

18 ABORIGINAL CULTURAL HERITAGE

18.1 CONSULTATION WITH TRADITIONAL OWNERS

Issue:

Clarification was sought on the process used to determine which Traditional Owners were consulted.

Submissions: 12, 13 and 240

Response:

BHP Billiton consulted with all the native title claimants in the areas where it proposes to develop.

This has been the consistent practice at Olympic Dam. In consulting with a claimant group, BHP Billiton does not determine which members of the group it will consult with as it considers that to be a matter for the group.

When BHP Billiton proposed the expansion of mining operations at Olympic Dam, the Barngarla, Kokatha and Kuyani people had native title claims in the Olympic Dam region (refer Section 17.3.1 of the Draft EIS for details). In 2005, BHP Billiton signed a negotiation protocol with these communities. This protocol identified the basis on which BHP Billiton and the three communities would negotiate a full agreement to address all native title and Aboriginal heritage issues arising from the proposed expansion (refer Section 17.2.2 of the Draft EIS for details).

The Dieri, Adnyamathanha, Yandruwandha/Yawarrawarrka and Arabunna groups were also identified as Traditional Owners, with whom BHP Billiton would consult, because of their native title claims to land on which sections of BHP Billiton's proposed gas pipeline would be constructed. Native title on the land at the Port of Darwin (East Arm) that is the proposed site for the BHP Billiton infrastructure has been extinguished.

During the extensive community consultation and engagement program for the proposed expansion, BHP Billiton also held meetings with other Aboriginal people and communities in northern South Australia who have expressed an interest in BHP Billiton's operations at Olympic Dam. BHP Billiton would continue this consultation as plans for the project develop and areas of impact become more certain.

Issue:

The adequacy of the consultation process and the level of involvement of Traditional Owners were questioned.

Submissions: 45, 92, 182, 189, 197, 205, 233 and 280

Response:

BHP Billiton has consulted extensively with Aboriginal people about the proposed expansion. The process of consultation has been open and transparent, both between BHP Billiton and the groups consulted, and in the information BHP Billiton provided to governments about the extent of its consultation.

The consultation process has included the negotiation over a period of more than two years of the Olympic Dam Agreement – a comprehensive agreement with the Barngarla, Kokatha and Kuyani native title claimant groups to facilitate the expansion of the Olympic Dam operation (refer Section 17.2.2 of the Draft EIS for details) and subsequent consultation about the implementation of the Agreement. The terms of the Olympic Dam Agreement demonstrate that the claimants and BHP Billiton entered into it 'for the fostering of mutual respect and cooperation'.

During the period of negotiation, BHP Billiton provided comprehensive information to the claimant groups about the proposed expansion. Site visits to Olympic Dam were arranged to demonstrate what was proposed, including an inspection of the area planned for the open pit and a drive around its perimeter to illustrate its proposed size. BHP Billiton also funded the groups to commission their own independent advice about the potential environmental and economic impacts of the proposed expansion.

In addition, the recording of sites of archaeological significance has involved full consultation with Aboriginal groups. During the archaeological surveys and recording work, the archaeologist has employed a representative nominated by each Aboriginal group that is party to the Olympic Dam Agreement to assist.

During the negotiation of the Olympic Dam Agreement, a representative from the National Native Title Tribunal was present at all meetings to record outcomes and to facilitate negotiations. This negotiation was conducted freely and openly through monthly meetings over more than two years.

At each monthly agreement negotiation meeting, each of the groups had three representatives in attendance with their legal advisers. BHP Billiton fully funded all meetings, including the legal costs of the groups. BHP Billiton also provided funds so the groups could hold community meetings to report progress during the period of negotiations.

The Olympic Dam Agreement includes arrangements for regular consultation between BHP Billiton and the groups about environmental matters. These arrangements would continue for the remaining life of the mine, including its expansion, and would also deal with rehabilitation issues.

Issue:

The Great Artesian Basin (GAB) mound springs and surrounding areas are of cultural significance to the Arabunna people. The question was raised whether there would be specific consultation with the Arabunna people about the potential impact of the proposed mine expansion on the mound springs.

Submissions: 136 and 196

Response:

BHP Billiton has consulted with the Arabunna people about the proposed expansion of Olympic Dam.

