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Cultural heritage roundtable

Introductory remarks

1 October 2020

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Edgar Basto, President Minerals Australia

Hello everyone. I'm Edgar Basto. I am BHP's President of Minerals Australia and am based in Perth, but currently in central Queensland. I am responsible for all of our mining operations across Australia. Thank you for joining us today.

Joining me is Colin Johnston, Principal Indigenous Affairs and Dave Bunting, BHP's Heritage Manager, who are both based in our Perth office, and Benjamin Proudfoot, Superintendent Heritage Coal from our Brisbane office.

As you will be aware, on 11 June 2020, the Australian Federal Parliament convened a Parliamentary Inquiry into the events at Juukan Gorge and into legislative protection for Indigenous cultural heritage. BHP is participating in the Inquiry. We provided a written submission on the relevant legislation and agreed to appear and answer questions at an upcoming hearing of the Inquiry, which I think some of you probably have already reviewed.

As I said when we spoke to the inquiry, we recognise that what has been lost with the Juukan Gorge event is not only a site of unique and living cultural heritage, but also a loss of trust. We understand that for many people, including in the Aboriginal and Torres Strait Islander communities, this incident can raise questions of trust not just for the individual company involved, but for our industry more broadly.

BHP recognises that we need to be a constructive part of the response to this.

It is an opportunity for us to lead the way and forge better relationships with Traditional Owners toward mutual benefit. We are focused on making sure that we listen to Traditional Owner partners and Indigenous stakeholders, and respond constructively where we can to the issues and ambitions that they have raised with us. I have personally met with many of the Traditional Owners, understanding the current situation and receiving their feedback.

We understand that to restore trust in our industry we need to do some things differently. Again, we want to step forward, to play our part in this.

Since the event, we have confirmed that we will not act on our section 18 consents without further extensive consultation with the relevant Traditional Owner groups. We have committed to Traditional Owners that if we become aware of new information that materially changes the significance of a heritage site, we will not undertake any activities that will disturb that site without agreement. And we have confirmed to Traditional Owners that we will not regard any terms of our agreement as preventing them from making public statements about cultural heritage concerns and, if any provision could be regarded as having this effect, we will not enforce it.

We have worked hard to build longstanding relationships, and ongoing engagement with the many Traditional Owners in the regions in which we operate. This engagement is not a new process for us, but we continue to learn. Just like we do with safety when we have a serious event. We learn from different company operations or serious events. We do need to learn and strengthen our process. That is what we are doing.

We know that meaningful and respectful engagement with Traditional Owners needs our ongoing focus and attention. This will naturally involve revisiting decisions that have been made in the past and looking at ways to improve our existing approach to protecting cultural heritage.

We know the role that we play in the development of Australia's natural resources. We also know how important it is to empower Traditional Owners, listen to their voice, and support them in their determination to achieve a better future for them and future generations.

We welcome the opportunity to set out our approach in more detail today. I will now hand over to Colin Johnston to talk more about our structure, policies and practice. Dave Bunting and Benjamin Proudfoot will talk to our approach to heritage management. We will then provide some high level views on the reform of the WA Aboriginal Heritage Act and finish with time for Q&A.

Colin Johnston, Principal Indigenous Affairs

Thanks, Edgar. And thanks to everyone on the call for their time and interest today. Again, my name is Colin Johnston. I work as part of our national Indigenous Affairs team. I am very pleased to have this opportunity to discuss any aspect about our approach to Indigenous engagement that you'd like to today.

In my role, I've got a particular focus on Minerals Australia's Native Title landscape – Native Title of course being Australia's particular Indigenous land rights regime.

I'm very pleased to have with me today my colleague, David Bunting, who works with a focus on Aboriginal cultural heritage management.

Now, Native Title and heritage are of course distinct but very closely related concepts. In that way, our teams do work very closely together with each other. To commence with, I will provide a brief overview of some of the intersections between BHP's Pilbara operations, our Indigenous land use agreement making processes, and the management of cultural heritage values.

That said, I'm very keen to keep my introductory remarks as short as possible, to allow more time for Dave's more interesting observations, and also for as many questions as possible.

Before I do so, it's only appropriate that I take a moment to acknowledge the Traditional Owners of the land, on which our operations are situated, and whose culture I might have cause to reference today..

