



Yamatji Marlpa
ABORIGINAL CORPORATION



Our Ref: GEN-033 Submissions
Your Ref: ACHA Regulations & Guidelines Phase 1
Office: Perth

Date: 27 May 2022

To: Department of Planning, Lands, and Heritage
140 William Street
PERTH, Western Australia, 6000
ATTN: Honourable Dr Tony Buti

By email: minister.buti@dpc.wa.gov.au; achimplementation@dplh.wa.gov.au

Dear Minister Buti,

REF: Submission in relation to the Phase 1 consultation for the *Aboriginal Cultural Heritage Act 2021* regulations and guidelines

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara and Geraldton regions of Western Australia. YMAC is run by an Aboriginal Board of Directors, representing several native title groups (each of whom have their own language, culture, traditions and protocols). YMAC provides a range of services, including native title claim and future act representation, heritage services, community and economic development assistance, and natural resource management support.

YMAC's Director of Projects and Heritage Manager attended the State Government's "phase 1, "co-design" workshop on 10 and 11 of May in Perth. At this event attendees were advised that they could make written submissions addressing the ten fact sheets and associated questions.

The attached submission and additional supporting documents (proposed modifications to the State's Tier Activity Table and a copy of the report from the recent ACHA online co-design workshop co-hosted by YMAC, South-West Aboriginal Land and Sea Council, and Native Title Services Goldfields) address the questions contained within the fact sheets distributed by the State at the 10 and 11 May workshop.

Whilst YMAC welcomes the opportunity to be involved in these important consultations, we remain deeply concerned about the timeframes allotted for the "co-design" of the regulations and guidelines. YMAC notes participants were given 17 days to formulate a submission and as a result YMAC's response should not be considered exhaustive. YMAC requests to be included in future consultations and submissions in relation to the regulations and guidelines.

We also request that the State report back on the outcomes of these consultations and submissions. Including summaries of the key issues and ideas raised in relation to each of the documents. Reporting back to individuals and organisations that have provided information and engagement is an essential part of the process so that we can understand how our feedback has been incorporated and where it has not, the reasoning why.

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Should this submission generate any questions or concerns, please contact me via Executive Assistant, Dionne Lamb, in our Perth office on 08 9268 7000, or email dlamb@ymac.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Hawkins'.

Simon Hawkins

Chief Executive Officer

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Submission: *Aboriginal Cultural Heritage Act 2021*

Phase 1 – Regulations and Guidelines

Submission Date: 27 May 2022

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Introduction

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara and Geraldton regions of Western Australia. YMAC is run by an Aboriginal Board of Directors, representing several native title groups (each of whom have their own language, culture, traditions, and protocols). YMAC provides a range of services, including native title claim and future act representation, heritage services, community and economic development assistance, and natural resource management support.

YMAC have provided submissions throughout all the consultation phases of the reform of the *Aboriginal Heritage Act 1972* (AHA Act) and the new *Aboriginal Cultural Heritage Act 2021* (ACH Act). Now that the ACH Act has passed the State has begun consultation on the regulations and guidelines which will underpin the implementation and operation of the ACH Act. YMAC view these regulations and guidelines as essential to the operation of the ACH Act which is to protect Aboriginal Cultural Heritage (ACH) in Western Australia.

YMAC representatives attended the State Government's two-day workshop on 10 and 11 May 2022 in Perth. At this workshop the State advised that if attendees wished to make further comment during Phase 1, they could provide a written submission by 27 May 2022.

YMAC is appreciative of the opportunity to provide further comment but note that due to the tight timeframe we are only able to focus on providing comment and recommendation in the areas of greatest concern.

ACHA phase 1: regulations and guidelines

General comments

Timelines

At the State's May consultation workshop many of the Traditional Owner participants and organisations questioned the State's timeline.

11 April to 27 May 2022	Codesign Engagement Phase 1	Release documents for consideration; Workshops in Perth and Regional areas; period for submissions
Review and analysis of submissions and further drafting of documents		
Early July to mid-August 2022	Codesign Engagement Phase 2	Release of documents informed from Phase 1 engagement for consideration; Workshops in Perth and Regional areas; period for submissions
Review and analysis of submissions and further drafting of documents		
Mid-October to Mid December 2022	Codesign Engagement Phase 3	Release of documents informed from Phase 1 and Phase 2 engagement for consideration; Workshops in Perth and Regional areas; period for submissions Includes ACH Council 60 Day consultation
Review and analysis of submissions and further drafting of documents		

Prior to the passing of the ACH Act in 2021 YMAC were repeatedly assured that many of our concerns and queries would be addressed by the regulations and guidelines. The then Minister for Aboriginal Affairs, Stephen Dawson MLA, and consequently the present Minister Tony Buti, MLA have repeatedly stated that these essential documents would be part of a true co-design process.

YMAC understands that due to time constraints (further impacted by COVID-19) the regional consultations comprised four-hour sessions in 12 regional centres. When asked about the number of participants the Department of Planning, Lands, and Heritage (DPLH) estimated that 350 people had attended, of which half were Traditional Owners.

As the State has rightly said, this is a once in 50-year opportunity to reform the protection of ACH in Western Australia. Why rush the regulations and guidelines that are so essential to the operation of the ACH Act?

The State has advised that the ACH Act is expected to be operational in July 2023. In that time, Prescribed Bodies Corporate (PBCs) or their endorsed representatives are expected to become Local Aboriginal Cultural Heritage Services (LACHS). YMAC submits that extending the timeframe for the regulations and guidelines to facilitate a more authentic co-design process reflective of the needs of Aboriginal people will also allow a more reasonable timeframe for PBCs to prepare to take on the responsibilities of a LACHS.

YMAC recommends the State amends timelines to accommodate an authentic co-design process regarding the regulations and guidelines and the development of a funding framework for LACHS. We are concerned that only very well-resourced PBCs will be able to become LACHS by July 2023. Our clients have repeatedly expressed that they feel that they are being set up to fail. We ask for sufficient time to genuinely support smaller PBCs to be ready to take on these important responsibilities.

Co-design not consultation

On 7 and 8 April 2022 YMAC, South-West Land and Sea Council, Native Title Services Goldfields and the National Native Title Council co-hosted an online co-design workshop. This event included presentations by Dr Chris Kueh a human designs and co-design specialist from Edith Cowan University, and Ngalia Traditional Owner, Kado Muir, Chair of the National Native Title Council, representing the First Nations Heritage Protection Alliance (FNHPA). Mr Muir discussed co-design in relation to reform of Federal heritage legislation. At this workshop participants from a range of stakeholder organisations and industries discussed what co-design means to them and how a meaningful co-design process could occur for the regulations and guidelines and beyond to the five-year review.

A copy of the report containing the results of this workshop are appended to this submission. Whilst YMAC appreciates the State's intent, we submit that the truncated timeframes and the methods of engagement with pre-defined questions and partially complete documents for discussion is a *consultation* - not a co-design process.

YMAC recommends:

1. The State review the outcomes from the April 2022 co-design workshop in the appended Outcomes Report and consider amending its timeframes and process to undertake an authentic co-design process of the regulations and guidelines.
2. Or alternatively, if the State intends to continue the existing process, it should cease referring to it as co-design.
3. The State reference the process being undertaken by the Federal government who is working in partnership with the FNHPA to undertake a co-design process to reform the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.
4. The State revise their timeframes (see above) to accommodate an authentic co-design process for the regulations and guidelines. This process could then provide a foundation for the five-year review.
5. The State support Traditional Owners to engage with this process utilising co-design principles to allow effective communication. This should include:
 - a. The provision of translators at community consultations.
 - b. Providing options to allow Traditional Owners to make oral submissions in the language of their choosing. These should be recorded and transcribed by DPLH staff.
 - c. The State returning to the communities they have consulted, to report to them how their submissions were incorporated and to explain where and why decisions were made that do not align with the communities' ideas. This is something our clients have repeatedly requested, and this was a strong message from the April 2022 ACH co-design workshop. They feel they are constantly asked to consult but are never told the outcome of their engagement.

Resourcing

Concerns regarding seed and ongoing resourcing for PBCs or other organisations to become LACHS was a common thread throughout the discussions that took place at the State's workshop. All the questions we were asked to discuss and respond to in the fact sheets are underpinned by how the LACHS will be resourced, developed, and supported.

YMAC is disappointed to hear the State say at the workshop that a framework for funding had not yet been established and that no economic modelling had taken place. We seek a commitment from the State that they will undertake this essential economic modelling. YMAC acts as a heritage service provider to a range of small PBCs and would be happy to contribute to any discussions around the funding framework. The National Native Title Council is also undertaking essential work investigating the level and methods of funding required by PBCs to maintain compliance with their obligations under the CATSI Act. YMAC recommends the NNTC be contacted to gain a stronger understanding of the resourcing of many WA (Western Australian) PBCs.

The duties of the LACHS under s.22 (d) of the ACHA are listed on page 3 of the LACHS fees and guidelines fact sheet. From this fact sheet, YMAC therefore understand their duties to include:

- The management of activities that may harm ACH located in an area to engage and negotiate as is appropriate with:
 - Proponents carrying out or intending to carry out activities.
 - Native title parties and knowledge holders for the area.
- Make or facilitate the making of ACHMPs (Aboriginal Cultural Heritage Management Plans).
- Provide advice to Proponents about the nature, characteristics, and location of ACH in the area.
 - What follows this is that the LACHS would be responsible for the co-ordination of heritage surveys to be undertaken on their Country, though this is not explicitly stated in the ACH Act.
- Provide information to the ACH Council about ACH located in the area to help the ACH Council undertake their duties in relation to the ACHA and to improve the accuracy of the ACH Directory.
- Make submissions to the ACH Council about proposals for activities to be carried out in the area and the management of those activities so as to avoid, or minimise, the risk of harm being caused to ACH by the activities.
- To engage with other LACHS, native title parties and knowledge holders about ACH that extends beyond the geographic boundaries of the area.
- To undertake either directly or indirectly, on ground identification, maintenance, conservation, and preservation of ACH.
- To report to the ACH Council about matters related to the provision of LACHS functions as required by the regulations.

YMAC notes that these duties must be performed in a timely manner or the LACHS is at risk of losing their status. If this occurs, we are advised that the PBC will become the fall-back entity. YMAC believes this to be illogical - if the PBC is also the LACHS and loses that status, they will still be required to provide the service. It is noted that several PBCs at the State's May workshop advised that they had done their own economic modelling and believed that becoming the LACHS was not financially viable – even if it is desirable from a cultural perspective. They also stated that their respective Land Council (native title representative body) had advised that they would not take on the role for the region for the same reason.

This raises significant questions about the viability of the LACHS model without significant and ongoing funding commitments to make it financially viable.

Finally, the ACH Act states that to become a LACHS s.39(e) the potential LACHS must demonstrate to the ACH Council that they have sufficient knowledge, skills, and resources to provide LACHS functions for the area. S.51 makes provision for the CEO (Chief Executive Officer) to approve funding for designated LACHS. This implies that a LACHS must first prove they have the resources before they can apply for resources.

YMAC is heartened that at the State's May workshop the Minister's Senior Policy Advisor confirmed that the \$10 million promised by the State was intended as seed funding, and the State recognised they may need to fund some LACHS indefinitely in areas where fee for service (FFS) work does not provide adequate funding for sustainability.

YMAC recommends:

1. The State undertake economic modelling across the State to inform the development of a funding model that considers the differing levels of activity and capacity cross the State and ensures that LACHS have equitable access to the rights legislated by the ACH Act (e.g. capacity to respond to ACH Permits).
2. The State release this economic modelling for comment.
3. When undertaking this modelling the State should consider the minimum requirements for a LACHS to function. Many of the PBCs in YMAC's regions do not have an office or any staff. We submit that at minimum a functional LACHS would require:
 - a. An appropriate office space and equipment.
 - b. A full-time staff member at minimum. For larger, busier LACHS multiple staff members could be required.
 - c. A reliable high-speed internet connection.
 - d. A reliable contact number.
 - e. Information communication technology and information management equipment.
 - f. Insurances.
 - g. Policies and procedures to govern the operations of the LACHS including the management of information generated because of LACHS activities.
 - h. Book-keeping and accountancy services.
 - i. Access to a range of software including Microsoft suite, Global Information Systems such as ArchGIS, accountancy / book-keeping.
 - j. The ability to generate budget estimates and invoices.
 - k. The ability to hold sensitive data such as payment details for survey and ACHMP negotiation participants.
 - l. The ability to process payments.
4. The State undertake an authentic co-design process with PBCs and other Aboriginal organisations to develop an equitable and sustainable funding model for LACHS.
5. The State should release the process for the allocation of the initial \$10 million seed funding. If LACHS are intended to be operational in July 2023 these bodies need to be appointed and this seed funding allocated as a matter of urgency to allow LACHS the time to establish operations in advance of the deadline.

Aboriginal Cultural Heritage Permits

YMAC understands Aboriginal Cultural Heritage Permits (ACH Permits) will be required for Tier 2 activities. YMAC and other workshop participants raised repeated questions about how LACHS will be funded to respond to ACH Permits. In the Yamatji region there will be minimal FFS work such as ACHMPS and heritage surveys. At the State's workshop the DPLH stated

that there was no intention for LACHS to be able to charge FFS for responding to ACH Permits to either Proponents or the State.

When questioned on this the State put forward the view that ACH Permits require notification only and that LACHS are unlikely to need to respond to these as Tier 2 activities will be clearly articulated in the regulations and guidelines. YMAC and other Aboriginal organisations present - including representative bodies and PBCs - have clearly communicated that our clients do not share this view. Regardless of what the ACHMP Management Code and Due Diligence Guidelines state, Traditional Owners are going to want to utilise the rights afforded in the ACH Permit process. We foresee that LACHS who have the resources will want to respond to and/or object to the majority of ACH Permits regardless of the expected outcome.