As discussed in Section 12.1 of the Draft EIS, BHP Billiton is not proposing to obtain any more water from the GAB than that which is currently available under approvals from the Australian and South Australian governments. Specific consultation with the Arabunna and other Aboriginal people about the mound springs began before the establishment of the original Wellfield A in the Great Artesian Basin in the 1980s, and continued during the establishment of Wellfield B in the 1990s.

Issue:

It was acknowledged that extensive consultation with Aboriginal communities occurred during project planning. Continual consultation and engagement is encouraged, particularly with the local Aboriginal group at Roxby Downs (Kalaya), the Northern Aboriginal Health Advisory Council and the Aboriginal Health Forum for Country Health SA.

Submission: 2

Response:

BHP Billiton has undertaken very extensive community consultation in Roxby Downs and the surrounding region. Indigenous consultation has been undertaken primarily with the Barngarla, Kokatha and Kuyani native title claimant groups. This has included discussion about issues associated with the Olympic Dam operation, including health-related issues. As a result, one of the objectives of the trust to be established under the Olympic Dam Agreement would be the promotion of health in the community. BHP Billiton welcomes discussion regarding this or any other health-related issues with relevant local and regional organisations, such as those recommended by the South Australian Department of Health.

Issue:

The concern was raised that Aboriginal rights have not been respected and that the opposition of Traditional Owners to the project should stop the proposed expansion from proceeding.

Submissions: 7, 125, 303 and 361

Response:

Since development at Olympic Dam began in the early 1980s, the rights of the local Aboriginal communities have been respected by BHP Billiton.

BHP Billiton has undertaken extensive consultation with Aboriginal people about the proposed expansion. This has included the negotiation of a comprehensive agreement with the Barngarla, Kokatha and Kuyani native title claimant groups to facilitate the proposed expansion and subsequent consultation about the implementation of the Agreement. The position of the Traditional Owners, as evidenced in the Olympic Dam Agreement, is not that the proposed expansion should be prevented from proceeding. Rather, the native title parties agree to BHP Billiton continuing to expand the Olympic Dam operations.

18.2 OLYMPIC DAM AGREEMENT

Issue:

Clarification was sought on the measures that BHP Billiton would put in place to protect Aboriginal heritage and culture and provide benefits to the Aboriginal community.

Submissions: 14, 44, 98, 247, 258, 302 and 388

Response:

BHP Billiton recognises Aboriginal traditions and culture and the significance of land to Aboriginal people. BHP Billiton has undertaken extensive consultation with Indigenous stakeholders about the proposed Olympic Dam expansion. This has included the negotiation of a comprehensive agreement (the Olympic Dam Agreement) with native title claimants in the Olympic Dam region. The Agreement recognises the rights of Aboriginal people and the importance of the land to them. It includes a Heritage Management Protocol for the management and protection of Aboriginal heritage (refer Section 17.5.2 of the Draft EIS for details).