Starting here in Perth where Edgar, Dave, and I live and work on the customary land of the Whadjuk Noongar people, up to our eastern Pilbara mines at Whaleback, Eastern Ridge, and Jimblebar, which are situated on Nyiyaparli country. Onto our central Pilbara mines – Mining Area C, Yandi and South Flank which are situated upon Banjima Country. From our mining hubs, our product is railed over Palyku and Kariyarra land before being shipped to the world from a place the Kariyarra people know as Marapikurrinya.

So, touching quickly again on the nature of these separate but related legal protections of heritage and native title. Native title was first recognised as a common-law property right. It's now largely regulated under the Commonwealth Native Title Act. Essentially, addressing native title rights and interests is a pre-requisite for obtaining an interest in land such as the mining tenure that we rely on.

Whereas Aboriginal cultural heritage is protected largely under the state-based legislation, where, depending on the jurisdiction you're in, consents to disturb heritage values must first be obtained by a state regulator and/or the relevant heritage custodians.

So, it's important to know that relevant Indigenous people have standing under certain other mining and environmental protection legislation as well. Suffice to say, there are many dimensions to the relationship between Traditional Owners and proponents. It spans heritage and environmental stewardship, land rights, and that's to say nothing of economic participation, employment, contracting, and more broadly, the important sectors of our communities of operation they may represent.

But it's very clear that recent industry events have rightly given rise to a considerable focus on Aboriginal cultural heritage and management practices in the Pilbara. As Edgar said, this focus has provided a valuable opportunity for BHP and many others to examine practices.

This focus also gives us the opportunity to consider the effectiveness of state and Commonwealth laws and policies and also at the juncture, more so than any other, where it's important that we're listening to Traditional Owners and Indigenous stakeholders respond productively to the issues and ambitions that they share with us.

So, one way in which our community is currently doing this is the Western Australian Government's reform of the Aboriginal Heritage Act. The draft consultation bill has recently been released, and we'll continue to actively engage in that consultation process.

However, it's already clear that the bill responds in many meaningful ways to the dimensions of concern that have been expressed recently in the community. This is a topic we can touch on later in this conversation in more detail.

Beyond compliance with local laws, BHP's Indigenous People's Policy Statement and Indigenous People's Strategy articulate a commitment to operating in a manner that's consistent with a series of globally consistent public commitments – to working with Indigenous peoples around the world in accordance with standards that have been in turn informed by the UN Declaration of Rights for Indigenous People, the UN Guiding Principles on Business and Human Rights, and the ICMM Position Statement on Indigenous Peoples and Mining.

Of course, closer to home, our approach is informed by BHP's own Charter and also to our Reconciliation Action Plan commitments, as well.

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So, one of the key vehicles in which we translate this greater approach into our way of operations is via Indigenous Land Use Agreement making. This is a process recognised and designed to recognise native title rights and interests, and to formalise those essential aspects of our relationship with Traditional Owners. In addition to benefit sharing, these agreements provide mechanisms for consultation and discussion and set out a mutually agreed way of working in relation to cultural heritage management. It's in this way that BHP's performance does not turn on overarching legislation alone, but on the standards to which we hold ourselves and the commitments that we have made to others.

As I mentioned, the framework for native title agreement making is provided under the Commonwealth Native Title Act and this provides a hierarchy of processes that validate Land Acts that affect native title rights and interests. It is under this framework that we achieve our native title agreements. It's probably more useful to illustrate this in practice and with reference to BHP's present South Flank project.

BHP first entered into land use agreements with the Banjima community in relation to the development of Mining Area C in and around 2001. That arrangement was later contemporised through the execution of the 2015 Banjima comprehensive agreement. That agreement was entered into following extensive consultation and negotiation with the Banjima community. It's necessarily a very comprehensive process that is required to arrive at a meeting of minds of this nature.

Under the agreement, among many other things, the Banjima community agreed: the lands on which mining may take place and where Banjima support BHP's operations; the lands have high cultural significance which BHP agreed not to impact or seek land use approvals; and also land in relation to which Banjima people retain the rights to oppose future land use disturbance.

Importantly, the agreement included heritage protocols. It sets out an agreed approach to cultural heritage management in all its many aspects. Heritage consultations first began at South Flank in 2005. Since that time and with Banjima's assistance, BHP has undertaken approximately 700 days cultural heritage fieldwork. This has allowed for the conduct of over 100 related heritage projects including six ethnographic surveys, 20 baseline studies, and 15 detailed studies.