YMAC's analysis suggests that ACH Permits will comprise the majority of a LACHS workload. Our understanding is that Tier 2 activities are intended to capture activities that have always occurred but have been unregulated. In some areas there are likely to be hundreds of these notifications a year.

Of particular concern to YMAC is the fact that where an ACH Permit is in place Traditional Owners will need the permission of the ACH (or ACHMP) Permit holder to be able to apply for a Protected Area. Given the simplicity of applying for ACH Permits and the lack of resourcing to process and respond to them, it is feasible that well-resourced Proponents will be able to apply for many ACH Permits when the ACH Act comes into effect, effectively locking up the Country to protected area applications. When directly questioned about this the DPLH staff present stated that a Proponent will need to provide a work plan with their application to justify the ACH Permits they are requesting. YMAC considers that this would not in fact be an obstacle to large, well-resourced Proponents, and it is unrealistic to expect that it will regulate itself.

YMAC recommends:

1. The State permit LACHS to charge FFS to the Proponent for the receipt of, action, and response to ACH Permits. This benefits Proponents by providing certainty that they can rely on the validity of the permit, minimising risk because a meaningful opportunity to object has been provided.
2. Alternatively, the State could fund (at minimum) a full-time employee for each LACHS to be able to respond in a timely manner to ACH Permits and other LACHS responsibilities.

Activity categories

YMAC and our members believe that only the Traditional Owners to whom the cultural heritage belongs can determine the potential level of harm related to a particular activity. We recognise why a well-defined Tier system is attractive to the State and Proponents, but it does not reflect the risks to heritage as perceived by Traditional Owners.

YMAC submits:

- Physical ground disturbance is not the only form of harm that can impact ACH. Additional concerns such as access and amenity should also be considered in ACH impact assessments.
- Depending on the site, just walking through it may constitute significant harm.
- The most appropriate way to determine the level of impact related to the proposed activity is to consult with the LACHS.

The Tier system has been legislated by the ACH Act. This means the regulations and guidelines that underpin this system are of paramount importance to the success of the ACH Act in its stated purpose of protecting ACH. At the State's workshop representatives from the Chamber of Minerals and Energy (CME) shared their view that the Tier system should be based on the level of ground disturbance and the size of the area to be impacted. YMAC strongly opposes this view in favour of a Tier system with explicit descriptions of activities that fall into the distinct categories.

Attached to this submission is a copy of the Activity Tiers Table, incorporating YMAC's feedback.

YMAC recommends:

1. Proponents be incentivised to meet with LACHS early in projects and to maintain ongoing communication. Under the new legislation Proponents will only be required to consult for Tier 3 activities. In areas where significant heritage work has already taken place with prior Proponents, this means the Proponent may not have any contact with the LACHS at all until it is time to negotiate an ACHMP.
2. Proponents be incentivised to consult with LACHS regarding what constitutes Tier 1, Tier 2, and Tier 3 activities on their Country. This would support relationship building and agreement making. We predict that this would also reduce the number of objections raised to ACH Permits.
3. Proponents be required (at minimum) to submit all ACH impact assessments to the LACHS for review prior to the application for any ACH Permits or ACHMPS. Proponents should pay FFS to the LACHS to undertake this review.
4. Proponents be incentivised to be flexible regarding the categorisation of activities where concerns are raised by the LACHS e.g., undertaking Tier 2 activities within the boundary of a mythological or ceremonial site.
5. Please see appended table for YMAC's specific comments on the Tier activity categories.
6. LACHS should be properly resourced to be able to respond to ACH Permits. Our clients have raised significant concerns that if they are unable to mount an objection to a Tier 2 activity this may be taken as tacit consent and set a precedent that will inform future decisions of the ACH Council. Given the potential for ACH Permits to lock up Country and prevent applications for Protected Areas this is a significant concern.
7. When reviewing ACH Permits the ACH Council must consider the scale of the activity and the number of disturbances. As per the example above, the removal of up to 20kg of material is permitted as a Tier 1 activity – requiring no ACH Permit. However, if bulk sampling was to occur in an artefact scatter or subsurface cultural deposit this would significantly impact the ACH values of the site.
8. Where an activity is not covered by the Tier table, the Proponent should present the proposed activity to the LACHS and the LACHS should set the precedent for that activity type on their Country. This could then be lodged with the ACH Council for future reference.
9. YMAC questions why the majority of proposed Tier 1 and Tier 2 activities might occur within the boundaries of ACH at all. The aim of the ACH Act is to protect heritage and encourage Proponents to ensure best endeavours to not impact ACH. There is no reason a Proponent should need to bulk sample or rock chip within a site. As currently written, a Proponent could undertake rock chip sampling within an ACH site containing petroglyphs or grinding patches and chip and engraving or grinding patch directly and this would be permissible with an ACH Permit. There is no logical reason that we can see as to why a Proponent may need to undertake such an activity.

ACH Management Code

YMAC understands this to be the document intended to inform the due diligence guidelines and Tier system.

From viewing the fact sheet provided by the State, YMAC recommends that with respect to reasonable steps that a Proponent must undertake to determine if there is any ACH in the area, Proponents should:

- In the first instance, consult with the LACHS about the project to get an idea of the ACH in the area and any specific cultural protocols.
- Undertake heritage surveys if directed to so by the LACHS.
- Undertake heritage surveys where no prior survey has occurred or if the prior survey is of an age or standard that is not reliable. The Proponent should consult the LACHS to determine the reliability of any historic heritage surveys. The LACHS should be able to charge FFS for providing this review.
- Utilise the ACH Directory for contextual research recognising the limitations of this resource. The ACH Directory should not be considered a single point of truth and should not replace meaningful engagement with the LACHS.

In determining what activities may cause harm to ACH, YMAC recommends that Proponents should:

- In the first instance consult with the LACHS to gain an understanding of what constitutes harm according to the Traditional Owners who speak for the area.
- Provide funding for the LACHS to undertake the impact assessment or alternatively undertake the impact assessments and provide them to the LACHS along with FFS to allow the LACHS to provide comment on the LACHS. The comment of the LACHS must be incorporated into the application for an ACH Permit or ACHMP.

With regards to information that will assist to avoid and or minimise harm to ACH, YMAC recommends that Proponents should:

- In the first instance consult with the LACHS to gain an understanding of what constitutes harm according to the Traditional Owners who speak for the area.
- Utilise the ACH Directory to gain contextual information regarding the ACH in the area. With the caveat that this is incomplete information.

Proponents can demonstrate that they have appropriately undertaken due diligence by:

- Providing a detailed record of the consultations, heritage surveys, and other activities they have undertaken with the LACHS to understand the ACH in the area.
- Provide any comments from the LACHS in their submissions such as the LACHS comment on the impact assessments.
- Provide detailed information concerning all the possible configurations of the project to demonstrate that the LACHS have been fully informed of all options to avoid ACH.

Consultation guidelines

In addition to the matters listed in s.101, YMAC recommends that LACHS should be able to engage experts to assist the consultation such as lawyers, heritage professionals, economists etc. Further, where requested Proponents should be required to provide funding to enable LACHS to engage independent experts of their choosing.

With reference to the requirements set out in s.101 of the Act, YMAC recommends:

- Consider multiple attempts to make contact, via a variety of methods, over an extended period to constitute a genuine attempt to consult. In this instance a period of 90 days would be the minimum extended period to accommodate Law Time and other forms of cultural and sorry business.
- Setting time periods for consultation is challenging and depending on the scope of the project and proposed impacts and the range of consultations previously undertaken, the period required to effectively consult could vary widely. These time periods should have a 'stop-the-clock' facility, for example if the Proponent tries to commence the process during Law Time or other periods of cultural business.
- It is likely that the PBCs will become the LACHS. PBCs already have a wide range of responsibilities including a variety of meetings. Directors are usually volunteers who balance their duties to the PBC with work, family, and other commitments. The addition of consultations and negotiations relating to the ACH Act will add significant additional requirements. We would recommend that this be considered and would suggest at minimum six months for the negotiation of ACHMPs.
- Sufficient information to be provided to the LACHS by the Proponent should include all information held by the Proponent that could have a material impact on the decision making of the LACHS. The Proponent should provide at minimum:
 - Records of all on-Country heritage investigations that have occurred within the project area. Including maps showing the locations of all heritage surveys and the boundaries of all ACH identified.
 - Copies of all desktop research undertaken including the due diligence assessment.
 - Copies of internal due diligence undertaken by Proponents to evaluate the reliability of historical heritage surveys i.e. surveys that occurred prior to 2005.
 - Copies of all impact assessments for review by the LACHS.
 - Records and results of all related, prior consultations with the LACHS and an explanation of how this engagement has informed the project proposal.
 - All configurations of the project and associated economic modelling. The LACHS should be presented all viable options not just the one that generates the most profit.
 - If requested, funding to the LACHS to engage their own, independent experts to review the information provided.
 - This information, including Plain English summaries should be provided to the LACHS at least 30 days prior to the consultation to allow the consultation team an opportunity to review all the materials and seek guidance from their community as appropriate.

- Regarding sufficient information, YMAC have repeatedly raised concerns that Proponents could justify only providing options that maximise profit on the grounds that any other option would not be viable due to their fiduciary responsibility to maximise the wealth of their owners (shareholders). We have not received a satisfactory answer from the State on this and would recommend the State have a legal expert review this question and provide legal advice that can be shared with all stakeholders to provide clarification on this point.
- The State should ensure that Aboriginal people can effectively engage with consultations and make their position known. For many of our clients English is not a first language. YMAC have recommended throughout all the consultation phases that Aboriginal people should be able to make oral submissions in the language of their choosing with transcription and translation funded (alternatively undertaken by) DPLH. Proponents should also investigate the need for translators during consultations and provide funding to the LACHS to engage translators if required.
- Requiring all submissions to be written, including responses to ACH Permits and other submissions to the ACH Council, reduces the ability of Aboriginal people to engage with the rights and obligations in the ACH Act.
- In relation to the provision of culturally sensitive information – only the LACHS can determine what information is appropriate to be shared with the Proponent. A simple statement of cultural sensitivity and any restrictions should be sufficient.

The most effective forms of consultation are face-to-face and on-Country, where requested by the LACHS. COVID-19 has led our clients to engage with virtual meetings and consultations, but we are repeatedly told that the preference is face-to-face engagement. Ideally, consultation should occur separately to requests for decision making. Whilst our clients are chosen by their community to represent their views this does not mean they are automatically empowered to make decisions on behalf of their community. Allowing a period between consultation and decision making allows space for the LACHS to take information back to their communities and seek input from relevant elders and others.

There is not a clear definition of sufficient consultation. Depending on the LACHS and the scope / complexity of the project differing levels of engagement may be required. YMAC would suggest that the outcome demonstrates the sufficiency of the consultation. Where informed consent has been achieved this could act as a benchmark to demonstrate that effective consultation has occurred.

Knowledge Holder Guidelines

With respect to the ACH Act, YMAC has generalised concerns about the concept of knowledge holders and how they will be identified and engaged.

YMAC does not consider it appropriate for representative bodies to be engaged in this process. Genealogies held by YMAC are provided to support Native Title applications, cannot be used to inform who the knowledge holders are for specific areas of sites.

ACH Management Plan Templates

YMAC submits that provision should be made for LACHS to either complete - or at minimum review and provide comment on - ACH Impact Assessments, to ensure that their views have been accurately reflected. Impact assessments should also include consideration of non-tangible impacts such as impacts to the spirit, accessibility, amenity, and enjoyment of the place. An example raised by one of our members is a Law Ground near a Haul Road. The ACH has technically been avoided but the dust from the Haul Road affects the enjoyment of the site and people can no longer use the place for ceremony due to the proximity of traffic.

Regarding the ACH Management Plan Template, YMAC is concerned that relying on templates risks turning the process into a 'tick box' exercise; narrowing thinking, rather than encouraging Proponents to treat each project and related considerations individually.

YMAC recommend that templates would be more useful if individual to the LACHS, and that they should be developed by the LACHS rather than imposed by the State.

If the State insists on developing standard templates, then YMAC submits these should be customised depending on the level and type of activity. An ACHMP for a highly deleterious mine should be differentiated from utilities and critical infrastructure that are essential in nature and involve repetitive maintenance.

YMAC submits that Proponents should be required to undertake new negotiations and develop new ACHMPS as their project moves through the various phases of exploration, feasibility, construction and operations.

In addition, YMAC recommends that Proponents should provide project proposals for each project to the LACHS in a format developed by the LACHS, to ensure all relevant information is included.

Prescribed Periods for ACH Permits and ACHMPS

YMAC is concerned the proposed timeframes are unrealistic for the majority of prospective LACHS. As mentioned earlier in this submission, many of the PBCs in YMAC's region do not have an office, staff, or any infrastructure. They are volunteers, balancing their duties as directors with a myriad of other competing priorities. Some of the offices that are in existence are staffed only on set days during the working week. ACH Permits and ACHMP negotiations as well as the management of heritage surveys will generate a significant workload.

At minimum YMAC recommends that all the proposed timeframes should contain 'stop-the-clock' provisions allowing them to be paused during Law Time or when a community is impacted by Sorry Business or other cultural business. It is not for the State to determine timeframes for these 'stop-the-clocks', as each situation is unique. A straightforward process whereby the LACHS notifies that the clock needs to stop and then advises when it can restart would be a respectful and culturally appropriate way to manage this.

LACHS Fee Guidelines

YMAC have previously made extensive comments on the challenge of running a sustainable heritage service that is reliant on FFS for funding. Answering the questions relating to LACHS Fees Guidelines is challenging without economic modelling or certainty around other funding levels and frameworks to support the LACHS.

YMAC submits that LACHS should be able to charge an FFS for all the duties assigned to them in section 22(d) of the ACH Act. In addition to this, they should be able to charge fees to receive and respond to ACH Permits; review and provide advice on ACH impact assessments, review of historic heritage surveys and any other activities Proponent request their assistance on. LACHS should also be able to charge Proponents to fund their own advisors and experts to support negotiations including but not limited to legal, environmental, economic, anthropological, and archaeological services.

