of mining and the rehabilitation processes and requirements, as well as the nature of the planned impacts on the Abba River. Ms Edwards explained that it was a continuous process of mining and rehabilitation, as soon as one section was mined rehabilitation commenced and the sands that remained after the processing of the mineral sands were returned to the areas they came from. Mr Wayne Webb, who had assisted Snappy Gum with the archaeological survey, furnished the EST members with a summary of the results of

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the archaeological survey and discussed how the results related to the landform. Mrs Toni Webb who have also participated in the archaeological survey, accompanied her husband Wayne and added information as required (see Plates 3-6).

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**Plate 1: The Yalyalup EST & other participants (from left) Jack Hill, Toni Webb, Franklyn Nannup, Wayne Webb, Barry Pell, Julie Edwards, Edward McDonald, Pearl Councillor, Tim Kumanjii Harris & Mark Blurton: note the vegetation free proposed mine access corridor & Abba River crossing alignment behind (Photo: Phillips, November 2019)**

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**Plate 2: The proposed mine access corridor & Abba River crossing location, looking east towards the Ludlow-Hithergreen Road (Photo: Phillips, November 2019)**

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**Plate 3: Wayne Webb (pointing) describes the Yalaylup Project area landform and the results of the archaeological survey to Mark Blurton, Jack Hill and Barry Peel (Photo: McDonald, November 2019)**



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**Plate 4: Julie Edwards discusses the environmental & heritage values of the McGibbon Track (in background) and Doral's plans to avoid impacting it with members of the EST (Photo: Phillips, November 2019)**

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**Plate 5: Julie Edwards responses to queries from the SWB consultants regarding Doral's proposed Yalyalup mining process (Photo: Phillips, November 2019)**

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Plate 6: Jack Hill queries Julie Edwards about aspects of Doral's mine development proposals while Franklyn Nannup and Tania Phillips listen on (Photo: McDonald, November 2019)

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### **Ethnographic Background**

Daisy Bates (1985, 1992 and n.d.) was the first researcher to systematically collect information regarding the social organisation, language and customs of the indigenous people of the Southwest region of Western Australia.

Bates (1985:39) referred to the Aboriginal people occupying the Southwest from around Jurien Bay in the north to a point just east of Esperance as the 'Bibbulmun Nation'. She reports that the Bibbulmun were comprised of a number of local groupings with similar customs and beliefs though regional differences, including forms of descent and dialect, were evident (Bates 1985:46-54). According to Bates (1985:54), the Bibbulmun who traditionally occupied the Busselton area were known as the *Dunan Wongi* after the name of their local dialect.

Later researchers, however, provide a different perspective to that of Bates. Berndt (1979), following Tindale (1974), for example, suggested that at the time of British colonisation the Southwest was occupied by thirteen 'tribes' or socio-dialectal groups that formed a discrete socio-cultural bloc similar to what Bates referred to as the 'Bibbulmun Nation'. Tindale (1974) and Berndt (1979) reported that the groups occupying the region in which the study area is located were the *Wardandi* 'tribe' or socio-dialectal group (see Figure 4). Tindale (1974:259) described the *Wardandi* territory as:

*From Bunbury to Cape Leeuwin, chiefly along the coast; at Geographe Bay, the vicinity of Nannup and Busselton. According to one informant, the tribal name is linked with the [wardan'] or crow, but the name given in vocabularies for crow is [kwa:kum']. They were also called the "seacoast people," and the detailed Nina Layman MS gives "werdandie" also "wartine" as meaning "the sea". In yet another version it is the derivative of the negative term.*

Bates (1985:47) also had reported that the Bibbulmun around the Busselton area were called *Waddarn-di*, or sea people; however, she commented that this term referred to

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all coastal people, including the groups stretching from Esperance to Bunbury and beyond.<sup>1</sup>

Bates' unpublished notes (for example, n.d. Section II Geographical Distribution) suggest that a number of important camping places associated with an initiates' (*beedawong* or *moolyeet*) trail were located in the Busselton area including in the vicinity of the Abba River (see also Bates 1985). Bates' list begins with the Porongorups and runs west to Augusta, then follows the coast to Perth and finally ends at *Karboordup* near where the Perth Town Hall is located. Hammond (1933:19) also refers to a *bidi* or pathway linking Perth to the Southwest that probably would have encompassed these and other campsites.

Bates (n.d.) lists a cluster of camps in the Busselton area, though the exact location of many of these places is unknown. These camps, in the order listed by Bates (comments in parentheses are Bates' own), include:

- ❖ *Ngamboornup* (Broadwater);
- ❖ *Win'in'up* (winnaitch);<sup>2</sup>
- ❖ *Yoonderup* (Busselton River);
- ❖ *Kelgalup* or *Kel'al'up* (Butter factory);
- ❖ *Kooneengoonderup* (Estuary);
- ❖ *Beerdalup*;
- ❖ *Kwarreedup*;
- ❖ *Ken'yee'dup*;

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<sup>1</sup> The term *Waddarn-di/Wardandi* in this sense is an example of what Sutton (2003:74–75) would refer to as 'environmental identity names' and not a language group name. Bates (1985:47) also reports that people who lived along rivers in the Southwest were referred to as 'Bilgur'; estuary people as 'Darbulung'; and hill people as 'Buyun-gur'. Sutton (2003) discusses how 'tribal' names identified by Tindale (1974) whose provenance might be somewhat doubtful have now been adopted by Aboriginal groups. McDonald and Christensen (n.d.) have questioned the basis of Tindale's, and particularly Berndt's, analyses.

<sup>2</sup> Bates glosses 'winnaitch' as "avoided" or "sacred". An examination of Bates' unpublished manuscripts indicates that *Win'in'up* is located between the road and the old railway bridge in Busselton on the Vasse River.

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- ❖ *Woojoolgup*;
- ❖ *Kweejerdup*;
- ❖ *Joorgadup* or *Joorak guttuk* (on the Abba River); and
- ❖ *Wannerdup* or *Menbinup*.<sup>3</sup>

It has not been possible, to date, to positively identify *Joorgadup/Joorak guttuk* or its location on the Abba River. It needs to be stressed that there are often major difficulties in clearly identifying some of the places listed by Bates (see McDonald, Hales & Associates 1999; McDonald and Venz n.d.). First is the nature of Aboriginal placenames themselves where a number of places may be known by the same or similar names. For example, in the Southwest there were a number of places recorded by Bates called *Walalyup* (place of the Eaglehawk) or other dialectal variants of that name. Second is the use of names and reference points by Bates herself. She is far from consistent in her use of names and dialectal variations of names. She also frequently uses different (English language) reference points to situate an Aboriginal placename. As a consequence of these problems, we must be cautious in applying a placename listed by Bates to a precise location in the context of heritage surveys, particularly in the absence of detailed information. Nevertheless, it appears likely that there were a number of camps located in the vicinity of the study area that were associated with the 'moolyeet trail'.<sup>4</sup>

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<sup>3</sup> Possibly refers to Wonnerup. We are currently unable to identify the location of *Joorgadup/Joorak guttuk* on the Abba River but likely to be in the vicinity of Wonnerup Estuary as it would roughly be in line with the other 'camps'. The suffix '**up**' in *Joorgadup* refers to 'place of' and '**guttuk**' is to have or possess. Wayne Webb (pers comm. December 2019) is of the view that the stem '**Joorgad/Joorak**' may derive from the word '**jooroot**' meaning track (see also Bindon and Chadwick 1992)

<sup>4</sup> However, it is not clear that in pre-colonial times the 'moolyeet trail' had the status of a single integrated route as is now is generally attributed to it (e.g. Vinnicombe 1989) as Bates (1985) herself seems to raise doubts about it. She notes (1985:51-52), for example, that one of her informants travelled from Busselton to Albany with initiates after colonisation but notes, "whether this was due to the facilities afforded by white settlement, and the greater ease with which long journeys could be accomplished under white protection cannot be definitely ascertained." McDonald and Venz (n.d.) provide a more detailed discussion of this issue.

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Hallam (1975), Ward (1981:18) and Gibbs (1987) provide detail of various aspects of the traditional economic and social life of Nyungars in the area. Ward (1981:18) has compiled ethnohistorical research which indicates that the Vasse, Wonnerup and Leschenault Inlets, together with the numerous rivers and other waterways in the area, were particularly important places, both economically and socially, prolific in fish, waterfowl and other resources. A number of mungah/mungar (fish traps) were located in various rivers and estuaries throughout the Southwest. At least two were located in the environs of Busselton, one on the Vasse River and another on the Abba River (see Ward 1981; Gibbs 1987; McDonald, Hales & Associates 1995). The former was observed by John Bussell who wrote in 1833 of 'snares for fish' built by Nyungars in the shallows at the mouth of the Vasse River (cited in Ward 1981:30). Groups of more than 200 Nyungars were recorded at the fish trap at Wonnerup on the Abba River (Gibbs 1987). George Layman also noted that during the month of September Nyungars were numerous along the estuary "and have frequently been seen, in numbers of one hundred" (Layman Acc. No. 36, cited in Collard 1994). Thus, the research indicates that the rich habitat of the Busselton region allowed for large gatherings of Aborigines during seasonal availability of certain foods. When food resources became limited at various times of the year, there is some evidence to suggest that Nyungars dispersed in smaller family groups over their range (Hallam 1981; Ward 1981).

According to Landgate,<sup>5</sup> the name for the Abba River was first recorded by Frederick Ludlow in 1834, '*abba*' an Aboriginal word which is most likely a greeting word used by South-West Aborigines (Bindon and Chadwick 1992: 1, gloss '*abba* as a friendly salutation). Yalyalup according to one of the informants, in the present survey is the name for the eastern end of the Whicher Range, which means 'place of big hill and

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<sup>5</sup> @ <https://www0.landgate.wa.gov.au/maps-and-imagery/wa-geographic-names/name-history/History-of-river-names#alpha>, accessed 051219.

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caves'. According to an entry on Wikipedia, Yalyalup means "place of many holes" with "yal", being the Wardandi word for "large hole".<sup>6</sup>

Shann (1978) and Jennings (1983; 1999) document various aspects of Nyungar-European relations during the colonial period in the Busselton area. Initially contact between Europeans and the local Nyungar population was relatively peaceful, however, as Nyungars realised they were losing control of their land and resources relations between them and the 'Wadjellas' [white fellas] deteriorated. As Collard (1994:58) points out, there was conflict in the perceptions of property between Aborigines and Europeans:

The Wedjela regarded their sheep, cattle and crops as private property and were incensed when this property was stolen, at the same time, however, they regarded the wild life as public property to be hunted at will. The Nyungar, on the other hand, had areas for hunting and gathering vested in specific families and these families also felt justifiably angry when property and territorial rights were violated.

Conflict between the colonists and the local Aborigines was often intense amounting at times to what Jennings (1983) has described as a state of war or insurrection. The spearing of George Layman and resultant reprisals against the Aborigines, which resulted in the Minninup massacre, highlight these tensions (see Jennings 1983: 181-199; see also Shann 1978 and White 2017).

Following this period of conflict Aboriginal people adapted to colonial conditions and local Nyungars were variously employed in the pastoral, farming and forest industries. Reports from Aboriginal consultants of agricultural employment in and around the Busselton townsite are documented in previous surveys (Hovingh and Jarvis 1996: 24; McDonald, Hales and Associates 1994: 13). The nature of work available was seasonal and those Nyungars employed by farmers were expected to fend for themselves in the off season by accessing traditional sources of food. As such

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<sup>6</sup> @ [https://en.wikipedia.org/wiki/Yalyalup,\\_Western\\_Australia](https://en.wikipedia.org/wiki/Yalyalup,_Western_Australia) accessed 051219



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Aboriginal people set up fringe camps on the outskirts of towns and on certain pastoral properties. Research by McDonald, Hales and Associates and other researchers in the Busselton area has shown that a number of fringe camps in and around the Busselton townsite were occupied as late as the 1960s by Nyungars. One such formerly utilised a fringe camp which has been previously recorded (Site ID 15,085) is located a short distance from the Busselton Airport to the west of the present survey area.