It's this level of consultation that's been necessary to inform a project as significant as South Flank. It's this level of engagement that we are committed to under our agreement for the duration of our operations upon Banjima country. It's only through this process can we adequately understand Banjima's cultural heritage values and in turn, Banjima can have the confidence in the adequacy of our understanding.

Now, consistent with this I'm pleased that this alliance has recently been further strengthened with the establishment of a Heritage Advisory Council that you will have seen jointly announced very recently.

So while cultural heritage values have certainly received considerable community attention in recent time, BHP has long been alive to this profound value set and our responsibilities when operating within what is a very rich cultural landscape. These learnings have been built over 50 years of operating in the Pilbara and they're being implemented with an appreciation that we are committed to operating sustainably within that region for at least the next 100 years.

As I find myself straying into those related concepts of heritage, I'll probably at this time pass over to my colleague, Dave for his views.

David Bunting, Manager Heritage

Thanks, Colin. As Colin mentioned the heritage team and the Indigenous engagement teams sit alongside each other. We actually sit in different parts of the business, with the heritage team sitting in the planning and technical part of the business, which is within the operation. That's an important distinction to make.

The reason we sit within the mining side of the business is because, in the heritage team, we play a very important link between what Traditional Owners are telling us on the ground and what the results of heritage surveys are on the ground. We then bring that inside and then we advise the mine planning team. That's why we sit in the technical side of the business, within the operation.

Colin and I work closely together. The two teams work closely together as Native Title and Heritage are intrinsically linked.

In the Minerals Australia heritage team we take a national approach and have a national strategy on how we go about conducting heritage work for all of the assets across Australia. We do at this level because we know that heritage is so fundamentally important to Aboriginal people across the country that we need to deliver it to a standard that goes above the compliance of whatever the state jurisdiction may be.

Our strategy aims to deliver heritage and land access in line with broader community expectations, not just in line with what the legislative framework may be. So, as Colin mentioned, the Native Title agreements that we have play a very important role in how we undertake heritage. The Native Title agreements in the Pilbara contain a heritage protocol.

That heritage protocol sets out how Traditional Owners and BHP will work together on the ground. We agree up front how we will conduct heritage and how we will mine in relation to that heritage. It really starts at the very forefront of a project.

We know that it's the Traditional Owners who are the true authority on heritage. It is the Traditional Owners who ascribe significance to heritage. Therefore it's the Traditional Owners that we have to listen to and respond to when it comes to how we are going to mine around that heritage. The heritage protocol outlines principles on how we're going to do that.

The principle of most importance is that we avoid first. So, a lot of the effort that we put in internally is around how we can avoid sites. That starts at the earliest stage of a project, which is during exploration.

To give a picture of what that looks like on the ground, we conduct heritage surveys with Traditional Owners on the ground before any land disturbance takes place – before a bulldozer hits the ground to do its first exploration drill hole.

That's a process where it's really in two parts. The first part is what's called an ethnographic survey. That's where an anthropologist with Senior Elders from the group go out into the bush and look at large areas of land very early on in a project to try and identify what the most significant sites are to the group. The sites that are connected to the Dreaming, the mythological ceremonial places, those that are the most significant to the group – we identify them first because they really are the red flags, if you will.

One of the important elements of the agreement is that these red flags are identified early. They're written in to the agreement. There are special rules around those. In the Pilbara there's about 138 of these sites that were identified through ethnographic surveys prior to the groups signing on to the Native Title agreements.

The second part of the survey is an archaeological survey and that is a lot more intensive. That involves Traditional Owners working with archaeologists, literally walking up and down the country, before exploration or before any infrastructure is put in. They identify sites on the ground, and these are very common sites types in the Pilbara, with artefacts scattered, scarred trees, and shell middens when we are close to the coast. The job of the Traditional Owners and the archaeologists in that is to record those sites. Put a boundary around those sites. Map those sites. That information is then brought internally and we use that in our mine planning.

One thing about the Pilbara in particular, and the Pilbara is a large focus here, is that it is a very rich heritage landscape. Aboriginal people have been in Australia for 60,000 years and in that time there is a lot of archaeological material that has been left behind. We do about 250 days of survey a year and it would be very rare for a survey team to go a single day without finding some form of archaeological material.

In total, we've surveyed about 700,000 hectares – an area the size of the Greater Perth metro area, a very large area. So we are very confident in the knowledge base that we are starting from. We've identified about 8,000 sites through that time and all of those sites are captured in our database to help inform our planning.