For example, different fees could be charged for:

- Non-profit organisations, researchers, and community organisations e.g., 70% of standard fee.
- Essential services such as power, water, and roads e.g., 85% of standard fee.
- For profit Proponents 100% of fee.

Regarding determining what fees are reasonable, the simple litmus test is whether the LACHS is sufficiently resourced to take advantage of the rights and opportunities contained in the ACH Act and able to meet their obligations under the same. At the State's May workshop several Aboriginal organisations stated that LACHS should be able to make a profit from these activities which would allow them to reinvest in and grow their organisations. YMAC broadly supports this approach.

YMAC does not consider geographic differences to be relevant in relation to the fees LACHS can charge.

YMAC recommends that LACHS should receive a 50% upfront payment once a budget estimate has been approved by the Proponent. This recognises that it costs money to progress a matter such as providing travel allowances to members of the LACHS to attend negotiations. Additionally, LACHS will need to undertake their own compliance checks such as desktop research. LACHS should also be able to retain some portion of this if the project does not go ahead in recognition of the cost of undertaking the pre-work. For example, half the upfront cost which would equate to 25% of the total estimate as a cancellation fee.

In relation to the co-ordination of heritage surveys one of the largest costs relates to Traditional Owner consultants. If there is no upfront payment these consultants would potentially wait months before they are paid for their work on-Country.

LACHS will also need to be able to charge an admin fee of ideally 20% (or more) on all fees and costs to cover overheads associated with the role of a LACHS (e.g. support staff, rent, utilities etc.).

State Significance Guidelines

Regarding State significance the factors of social, spiritual, historical, scientific and aesthetic accurately reflect a range of different values. In terms of the evidence, the view of the Aboriginal people to whom the heritage belongs should be weighted highly in relation to all other forms of evidence.

Like Protected Areas, YMAC submits that ACHMPS should not be permitted in areas of State Significance. If the ACH meets this threshold of significance, then harm - even when managed by an ACHMP should not be permitted. Otherwise, what is the point of this designation?

Protected Area Order Guidelines

At the State's May 2022 Workshop the Chairperson of Western Desert Lands Aboriginal Corporation spoke passionately about his discomfort regarding the co-design process being undertaken and the lack of cultural competency demonstrated by the questions asked by the State, particularly regarding the questions asked in relation to Protected Area Order Guidelines.

YMAC holds the view that in relation to the Protected Area Order Guidelines:

- Only the Aboriginal people to whom the heritage belongs can determine if the ACH is of outstanding significance to them.
- The statement that the ACH is of outstanding significance, coming from the Traditional Owners to whom the heritage belongs should be sufficient evidence to support the declaration of a Protected Area.
- Traditional Owners should not have to provide any information that they deem to be culturally sensitive. Their word concerning the significance of the heritage should be the benchmark.
- The concept of outstanding heritage is a European understanding of heritage and culture. Requiring Aboriginal people to rank their heritage is a culturally insensitive and traumatising process. This needs to be recognised when considering the process and evidence for declaring Protected Areas.

Substantially Commenced

The key issue for YMAC regarding the concept of 'commenced' is the degree to which the activities that will harm ACH have been commenced. Activities that cause the greatest harm tend to occur early in the development process. YMAC suggests a definition such as 'substantially commenced' mean that 30% or more of the activities which will harm ACH have been completed.

Definitions and Acronyms

ACH	Aboriginal Cultural Heritage.
ACH Act	<i>Aboriginal Cultural Heritage Act 2021 (WA)</i>
ACH Council	Aboriginal Cultural Heritage Council
AHA	<i>Aboriginal Heritage Act 1972 (WA)</i>
CEO	Chief Executive Officer
DPLH	WA Department of Planning, Lands and Heritage
GIS	Geographic Information System
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
LACHS	Local Aboriginal Cultural Heritage Services
NTA	<i>Native Title Act 1993 (Cth)</i>
NTRB	Native Title Representative Body
PBCs	Prescribed Bodies Corporate
Regulations and Guidelines	The regulations and guidelines legislated in the ACHA including Activity Categories, Draft Activity Table, ACH Management Code, Consultation Guidelines, Knowledge Holder Guidelines, ACH Management Plan Templates, Prescribed Periods for ACH Permits and ACH Management Plans, LACHS Fees Guidelines, State Significance Guidelines Protecting Aboriginal Cultural Heritage of State Significance, and Protected Area Order Guidelines.
State's Workshop	The regulations & guidelines (ACHA) "co-design" workshop undertaken at RAC Arena on 10 th and 11 th May 2022.
WA	Western Australia
YMAC	Yamatji Marlpa Aboriginal Corporation

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Exempt	Tier 1	Tier 2	Tier 3
construction, renovation or demolition of a building occupied, or intended for occupation, as a place of residence, or a building ancillary to such a building, on a lot as defined in the Planning and Development Act 2005 section 4(1) that is less than 1 100 m2	Field mapping including cadastral surveys, environmental, biological, non-invasive aerial and remote sensing and magnetic surveys not involving the permanent disturbance of soil and vegetation. No significant disturbance to vegetation should be permitted at Tier 1. Move to Tier 2 at minimum.	Revegetating of degraded areas, including fencing of revegetated areas	Costeans
development of a prescribed type carried out in accordance with the Planning and Development Act 2005	Environmental monitoring Extend this to Environmental monitoring that does not require any ground disturbance or the removal of any soil or bulk samples. Needs further description	Rehabilitating previously disturbed areas, including ripping, scarifying, matting, brushing seeding and planting. This needs a clear definition of what constitutes prior disturbance.	Mining or establishment of processing plant, plant, access roads, permanent camp and supporting infrastructure in previously disturbed areas
travel on an existing road or track	Spatial measurement	SKIMPI Survey	Mining exploration activities consisting of vehicle track creation and drill pads
the taking of photographs for a recreational purpose	Geological scientific research, including geological mapping soil and drainage sampling using handheld tools only This needs to be more clearly defined. For example, in a rock art site it should be an offence to chip a rock sample from an outcrop containing petroglyphs. The maximum size of the sample that can be collected should be defined.	Geophysical surveys, including seismic surveys, carried out along gazetted roads, road reserves, road corridor or existing track or paths or firebreaks	Scientific Investigations on previously disturbed land (up to 10 metres deep)
recreational activities carried out on or in public waters or in a public place;	Aerial surveying and magnetic surveys such as <ul style="list-style-type: none"> Airborne geophysical survey Ground based survey Magnetic Geophysical survey Radiometric geophysical survey Gravity surveys Electromagnetic surveys These should be moved to Tier 2 or require a notification at minimum. Community members observe planes or people travelling through the County to undertake these activities and will want to know what is happening on their Country. Under <u>existing</u> heritage agreements Proponents are generally required to advise PBCs of their planned activities including minimal impact activities in a work plan.		Installation of telecommunications tower on previously disturbed land
burning carried out — (i) for fire prevention or control purposes or other fire management works on Crown land; and (ii) by a public authority;	Metal detecting including digging a target with hand-held, non-mechanical tools. Limitations need to be made clear regarding the size of the sample and the number of samples taken. Digging with a shovel in an artefact scatter or quarry would have a significant impact on the tangible ACH values of the site. Ideally, this should be moved to Tier 2.	Erosion control activities around existing roads, infrastructure or facilities. This requires clearer definition to make it clear that it is only related to the existing infrastructure not new disturbance around the infrastructure.	Resource definition drilling and grade control drilling
clearing of a kind set out in the Environmental Protection Act 1986 Schedule 6 item 10, 10A, 11 or 12	Feral animal eradication, vermin and pest control and baiting	Weed control using mechanical methods of control. Please define mechanical methods of control and examples. If this involves potential permanent impact to surrounding native vegetation this should be moved to Tier3.	Water Bore Establishment
other activities, if any, prescribed for the purposes of this paragraph	Reconnaissance and patrol in light vehicles, but not to the extent that repetitive access and use creates a permanent track	Vehicle mounted auger sampling should not be a Tier 2 Activity. YMAC notes that no limitation on the size of the auger or the number and density of holes is provided. This should be a Tier 3 activity.	Subdivisions in previously disturbed land such as cultivated agricultural land or excavated land
	Collecting and removing loose rocks, firewood, flora and fauna. Sampling including removing soil, rock and flora samples using hand-held methods including hand augering, rock chipping, soil sampling, stream sediment sampling that does not interfere with any objects as defined by the Aboriginal Cultural Heritage Act 2021 - also needs definition of sample sizes.	Burning for hazard reduction (non – emergency situations) - ideally, Aboriginal expertise should be engaged wherever possible.	Mobile plant (concrete batching and screening/crushing).

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Exempt	Tier 1	Tier 2	Tier 3
	Conducting tests for water, site contamination or other scientific or conservation purposes	<p>Archaeological materials analyses, surface and sub-surface sampling, test-pitting, small open area excavation, or salvage:</p> <ul style="list-style-type: none"> • Making moulds of rock art • Taking samples of ochre, pigments, charcoal, wood, shell etc for scientific analysis • Hand tools: shovels, trowels, sieves, hand-augers) • Machinery: mechanical augers, mechanical excavator (300 mm to 1 m bucket), mechanical sieves Light vehicles for transport - <2 sq m per shovel pit • Pits less than 5m2 <p>These should all be Tier 3 activities. The intended purpose seems to be to support scientific investigations, but this could easily be exploited. LACHS should play a role in developing any research projects and this should be covered by an ACHMP.</p>	Mechanised Ground disturbance within undisturbed areas
	Non-intrusive vegetation control such as flora and fauna surveys (without digging), treatments, dieback surveys, injections and spraying, mosquito treatments (including non-invasive trapping, treatments including fogging (adulticides and larvicides) through chemical-use and spraying	Installing new kerbing If this involves any new ground disturbance it should be a Tier 3 activity.	Road reconstruction / maintenance (resealing, asphalt overlays, re-sheets) involving widening outside of the existing road footprint
	Erecting signage and barriers using hand and hand held mechanical augers	Installation or replacement of signs in natural or developed reserves using non hand held mechanical augers	New Park development which could include bores, fences, garden, tree planting, turf, toilet, BBQs, seating, pavilions and maintenance
	Laying of temporary water pipelines across ground where no excavation is required Temporary water pipelines can impact the surface of ACH such as artefact scatters. Unless the pipes are fixed they move, which causes damage, and fixing the pipelines should be a Tier 3 activity. We would recommend that water pipes should not pass over ACH. Or at minimum, this should be a Tier 2 activity.	Installation of new bollards or fencing Bollards and fencing should not be installed within the boundaries of ACH. Installation should only be Tier 2 if the Proponent can demonstrate that all ACH is being avoided. Any installation of bollards or fencing within ACH should require a Tier 3 ACHMP.	Beach development i.e. moving sand for sand banks or ramps (including repairs)
	Field Geological Mapping	Installation of new bores or watering systems in developed reserves As above – bores should not be installed within ACH. This should be a Tier 3 ACHMP activity.	Commercial and industrial subdivisions of any size
		Tree removals (including land surrounding with roots) around infrastructure which does not include the removal of any objects as defined under the Aboriginal Cultural Heritage Act 2021	Activities in waterways which involve a new impact to the banks, bed or water flow - Dewatering of mine features and associated discharge. Dredging of natural waterways (e.g. wetlands, rivers, foreshores) to remove sand that has been deposited over time from drainage pipes
	Ground based Electrical Surveys	Geotechnical testing with digging required No digging should occur within ACH. Any digging of any scale within ACH sites should be a Tier 3 activity managed by an ACHMP.	Soil investigations utilising an excavator or other machinery to access below the natural ground level
	Seismic Survey (Passive)	Jetty and boat ramp maintenance and redevelopment Maintenance of existing infrastructure is okay as a Tier 2 activity. The development of any new jetty and boat infrastructure should be a Tier 3 activity.	Erosion control activities outside of existing disturbance/infrastructure footprint
	Portable PPB Analysis	Modification or repair of existing buildings	Mechanised ground disturbance eg gravel extraction
		Stockpiling of construction materials or temporary storage of machinery for works Constructional materials should not be stored within the boundaries of ACH. Accessing these materials would involve significant traffic through the ACH. They also impact the amenity of the ACH and the ability of Traditional Owners to access and use the place. The storage of constriction materials should be a Tier 3 activity managed by an ACHMP.	Broad acre land clearing where there has been no or minimal previous disturbance
	Digging pitfall traps and temporary trenches for small animals, baiting and installation of temporary fences and nest boxes	Taking geological samples, including soil and rock, exceeding 20 kg in weight	Construction of housing sub-divisions