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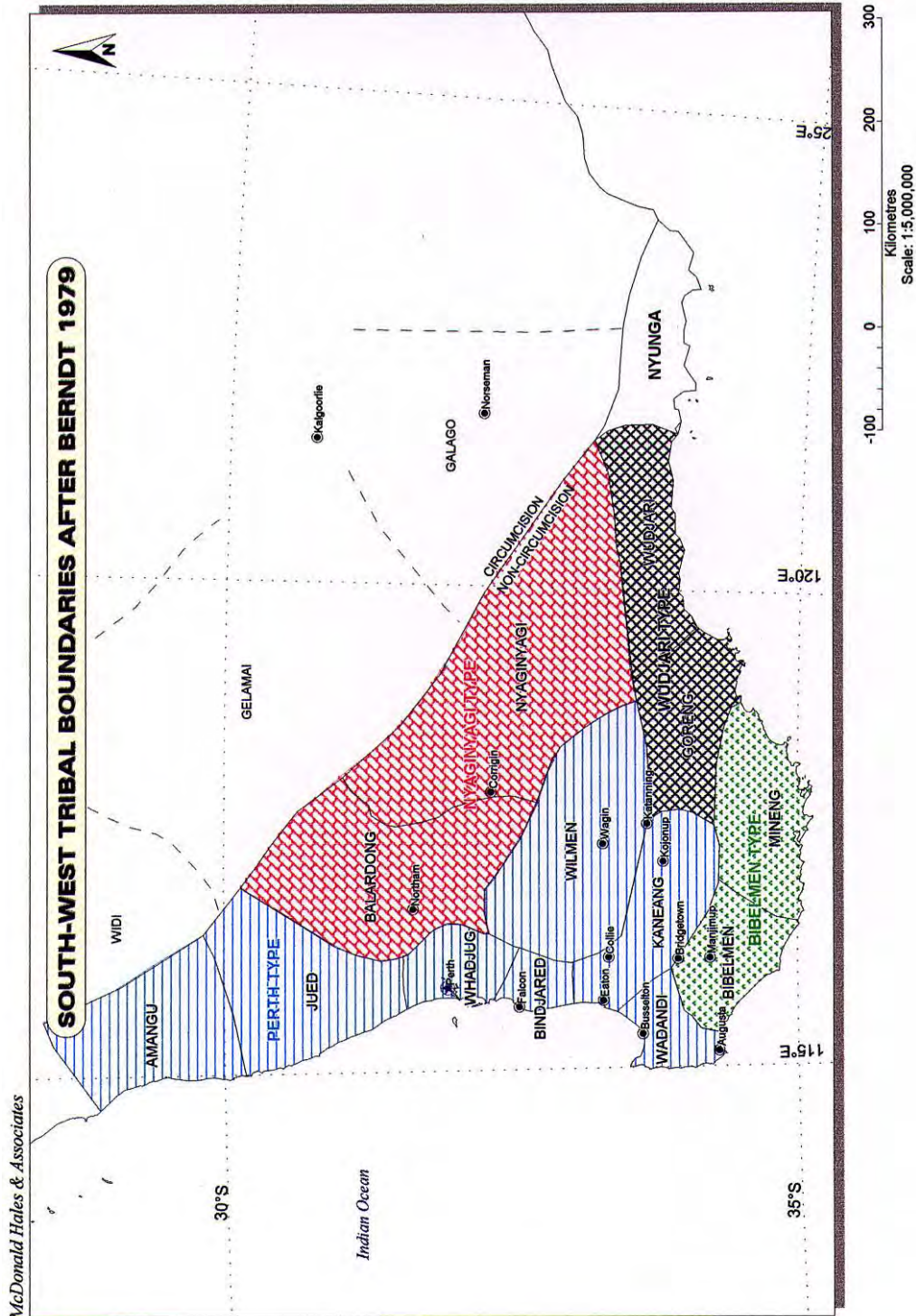


Figure 4: South-West Tribal Boundaries after Berndt 1979

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### **Ethnographic Survey Results**

#### **Desktop Results**

The search of the AHIS reveals that the Abba River (DPLH 17354) is the only registered Aboriginal site within the proposed Yalyalup project area, including the mine access corridor. No ethnographic 'Other Heritage Places' (OHPs) were identified within the project area and the desktop review did not identify any other heritage values in the study area (McDonald & Coldrick 2017 and McDonald 2019).

While several broad scale surveys have encompassed the proposed Yalyalup project area, for example, McDonald, Hales & Associates (1994) and CSR, Edith Cowan University and McDonald, Hales & Associates (1997), the AHIS does not reveal any previous targeted surveys of the present study area. No ethnographic sites were reported in the Yalyalup area in either of these earlier broadscale studies.

#### **Results of the Ethnographic Field Survey**

With the exception of the Abba River (DPLH 17354) no other ethnographic sites were reported by the EST in Doral's Yalyalup survey area.

The Abba River, as noted, is located in the mine access corridor and a crossing will have to be constructed on the river. Ms Edwards noted that the Ludlow-Hithergreen Road had been selected as the appropriate access to and from the Yalyalup mine, as it was already designed to carry heavy vehicles. She stressed that the area selected for the crossing to provide access from the mine sites to the Ludlow-Hithergreen Road is presently free of riverine vegetation and no clearing would be required (see Plate 2 above; see also Figure 5 below). The SWB consultants agreed that this was the best location for the mine access road. Ms Edwards also reported that Doral hoped to cross the river using culverts in order to minimise impacts on the river but that they would be guided by the environmental conditions that would be established for the project. The SWB Aboriginal consultants raised a number of questions regarding

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environmental impacts which Ms Edwards addressed by outlining the sorts of environmental controls that would be in place and addressed a number of issues including dewatering and run-off and management of topsoil and waste.

A number of the SWB consultants raised a number of strictly non-heritage issues, such as the benefits that might flow to the Nyungar community from the mine development. They also expressed the hope that the project would provide employment opportunities for local Nyungars. It was suggested to them that this was a matter that SWLASC and the SWB Working Party could raise directly with Doral.



**Figure 5: Detail of area selected for the Abba River crossing for Doral's proposed Yalyalup Mineral Sands Mine (Source: Doral)**

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### **Consultation Regarding Archaeological Findings**

As noted above, the archaeological survey was conducted by Snappy Gum between November 18 to 21, 2019, with a team comprising archaeologists Kellie Cue (Senior Archaeologist) and Tessa Woods and archaeological assistants, Wayne Webb and Toni Webb. Ryan Hovingh, the Managing Director of Snappy Gum also assisted on November 20.

The archaeological survey did not discover any Aboriginal archaeological sites within the survey area. However, thirty-three (33) isolated artefacts were recorded, the vast majority of which were quartz flakes, core fragments or debris, with a few fossiliferous chert flakes also identified. The isolated artefacts were found on top of fine white sands in small areas where vegetation was entirely absent and primarily in pushed-up earth around dams and deflations in the vicinity of the Abba River (Cue & Hovingh, 2019).

Mr Webb described the survey process and outcomes to the other members of the EST, noting that the area had a very low archaeological potential as most of it was extremely low-lying and swampy before being drained by farmers. As a result, it was not suitable for traditional camping and therefore there would be unlikely to be archaeological sites in the area. Members of the EST expressed their satisfaction with the results of the archaeological survey, noting that if Wayne Webb conducted the survey it must be right.

Mr Webb reported that as most of the area had such a low archaeological potential there was little point in monitoring ground disturbance apart from the locations where they had found the isolated artefacts and particularly in the vicinity of the Abba River, where the access corridor would be constructed which would include a river crossing. Other members of the EST concurred with his assessment. They, however, did request that any archaeological material that is to be disturbed is salvaged and suitably stored.

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### **Conclusions**

This report presents the findings of an ethnographic survey undertaken by Ethnosciences for Doral's Yalyalup mineral sands project. A desktop study was initially undertaken in 2017 and updated in 2019 to include an access corridor. Ethnosciences was then commissioned to undertake a field heritage investigation. Snappy Gum conducted archaeological survey of the project area, on behalf of Ethnosciences with the assistance of Wayne and Toni Webb. The results of which are reported under a separate cover (Cue & Hovingh, 2019), suffice it to say, that no archaeological sites were recorded. However, 33 isolated artefacts were identified.

Doral entered into a NSHA with SWALSC, on behalf of the SWB claimants. SWALSC then provided a list of eight SWB consultants nominated for the ethnographic survey, which was conducted on November 28, 2019 with seven of those nominated or their proxies. A site identification methodology was used and following a short briefing session on Busselton the EST inspected the Yalyalup project area by vehicle, stopping at various vantage points to view the land and discuss the proposed project and the results of the archaeological survey. Particular attention was paid to the location of the proposed crossing of the Abba River (DPLH 17354), which was the only ethnographic site identified during the desktop and field survey.

The SWB consultants were supportive of Doral's mine development and rehabilitation plans and particularly of the proposed location for the access corridor crossing of the Abba River. They were satisfied with the results of the archaeological survey and agreed that archaeological monitoring should be restricted to areas of archaeological potential, especially the location of the proposed Abba River crossing. They requested, however, that any archaeological material that is to be disturbed is salvaged and suitable stored.

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A number of SWB consultants raised questions regarding the economic benefits that might flow from the development to the Nyungar community and expressed the hope that the project would provide employment opportunities for local Nyungars.

### **Recommendations**

1. It is recommended that Doral's planned Yalyalup development proceed.
2. It is also recommended that areas of archaeological potential are monitored during the removal of the topsoil and that any archaeological material discovered is salvaged and suitably stored.
3. It is further recommended that Doral consult SWALSC regarding Nyungar employment opportunities and benefits that might flow to the community from the Yalyalup project.

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# *Ethnoscience*

ABN 47 065 099 228

## *Ethnography, Heritage & Cultural Interpretation*

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# *Ethnoscience*

ABN 47 065 099 228

## *Ethnography, Heritage & Cultural Interpretation*

- McDonald, Hales & Associates (1994) National Estates Grants Programme Aboriginal Sites in the Lower South-west Heritage Study. Unpublished report prepared by McDonald, Hales & Associates for Gnuraren Aboriginal Progress Association.
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APPENDIX 4: AQ2 SURFACE WATER ASSESSMENT -  
YALYALUP MINE ACCESS ROAD: ABBA RIVER CROSSING



## Memo

<b>To</b>	Julie Edwards	<b>Company</b>	Doral
<b>From</b>	Wendy McCarthy	<b>Job No.</b>	136E
<b>Date</b>	13/05/2020	<b>Doc No.</b>	008a
<b>Subject</b>	Surface Water Assessment - Yalyallup Mine Access Road: Abba River Crossing		

Julie,

We are pleased to provide you with the following surface water assessment which has been completed for the proposed Yalyalup Mine access road crossing of Abba River.

### 1. BACKGROUND

The Doral Yalyalup heavy mineral sands resource is located 10 to 14km south-east of the Busselton CBD, in the south-west region of Western Australia (Figure 1). The proposed mine access road is primarily on Doral landholdings, however the road will need to cross Water Corporation Lot 821 which forms part of the Abba River Drain (Figure 2). The Abba River Drain is a rural open earthen drain within a paddock.