The way that it informs our planning is really in two parts. One is through long term mine planning, where we use this site information to then try influence the mine planning on how sites are going to be avoided during development. We do that as part of what's called the life of asset planning stage. That's the long term outlook on where BHP is going to mine.

Then more closely we have an internal process – for iron ore it's called the Project Environment on Aboriginal Heritage Review, we've got similar processes in Olympic Dam and coal – that's for projects where there is land disturbance at a day-to-day operational level. That's effectively an internal permit that any project owner likely to do land disturbance work on BHP land has to get a sign off from the heritage team and we put conditions on that permit to make sure that heritage sites are avoided.

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We know, of course, that from time to time heritage sites can't be avoided. This is really when they are located within the mining footprint. The protocol that we've agreed with Traditional Owners in the Pilbara is that we avoid heritage sites during exploration. We avoid to the best of our ability during infrastructure development. But when it comes to the actual mining deposits themselves, the agreement includes the understanding that it is much more difficult to avoid heritage sites in that instance.

So we go through a protocol where we seek a Section 18 in Western Australia and seek a ministerial consent to impact those sites. There is a long timeframe of consultation leading up to that with Traditional Owners where we talk about the significance of those sites and how we can mitigate the impacts, before we go for that approval. After we receive that approval there is ongoing consultation and mitigation work, which may include excavation and salvage or the collection of artefacts.

In the instances where sites cannot be avoided, we go through a very detailed process to ensure that Traditional Owners are well informed and that they have influence and input into how any impacts are mitigated. Finally, there is now an internal check for any sites that are being impacted called the Heritage Impact Approval Panel, where the Asset President signs off before any impact occurs.

So that gives a brief overview of how the process works on the ground.

I will now pass over to Ben Proudfoot to talk about how important the relationship is between heritage and BHP, and to give some personal reflections as well.

Benjamin Proudfoot, Superintendent Heritage Coal

Thank you, Dave. Thank you everyone for your time this morning.

There's a few key pieces that I'll touch on. One is around the relationship, also listening, and then how does listening turn into action and how do we actually consistently engage over long periods of time.

A lot of key points that have been brought up this morning are around the Traditional Owners and the business side of how we actually manage heritage internally. To manage heritage meaningfully and respectfully, the relationship is critical. The feedback that we get from the Traditional Owners essentially guides us on how we best manage heritage internally as well. This can change over time, so to engage meaningfully and listen is critical to all of this.

That involves meeting on a regular basis, and also meeting when we don't actually have set things to talk about – it might be business, but also catching up to understand where there might be changes in the structure of the Traditional Owner groups that we may not be aware of.

Also, it's really important to call out the human aspect to all this. Without meaningful engagement within the relationship, a lot of this actually doesn't translate to ongoing knowledge transfer between our Traditional Owner groups and the younger generations.

Listening is a critical part to this. How listening is turned into action – we're always looking at how do we better manage challenges and that is always directed by the Traditional Owners in conjunction with our team.

When I talk about our team as well, we have many Indigenous people, about six out of 15, which is critical to understanding perceptions and also being able to have a voice from an Indigenous point of view internally. It really empowers us to have a better and stronger sound process around managing heritage.

Lastly, to be meaningfully engaged and to understand Traditional Owner group's aspirations outside of managing heritage is really critical as well. To understand that the heritage landscape goes much beyond our tenements and mining footprint. This also then empowers Traditional Owners to sustainably share their knowledge and cultural heritage into the future.

Thank you.

David Bunting, Manager Heritage

Thanks Ben. I'll just make a couple of very brief comments on the heritage reform which is going on in Western Australia before we then go to questions.

People may have seen the previous submission that we put in relation to a white paper on the reform. BHP is supportive of Aboriginal heritage legislative reform in Western Australia. The new bill has just come through in the last several weeks.

We've gone through a process of reviewing that bill. It broadly aligns to where we thought the direction was going and there are several things that we support in the bill.

Firstly, that agreement making being enshrined in the bill is very much aligned to our existing process and also aligned with the feedback that we get from Traditional Owners on how they see heritage should be managed. With that agreement making comes more of a localised approach to decision making which we're aligned to. Then more broadly, the idea of the new reform taking a landscape approach to heritage management also aligns with how BHP develops a project. So there's this nice alignment from a project development point of view with how the new approvals regime is likely to work in practice.

So, while we don't know the full detail of that yet, at a high level, we think that there is broad alignment between project development and what they call the Aboriginal Cultural Heritage Management Plan which is the approval process for large projects.

With that, we'll open up to questions.