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Exempt	Tier 1	Tier 2	Tier 3
	There is no need to dig and place traps within the boundary of sites. Any trenching should be a Tier 3 activity.	This implies that samples below 20kg in weight are to be considered minimal impact. Removing more than 20kgs of soil and rock for an ACH site is a significant impact. This type of sampling should not need to occur within the boundary of ACH. If samples must be taken within an ACH site this should be a Tier 3 activity managed by an ACHMP.	
	Environmental and Heritage Surveys and recording where no movement or removal of heritage material occurs.	Laydown area adjacent to existing road (sealed/unsealed) or track for aerial surveys and associated activities Where a laydown area involves new ground disturbance this should be a Tier 3 activity requiring an ACHMP if any ACH is going to be harmed.	Establishment of new infrastructure easements (requiring excavation)
	Maintaining or reconstructing existing retaining walls (land and sea included) where there is no additional disturbance footprint	Excavation of contaminated material and/or waste material buried below natural ground level We understand the need to be able to undertake this work rapidly as it represents a safety issue. But would recommend that monitors should be required for ground disturbing work of this nature.	Forestry activities, including mechanical harvesting, water extraction, river crossovers and replanting
		Backfilling historic mine features using imported material where minor clearing/disturbance is required This is okay so long as the imported material is not being sourced from within the boundary of ACH in the area.	Mining exploration activities consisting of vehicle track creation and drill hole clearing
		Induced Polarised Surveys	Seismic Surveys requiring clearing of tracks
	Digging pits for the purpose of temporarily burying geoscientific equipment where pits do not exceed 2.0 m in depth This is unclear - do you mean the digging of 2msq pits? No pits should be dug within the boundary of ACH. Any digging within ACH should be a Tier 3 activity requiring an ACHMP. Need information on sampling		Channel Sampling
	Erecting signage, solar panels and barriers using hand held mechanical augers –Not within ACH and, potentially, not adjacent to ACH.		Bulk Sampling
	Aerial transportation for geoscientific research and heritage clearances (e.g. Helicopter deployment of staff to remote site, heritage clearance with Aboriginal groups in remote areas) that does not require any ground disturbance at landing site YMAC recommends consultation with the LACHS prior to undertaking these kinds of activities. There are some sites that are considered so culturally dangerous that they cannot be flown over, especially during Law season.		Drilling (air core, Rotary, Percussion, Diamond, Rotary mud)
	Stockpile sampling where samples are collected from above the natural ground level See earlier comments regarding stockpiling. Samples should not be taken within the boundary of ACH. Samples should not be stockpiled within them.		Scrape and Detect
	Conducting tests for water, site contamination, or other scientific or conservation purposes within previously disturbed area. As previously stated, a clear definition of what comprises previously disturbed is required.		Small scale mining
	Mine Closure and demolitions within previously disturbed area <ul style="list-style-type: none"> Surface asbestos containing materials (ACM) assessments including raking of the ground surface Removal of surface waste and inert rubbish Removal of redundant plant and equipment within existing disturbance/ infrastructure footprint Removal of stockpiles of contaminated material where excavation below ground level is not required Clearing regrowth vegetation on mine waste material Sampling from already installed monitoring wells		Replacement or repair of lineal telecommunications infrastructure (i.e. subsurface cabling) in corridor immediately adjacent to existing infrastructure (new footprint)

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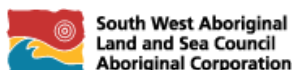
Exempt	Tier 1	Tier 2	Tier 3
	Geotechnical or environmental drilling (e.g. installation of monitoring wells) using existing roads or tracks within previously disturbed mining areas not requiring additional clearing and involving no disturbance to plant roots See prior comments regarding previously disturbed.		Installation of telecommunications infrastructure
	Removing soil and flora samples and cores up to 20 kg and up to a depth of 2.0 m from the natural surface Soil should not be removed from within ACH. Removing 20kgs up to a depth of 2m is a significant impact to the tangible values of ACH. This level of ground disturbance constitutes a high level of impact and should be a Tier 3 activity managed by an ACHMP.		Blasting Use of Explosives including military training
	Revegetating degraded areas in mined areas, including fencing areas of vegetation		Land clearing where there has been no or minimal disturbance previously
	Any other handheld tools not referred to in preceding paragraph There needs to be limits placed on the size of samples that can be collected and that they cannot occur with ACH sites to impact heritage directly. Do handheld tools include shovels? If so, the use of shovels should be a Tier 2 activity.		Large Scale Archaeological Excavation and Salvage Archaeological Excavation – Open area archaeological excavation Archaeological Salvage – Collection and removal of cultural objects
	Cultivation and grazing in previously cultivated and grazed areas – consideration of impact to sacred water sources.		Development of new roads, tracks, trails, pathways or parking areas
	Maintenance of existing facilities <ul style="list-style-type: none"> Including recreation, camping and parking facilities Landscaping, mowing and planting in developed Parks and Ovals and other maintenance works Redevelopment of existing landfill or waste facilities Water points, signs other structures do not require further disturbance to the ground and within the current footprint		Constructing new retaining walls (sea and land inclusive)
	Replacement of existing toilet facilities, bores or watering systems where there is no additional disturbance footprint		New toilet facilities and associated leach drains/tanks
	Cemetery services including grave digging and maintenance within existing designated cemeteries.		New developments buildings, outbuildings, club rooms, toilets, tracks, sports grounds, etc
	General maintenance and lifestyle activities associated with a dwelling including, gardening, erecting ancillary buildings, extensions, fixing fences - define ancillary buildings and extensions.		Erosion control activities associated with the ocean and significant waterways (includes walls, barriers, reshaping of beach areas, construction of groynes etc)
	Site walk over, walking, surveying on foot, bushwalking		Creation of suspended walkways over sensitive environments or waterways including construction of boardwalks and walkways
	Pegging for prospecting and mining activities		Installation of new services (power, water, sewer, telecommunications)
	Establishing temporary camps where the establishment of the temporary camp does not require the removal of trees, shrubs and does not require any earthworks. Camps temporary or otherwise should not be established within the boundaries of ACH. Impacts are caused by human waste and this affects amenity and access to the place. Establishing any kind of camp within an ACH place should be Tier 3 and managed by an ACHMP.		Extension of existing buildings that are not subject to the ‘Exempt’ category
			Development of new bridges
			Mechanical digging of significant depth and scale (Requires further clarification as to specifics of “depth and scale”)
			Development of a new cemetery
			Clearing of land for laydown and staging areas with or without drilling
			Extensive soil investigations utilising an excavator or other machinery to access below the natural ground level
			Large-scale on-site remediation works which may include the construction of containment cells/ bioremediation pads or excavation, screening and replacement of contaminated soil or installation of in-situ/ ex-situ groundwater remediation systems
			Formation and mining of new borrow pits
			Constructed landforms (e.g. tailings storage facilities, waste landforms). Either creating new landforms or conducting rehabilitation earthworks to existing facilities outside of existing footprint

**Aboriginal Cultural Heritage Protection
Co-Design Workshop**

Thursday, 7 April & Friday, 8 April 2022

Outcomes Report

Presented by:



Acknowledgements

The 'Aboriginal Cultural Heritage Protection Co-Design Workshop' event partners acknowledge the Traditional Owners and custodians of Country throughout Australia, and recognise their continuing connection to land, waters and community. We pay our respects to the people, cultures, and Elders past, present and emerging.

The event partners also thank the Australian Government, through the National Indigenous Australians Agency, for its support in delivering this event.

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Executive Summary

The December 2021 passing of the *Aboriginal Cultural Heritage Act 2021* (WA) (ACH Act) felt like a significant missed opportunity for many Traditional Owners from across the state in terms of suitably safeguarding their cultural heritage and related sites. They had consistently called on the McGowan Government to not rush the bill through, and instead afford enough time for all those affected by the new law to work together to identify and resolve concerns being raised. These requests went unanswered.

In response to the legislation being introduced, Traditional Owners (via several representative organisations) confirmed they still wished to convene a meeting to discuss what should happen next in relation to the implementation of the ACH Act. Consequently, the National Native Title Council, Yamatji Marlpa Aboriginal Corporation, South West Aboriginal Land and Sea Council, and Native Title Services Goldfields agreed to coordinate and co-host the 'Aboriginal Cultural Heritage Protection Co-Design Workshop' (held entirely online on Thursday, 7 April and Friday, 8 April 2022).

By hosting this workshop, the event partners endeavoured to create a forum for a broad representation of Aboriginal people from across Western Australia (WA) to learn about both national and international understandings and applications of genuine 'co-design', and to consider these principles and approaches to better identify what 'co-design' should mean in the context of implementing the ACH Act. Following these initial discussions, the conversations were extended to other parties impacted by the new legislation, in an effort to find common ground and a way forward, together.

To assist these discussions, participants at the workshop were asked to consider and provide ideas and input in response to several framing questions. These included prompts along the lines of, for example:

- What are key elements of a genuine co-design approach that must be incorporated for this process?
- What are the desired outcomes for this co-designed approach?
- Who should be involved?
- Who would lead, own, and implement the co-design process (or aspects of it)?
- Timeframes.
- Resources required.

Across both days, quite similar views seemed to be shared, with comparable priorities emerging. Though the format of the workshop, and time constraints could not ensure complete unanimity across all matters being considered and points being made, several strong themes were observed. For example:

- Participants' desire for a transformative co-design approach (and sentiments that previous 'consultation' processes have been insufficient).
- Ensuring the right people are suitably involved at all stages of any related processes, which includes a wide range of interested parties.
- The necessity for equity and transparency, in addition to inclusivity and respect, at all stages of any related processes.

- While there should be parity (i.e. where there has not been in the past), Traditional Owners must be recognised and duly respected as the owners of their cultural heritage and related sites, and their cultural values and practices must be considered and given due weight in any planning and decision-making.
- Culture and cultural protocols must underpin and inform all aspects of any processes; this includes respecting cultural considerations in terms of affording adequate time for planning and decision-making (i.e. not running things only based on government objectives and timeframes or deadlines).
- Objectives, expectations, and related roles and responsibilities, must be clear and understood by all interested parties involved at all stages of any related processes, which will require adequate resourcing.
- A genuine co-design partnership must involve ongoing collaboration and reviews to ensure any processes are working effectively as intended (and if they're not, identifying new solutions, together, to introduce/implement).
- Traditional Owners (and their supporting/representative organisations) should be empowered to lead any related processes, including broad community engagement and education/awareness-raising efforts, but must be provided adequate resourcing to do so.
- It must be accepted that true co-design is a long-term commitment for all those involved.

These emergent themes are supported by the generally endorsed outcomes captured on each day, included here as Appendix Four ('Day One Outcomes') and Appendix Six ('Day Two Outcomes').

It was both interesting and encouraging to observe that, on the surface, some of these points appear to align with the State Government's own stated co-design 'principles'; for example, concepts such as "Inclusiveness", "Transparent", and "Iterative" (see Appendix Five). However, some caution and concern still exist for participants in how these concepts can be construed and how they are applied and demonstrated in practice.

Workshop participants clearly recognised the importance of language in this regard, and how it can be interpreted differently by different people unless direct and concise meanings are suitably attributed and described. Hence, a further recommendation of this report is for the State Government, as part of its planned co-design process, to seek specific advice from Aboriginal people regarding appropriate and accepted terms and distinct explanations, in particular for any descriptors referring to them, their cultural heritage, etc. These should then be employed consistently throughout the ongoing ACH Act co-design process, as well as any documents, materials or similar that are developed as a result.

As is evident from the outcomes of the workshop, participants openly shared and collaborated to identify some of the key elements of what they envisage as a genuine co-design process. Having these conversations, together, has been important and valuable.

Now, these outcomes are being shared with the State Government, with the aim to better inform how it should appropriately undertake co-designing and developing the statutory

guidelines and regulations associated with the ACH Act, as well as continue to support a true co-design approach into the future.

Several of the workshop presentations and this outcomes document will also be made available on the protectaboriginalheritagewa.org.au website, to help promote and educate others on this vision.

In addition to keeping up-to-date by way of what will be shared on the abovementioned website, we encourage workshop participants and others who have an interest in this important issue to also get directly involved in the State Government's planned process. You can find out more, including how to register for one of their upcoming workshops here: www.wa.gov.au/government/document-collections/aboriginal-cultural-heritage-act-2021-co-design-process.

As has been said from the beginning, this workshop should be just the first step in a long and enduring journey, which we hope workshop participants will continue, and one that others will join them on too.

Purpose of the Workshop

The workshop aimed to bring together WA Traditional Owners, government and industry representatives, heritage professionals and co-design experts to discuss a co-design approach specific to the ACH Act, its associated guidelines and regulations, and its ongoing review.

The State Government is also on record committing to a co-design process in relation to the guidelines and regulations associated with the ACH Act.

The intended objective of the workshop was to have an Aboriginal-led conversation with other relevant interest groups about what 'co-design' should look like, and what it means to them. Hence, a key aspect of the workshop was to explore shared understandings of what 'co-design' is (and what it is not).

Outcomes of the workshop, reported here, are now being shared with the State Government, with the aim of better informing how it should most appropriately undertake co-designing and developing the statutory guidelines and regulations associated with the ACH Act.

What is 'co-design'?

Drawing from best practice approaches undertaken elsewhere, we already know that 'consultation' does not equate to 'co-design'; legitimate co-design processes require continual collaboration and improvement, and ensuring the right stakeholders are involved.

The main purpose of co-design is to generate meaningful dialogues among all affected parties, and to give the people who are most affected by the problems that we seek to solve a primary role in solving them.

Co-design is not simply about designing innovative services, products or policies. It is about prioritising the stories of those people that those services, products or policies will serve – at every stage of the process.

Therefore, if *genuine* co-design is to be achieved, the ‘Aboriginal Cultural Heritage Protection Co-Design Workshop’ should be the first important step in a far longer-term endeavour.

Host Organisations

At the request of Traditional Owners from across Western Australia, the workshop was co-hosted by the National Native Title Council and members from the WA Alliance of Native Title Representative Bodies and Service Providers (WA Alliance): Yamatji Marlpa Aboriginal Corporation, South West Aboriginal Land and Sea Council, and Native Title Services Goldfields. See Appendix One for short descriptions of each host organisation.

Event Chair, Co-Facilitators, and Presenters

Both days of the workshop were chaired by Whadjuk Yued Noongar man, Brendan Moore, and co-facilitated by Ballardong-Whadjuk Noongar maarman, Bill Bennell, and Yawuru woman, Mandy Gadsdon.

On Day One, Dr Christopher Kueh, Senior Lecturer within the School of Arts and Humanities at Edith Cowan University and co-design expert, presented on internationally recognised elements of strong co-design for consideration by Traditional Owners. This was intended to help inform group discussions when contemplating what co-design should look like in the context of WA Aboriginal cultural heritage protection, including the development of the statutory guidelines and regulations associated with the ACH Act. Dr Kueh also shared a shorter presentation on Day Two focusing on ‘why a genuine co-design approach needed’ for the benefit of those participants not involved in Day One.

Day One participants also heard from Ngalia Traditional Owner, Kado Muir, Chair of the National Native Title Council, about the efforts of the First Nations Heritage Protection Alliance and what is happening in relation to national reforms and co-design.