A temporary bridge is proposed across the Abba River Drain and will be taken down following closure of the mine. The mine development project is expected to begin in September 2021 and finish in 2026-2027.

Advice from Water Corporation as part of approval applications includes:

“The crossing will need to be designed and built in a way it does not impede any flow in the waterway and the adjacent banks that act as a flood plain conveying large flows when the banks break out. The proposed bridge will need to be erected above the existing bank level. The designer will need to demonstrate that the structure will not retard the bank flow significantly.”

Water Corporation subsequently provided the following additional context for the required approval application:

- the Abba River Main Drain is classed as a rural drain and rural drains are managed to prevent long inundation periods of land [defined as greater than 3 days]. It should be demonstrated that the proposed structure will not interfere with the flow in the drain and also it will not impede the bank/flood plain flow significantly. Flows in rural drains often spill the banks and go onto flood plains that can convey floodwater downstream.

#### 1.1 Purpose

This memo has been prepared to support Doral’s proposed design of the bridge taking into consideration the above Water Corporation requirements.

This includes consideration of potential overbank flow and documenting provision for conveyance of flows.

## 2. TOPOGRAPHY AND SITE VISIT

Site topography and the predicted general flood flow directions during a 100-yr runoff event are shown on Figure 2. Doral's proposed crossing of Abba River Main Drain is about 100m downstream of the confluence of a Water Corporation rural east-west drain (East-West Drain) and the main Abba River channel flowing from south to north (Figure 2). A zoomed in view of the topography of the Ludlow-Hithergreen Road in the vicinity of the upstream East-West Drain is shown in Figure 3.

The Abba River Main Drain invert at the road crossing is 27.0mAHD with a West Bank of 28.5mAHD and East Bank level of 28.3mAHD (1.3 to 1.5m deep). South (upstream) of the proposed road crossing, flow may leave the channel area over the West Bank at crest level 28.5mAHD (Figure 2). Also upstream of the proposed road crossing, low-lying areas exist on the eastern river bank which would be prone to inundation when flow overflows the Abba River banks.

The upstream drain and drain road crossings were inspected on 25/3/2020. Photos of the condition of the upstream East-West Drain viewed from Ludlow-Hithergreen Road are shown on Figure 4.

Figure 4 also shows the Ludlow-Hithergreen Road eastern road side drain invert is part way up the East-west drain side slope. As per Figure 3, the road side drain invert is at approximately 1m depth. Survey of the Ludlow-Hithergreen road side drain shows the drain slope is northwards (away from the East-West Drain) and could spill out across an eastern paddock prior to reaching the level of the Ludlow-Hithergreen road centreline elevation (Figure 3). Therefore, for higher flow rates, a portion of flow from the East-West drain is likely to be diverted northwards to re-join the Abba River downstream of the study area, rather than continue through the East-West Drain to join the Abba River immediately upstream of the proposed road crossing. Northward overtopping of the East-West drain may also occur further upstream, as the drain is unlikely to have capacity to contain a 1% AEP event.

## 3. REGIONAL HYDROLOGY

Abba River flows into the Vasse-Wonnerup Estuary, with a regional catchment extent of 137.4 km<sup>2</sup> as shown on Figure 1.

Department of Water and Environmental Regulation (Marillier, 2018) completed a recent assessment to estimate peak flows through the Abba River catchment (Reconnecting rivers flowing to the Vasse Estuary – hydrological and water quality modelling. Department of Water and Environmental Regulation Report WST81), which provided a 1% AEP flow rate of 99m<sup>3</sup>/s to the Estuary.

## 4. PEAK FLOW AT DORAL LANDHOLDING (HYDROLOGY)

AQ2 was supplied the DWER 2018 RORB model to use for this project. The layout of the model for the Abba River Drain is shown in Figure 5.

Doral's proposed crossing of Abba River is about 100m downstream of the river's confluence with the East-West Drain (Figure 2). This confluence is represented as a node in the RORB model (Figure 5), herein referred to as the Reporting Node. The catchment area contributing to the Reporting Node is 62.4km<sup>2</sup>, which is 45% of the Abba River Catchment of 137.4km<sup>2</sup>. Estimated flows at the Reporting Node have been adopted for the hydraulic assessment of the road crossing.

The supplied RORB model was run to match the report 1% AEP 24 hr critical peak outflow of 99 m<sup>3</sup>/s at the outlet of Abba River to the Vasse Estuary by modifying the rainfall aerial reduction factor from 0.91 to 0.97. The other RORB input parameters used by DWER 2018 were unchanged, including initial loss (10mm), runoff coefficient (0.4), Kc (15) and m parameter (0.85). The adopted aerial reduction factor of 0.97 is also appropriate for the catchment size to the reporting node for Doral's proposed crossing location.

The provided RORB model assumed all flow from the East-West drain catchments (34m<sup>3</sup>/s in 1% AEP event shown) would report to the Abba River main drain area upstream of the bridge crossing site. An assessment of site visit and survey information data indicates that during high flow scenarios flow

would in fact overtop the East-West drainage channel upstream of Bridge 86, and be diverted north along both the spoon drain and adjacent paddock which is elevated lower than the Ludlow-Hithergreen Road crest (refer photo and survey Figures 3-4). An assessment was completed which estimated that 17m<sup>3</sup>/s would pass under Bridge 86 and continue through the East-West Drain during a 1% AEP event, with the remaining flow diverted northwards along the Ludlow-Hithergreen road drain and adjacent paddock. The RORB model was updated to include this split of flows, with the resulting hydrographs shown in Figure 6.

## 5. HYDRAULICS

To estimate the existing capacity of the drainage channel and simulate flow of overbank areas in the vicinity of the proposed road crossing, a hydraulic HEC-RAS 2D model was built.

The model was initially run using the existing terrain based on site survey point elevations. Other model parameters adopted include surface Mannings roughness of 0.05, downstream normal depth boundary condition with an energy grade slope of 0.005 for the channel and 0.002 for the western over bank. The model was run with the estimated RORB 1% AEP peak flow rate (44m<sup>3</sup>/s) at a constant rate to negate any terrain storage effects.

Results and flood depth mapping for the 1% AEP event are shown on Figure 7. Model results indicate the following:

- Overtopping of the West Bank upstream of the road crossing when flood levels rise above 38.5m AHD. The West Bank acts as a spillway onto the flood plain, as water over the West Bank is able to flow freely away from the channel area in a north-westerly direction once overtopping the bank. The flow over the flood plain is predicted to return to the river downstream of the Doral tenement. The West Bank overflow limits the flow which is conveyed to the proposed bridge location. Therefore, the flood water levels in the main Abba River Drain channel at the proposed bridge location are controlled by the West Bank spillway elevation.
- The model predicts a flow of approximately 19 m<sup>3</sup>/s to spill over the West Bank and be conveyed northwards across a broad 300m section of flood plain. Figure 7 shows the floodplain width at the proposed road alignment location and Figure 8 shows the predicted 1% AEP flood-levels range from 27.9 to 28.3m AHD along the proposed road alignment (Figure 8).
- At the location of the bridge, the 1% AEP flood water level is predicted to be 28.5m AHD and the 1% AEP peak flow is approximately 21m<sup>3</sup>/s within the channel. The combined channel and East Overbank combined flow is 25.5m<sup>3</sup>/s.
- Water spills over the East Bank initially upstream of the crossing location with overbank flow confined to a 55m flow width from the drain.

A second model was run with using a modified terrain to reflect the proposed road design information supplied by Coats Civil Engineering. To avoid western overbank floodplain flows being blocked by the road and partially diverted to the adjacent catchment to the west, a floodway was assumed across nominally half the floodplain width within the model. As such, the model terrain was only modified using the proposed design road elevations for half the West Bank floodplain width (eastern half of the floodplain) (Figure 8). The bridge deck soffit is assumed to be above the channel 1% AEP flood water level and so was not incorporated in the model.

Flood level results for the nominal proposed scenario 1% AEP are shown on Figures 8 and 9. Model Results indicate the following:

- Provision of a floodway at existing ground surface level for the western half of the floodplain should allow the flows to continue along existing flow paths (northwards) within the existing catchment. The resultant flood level within the floodplain does not rise above 28.1m AHD,

such that the natural catchment divide (at 28.3 to 28.45mAHD) continues to form a barrier to prevent flow to the western catchment.

- The proposed road surface across the east floodplain reduces the capacity for overbank flow within the Eastern Overbank. Compared with the existing scenario, the Eastern Overbank flows generally return back into the channel.
- The peak flow through the channel is predicted to be approximately 24m<sup>3</sup>/s. The 1% AEP flood level in the channel at the bridge remains the same (28.5mAHD) despite the increased flows, as the cross-section area under the bridge is slightly increased with the proposed works.
- The peak flow conveyed across the Western Overbank 'floodway area' is predicted to be 20m<sup>3</sup>/s. The flow has increased slightly due to the reduced capacity across the Eastern Overbank.

## 6. ROAD CROSSING DESIGN RECOMMENDATIONS

Based on the modelling completed, to provide for conveyance of flood flows through the Abba River Main Drain and associated overbanks while meeting Water Corp's requirement of not significantly impacting flows, the following is recommended for the access road crossing:

1. The bridge soffit should be positioned above the predicted 1% AEP flood level of 28.5mAHD to not impact the conveyance of flows. To achieve this, the road may be required to be elevated above the existing ground surface at the bridge approach on both sides.
2. A significant portion of the flow through the drain is predicted to be conveyed over the Western Overbank, and therefore the road surface on the western side of the drain crossing will nominally need to include provision of a floodway (i.e. be at natural ground level). The model has predicted that if the floodway covers approximately half the floodplain width (160m), there will be sufficient flow area to not significantly impact the conveyance of flows. The actual road design may vary from what has been modelled, but the design needs to include provision of sufficient floodway area to convey approximately 20m<sup>3</sup>/s at a flood level below the elevation of the natural catchment divide to the west.
3. The proposed road design includes a spoon drain to collect runoff shed from the road. Elevations along the road and spoon drain need to be considered to ensure that the road and spoon drain don't become a flow path for flooding to be diverted away from the Abba River Main Drain to the catchment to the west. For example, the road and spoon drain should not have a lower elevation than the elevation of the catchment divide (28.3 to 28.45mAHD).

We trust that this assessment meets your requirements. Please contact us should you have any questions.