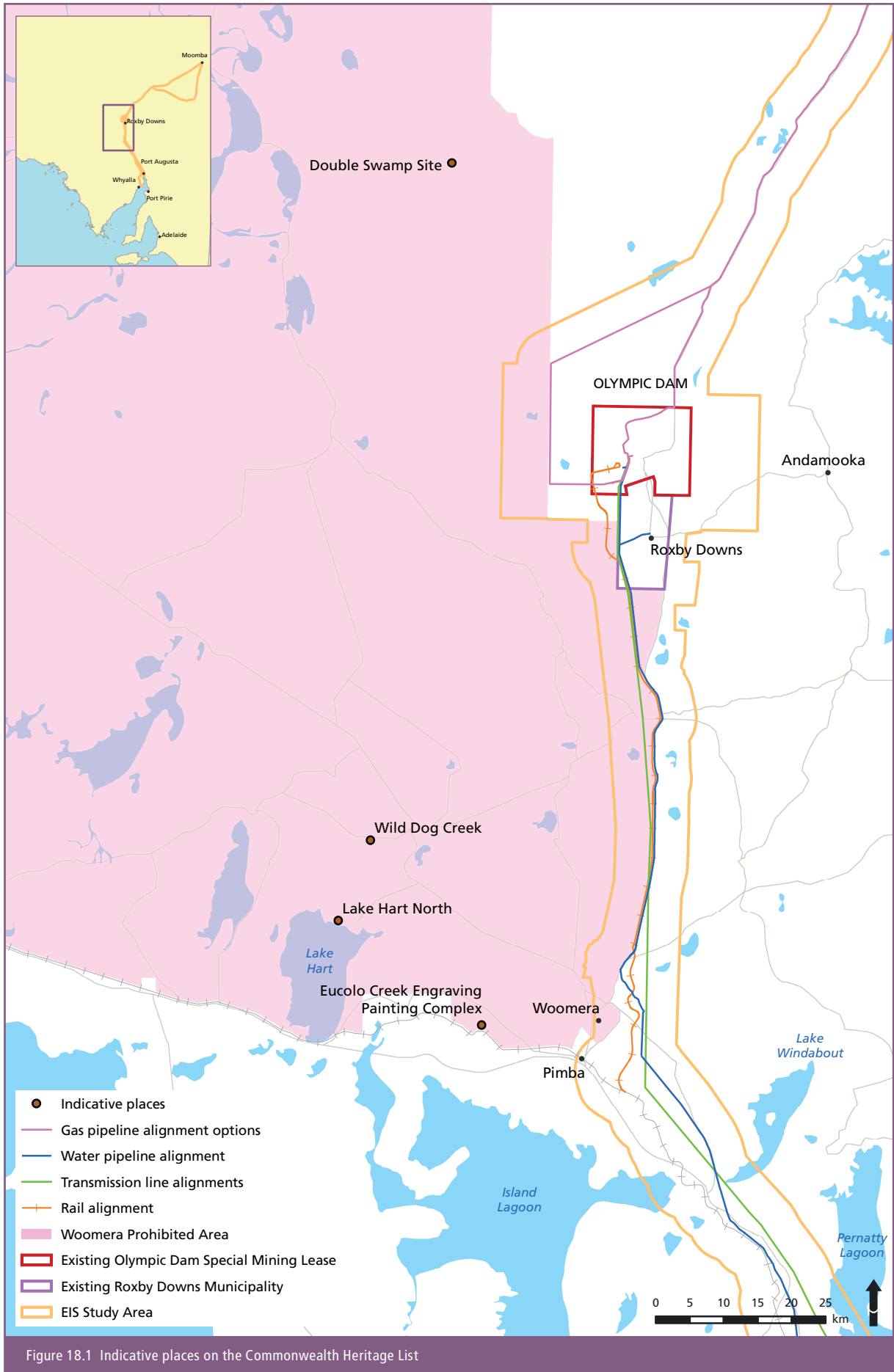
BHP Billiton's commitments in the Olympic Dam Agreement with respect to recording, managing and protecting Aboriginal heritage go well beyond the legislative requirements.

For example, BHP Billiton has funded an archaeological survey of the existing Special Mining Lease and a wider area on which development may occur in the future. As a result, much more is now known about the archaeology of the area. This survey will inform plans to manage heritage issues and mitigate impacts, including the salvage of some sites for ongoing research purposes. The mitigation program is part of the agreed Heritage Management Protocol. As this work progressed, representatives of the native title claimant groups would be trained and employed in heritage management and recording activities.

The Olympic Dam Agreement establishes a trust for the benefit of the Barngarla, Kokatha and Kuyani communities and other Aboriginal people in the northern region of South Australia. Once all components of the expansion project were completed, BHP Billiton would make annual payments into the trust over the remaining life of the mine to support community development initiatives for Aboriginal people and communities in the northern region. BHP Billiton has also begun making milestone payments to the trust; the trustee was appointed early in 2010 and the first payment was made soon afterwards. All Aboriginal people resident in northern South Australia (which for the purposes of the Olympic Dam Agreement is an area within a boundary linking Port Pirie, Hawker, Marree, Glendambo, Port Lincoln, Whyalla and Port Augusta) are eligible to apply to the trust for benefits (refer Figure 17.1 of the Draft EIS, reproduced here as Figure 18.1).

The Olympic Dam Agreement also commits BHP Billiton to providing training and employment programs for Aboriginal communities, and provides for the development of Aboriginal-owned business enterprises. In this way, BHP Billiton believes its presence in the region can provide economic and social benefits to Aboriginal people.