WA Minister for Aboriginal Affairs, Dr Tony Buti MLA, joined the workshop for part of Day Two, providing participants an opportunity to share the outcomes of the workshop’s previous day’s discussions with him directly, and to take questions.

See Appendix Two for short biographies of each abovementioned individual.

Participation

Invitations to the workshop were shared with WA Traditional Owners care of their Native Title Representative Bodies and Service Providers and Prescribed Bodies Corporate (PBCs). Support staff from these organisations were also welcomed to attend.

Other interest groups invited (most to Day Two only) included:

- other organisations/alliances with a focus on Aboriginal cultural heritage protection;
- government representatives, including ministers, senators, departmental staff, and members of the newly formed 'Aboriginal Cultural Heritage Reference Group';
- industry peak bodies and resource companies, e.g. the Chamber of Minerals and Energy WA (CME WA), Association of Mining and Exploration Companies (AMEC), Pastoralists and Graziers Association of WA (PGA), Amalgamated Prospectors & Leaseholders Association of WA (APLA), Rio Tinto, BHP, FMG, etc.;
- professional associations working with Aboriginal cultural heritage, including the Australian Association of Consulting Archaeologists Inc. (AACAI) WA Chapter, and the Anthropological Society of WA (ASWA); and
- investment sector peak bodies and companies, including the Australasian Centre for Corporate Responsibility (ACCR), the Australian Council of Superannuation Investors (ACSI), Responsible Investment Association Australasia (RIAA), Global Compact Network Australia (GCNA), HESTA, Australian Ethical Investment, Perpetual, etc.

On Day One, of 69 registrants, 35 attended. On Day Two, of 93 registrants, 50 attended.

Day One

Overview

Day One was targeted towards WA PBCs and WA Alliance organisations. Traditional Owner representatives from these organisations (and their nominated support staff) came together to hear from co-design experts, share their stories, and discuss what 'co-design' means to them. See Appendix Three for Day One's agenda.

Discussions

Following several presentations intended to inform and provide context regarding generally accepted 'co-design' concepts and processes, participants were asked to share their initial ideas and input about what a co-design approach relating to the ACH Act should involve in small group settings. These conversations were framed around the broader themes of 'Who, What, Why, When, and How'. For example:

- Who should be involved?
- What are the desired outcomes for the co-designed approach?
- Timeframes.
- Resources required.

All points noted during these preliminary discussions were then collated and returned to participants for them to consider which should take priority in a meaningful and acceptable co-design process going forward. Again, these discussions were held in small groups.

Outcomes

Drawing from the priorities identified in the small group discussions, Day One participants were then asked to collectively work together to seek agreement on the key points made they wished to have included in the final outcomes captured for the day; that is, what would be presented to Day Two participants, to help inspire further conversations based on these Aboriginal-led discussions.

Through this process, strong themes began to emerge, including (but not limited to):

- Participants' desire for a transformative co-design approach (and sentiments that previous 'consultation' processes have been insufficient).
- Culture and cultural protocols must underpin and inform all aspects of any processes; this includes respecting cultural considerations in terms of affording adequate time for planning and decision-making (i.e. not running things only based on government objectives and timeframes or deadlines).
- The necessity for equity and transparency, in addition to inclusivity and respect, at all stages of any related processes.
- A genuine co-design partnership must involve ongoing collaboration and reviews to ensure any processes are working effectively as intended (and if they're not, identifying new solutions, together, to introduce/implement).
- Traditional Owners (and their supporting/representative organisations) should be empowered to lead any related processes, including broad community engagement and education/awareness-raising efforts, but must be provided adequate resourcing to do so.

For the full lists of the generally endorsed 'Day One Outcomes' (unmodified from how they were captured on the day), see Appendix Four.

It was both interesting and encouraging to observe that, at face value, some of these themes appear to align with the State Government's accepted co-design 'principles' (released during its 'Co-Design Process Launch' on 29 March 2022; see Appendix Five); for example, concepts such as "Inclusiveness", "Transparent", and "Iterative". Where some cautiousness and concern still lies for participants, however, is what these concepts may *mean* to different people, as well as how they are to be demonstrated *in-practice*.

Day Two

Overview

Day Two was open to all invitees, to converse, collaborate and identify a way forward. Traditional Owners and representatives from other interest groups discussed and refined a response intended to inform the State Government's approach to co-designing the associated regulations and implementation of the ACH Act. See Appendix Three for Day Two's agenda.

Discussions

Again, following presentations intended to inform and provide context regarding generally accepted 'co-design' concepts and processes, as well as a recap of Day One's outcomes, and an address from the WA Minister for Aboriginal Affairs, Dr Tony Buti MLA, participants were asked to form small groups and identify key components of a suitable co-design approach in relation to the ACH Act hereon. These discussions centred on similar question prompts to Day One. After initial ideas and input were shared, these were then considered further again by participants (in small group settings) in an effort to prioritise what would be most important and/or critical to such a process.

Outcomes

The collated lists of priorities were then considered in the larger group format, where participants were asked to indicate their support for retaining points as already stated, attempting to remove duplicated points and/or combining similar points, with the view that these would be ultimately shared with the State Government to help shape its planned co-design process.

Some of the key takeaways from this exercise seem to confirm there is much common-ground to be found across the ideas and input from the various interest parties in attendance. That is, there appeared to be comparable consistency between a number of the outcomes captured on Day One and Day Two's emergent themes. For example:

- Ensuring the right people are suitably involved at all stages of any related processes, which includes a wide range of interested parties.
- While there should be parity (i.e. where there has not been in the past), Traditional Owners must be recognised and duly respected as the owners of their cultural heritage and related sites, and their cultural values and practices must be considered and given due weight in any planning and decision-making.
- Objectives, expectations, and related roles and responsibilities, must be clear and understood by all interested parties involved at all stages of any related processes, which will require adequate resourcing.
- Sufficient time must be provided for all interested parties to appropriately consider issues and reach mutual agreement regarding proposed solutions.
- It must be accepted that true co-design is a long-term commitment for all those involved.

For the full lists of the generally endorsed 'Day Two Outcomes' (unmodified from how they were captured on the day), see Appendix Six.

Unresolved Issue Raised

Due to time constraints, one consistently raised issue throughout the workshop that was not able to be discussed in proper detail relates to key terminology and definitions to be used and applied in relation to the ACH Act, its associated supporting documents, policies, and so on.

Participants at the workshop recognise the importance of language in this regard, and how it can be interpreted differently by different people unless clear and concise meanings are suitably attributed and described. Hence, a further recommendation of this report is for the State Government, as part of its planned co-design process, to seek specific advice from Aboriginal people regarding appropriate and accepted terms and distinct explanations, in particular for any descriptors referring to them, their cultural heritage, etc. These should then be employed consistently throughout the ongoing co-design process, as well as any documents, materials or similar that are developed as a result.

Next Steps

Throughout the workshop, participants shared and collaborated to identify some of the key elements of what they envisage as a *genuine* co-design process. Having these conversations, together, has been important and valuable.

Now, these outcomes are being shared with the State Government, with the aim to better inform how it should appropriately undertake co-designing and developing the statutory guidelines and regulations associated with the ACH Act, as well as continue to support a true co-design approach into the future.

Several of the workshop presentations and this outcomes document will also be made available on the protectaboriginalheritagewa.org.au website, to help promote and educate others on this vision.

In addition to keeping up-to-date by way of what we will be shared on the abovementioned website, we encourage workshop participants and others who have an interest in this significant issue to also get directly involved in the State Government's planned process. As was outlined in Minister Buti's address on Day Two, the State Government has recently commenced its own consultation to develop the new ACH Act's guidelines and regulations. You can find out more about this, including how to register for one of their upcoming workshops here: www.wa.gov.au/government/document-collections/aboriginal-cultural-heritage-act-2021-co-design-process.

As has been said from the beginning, this workshop should be just the first step in a long and enduring journey, which we hope workshop participants will continue, and one that others will join them on too.

Appendices

Appendix One – Host Organisations

National Native Title Council

The National Native Title Council (NNTC) is the peak body for the native title sector. Our members are made up of the Traditional Owners of Australia's lands, waters and resources, and their representative bodies. Through the native title system, we advocate for the rights and interests of all First Nations people.

We support First Nations people's right to true self-determination – their right to speak for and manage their own Country, to govern their own communities, to participate fully in decision-making and to self-determine their own social and economic development. We understand native title is complex, and that Australia's laws and policies have historically excluded First Nations people from accessing their own lands and having a say over how they are managed. The native title system gives some rights and land ownership back to First Nations people, but there is still work to be done before their rights and interests are fully realised.

Together with the native title sector, governments and partners, we work to support First Nations people having greater decision-making power over their own Country, community, lands, waters & resources. On behalf of our members, we provide resources and support for First Nations' development; we work with government to improve native title's laws and policies; and we work with partners and industry to advance the rights and interests of First Nations people.

Yamatji Marlpa Aboriginal Corporation

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for what are described as the Pilbara and Geraldton regions of Western Australia. YMAC's representative area is equivalent to approximately one-third of the size of the state. YMAC is governed by an Aboriginal Board of Directors, and provides a range of services, including native title claim and future act representation, heritage services, community and economic development assistance, and natural resource management support.

YMAC represents several different Traditional Owner groups, each with their own distinct Country, culture and identity. These living cultures are maintained through languages, ceremonies, beliefs, music, art, laws and creation stories.

Our Vision: Through connection to Country, Aboriginal people pursue and achieve economic, social and cultural goals and aspirations with strength and confidence.

Our Mission: For current and future generations, we work with and for Australian Aboriginal people to protect rights and manage Country and opportunities.

South West Aboriginal Land and Sea Council

The South West Aboriginal Land and Sea Council (SWALSC) are a native title service provider to the Noongar people, who are the traditional owners of the south west of Australia. SWALSC works with members to progress the implementation of the South West Native Title Settlement, Australia's largest native title settlement, while also advancing and strengthening Noongar culture, language, heritage and society.

Native Title Services Goldfields

Native Title Services Goldfields (NTSG) has been the native title services provider for the Goldfields region since 27 November 2019. Our mission is to achieve strong outcomes from native title claims that empower traditional owners and lead to cultural, social, and economic gains for them and the Goldfields community.

Appendix Two – Event Chair, Co-Facilitators, and Presenters

Brendan Moore – Event Chair



Brendan Moore is the Chair of the South West Aboriginal Land and Sea Council (SWALSC). He is a Whadjuk Yued Noongar man, born in Moora, in the heart of Yued Boodja, where he grew up on a farm in Dandaragan with his four siblings. Brendan has a Bachelor of Applied Science and a Master of International Studies, and is an Associate Fellow of the Australian Institute of Management.

Bill Bennell – Event Co-Facilitator



Born and raised in Bunbury with strong traditional ties to the Bunbury-Collie and Brookton/Pingelly-Perth areas, Bill is a proud Ballardong-Whadjuk Nyungar maarman.

The majority of Bill's working and personal life has centred on bridging the gap between Aboriginal people and mainstream society.

For almost 30 years, Bill has worked all over Australia in land management, cultural heritage protection and Aboriginal community capacity development. As a result, he has extensive networks across the state, and nation-wide.

Presently, Bill is the owner and Principal Director of Kooyar Wongi, a 100% Nyungar owned and operated consulting business, advising in the areas of heritage protection, environmental management, community engagement, cultural awareness, and education in the public and private sectors.

Mandy Gadsdon – Event Co-Facilitator



Mandy is a Yawuru woman from the West Kimberley, and Director of Think Culture, a business she started specialising in strategic policy and planning, organisational culture, equity and diversity support, training, mediation and coaching. Her ability to navigate complex policy and guide others to embed high-level conceptual frameworks into everyday practice is a well-honed strength, and one she enjoys sharing with others in an effort to achieve meaningful outcomes.

Mandy holds a Bachelor of Arts in Communication Studies and English and Comparative Literature, a Graduate Certificate in Management, a Graduate Diploma of Human Resources, and a Diploma of Business (Governance). She is also a Nationally Accredited Mediator and registered through the National Mediation Accreditation System (NMAS).

Drawing on her extensive knowledge and experience, in particular working within the Aboriginal community as well as with both government agencies and non-government organisations, Mandy is skilled in facilitation and consultative practices and operating within culturally-diverse settings. She is also skilled in community engagement and building environments that are based on collaborative practice to achieve purposeful results.

Dr Christopher Kueh – Presenter



Currently a Senior Lecturer within the School of Arts and Humanities at Edith Cowan University, Christopher is a design educator/researcher and practicing design strategist.

Christopher's passion is to leverage on the designer's mind-set of embracing uncertainty and developing new possibilities, in order to empower stakeholders to co-create effective, meaningful, sustainable, and ethical solutions.

His research and practice involve helping organisations to cultivate design abilities and understand complexities through co-design strategies; continually exploring the relationships between design research and practice in the rapidly changing world.

Through his consulting practice and academic research, Christopher has contributed to building human-centred design frameworks, to better understand complex challenges and develop innovative ways to enhance the human experience in social and cultural contexts in the healthcare and business sectors. He is also an influencing leader in the field of 'Service Design', a practice he introduced in Perth in 2010.

Kado Muir – Presenter



Kado Muir is Chairman of the National Native Title Council (NNTC). He is a Ngalia Traditional Owner and a Wati – a Goldfields Aboriginal cultural and community leader, and an anthropologist/archaeologist with many years' experience working in Aboriginal heritage, language preservation and maintenance, traditional ecological/education and native title research.

Kado is the Co-Chair for the First Nations Heritage Protection Alliance.

Kado is also Chair of the Wakamurru Aboriginal Corporation RNTBC, the PBC for Manta Rirrtinya Native Title Determination, and the former founding CEO of the Goldfields Land and Sea Council. He also operates a number of businesses, including an Aboriginal art business, a sandalwood company, and a heritage consultancy business.