Regards

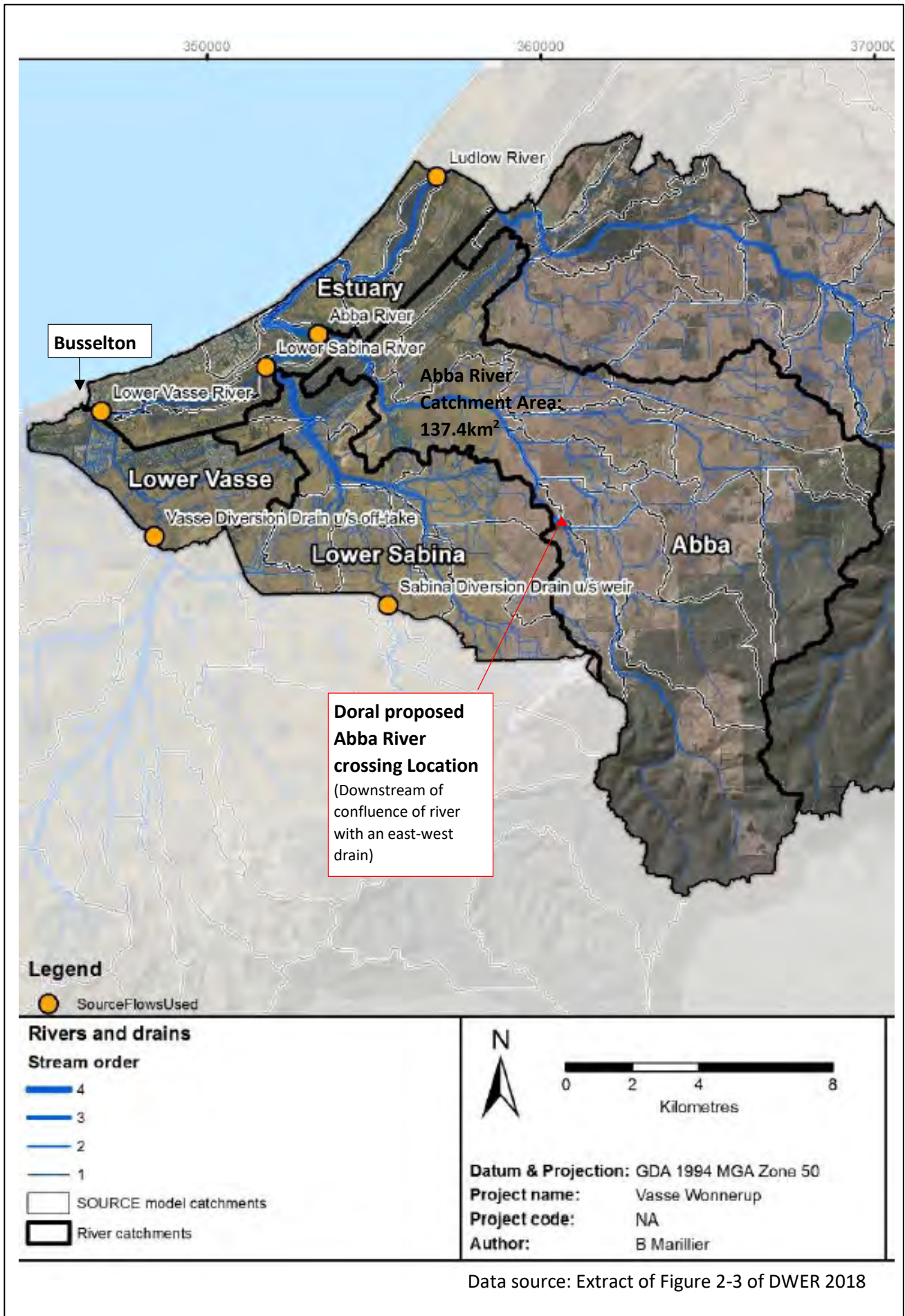
*Wendy*

Consulting Hydrologist

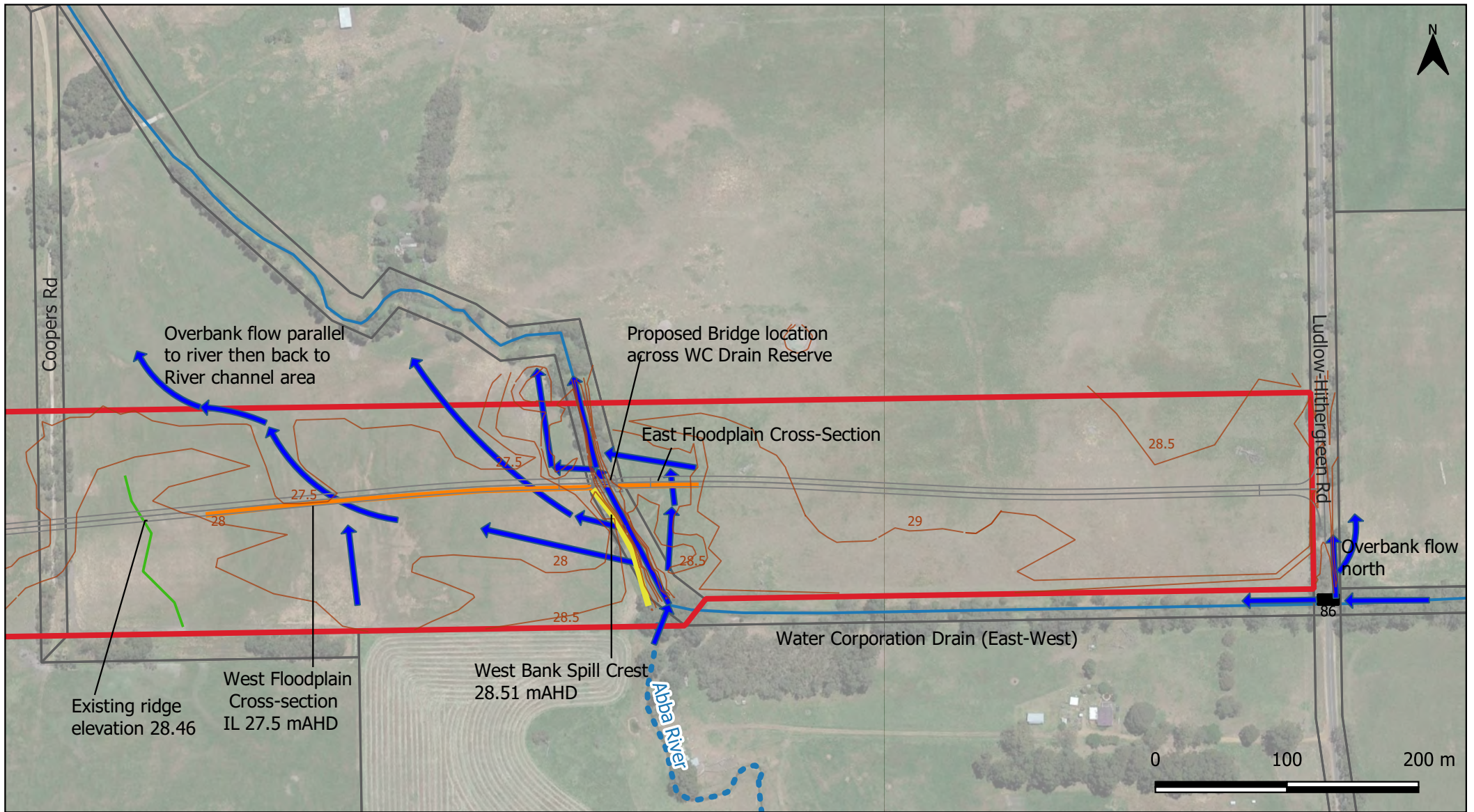
*Mark*

Consulting Water Resources Engineer

Author: WM (15/05/20)  
Checked: MN (15/05/20)  
Reviewed: MN (15/05/20)







**Legend**

- Doral Site Boundary
- Abba River Upstream
- Existing Flow Direction
- Proposed Road/Bridge Alignment
- Water Corporation Drainage Open Channel
- West Bank Existing Upstream Spill Crest Location
- Topographic Contours (mAHD)
- Water Corporation Bridge & No
- Existing Flood Plain Width along road alignment

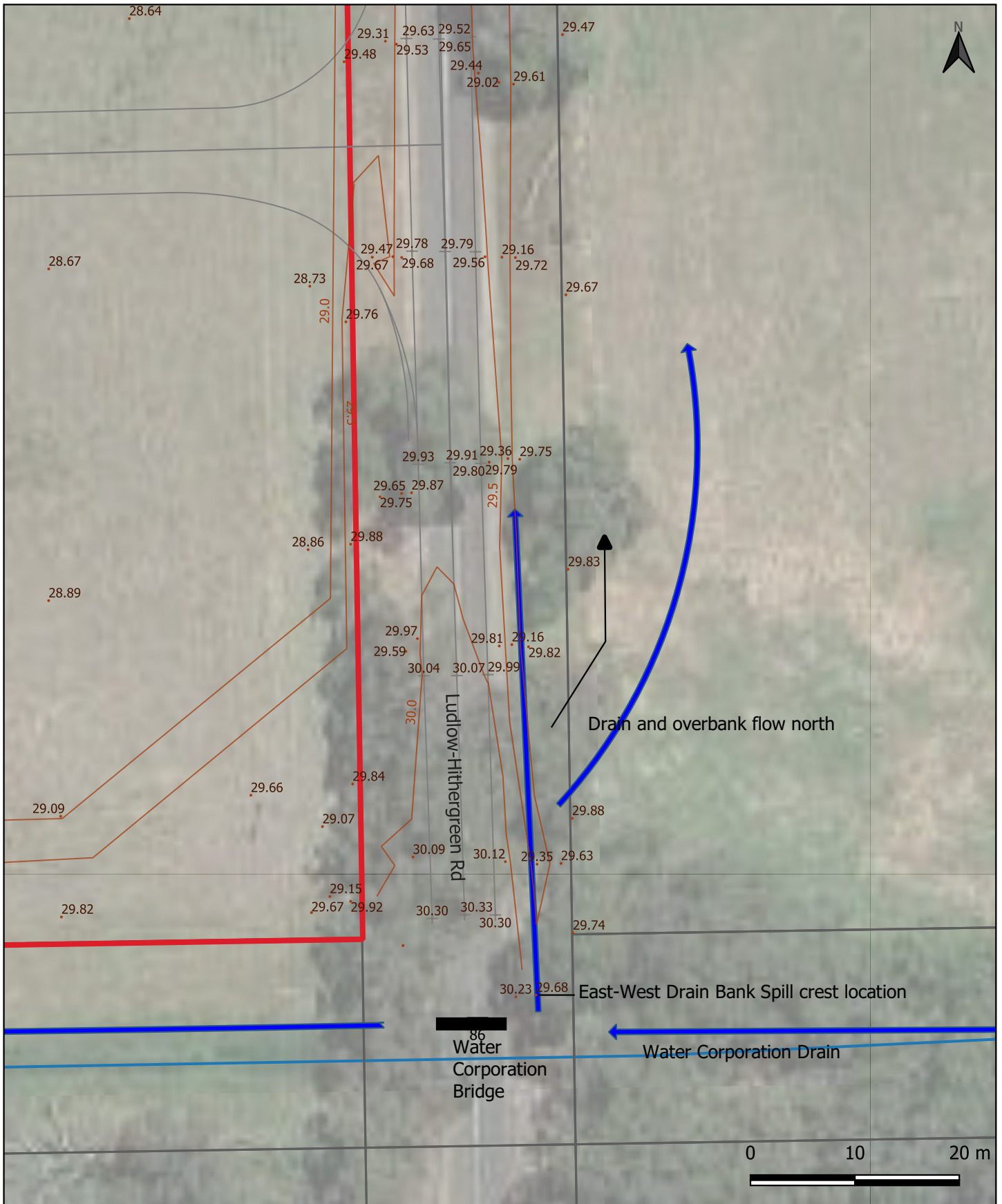
AUTHOR: WM  
 DRAWN: WM  
 DATE: 8/5/2020

REPORT No: 008a  
 JOB No: 136E  
 Coordinates: MGA Zone 50

Notes and Data Sources:  
 Water Corporation (2020) Drainage Open Channel  
 Survey of Topographic Points by Doral and draft road design provided by  
 Contours developed from Points.