BHP Billiton will also continue to provide cross-cultural awareness information to all people working at Olympic Dam to promote respect for Aboriginal culture and heritage (refer Section 17.5.6 of the Draft EIS for details).



18.3 SURVEYS AND INVESTIGATIONS

Issue:

BHP Billiton has been asked to provide a wider reference base of ethnographic and anthropologic peer-reviewed studies to corroborate the methodology and significance criteria used in the Draft EIS. It was also asked whether there is a process in place to enable qualified and culturally acceptable ethnographers and anthropologists to peer-review the reports held by BHP Billiton (as listed in Appendix P1 of the Draft EIS).

Submission: 240

Response:

As noted in Section 17.3.2 of the Draft EIS, Aboriginal groups that have participated in cultural heritage surveys, both for the current investigations and in the past, have requested that BHP Billiton does not publicly disclose information about places and stories of cultural significance to them in the Draft EIS. Within this constraint, reference is made to specific survey reports and to other information to demonstrate that a process has been established to identify, record, protect and otherwise manage Aboriginal cultural heritage sites and places of significance to Aboriginal people.

BHP Billiton believes it has assembled the best possible and most highly qualified team to record the Aboriginal archaeology of the region. From the inception of planning for Olympic Dam in the late 1970s, Dr Philip Hughes has been involved in recording the archaeology of the region. Dr Hughes is an eminent geo-archaeologist and archaeologist who throughout his working life has been involved in projects in Australia. Since 2007, Dr Hughes has been assisted in this work by Dr Marjorie Sullivan and Professor Peter Hiscock. Dr Hughes and Dr Sullivan are fellows of the Australian National University (ANU). Professor Hiscock, from the Department of Archaeology and Anthropology at the ANU, is an internationally regarded specialist in Australian and European stone artefacts and recently published an important textbook on Australian archaeology. Since 2007 this team has also been supplemented by the involvement of Associate Professor Ben Marwick from the Department of Anthropology at the University of Washington (United States). Their work is being supported by students from the ANU and other universities to provide training and research opportunities.

In relation to ethnographic information, it has been the consistent practice of BHP Billiton that because of the cultural sensitivity of this work, those providing professional advice to the Aboriginal people claiming an interest in the region should be chosen by Aboriginal people, not by BHP Billiton. Accordingly, many anthropologists have provided advice over the past 30 years. It remains the wish of Aboriginal people that this information is kept confidential and whether or not reports provided in the course of this work are peer-reviewed is a matter for the Aboriginal people concerned, not BHP Billiton.

Issue:

It was suggested that up-to-date archaeological and paleontological surveys should be carried out using modern equipment, techniques and expertise to protect scientifically and culturally valuable sites.

Submission: 281

Response:

BHP Billiton has used highly experienced and respected archaeologists to undertake the Aboriginal heritage investigations for Olympic Dam (see answer to previous issue for details). Representatives from various Aboriginal groups have also assisted in field investigations, and at times the Aboriginal groups have employed independent heritage consultants of their choosing to undertake investigations.

As discussed in the Draft EIS, comprehensive and ongoing Aboriginal cultural heritage investigations have been undertaken over the past 35 years in the EIS Study Area, especially around Olympic Dam (refer Section 17.2.3 of the Draft EIS). These investigations have included field surveys (to identify both archaeological and ethnographic sites) and archaeological salvage works, with the results discussed in Sections 17.3.3 and 17.3.4 of the Draft EIS. The initial surveys undertaken for the 1982 EIS allowed the development of a precise, environmentally based archaeological predictive model that predicted the nature and distribution of archaeological sites. Analysis of data collected from surveys between 1982 and 1998 strengthened the validity of the predictive model (refer Section 17.3.4 of the Draft EIS). Archaeological investigations for the proposed expansion were undertaken during 2006 and 2007 (refer Section 17.3.4 of the Draft EIS). The data obtained from these surveys were again consistent with the predictive model, confirming that the model provides BHP Billiton with the most accurate archaeological information possible.