Kado is a long-time activist for bi-lingual and two-way education, environmental and cultural heritage protection, and promoting alternative community based enterprises, especially through his PhD university partnerships for research on wealth in First Nations.

Hon. Dr Tony Buti MLA – Presenter



The Hon. Dr Tony Buti is Western Minister for Finance; Racing and Gaming; Aboriginal Affairs; Citizenship and Multicultural Interests.

He has been a Minister for the McGowan Labor Government since March 2021, and has been the Member for Armadale in the Legislative Assembly since 2010.

Dr Buti has worked as a high school teacher, lawyer, AFL player agent, and legal academic.


On 2 October 2010, Dr Buti was elected as the Member for Armadale in the Parliament of Western Australia.


Dr Buti has published a number of books, most recently *Alkira* - a book named after his daughter that challenges us to rethink how we approach disability to move toward a more just and inclusive society.

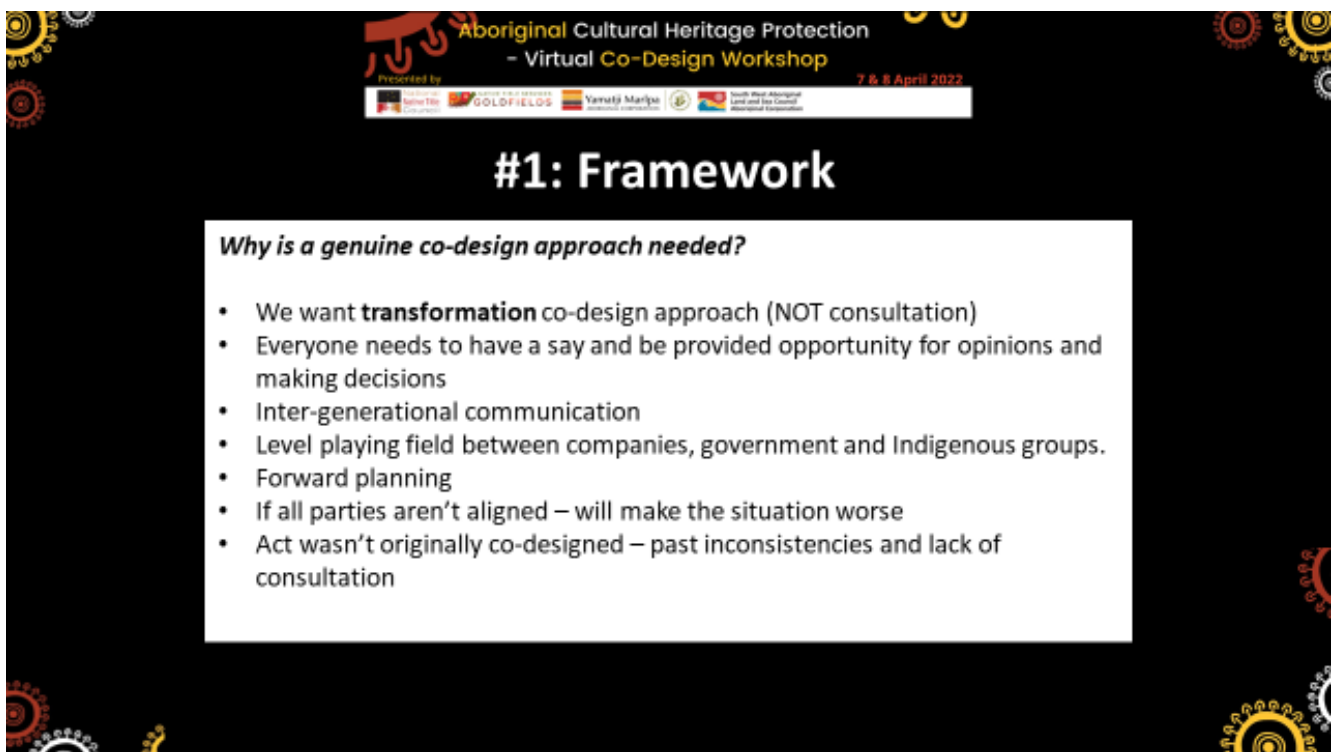
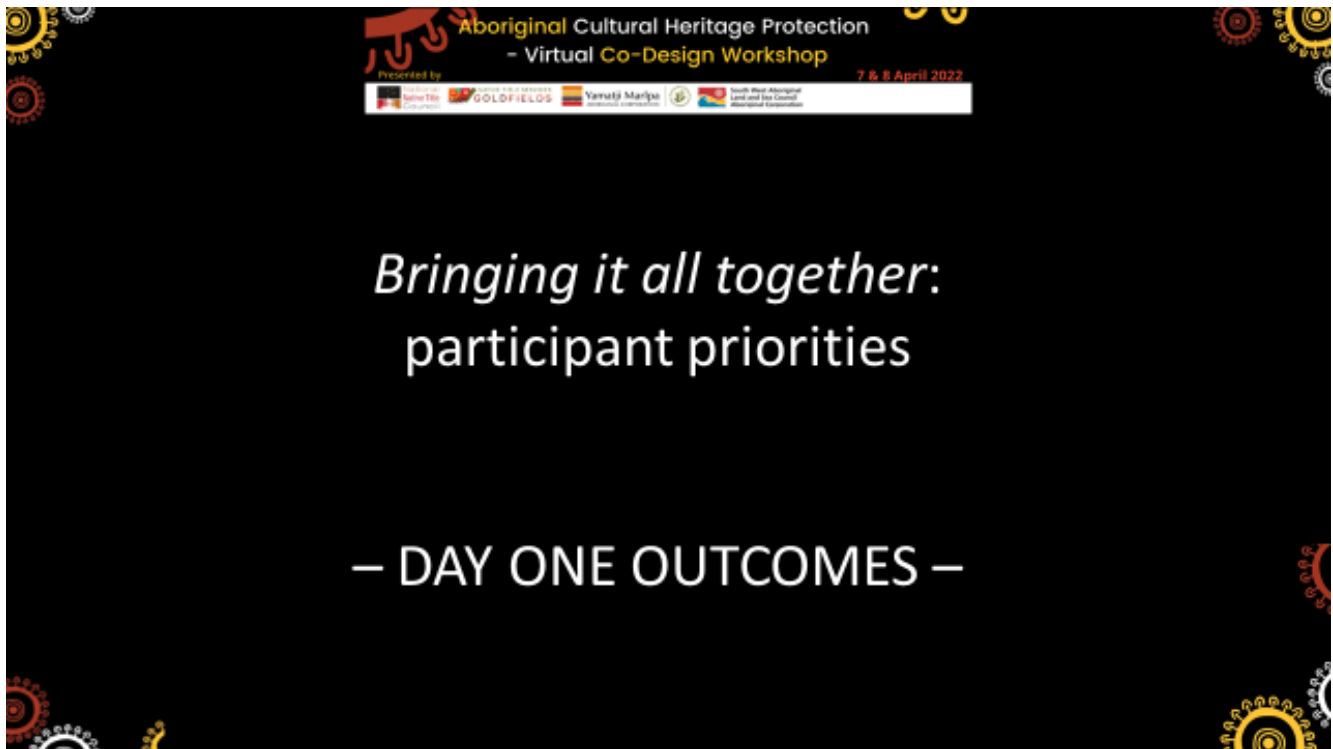
He has three adult children, and in the early mornings can often be spotted jogging through the Kelmscott hills or near Parliament.

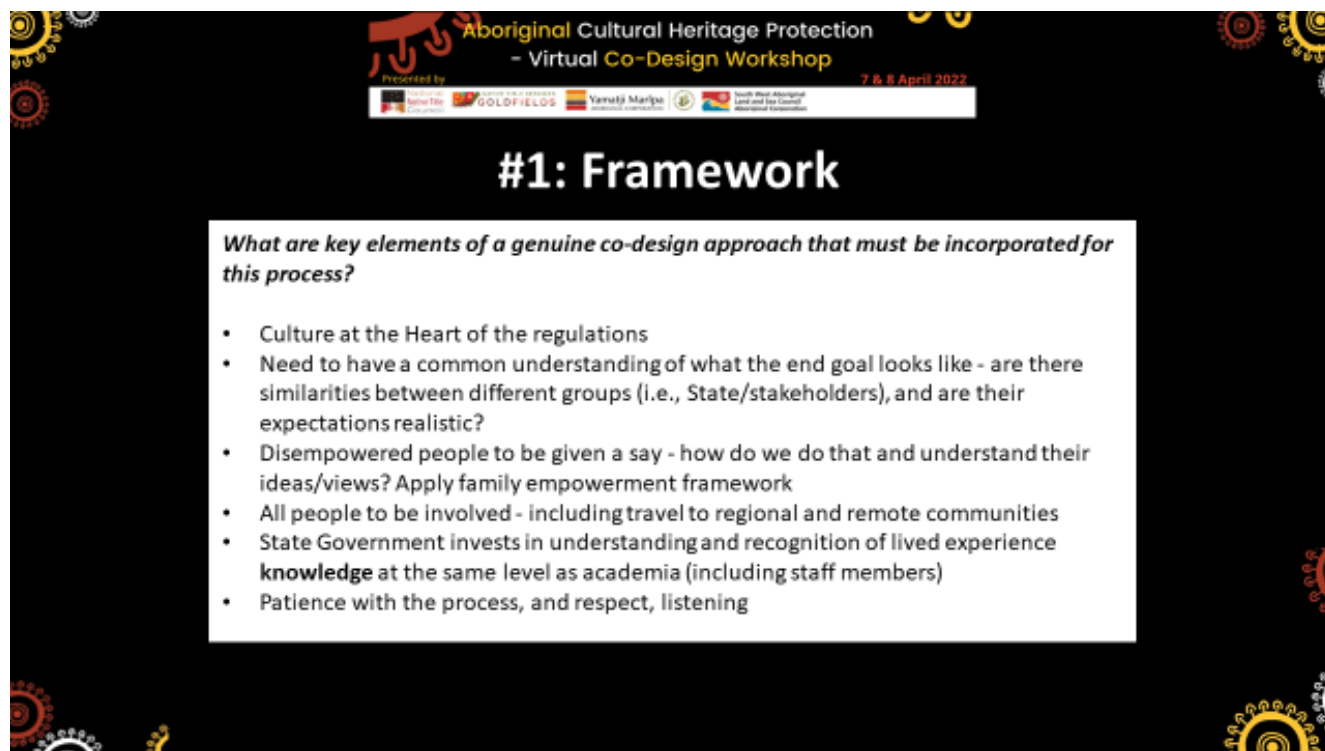
Prior to becoming a Minister, Dr Buti was Chairman of the Western Australian Legislative Assembly Public Accounts Committee, and while in opposition, he was Deputy Chair of the Community Development and Justice Standing Committee.

Appendix Three – Agendas

Aboriginal Cultural Heritage Protection – Virtual Co-Design Workshop Presented by  7 & 8 April 2022		
Day 2 – Friday, 8 April 2022 (10:00am – 3:00pm) Traditional Owners and their representatives, and other stakeholders Theme: Engaging Co-Design		
Time	Session Description	Session Leader/s
10:00	Workshop opened; networking	
10:30	Welcome and introductions; overview of the objectives of the workshop and recap of Day 1	Event Chair Brendan Moore, and Event Co-Facilitators Bill Bennell and Mandy Gadsdon
	Co-design expert presentation on why genuine co-design is important	Dr Christopher Kueh, Co-Design Expert, and Senior Lecturer, Edith Cowan University
	Presentation of Day 1 findings	Nominated delegates from Day 1
	Address by Minister for Aboriginal Affairs, Hon. Dr Tony Buti MLA; Q&A (TBC)	Minister Buti, and Event Co-Facilitators
12:00	Lunch	
	Group discussions to further unpack co-design concepts and implementation Session 1: Framework (Why and What) Session 2: Structure/Implementation (Who, When and How)	Event Co-Facilitators
1:30	Afternoon tea	
	Bringing it all together	Event Co-Facilitators
	Event wrap up and next steps	Event Chair, and Event Co-Facilitators
3:00	End of Day 2	

Aboriginal Cultural Heritage Protection – Virtual Co-Design Workshop Presented by  7 & 8 April 2022		
Day 1 – Thursday, 7 April 2022 (9:00am – 4:00pm) Traditional Owners and their representatives only Theme: Initiating Co-Design		
Time	Session Description	Session Leader/s
9:00	Workshop opened; networking	
9:30	Welcome and introductions; overview of the objectives of the workshop	Event Chair Brendan Moore, and Event Co-Facilitators Bill Bennell and Mandy Gadsdon
	Co-design expert presentation on best practice approaches	Dr Christopher Kueh, Co-Design Expert, and Senior Lecturer, Edith Cowan University
	First Nations Heritage Protection Alliance (FNHPA) presentation on national-level developments	Jamie Lowe, CEO, NNLC, and FNHPA Member; and Kado Muir, Chair, NNLC, and Co-Chair, FNHPA
11:45	Morning tea	
	Group discussions to unpack co-design concepts and implementation Session 1: Framework (Why and What) Session 2: Structure/Implementation (Who, When and How)	Event Co-Facilitators
1:30	Lunch	
	Bringing it all together	Event Co-Facilitators
	Wrap up and preparation for Day 2	Event Chair, and Event Co-Facilitators
4:00	End of Day 1	