Figure 2:  
**Topography and Existing  
 Drainage Flow Direction**



**Legend**

- Doral Site Boundary
- Existing Flow Direction
- Survey topographic Points (Doral Dec 2019)
- Topographic Contours (mAHD)

AUTHOR: WM  
 DRAWN: WM  
 DATE: 13/5/2020

REPORT NO: 008a  
 JOB No: 136E  
 Coordinates: MGA Zone 50

Notes and Data Sources:



Figure 3  
**Ludlow-Hithergreen  
 Road Reserve  
 Topography**



1. Looking upstream (east) from Ludlow-Hithergreen Road

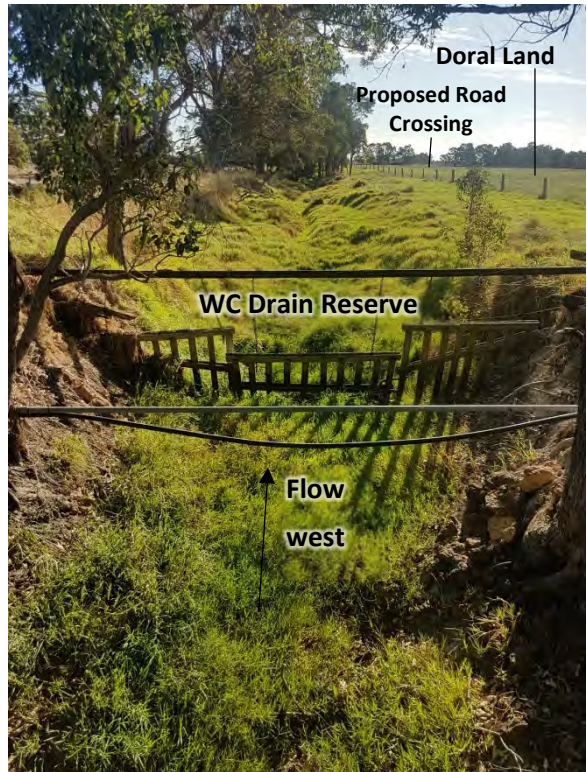
2. WC Bridge 86, looking West

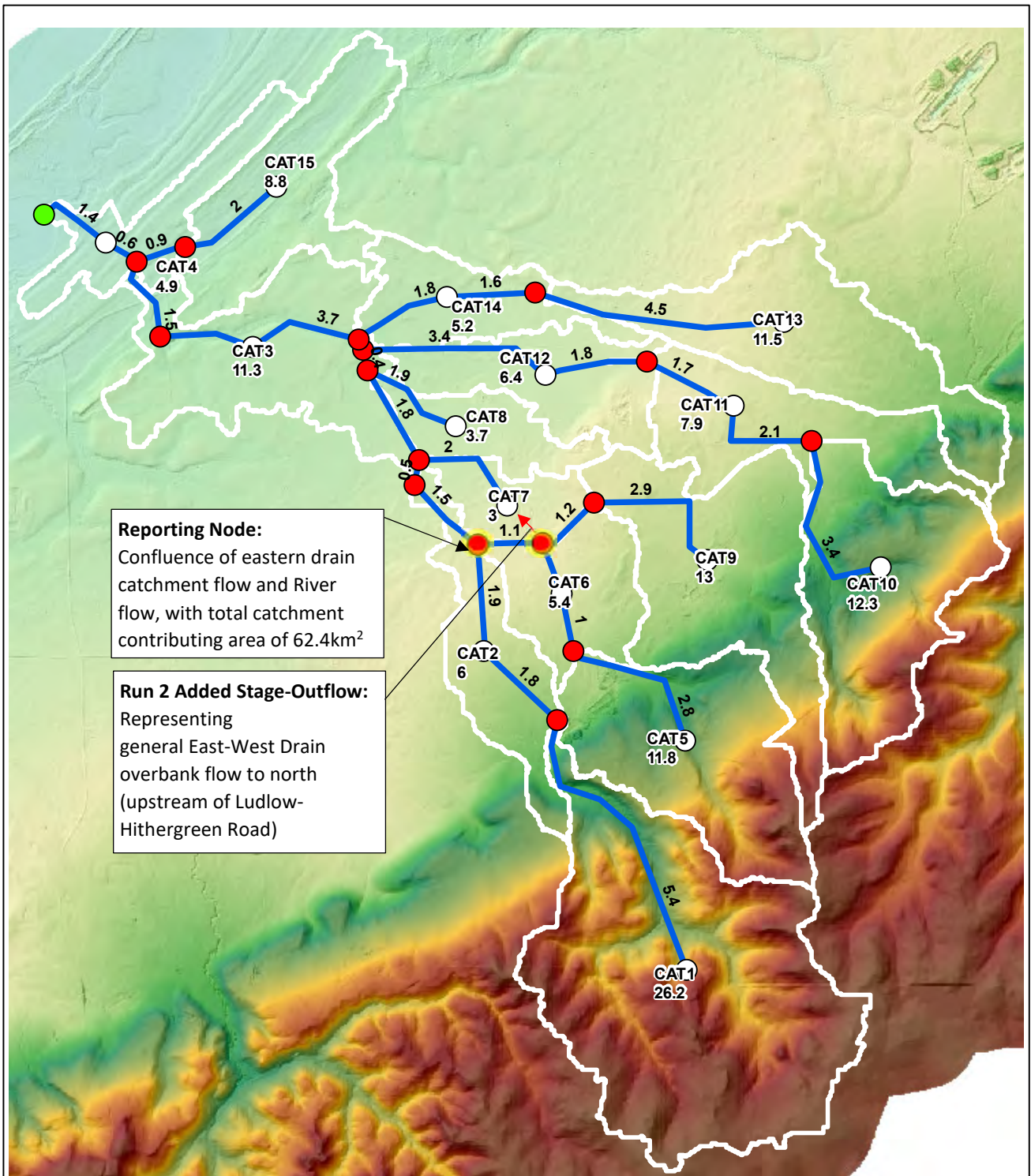


3. Looking south along Ludlow-Hithergreen Rd at WC Bridge 86



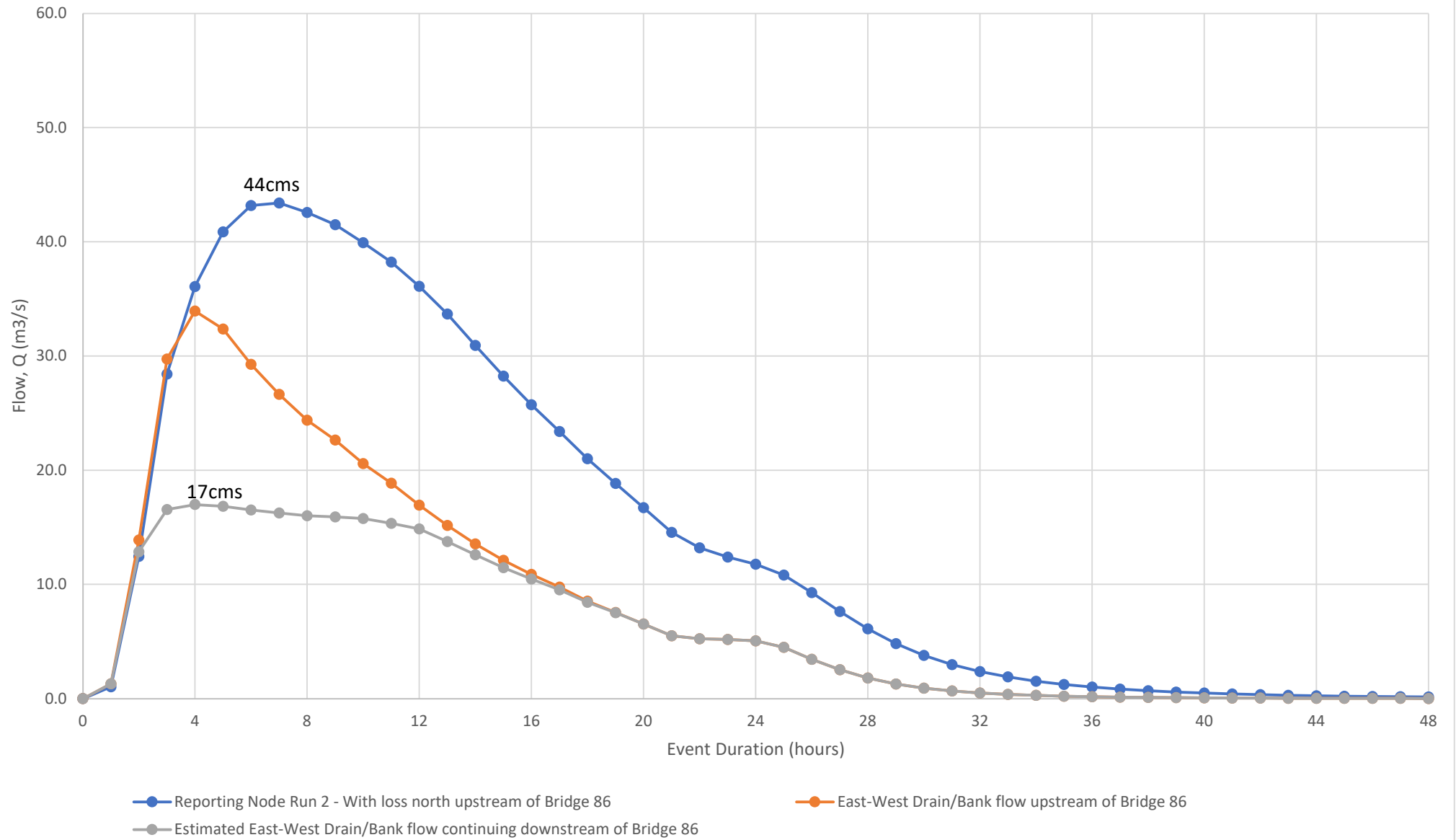
4. Water Corporation East-West Rural Drain looking west from Ludlow-Hithergreen Road.