A program of ongoing archaeological investigations has been agreed to by the Kokatha, Barngarla and Kuyani groups. The program includes the participation of Aboriginal archaeological field trainees nominated by the groups to accompany qualified archaeologists. The areas to be surveyed include parts of the SML not previously surveyed and the preferred locations for the various infrastructure elements, once these are determined. It is anticipated that the outcome of the ongoing survey program would further strengthen the predictive model and the understanding that arises from it (refer to Section 17.5.3 of the Draft EIS).

Issue:

Clarification was sought on the process that is in place to ensure that disturbance of cultural heritage sites is avoided wherever possible.

Submission: 240

Response:

When planning development activities at Olympic Dam that involve ground disturbance, BHP Billiton first takes into account known areas of heritage significance and seeks to avoid them wherever possible.

Where such ground disturbance cannot be avoided, or where the existence of any items of Aboriginal heritage significance may not be known, BHP Billiton undertakes heritage surveys with Aboriginal custodians to identify areas of interest and, as it does so, discusses options to avoid or minimise site disturbances. In situations where disturbance is unavoidable, the Olympic Dam Agreement requires BHP Billiton to discuss the matter with Aboriginal custodians before making an application to the South Australian Government for permission to disturb sites (refer Section 17.5.4 of the Draft EIS for details). In such applications, BHP Billiton is required to explain why such disturbance is necessary.

In most cases where this becomes an issue, the physical characteristics of the land make it impossible to avoid disturbance. The location of the ore that BHP Billiton mines is fixed, and this typically dictates the location of infrastructure necessary to undertake mining and processing, and to provide the water, power and other inputs required. Site disturbance is more readily avoided on pipeline and powerline corridors, where infrastructure can be more easily realigned or relocated.

Issue:

It was suggested that there has not been adequate governmental review of the transport of radioactive material on the Adelaide to Darwin rail line. It was also questioned whether the increased transport volumes associated with the proposed expansion are consistent with the initial rail line site clearances and approvals given by the Traditional Owners.

Submission: 10

Response:

The extent to which governments review the transport of radioactive material on the Adelaide to Darwin rail line is outside BHP Billiton's control. BHP Billiton is not seeking any expansion of the rail line facilities.

Transportation of Olympic Dam uranium oxide on the Adelaide to Darwin rail line began in 2005. This occurred under Australian, South Australian and Northern Territory government approvals, which were granted after a trial demonstrated that uranium oxide could be transported safely. Since 2005, BHP Billiton has complied with all legislative and regulatory requirements of the Australian, South Australian and Northern Territory governments, including lodging detailed safety management and emergency response plans with all of these jurisdictions (refer Section 22.4.5 of the Draft EIS for details). Transport of uranium oxide on this route has continued without incident.

Chapter 5, Description of the Proposed Expansion, of the Draft EIS detailed the expansion of Olympic Dam, including the increased volumes of uranium oxide and concentrate transport along the Adelaide to Darwin rail line (refer Section 5.9.5 of the Draft EIS for rail transport in particular). In addition, all issues relevant to the transport, handling, storage and export of Olympic Dam product via the Port of Darwin were consolidated in Appendix E4 of the Draft EIS for ease of government and public review.

Section 22.6.10 of the Draft EIS presented the impact assessment and management measures to be adopted by BHP Billiton for the safe transport of uranium product (uranium oxide and concentrate) from Olympic Dam to the Port of Darwin. These measures are considered leading practice, and include dedicated rolling stock for the concentrate with rail wagons fitted with water- and air-tight lids, unloading of the wagons in a negative pressure enclosed facility, and washdown of the exterior surface of each wagon before its return trip to Olympic Dam. The washdown water would be collected, recycled and ultimately returned to Olympic Dam so there would be no discharge of washdown water at the Port of Darwin.

The outcomes of a risk assessment undertaken for the transport of uranium oxide and concentrate on the Adelaide to Darwin rail line were presented in Chapter 26 and Appendix C of the Draft EIS. This assessment established that there are no unacceptable risk events (i.e. no 'extreme' risk level events). Some risks, such as an accidental spill of material following a train or vehicle collision, were identified. Contingency measures such as appropriate training and the development of emergency response plans would be implemented at the appropriate time (see Section 20.1 of the Supplementary EIS for further details).