Aboriginal Cultural Heritage Protection
- Virtual Co-Design Workshop

Presented by

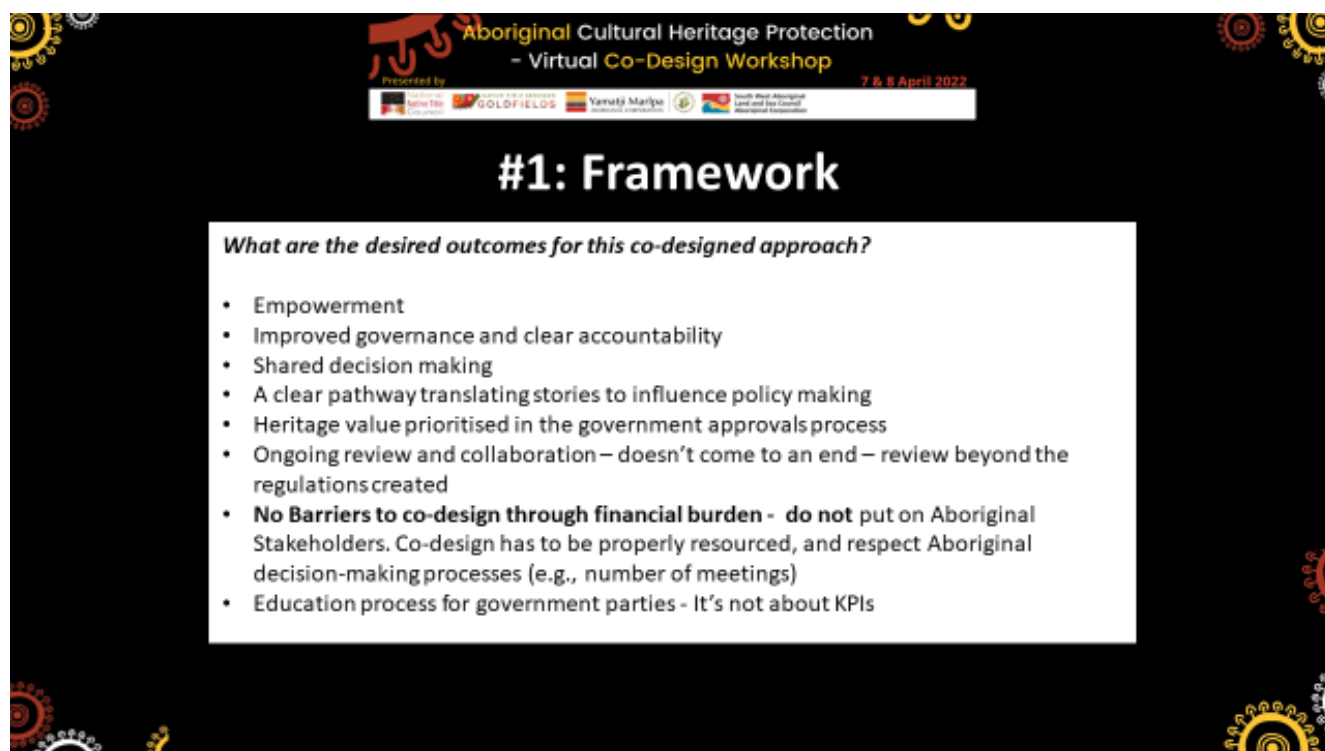
Indigenous Nation Builders GOLDFIELDS Yamaji Marjpa South West Aboriginal Land and Sea Council

7 & 8 April 2022

#1: Framework

What are key elements of a genuine co-design approach that must be incorporated for this process?

- Culture at the Heart of the regulations
- Need to have a common understanding of what the end goal looks like - are there similarities between different groups (i.e., State/stakeholders), and are their expectations realistic?
- Disempowered people to be given a say - how do we do that and understand their ideas/views? Apply family empowerment framework
- All people to be involved - including travel to regional and remote communities
- State Government invests in understanding and recognition of lived experience **knowledge** at the same level as academia (including staff members)
- Patience with the process, and respect, listening



Aboriginal Cultural Heritage Protection
- Virtual Co-Design Workshop

Presented by

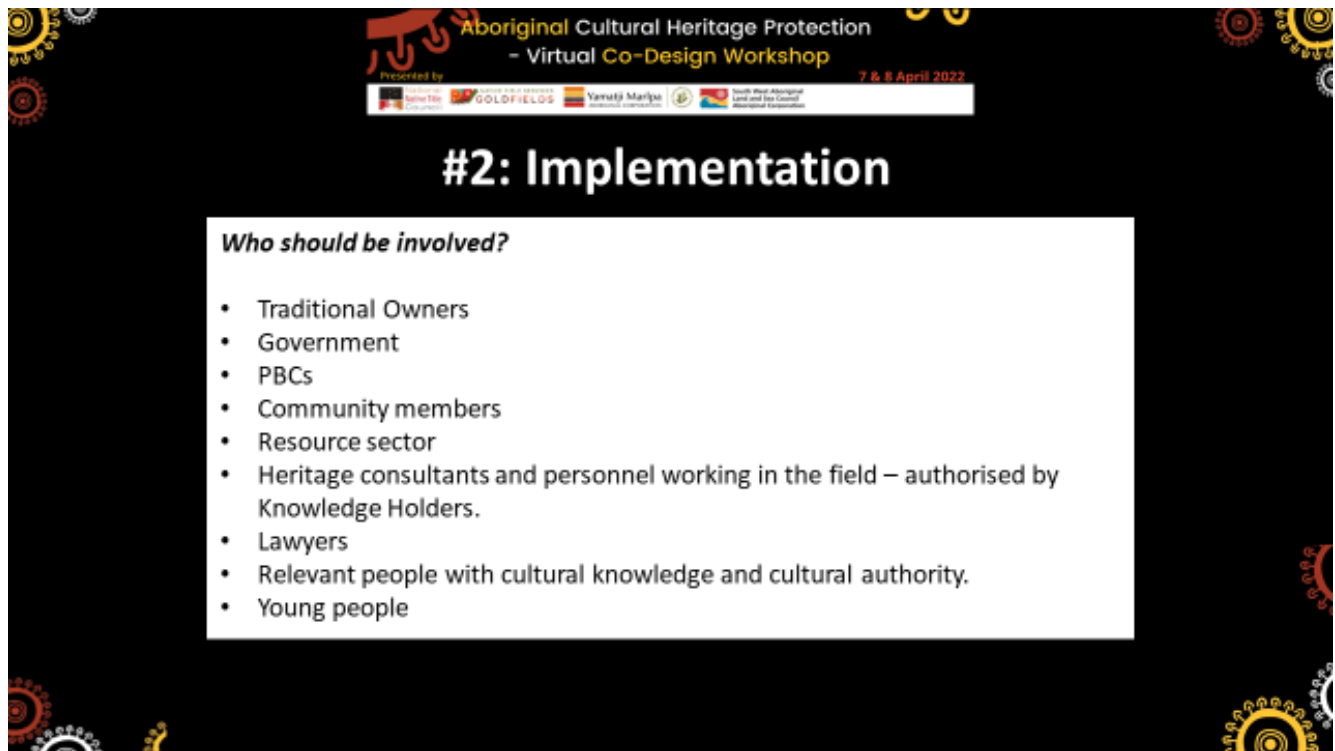
Indigenous Nation Builders GOLDFIELDS Yamaji Marjpa South West Aboriginal Land and Sea Council

7 & 8 April 2022

#1: Framework

What are the desired outcomes for this co-designed approach?

- Empowerment
- Improved governance and clear accountability
- Shared decision making
- A clear pathway translating stories to influence policy making
- Heritage value prioritised in the government approvals process
- Ongoing review and collaboration – doesn't come to an end – review beyond the regulations created
- **No Barriers to co-design through financial burden - do not** put on Aboriginal Stakeholders. Co-design has to be properly resourced, and respect Aboriginal decision-making processes (e.g., number of meetings)
- Education process for government parties - It's not about KPIs



Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop

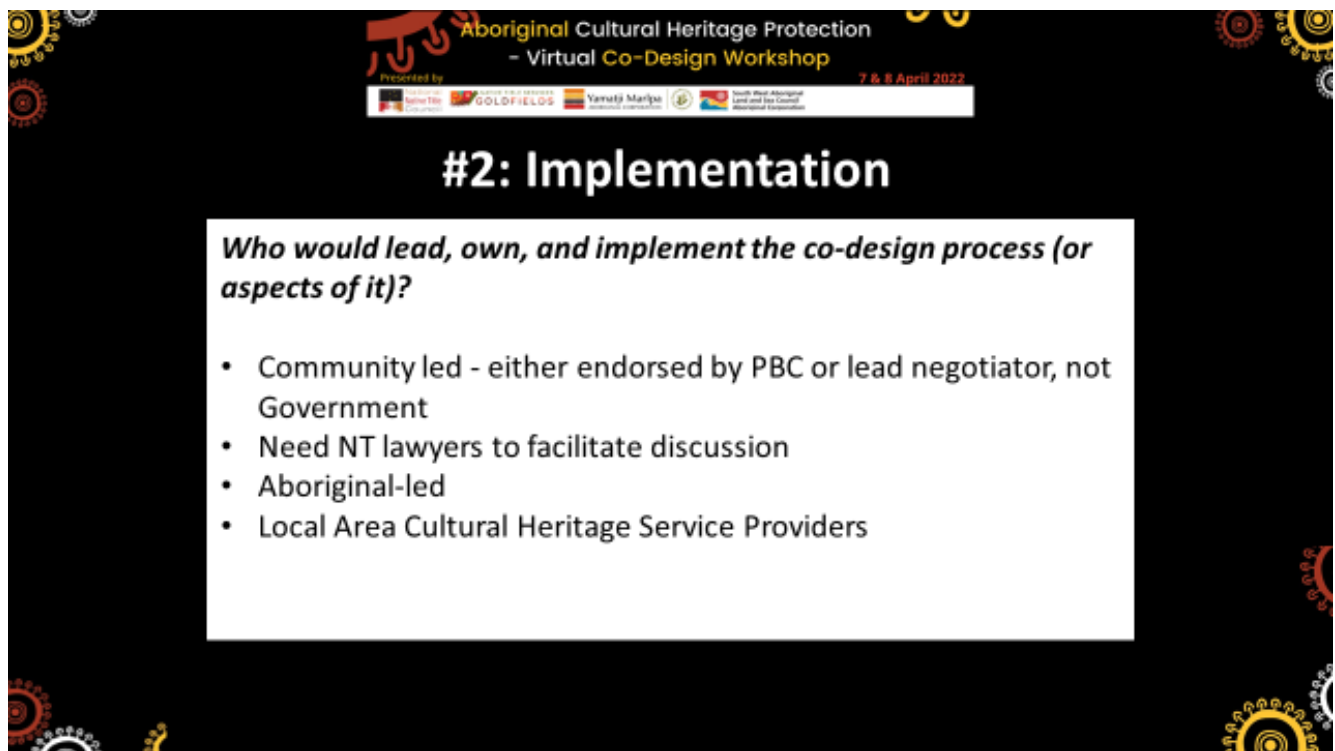
Presented by

7 & 8 April 2022

#2: Implementation

Who should be involved?

- Traditional Owners
- Government
- PBCs
- Community members
- Resource sector
- Heritage consultants and personnel working in the field – authorised by Knowledge Holders.
- Lawyers
- Relevant people with cultural knowledge and cultural authority.
- Young people



Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop

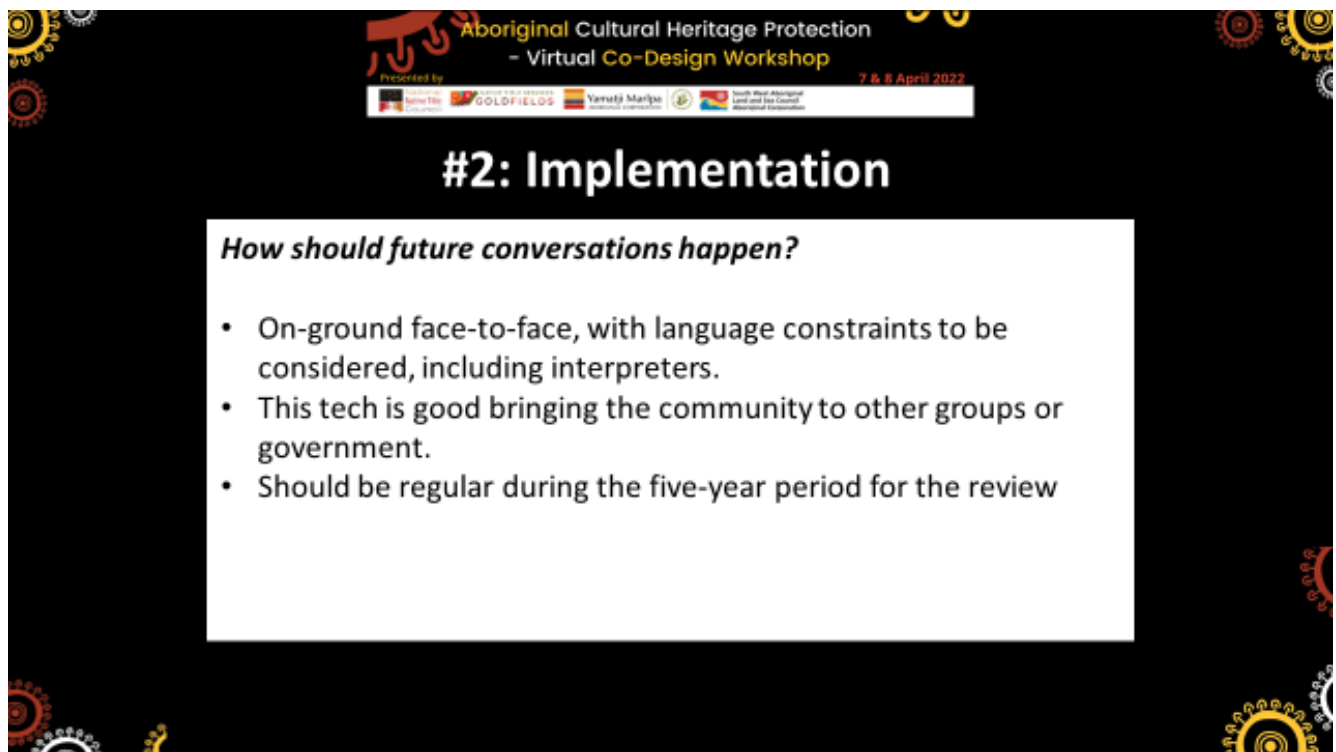
Presented by

7 & 8 April 2022

#2: Implementation

Who would lead, own, and implement the co-design process (or aspects of it)?