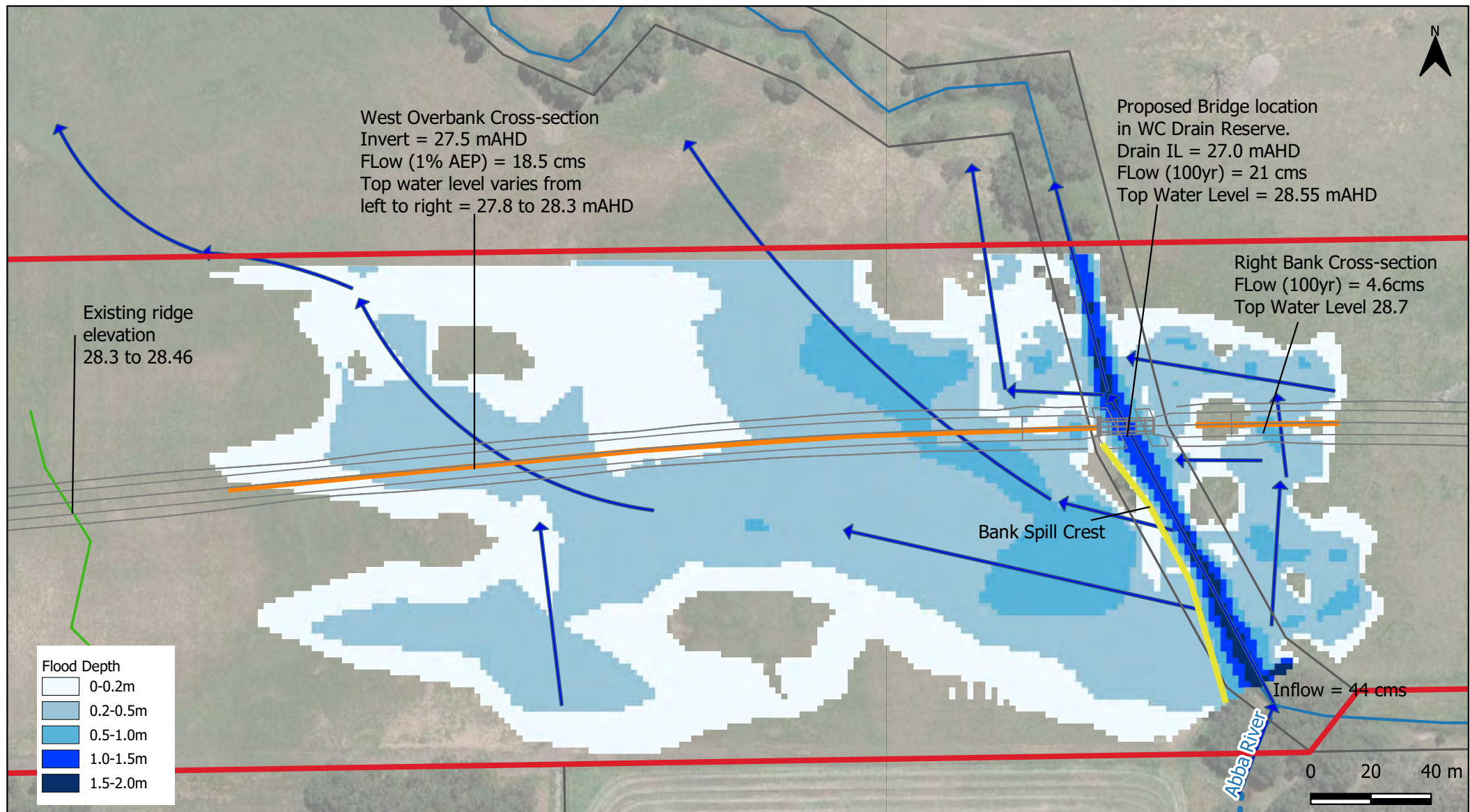




RORB Model Background Image supplied by DWER

DWER 2018 RORB Node ID	Area (km <sup>2</sup> )	Comment
CAT1	26.2	Sub-catchments to the south
CAT2	6	
CAT5	11.8	Sub-catchments to the east
CAT6	5.4	
CAT9	13	
Sub-Total	62.4 (45% of 137.4 km <sup>2</sup> )	





- Legend**
- Doral Site Boundary
  - Proposed Road/Bridge Alignment
  - Existing Flow Direction
  - Left Bank Existing Upstream Spill Crest Location
  - Existing Flood Plain Width along road alignment

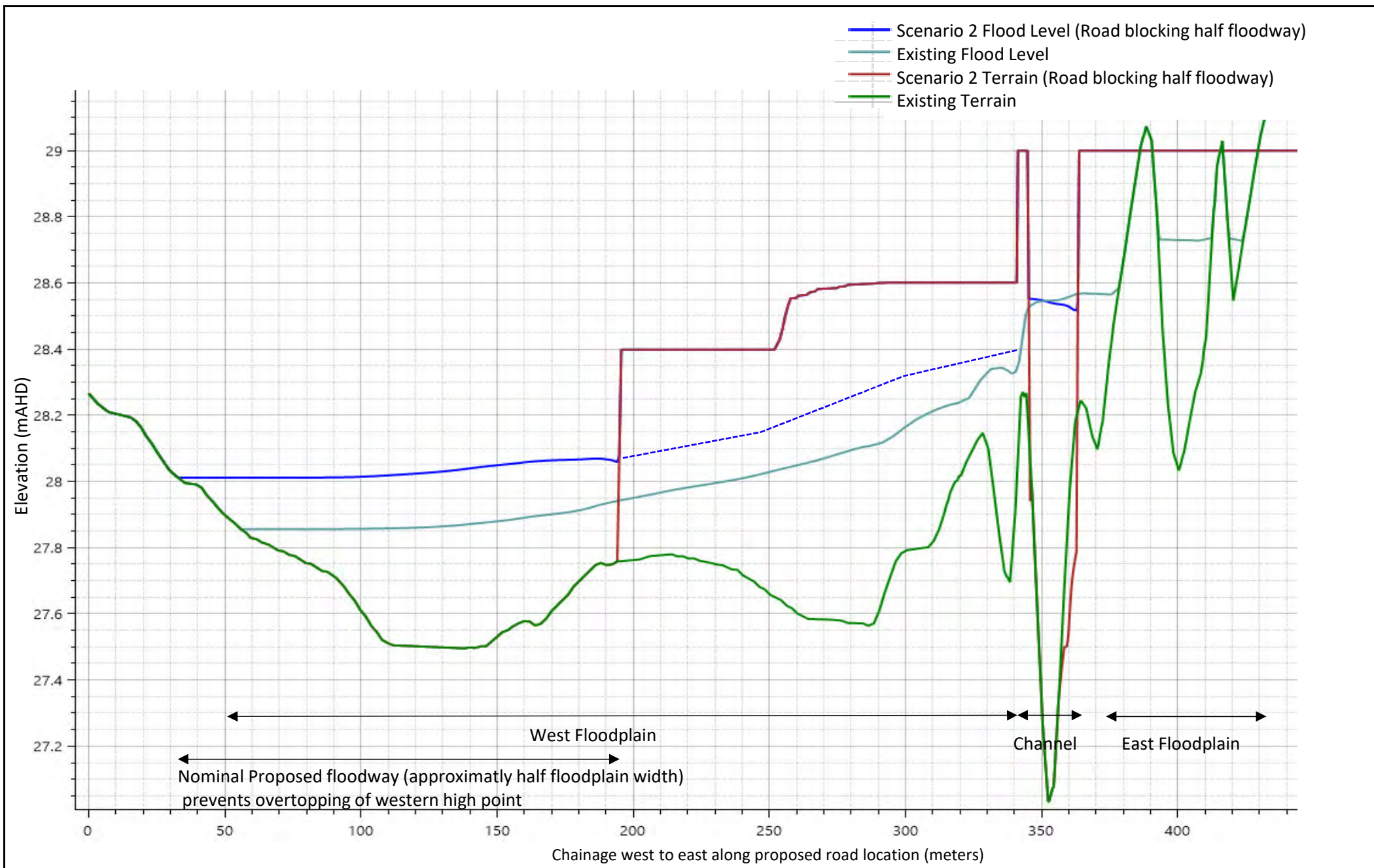
AUTHOR: WM  
 DRAWN: WM  
 DATE: 8/5/2020

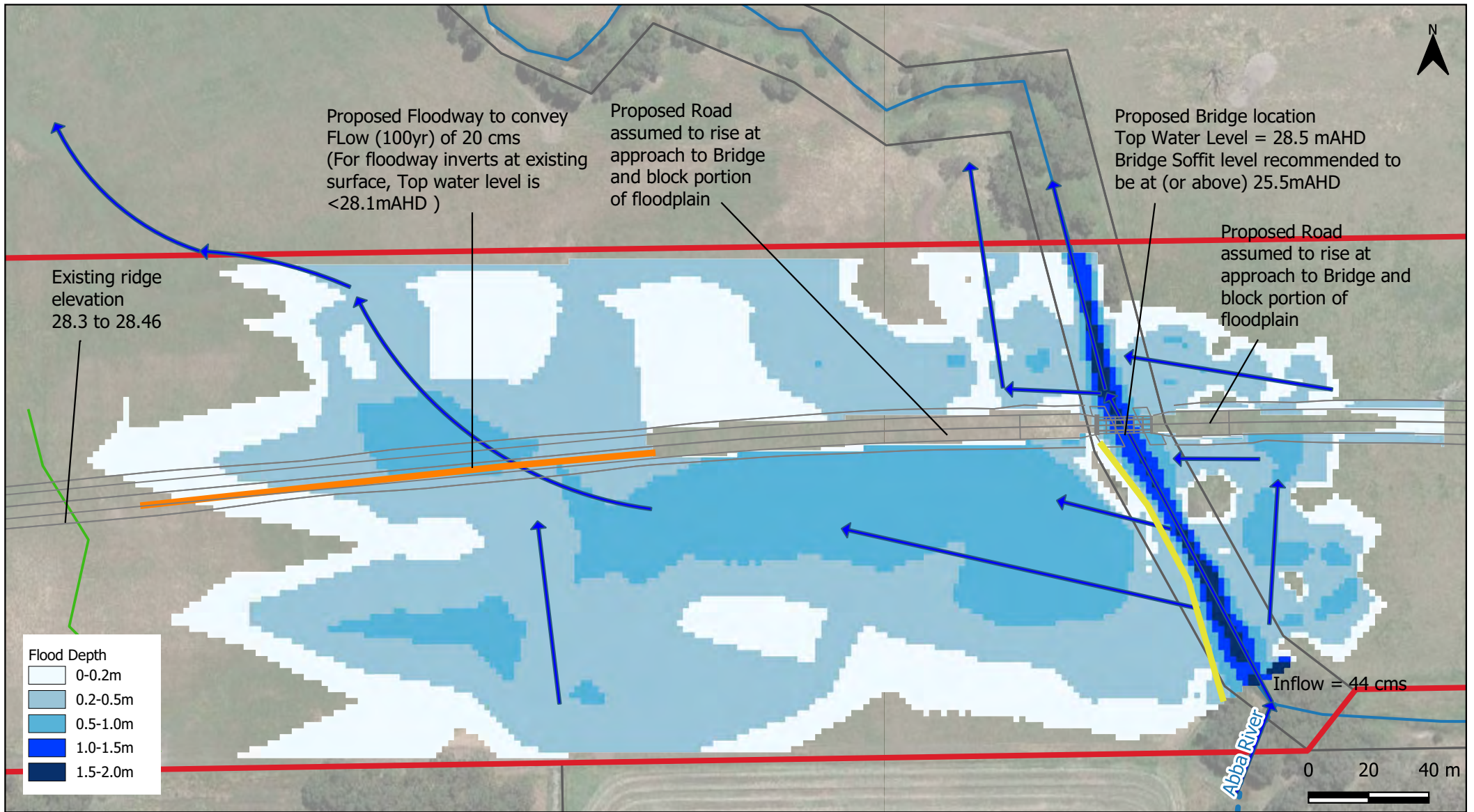
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 JOB No: 136E  
 Coordinates: MGA Zone 50

Notes and Data Sources:  
 Water Corporation (2020) Drainage Open Channel  
 Survey of Topographic Points by Doral and draft road design provided by  
 Contours developed from Points.



Figure 7:  
**Existing Surface Water  
 1 % AEP Flood Plan**





**Legend**

- Doral Site Boundary
- Proposed Road/Bridge Alignment
- Water Corporation Drainage Open Channel
- Flow Direction
- Left Bank Existing Upstream Spill Crest Location
- Existing Flood Plain Width along road alignment

AUTHOR: WM  
DRAWN: WM  
DATE: 8/5/2020

REPORT No: 008a  
JOB No: 136E  
Coordinates: MGA Zone 50

Notes and Data Sources:  
Water Corporation (2020) Drainage Open Channel  
Survey of Topographic Points by Doral and draft road design provided by  
Contours developed from Points.



Figure 9:  
**Proposed Nominal Measures and 1 % AEP Flood Plan**



## APPENDIX 5: WATER CORPORATION LICENCE AND INDEMNITY AGREEMENT

**BETWEEN:**

1. **WATER CORPORATION** a body corporate established under the *Water Corporation Act 1995 (WA)*, of 629 Newcastle Street, Leederville, Western Australia (Corporation); and
2. **DORAL MINERAL SANDS PTY LTD**  
Of Lot 7 Harris Road, Picton, WA 6229 (**Occupier**)

**RECITALS:**

- A. The Occupier agrees that the Corporation is the exclusive owner of the Land.
- B. The Occupier acknowledges that they have no claim for loss, damage or compensation against the Corporation because of the use of the Land and the Corporation is entitled to deal with the Land for operational purposes, without restriction from the Occupier.
- C. The parties have agreed that the Occupier may use the premises for the Occupier's use on the terms and conditions of this Agreement.