Expansion of the Adelaide to Darwin rail line is not required to accommodate the proposed transport of product from Olympic Dam. The rail line operator (FreightLink) has indicated that there is sufficient capacity on the line for the proposed Olympic Dam expansion's train movements. BHP Billiton would continue to comply with the requirements of the existing rail line operations in terms of protecting Aboriginal cultural heritage, in accordance with any agreements the line owner/operators have with the Traditional Owners.

18.4 LEGISLATIVE REQUIREMENTS

Issue:

The *Roxby Downs (Indenture Ratification) Act 1982* is said to provide BHP Billiton with an exemption from the South Australian *Aboriginal Heritage Act 1988*. It was suggested that this exempts BHP Billiton from having to negotiate with Traditional Owners and protect heritage sites.

Submissions: 37, 141, 196, 245 and 313

Response:

The *Roxby Downs (Indenture Ratification) Act 1982* does not exempt Olympic Dam from complying with the *Aboriginal Heritage Act 1988*. BHP Billiton complies with all laws relating to Aboriginal people and goes well beyond the requirements of the legislation in addressing matters such as heritage management and protection.

The *Aboriginal Heritage Act 1979* applies to the Special Mining Lease and areas close to it. Beyond this, including on the power and water pipeline infrastructure corridors, the *Aboriginal Heritage Act 1988* applies. Regardless of which Act applies in any particular circumstance, BHP Billiton undertakes extensive consultation with Aboriginal groups, complies with all applicable heritage legislation, and complies with the requests of Aboriginal people to avoid disturbance and protect sites as far as possible. In circumstances where this is not possible and site disturbance is necessary to enable project development, BHP Billiton must obtain permission to disturb sites from the South Australian Government, and only after consultation with Aboriginal people.

Since becoming the owner of Olympic Dam, BHP Billiton has entered into a comprehensive Agreement, the Olympic Dam Agreement, with native title claimant groups. This Agreement includes a Heritage Management Protocol that sets out in detail consultation and other procedures to manage heritage issues.

Issue:

A review of the *Aboriginal Heritage Act 1988* is currently being undertaken by the South Australian Aboriginal Affairs and Reconciliation Division. The implications of this review for the Heritage Management Protocol were questioned.

Submission: 240

Response:

The review of the South Australian *Aboriginal Heritage Act 1988* is still under way (see <http://www.aboriginalaffairs.sa.gov.au/ahaReview/ss_home.html> for the Review Timetable, viewed 13 April 2010). The intention of the review is to take account of the changed legislative and policy context and changing community attitudes and expectations.

As the review has not yet been completed, BHP Billiton cannot pre-empt the implications for the Heritage Management Protocol. Regardless of any legislative review, the Olympic Dam Agreement, which contains the Heritage Management Protocol, includes provisions for periodic review by the parties to the Agreement.

Issue:

It was suggested that the land in the vicinity of Blanche Harbour and Point Lowly is protected under native title, therefore precluding major industrial development.

Submission: 310

Response:

BHP Billiton is not aware of the basis of this suggestion that native title precludes industrial development occurring in the vicinity of Blanche Harbor and Point Lowly. BHP Billiton has consulted with native title claimants about the possibility of development in these areas. In situations where there are native title claims, it is common practice for proponents of industrial developments to negotiate an agreement with the claimants to secure access to land, as is the case with the proposed expansion.

Issue:

Information was requested about the potential impact of the expansion on indicative sites listed in the Commonwealth Heritage List, including Lake Hart North, Double Swamp Site, Wild Dog Creek Site and the Eucolo Creek Engraving Painting Complex.

Submission: 1

Response:

The sites of Lake Hart North, Double Swamp Site, Wild Dog Creek Site and Eucolo Creek Engraving Painting Complex, listed as indicative places on the Commonwealth Heritage List, lie well outside the EIS Study Area and therefore the area of direct impact of the proposed expansion of Olympic Dam (see Figure 18.1 of the Supplementary EIS). The Draft EIS (Appendix U, ID1.1 and ID5.1) acknowledged the potential for indirect impacts associated with increased visitation to these sites as a consequence of increased population. As for the listed sites, codes of practice and education during the Olympic Dam workforce induction training would be implemented to help ensure an awareness of the existence of the sites and the need to comply with laws relating to their protection.