- Community led - either endorsed by PBC or lead negotiator, not Government
- Need NT lawyers to facilitate discussion
- Aboriginal-led
- Local Area Cultural Heritage Service Providers

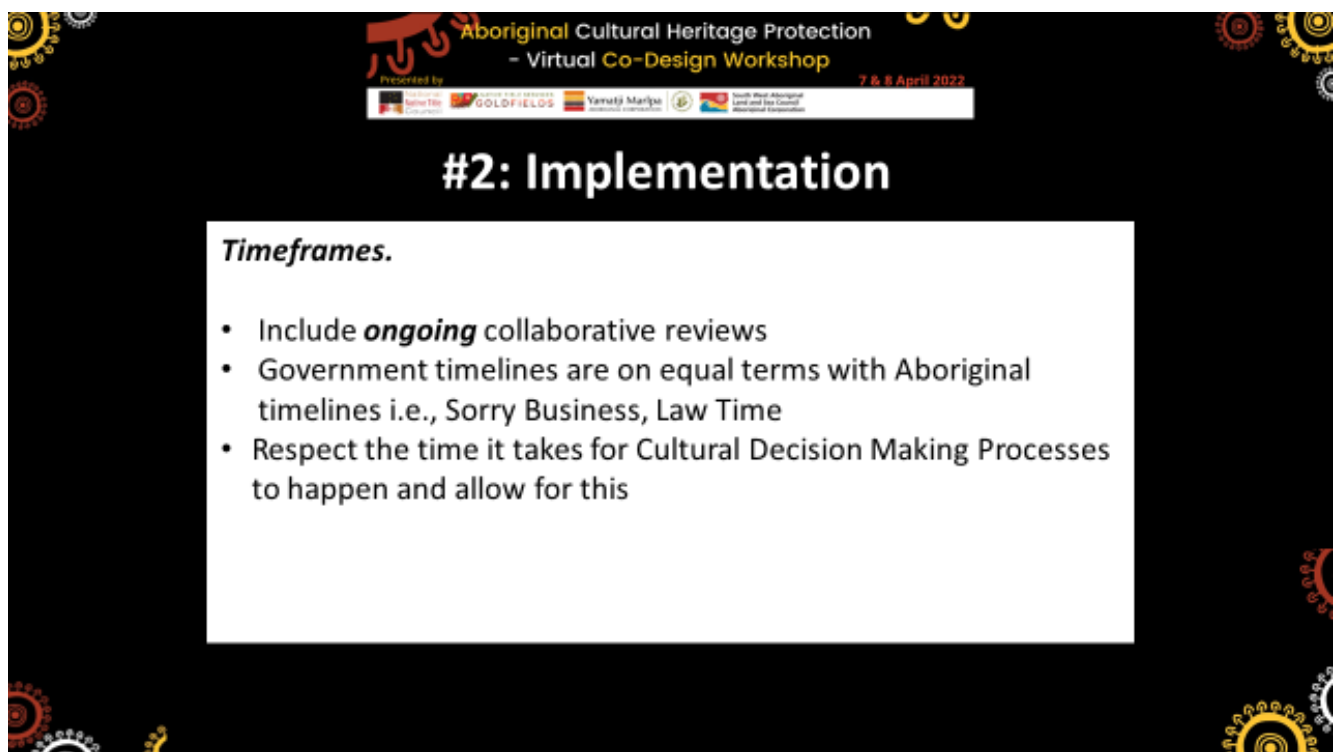


Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop
Presented by
Indigenous Communities GOLDFIELDS Yamaji Marjpa South West Aboriginal Land and Sea Council
7 & 8 April 2022

#2: Implementation

How should future conversations happen?

- On-ground face-to-face, with language constraints to be considered, including interpreters.
- This tech is good bringing the community to other groups or government.
- Should be regular during the five-year period for the review



Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop
Presented by
Indigenous Communities GOLDFIELDS Yamaji Marjpa South West Aboriginal Land and Sea Council
7 & 8 April 2022

#2: Implementation

Timeframes.

- Include **ongoing** collaborative reviews
- Government timelines are on equal terms with Aboriginal timelines i.e., Sorry Business, Law Time
- Respect the time it takes for Cultural Decision Making Processes to happen and allow for this

#2: Implementation

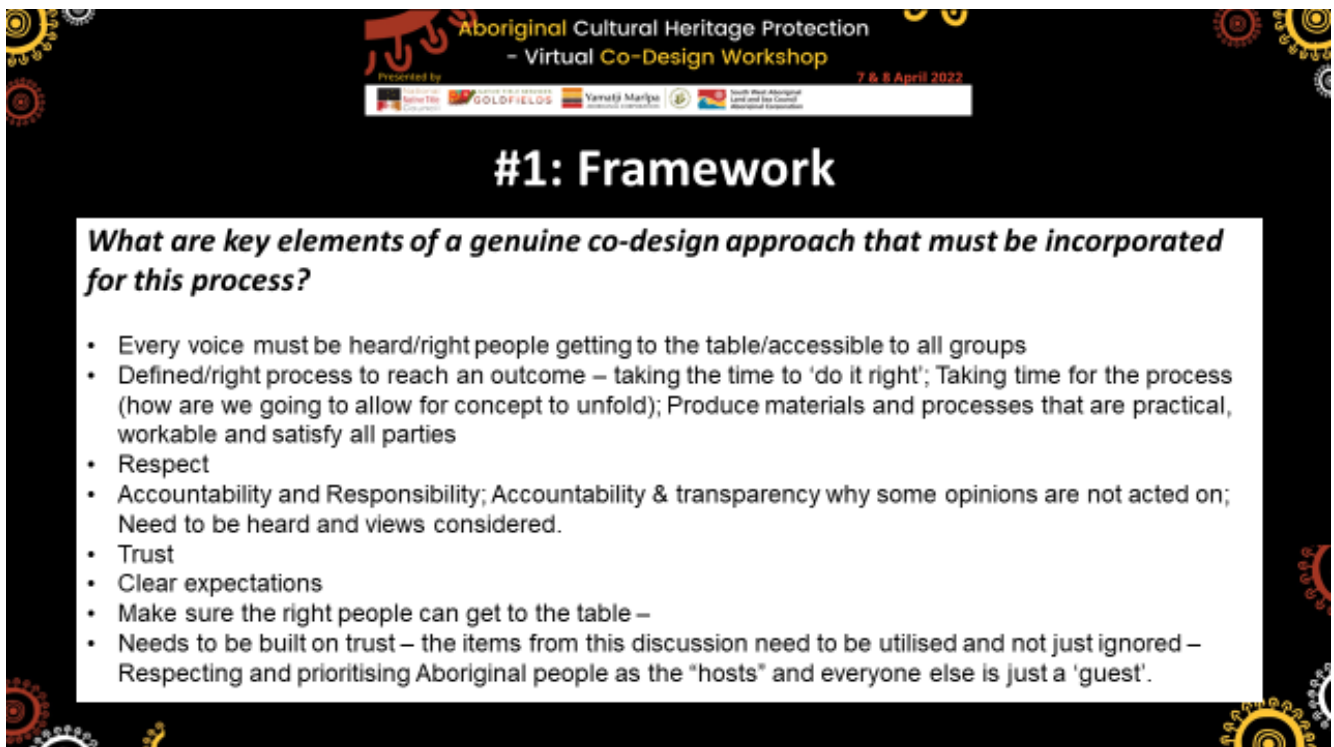
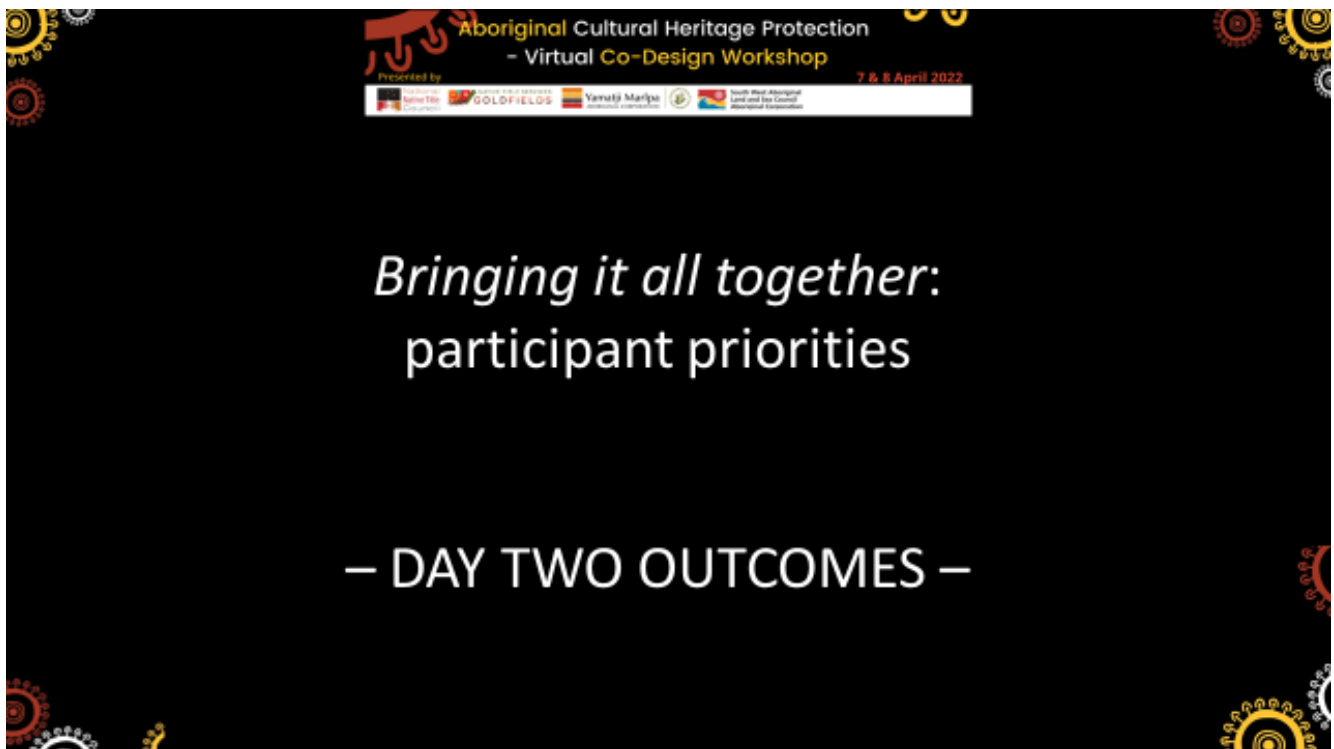
Resources required.

- Interpreters
- Needs to be properly resourced to allow for Aboriginal decision making and cultural authority
- Enough government human resources and funds for assessing sites
- Resources for community education and knowledge building
- Digital resources e.g., an app showing native title boundaries etc.
- Sufficient resourcing for admin support, access to skills and people

Co-design principles



Appendix Six – ‘Day Two Outcomes’



Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop
Presented by
7 & 8 April 2022

#1: Framework

What are key elements of a genuine co-design approach that must be incorporated for this process? (cont.)

- An effective framework that all parties can actually Collaborate – further working on this structure to facilitate real conversation
- What is actually being co design? Clarification. Who is involved in each process/pathway?
- Opportunity for all Heritage holders to participate
- Cultural values/practices are highly considered in decision making
- Underpinning all of this, striving to maintain cultural heritage, as part of a social, cultural, environmental eco system.
- Interaction of other legislation and impact on heritage, eg water act, land act and environmental protection act and state agreements.

Aboriginal Cultural Heritage Protection
– Virtual Co-Design Workshop
Presented by
7 & 8 April 2022

#1: Framework

What are the desired outcomes for this co-designed approach?

- Respect for each Parties process;
- Clear definitions around roles, responsibilities and regulations
- Greater knowledge base and understanding at the conclusion of process
- Flexible approach to adapt to already established co-design methods (from Traditional Owners)
- Implementation of legislation that is designed, accepted and endorsed by Traditional Owners
- Understanding how to identify relevant cultural authority and determine and clarify on who has the right to speak on which country – make the process easier for mining companies & government to approach the correct people
- Continues in the long-term – integrated in regulations (Co-design becomes the model for engagement in the long term)
- Respect for each parties process (e.g government are still working to a time-frame but co-design process allow desired outcomes – despite these possible time frames)
- Common understanding of each parties end goal

#2: Implementation

Who should be involved?

- Aboriginal People:
 - Regional representation;
 - Senior men and senior women;
 - Broad-based community representation;
 - Right people for right country
 - People with cultural authority
- PBC or land representative groups
- private land owners
- Corporate interests (proponents, mining companies etc)
- Interpreters/ researchers/consultants
- Other govt departments that can assist the regulator
- Financial / business analysts for development of the LACHS to be sustainable;
- Process of insourcing skills and development into the LACHS

#2: Implementation

Who would lead, own, and implement the co-design process (or aspects of it)?

- Facilitator who is Aboriginal
- Aboriginal led
- Aboriginal co-design process using traditional ways
- Minister has to own responsibility of the co-design process and not pass on all responsibility to Aboriginal people

#2: Implementation

Timeframes.

- Build in time for COVID restrictions.
- Time to understand the Act and how it functions, to work out how the regulations and guidelines fit
- Aboriginal calendar/schedule to be consulted, eg lore/cultural business
- Sufficient time to work through issues on the ground, bearing in mind how many other demands there are on TOs.
- Need ongoing dialogue during those 5 years.

#2: Implementation

Resources required.

- Resourcing going into IT and training for helping Elders and cultural people seeing what is out on country eg drones.
- Logistical planning- vast state, little time
- Resourcing- people, human resources, labour intensive, meals, cars, accommodation and meeting spaces
- Knowledge resources and knowledge of new legislation in order to make it easy to understand. This may include training
- Workshops / forums on country and in Perth to facilitate co-design – funding to bring people in, and accessible language to do it.