**OPERATIVE PART:**

1. In granting surface use of the Land described at Item 1, for the Usage described at Item 2, for the Amount described at Item 3, for the Term described at Item 4, on the Commencement Date described at Item 5, the Occupier will comply with the Responsibilities described at Item 6 of the Schedule and will release and indemnify the Corporation from:
  - (a) liability for any damage, loss, injury or death occurring on the Land; and
  - (b) any action or demand arising from any damage, loss, injury or death caused by the Occupier's act or negligence or occupation of the Land.
2. The Occupier's indemnity does not apply to the extent that the Corporation caused or contributed to the damage, loss, injury or death by their act or negligence.
3. The Occupier must extend its current public risk insurance cover to include the Land and provide details of the policy when required to do so by the Corporation.
4. Either party may terminate this Agreement provided that one party gives to the other, three months written notice. In the event of a breach of any of the Occupier's Responsibilities or when a change in Usage of the Land occurs, then at the discretion of the Corporation, this Agreement can be terminated.
5. The Occupier agrees that this Licence is personal to the Occupier and the Occupier will not assign, charge or sub-licence the premises.

## SCHEDULE

### Item 1

#### The Land

Portion of land comprised in Certificate of Title Volume 965 Folio 21  
Outlined in red on the attached plan (Approx. 180 m2)

### Item 2

#### Usage

Installation of bridge infrastructure

### Item 3

#### Amount

\$1,000.00 per annum

### Item 4

#### Term

10 years from the Commencement Date.

### Item 5

#### Commencement Date

01/02/2021

### Item 6

#### Responsibilities of the Occupier

- a) Maintain and keep the land in good, clean and tidy condition.
- b) Not plant any trees or shrubs on the Land other than those in existence at the Commencement Date.
- c) Not place anything on the Land which is likely to prevent or hinder the Corporation in undertaking any operational works.
- d) Not to store chemicals, inflammable liquids, acetylene gas or volatile or explosive oils or compounds or substances or any other hazardous substance upon the premises.
- e) Not erect or construct any additional structures on the Land without the Corporation's written permission other than those in existence at the Commencement Date.
- f) Not do anything that will damage the Corporation's infrastructure within the Land.
- g) Make good the Land and realign fencing on termination of this agreement unless prior agreement is reached for a further term.
- h) Allow the Corporation full and free access to the Land to repair, maintain and improve the existing infrastructure. The Corporation will use its reasonable endeavours to minimise disruption to the Occupier.
- i) Maintain Firebreaks as required by Statutory Authority.
- j) Occupier to pay all Charges and Taxes levied on the Land should these be applicable.

Dated this ... 7/4/2020

  
Licensee's Signature

\_\_\_\_\_  
Licensee's Signature

PETER BUCHANAN  
Licensee's Name

\_\_\_\_\_  
Licensee's Name

  
Witness Signature

\_\_\_\_\_  
Witness Signature

JULIE EDWARDS  
Witness Name (please print)

\_\_\_\_\_  
Witness Name (please print)

41 GULF WAY, AUSTIN TX  
Address

\_\_\_\_\_  
Address

COMMERCIAL MANAGER  
Occupation

\_\_\_\_\_  
Occupation

SIGNED by Colm Lawrence Stanley the Manager, Property Management of Water Corporation (a Level 1 Attorney) and by Domenico Papalia the Lead, Property Acquisitions of Water Corporation (a Level 1 Attorney) as the attorneys for Water Corporation who state that they have no notice of revocation of the Power of Attorney No N704556 dated 22 August 2017 under which they sign in the presence of:



Witness

LEE FLECK

Name (please print)

629 Newcastle Street,

Address

Leederville WA 6007

Address (continued)

PROPERTY CONSULTANT

Occupation



Witness

LEE FLECK

Name (please print)

629 Newcastle Street,

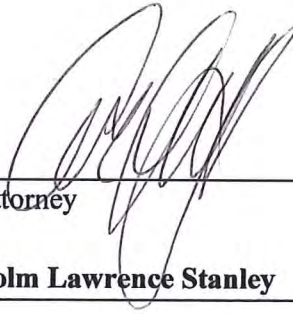
Address

Leederville WA 6007

Address (continued)

PROPERTY CONSULTANT

Occupation



Attorney

Colm Lawrence Stanley

Manager, Property Management of Water Corporation

Designated Post



Attorney

Domenico Papalia

Lead, Property Acquisitions of Water Corporation

Designated Post

## Appendix A: Location Diagram



**Appendix B (ii): Water Corporation Bridge Loading Limits in Locale**

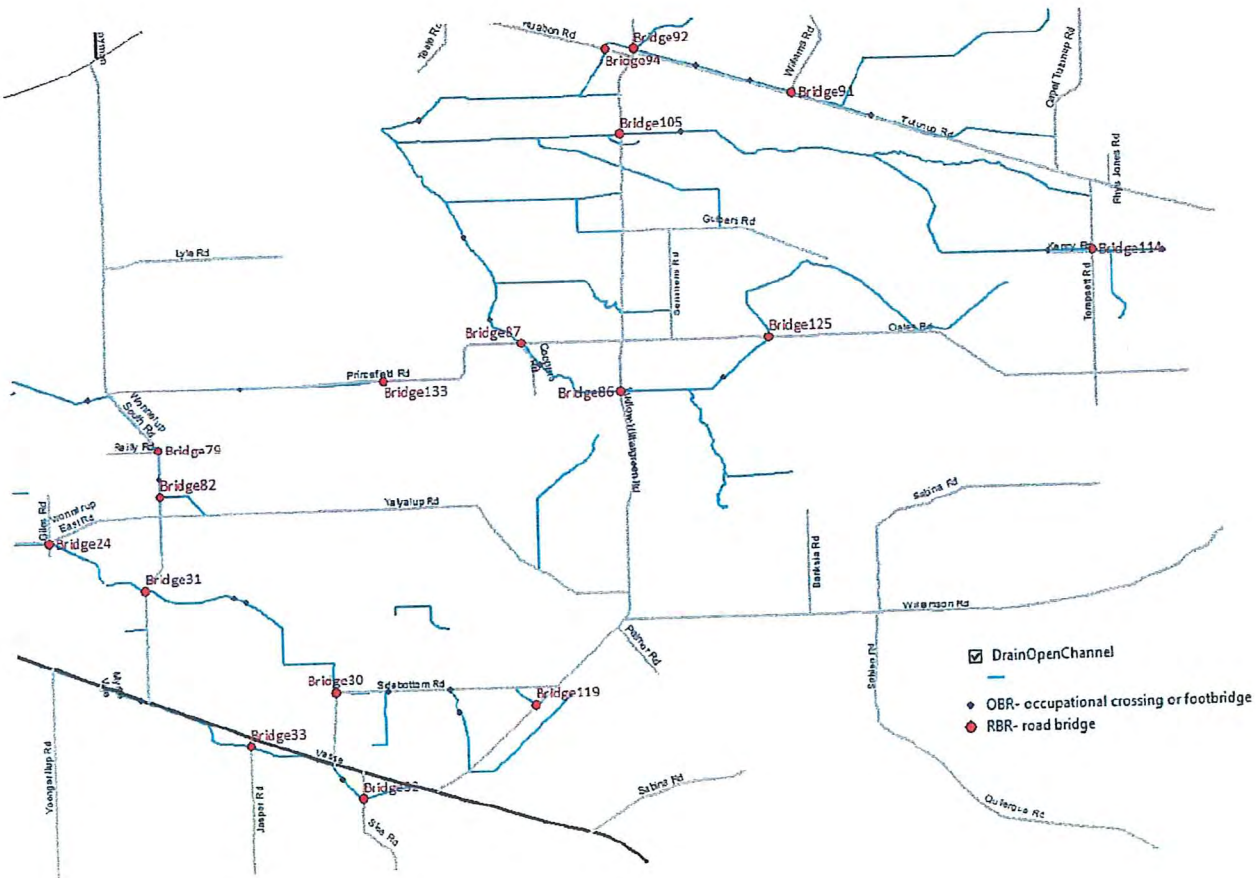
Bridge ID (WC)	Bridge ID (MRWA)	Road	MRWA Load Rating
24	5180	Giles Rd	75% T44
30	3456A	Sidebottom Rd	100% T44
31	3444A	Wonnerup South Rd	100% T44
32	3457A	Slee Rd	75% T44
33	3467A	Jasper Rd	100% T44
79	3446A	Reilly Rd	100% T44
82	3443	Wonnerup South Rd	75% T44
86	3463	Ludlow-Hithergreen Rd	100% T44
87	3455	Princefield Rd	100% T44
91	3470A	Williams Rd	100% T44
92	3445A	Ludlow-Hithergreen Rd	100% T44
94	3460A	Ruabon Rd	75% T44
105	3462	Ludlow-Hithergreen Rd	75% T44
114	3479A	Tompsett Rd	100% T44
119	3466	Ludlow-Hithergreen Rd	100% T44
125	3474A	Oates Rd	100% T44
133	3472A	McGibbon Track	100% T44

Vehicle Axle Group	Bridge Capacity (Tonnes)
Tandem	16.5
Tri-axle	20.0
Quad	20.0
484 Quad	20.0

This is equivalent to at least 75% of the T44 design vehicle.

<u>Vehicle Axle Group</u>	<u>Capacity (Tonnes)</u>
T44	100%
Tandem	18
Tri-axle	27
Quad	36
484 Quad	36

# Appendix B (i): Water Corporation Bridge Loading Limits in Locale







## APPENDIX 6: HYDROCARBON MANAGEMENT PROCEDURE

## 1.0 Purpose

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To ensure acceptable standards of hydrocarbon management are maintained on Doral (DMS) Sites including the Mining Sites and the Picton Dry Separation Plant to prevent contamination of land or water.

## 2.0 Objective

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This procedure applies to all employees and contractors undertaking work on any DMS site.

## 3.0 Definitions

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Hydrocarbon products include:

- Diesel;
- Lubricating oils;
- Lubricating greases;
- Hydraulic oils; and
- For simplicity diesel/petrol and oil/grease will be herein referred to as 'fuel and oil' or collectively as 'hydrocarbons'.

## 4.0 Waste types and control facilities

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### 4.1 Waste Types

The types of hydrocarbon wastes generated by operations include:

- Waste oil from maintenance and repair works on equipment at the wet concentrator, feed preparation, in pit mining units, dry separation plants, workshop areas and heavy machinery workshops;
- Oily rags, spent grease cartridges, oil drums and other contaminated wastes from maintenance and repairs;
- Waste oil filters from heavy machinery workshops;
- Solvent and oily liquid waste from a degreaser 'parts washer' cleaning of mechanical components;
- Oily waters generated from the high-pressure water cleaning of equipment at the washdown pads;
- Contaminated stormwater from spillages inside the diesel storage bunds at the mine sites;
- Absorbent pads from the cleanup of spills; and
- Hydrocarbon contaminated soils from spills both at the mine sites and the Picton plant.

### 3.2 Control Facilities

The types of hydrocarbon waste control facilities on site shall include;

Mine sites (Yoongarillup, Keysbrook and Yalyalup)

- Oily Filter Waste skip bin at Heavy Machinery Workshop
- Oil Contaminated Waste skip bin at Heavy Machinery Workshop
- Oil Separator at designated washdown bay
- Bulk hydrocarbon storage – permanent and semi-permanent bunding
- Bunded waste oil collection IBC at Heavy Machinery Workshop
- Undercover bunded waste oil collection drums at Workshops
- Supply of spill pads and booms in workshop areas, heavy machinery workshops and designated vehicles (i.e. service trucks)
- Identified contractor (Wren Oil, Cleanaway, Peel Resource Recovery) able to receive regular wastes and incidental hydrocarbon contaminated soils

Picton

- Oily Waste (Wren Oil) drum within workshop
- Doral workshop degreaser waste storage drum
- Bulk hydrocarbon storage – permanent bunding Diesel fuel storage tank
- Bunded waste oil collection IBC next to compressor shed
- Supply of spill pads and booms in workshop areas, diesel bund and designated vehicles.
- Storage of replacement spill pads and booms stocks in Stores warehouse.

### 3.3 Spill Prevention

- Bunds shall be regularly inspected visually for cracks, holes or accumulation of stormwater;
- Vehicles and machinery shall only be serviced in designated areas;
- Workforce awareness of spill prevention and management shall be maintained through training sessions and toolbox/safety meetings;
- Job Risk Assessments (TRAP/JSA) shall incorporate environmental hazards and controls arising from the interaction with hydrocarbons
- Spill response kits including oil absorbent pads and booms shall be easily accessible areas and stored at all major areas containing hydrocarbons eg workshops, wet plant, and dry plant; and

Supplies of sufficient spare spill response equipment shall be maintained within the Picton Stores warehouse.

## 5.0 Procedure

Waste Type	Picton Plant and Workshop	Yoongarillup and Yalyalup Mine Workshops	Keysbrook workshop & Heavy Machinery Workshops
Used Oil	<p>Drain used oil into the (labeled) waste oil container bund (next to the compressor shed) using a funnel, hoses and valves.</p> <p>When 'close to full' the Store person shall be contacted to arrange for Wren Oil to come on-site and remove the contents of the drum.</p> <p><i>Note: Routine services and lubrication oil changes are generally conducted during planned maintenance shut downs. Adequate precautions and temporary catchment containers shall be planned to prevent any spillages outside the bunded area.</i></p>	<p>Dispose of any used oil at the Doral bunded waste oil drums in the workshop areas.</p> <p>When the waste oil drum is 'close to' full arrange for transfer to Picton for disposal at Wren Oil. There should be no more than one 205L waste oil drum on site at any time.</p> <p><i>Note: Routine services and lubrication oil changes are generally conducted during planned maintenance shut downs. Adequate precautions and temporary catchment containers shall be planned to prevent any spillages outside the bunded area.</i></p>	<p>Drain used oil into the mobile containment trolley or direct pumping into bunded IBC's.</p> <p>When IBC's are 'close to full' the Heavy Machinery Workshop Supervisor will arrange removal for disposal via a contracted waste oil contractor.</p> <p><i>Note: Routine services and lubrication oil changes are generally conducted during planned maintenance shut downs. Adequate precautions and temporary catchment containers shall be planned to prevent any spillages outside the bunded area.</i></p>
Oily Rags and general oily wastes (eg spent cartridges, packaging, drums)	Oily rags, spent grease cartridges and other oily waste materials generated from work areas shall be disposed to designated oily waste bin located in Doral workshop and recycled by Wren Oil as required.	Collect and dispose of oily rags and spent cartridges after use and place in the workshop oily wastes skip bin.	Collect oily rags from work areas immediately after use and place in the oily waste skip. Workshop Supervisor to arrange removal of the near full skip and organize replacement.
Waste Oil Filters	None used by DMS personnel.	None used by DMS personnel.	Place used filters in the designated Oil Filter skip. Workshop Supervisor to arrange removal of the near full skip and organize replacement.
Degreaser Parts washer units waste	Maintenance staff to inspect the drum weekly at the Picton work shop and notify the Store person for Wren Oil pickup when 'close to full'.	Degreaser unit has been removed from workshop	N/A

Waste Type	Picton Plant and Workshop	Yoongarillup and Yalyalup Mine Workshops	Keysbrook workshop & Heavy Machinery Workshops
Oil interceptor waste and/or oily waters.	N/A	<p>Washdown/cleaning activities are to be carried out at the designated washdown bay with oil separation unit installed. Oily residues are directed to the wastewater collection sump and into an oil separator.</p> <p>Inspect open sump levels daily.</p> <p>Workshop supervisor to monitor the oily residue collection in waste IBC and arrange for transfer to oil waste contractor.</p>	<p>Washdown/cleaning activities are to be carried out at the designated washdown bay with oil separation unit installed. Oily residues are directed to the wastewater collection sump and into an oil separator.</p> <p>Inspect open sump levels daily.</p> <p>Workshop supervisor to monitor the oily residue collection in waste IBC and arrange for transfer to oil waste contractor.</p>
Absorbent pads in the cleanup of spills.	<p>Contaminated spill pads shall be in the designated oily waste bin.</p> <p>Notify the Stores Supervisor to arrange for Wren Oil to remove the bin as required.</p>	<p>Absorbent pads are disposed of in the designated skip with the oily rags, packaging waste and oil filters.</p> <p>Workshop Supervisor to arrange transfer to offsite workshop prior to when the skip is full and organize replacement with an empty skip.</p>	<p>Absorbent pads are disposed of in the designated skip with the oily rags, packaging waste and oil filters.</p> <p>Workshop Supervisor to arrange transfer to offsite workshop prior to when the skip is full and organize replacement with an empty skip.</p>
Contaminated soils.	<p>Small volumes of contaminated soils shall be deposited in an IBC for disposal at Wren Oil when full.</p> <p>Larger volumes of contaminated soil will be removed from site and disposed of at Cleanaway's Dardanup Landfill.</p>	<p>Small volumes of contaminated soils shall be returned to the oily waste bin or IBC at workshops for return to licenced waste contractor</p> <p>Larger volumes of contaminated soil will be removed from site and disposed of at a licenced waste facility at Pinjarra.</p>	<p>Small volumes of contaminated soils shall be returned to the oily waste bin or IBC at workshops for return to licenced waste contractor</p> <p>Larger volumes of contaminated soil will be removed from site and disposed of at a licenced waste facility at Pinjarra.</p>

## 6.0 Contractor Requirements

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All contractors will:

- Notify the DMS site contact (who requested their services) of their presence on-site, confirm the nature of services required and where this activity is to be carried out;
- Bring to site and carry their own spill containment equipment which is appropriate for the tasks undertaken. Any spills resulting from work are the responsibility of the contractor to contain and dispose off-site at a licensed off-site facility, unless provision is made for within the existing DMS controls; and
- Notify the DMS site contact of any incident or intention to use the hydrocarbon waste disposal facilities on-site. If agreeable to both parties, the DMS contact person is to make the contractor aware of the requirements of this procedure and its content.

**Table 2: Hydrocarbon Waste Contractor Details**

Company	Contact	Position	Phone	e-mail
Raywell (Yoongarillup)	Jake Mallam	Earth Moving Mine Supervisor	0437 431 150	<a href="mailto:jake@raywell.com.au">jake@raywell.com.au</a>
Raywell (Keysbrook)	Jason Hull	Earth Moving Mine Supervisor	0439 690 905	<a href="mailto:jason@raywell.com.au">jason@raywell.com.au</a>
Wren Oil			9725 4002	
Environmental Recovery Services (ERS)			9493 1770	
Cleanaway			0401 235 694	<a href="mailto:Dardanup.weighbridge@cleanaway.com.au">Dardanup.weighbridge@cleanaway.com.au</a>
National Lubrication Services			9725 4741	<a href="mailto:nls@natlube.com.au">nls@natlube.com.au</a>
Transpacific Industries			9724 6407	

## 7.0 Responsibilities

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### DMS Management

- The OHS&E Superintendent is responsible for maintaining this procedure and consulting appropriate personnel to keep it relevant and up to date;
- The OHS&E Superintendent is responsible to ensure statutory reporting requirements for both the Picton and Mine site operations are conducted as required.

### **DMS and Heavy Machinery Contractor Area Managers**

- DMS and Heavy Machinery Contractor area managers are responsible for implementation of this procedure in their relevant work areas and effective waste management. This includes ensuring all personnel within their work group are aware of their responsibilities in managing hydrocarbon use and the cleanup of contaminated sites;
- DMS and Heavy Machinery Contractor area managers shall be responsible for 'fuel and oil' housekeeping, use, storage, transfer, and spill clean-up; and
- DMS and Heavy Machinery Contractor area managers shall also be responsible for collection and storage of waste 'fuel and oil' generated within their areas.

### **DMS Store Manager**

- The Store manager shall be responsible for all purchases, delivery, storage, collection and disposals of DMS 'fuel and oil';
- The stores shall maintain an adequate level of spill cleanup equipment to ensure required equipment is available in the event of an incident; and
- The Store manager shall ensure that their contractors are appropriately licensed and aware of relevant sections of this standard.

### **All employees and contractors**

- Any person handling 'fuel and oil' shall be responsible for implementing the requirements of this procedure and for notifying the area manager or the OSH&E department of any concerns regarding fuel management on site; and
- All employees and contractors shall ensure environmental hazards and controls are incorporated into task risk assessments.

### **Reporting Requirements**

- All DMS and contract personnel must report all environmental incidents internally as soon as practicable using the MyOSH system or by notifying an appropriate supervisor.
- Any hydrocarbon spill is unacceptable however greater than 5 litres must be internally reported as an incident entered into MyOSH.
- Spills of less than 5 litres are to be entered into MyOSH as a hazard.
- Refer to the Accident/Incident Reporting and Investigation Procedure (DMS SP-4.4) for information on reporting;
- Any hydrocarbon spill greater than 200 litres must be reported by the Environmental Team to the Department of Environment Regulation (DWER) by no later than 5pm the following business day on an approved N1 form. Maintain a record of the change history of the Emergency response plan

## **8.0 Approved By:**

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General Manager



Date 08/06/21



APPENDIX 7: ABORIGINAL CULTURAL MATERIAL  
MANAGEMENT PROCEDURE

**Aboriginal Cultural Material Management*****Purpose***

The purpose of this procedure is to outline what steps are to be taken if aboriginal cultural material (i.e. stone tools or human bones) is unearthed during vegetation clearing and pre-mine disturbance activities.

***Definitions and Abbreviations***

**Cultural material:** Stone tools, human and non-human bones, shells etc that are found together in a small area that are the product of human activities.

***Procedure***

If aboriginal cultural material or skeletons/burial site is unearthed at any time during the construction and operation of Yalyalup the following steps must be followed:

1. Stop work in the immediate area (e.g. 30m radius) of the find;

**Note: If it is suspected that human remains have been uncovered all works in the general area (e.g. 150m radius) must be stopped – by law the area becomes a crime scene until otherwise determined.**

2. Notify the supervisor of the suspected aboriginal cultural material;
3. The supervisor will ensure that the area affected area is secured;
4. The supervisor will report the suspected aboriginal cultural material to the Mine Manager;
5. The Mine Manager will contact an aboriginal heritage consultant, who will arrange for a consulting archaeologist to visit the site and positively identify the suspect materials;
6. The Mine Manager will ensure that the appropriate protocols and procedures are in place; and
7. Work can recommence in the affected area only when the all clear is given by the heritage consultant/consulting archaeologist and appropriately communicated to personnel by the Mine Manager.

***Responsibilities***

It is the responsibility of the Mine Manager or delegate to ensure compliance with this procedure.

**Approved By:**

