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Related Documents

This guideline document provides the codification of the best-practice principles and standards to which YMAC applies in the provision of heritage services to native title groups.

Other documents relevant to the content of this guideline and the provision of cultural heritage services include:

**YMAG Heritage Survey Briefs**
These are provided to the consultant as the invitation to conduct a survey and detail the nature and extent of work required from that consultant.

**YMAG Aboriginal Heritage Policy**
This document sets the terms under which YMAG provides service to native title clients.

**YMAG Heritage Survey Request Form**
This form lodged with YMAG by proponents and should include all information necessary for YMAG and the consultant to define and understand the model and scope of the Survey.

**Cultural Heritage Services Consultancy Agreement**
This is the consultant’s contract with YMAG.

**Standard Heritage Agreement and Alternative Heritage Agreements**
These are the heritage agreement that have been negotiated between YMAG and the proponent, and which initiate the undertaking of the heritage survey.

**Australia ICOMOS Burra Charter**
The codified best practice standards document for the theory and practice of cultural heritage management.

**UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (and Operational Guidelines)**.
The convention which sets out the nature and definitions of sites eligible for World Heritage listing, and useful definitions of cultural heritage related concepts.

**UN Declaration on the Rights of Indigenous Peoples**.
The statement which specifically addresses the rights of Indigenous peoples, relating to, among other things, the protection and preservation of their cultural heritage.

[1]
Purpose of this Guideline

❖ To provide a clear understanding of the legislative, agreement and policy framework in which YMAC provides heritage services to native title clients and the context in which consultants are contracted.

❖ To provide consultants with a full understanding of the services for which they are contracted, including the specific model of survey and services required, appropriate methodology, ethical considerations, reporting and their role as an Aboriginal heritage expert.

❖ To ensure that best-practice standards are recognised by YMAC in providing heritage services to native title group clients and proponents.

❖ To outline YMAC’s responsibilities to consultants and native title groups in relation to the information and assistance provided by YMAC for the provision of heritage services.

❖ To inform developers conducting heritage surveys through YMAC, of the principles, standards and procedures associated with the delivery of heritage surveys to YMAC’s native title clients.
<table>
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<th>Key Terms and Acronyms</th>
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<td>Aboriginal Consultants</td>
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</table>
| Aboriginal Site        | Land or waters which are of cultural, social, or spiritual significance to Aboriginal persons traditionally responsible for that land or those waters, and includes, whether recorded or not:  
  (a) any ‘Aboriginal Site’ as defined in the Aboriginal Heritage Act 1972 (WA);  
  (b) any ‘Significant Aboriginal Area’ or ‘Significant Aboriginal Object’ as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth); and  
  (c) any ‘area or site of particular significance’ within the meaning of section 237(b) of the Native Title Act 1993 (Cth). |
<p>| ACMC                   | The Aboriginal Cultural Materials Committee |
| AHA                    | The Aboriginal Heritage Act 1972 (WA). |
| AIATSIS                | The Australian Institute of Aboriginal and Torres Strait Islander Studies |
| ArcGIS                 | Geographic information software for mapping and reporting. |
| Consultant             | A cultural heritage consultant as specified in the YMAC Cultural Heritage Services Consultancy Agreement to conduct and prepare heritage surveys and reports or other cultural heritage related consultancy services. |
| DAA                    | The Western Australian Department of Aboriginal Affairs. |
| External Report        | Report provided to YMAC following a heritage survey or other cultural heritage related consultancy service that is written to be shared with a proponent and/or for public release, and which contains information to meet the terms of the survey brief. |
| GIS                    | Geographic Information System. |
| GPS                    | Global Positioning System. |
| Heritage Agreements    | Agreements for heritage services between YMAC (as an agent for the Native Title Group) and proponents that are typically triggered by the future act processes of the NTA, and which outline how Heritage Surveys and other cultural heritage related consultancy services will be conducted, and the outcomes of those surveys in relation to the AHA and NTA. YMAC utilises a Standard Heritage Agreement (SHA) and an Alternative Heritage Agreement (AltHA). |
| Heritage Service(s) Provider (HSP) | The entity which has been nominated by the native title group to provide administrative and logistical services for the purpose of delivering heritage surveys pursuant to a heritage agreement. |
| Heritage Sub Committee (HSC) | The committee formed either voluntarily, or pursuant to a heritage or other agreement, which arbitrates on heritage matters on behalf of the native title group, and provides instruction to the NTRB/HSP. |
| Heritage Survey        | The field survey, of various methodologies, consisting of an archaeological and/or anthropological survey of a proposed development area (the survey area), and undertaken pursuant to a heritage (or other) agreement. |
| HISF                   | The Department of Aboriginal Affairs Heritage Information Submission Form, used for recording and lodging sites for the DAA Site Register. |</p>
<table>
<thead>
<tr>
<th><strong>Internal Report (or Closed Report)</strong></th>
<th>Report provided to YMAC following a survey or other cultural heritage related consultancy services usually containing detailed and specific anthropological information, which is not intended for public release.</th>
</tr>
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<tbody>
<tr>
<td><strong>LAA</strong></td>
<td>A Land Access Agreement, similar to a heritage agreement for exploration activity, but instead for the purpose of negotiating more widespread, continued, and intensive land use, and which will therefore typically contain more detailed heritage protocols.</td>
</tr>
<tr>
<td><strong>MapInfo</strong></td>
<td>Geographic information software for mapping and reporting.</td>
</tr>
<tr>
<td><strong>MGA</strong></td>
<td>Map Grid of Australia</td>
</tr>
</tbody>
</table>
| **Native Title Group (NTG)** | A group of persons on whose behalf a native title claim is made or, in the event that a determination of native title has been made, the persons holding the rights comprising the native title rights and interests, as identified in the determination.  
*For the avoidance of doubt, where a determination has been made in favour of the Native Title Group, such that the Native Title Group becomes known as the Common Law Holders of native title, the term “Native Title Group” as used in this guideline will be taken to also mean and include the term “Common Law Holders”.* These are Australian Aboriginal persons that are represented by YMAC in heritage and native title matters. |
<p>| <strong>Native Title Representative Body (NTRB)</strong> | Entities as recognised under the <em>Native Title Act 1993</em> (Cth). |
| <strong>NTA</strong> | The <em>Native Title Act 1993</em> (Cth). |
| <strong>Other Heritage Place</strong> | A place as defined by the Department of Aboriginal Affairs as containing some Aboriginal heritage value(s), but either not satisfying the criteria under section 5 of the AHA, or having not yet been assessed against section 5. |
| <strong>Prescribed Body Corporate (PBC)</strong> | Or Registered Native Title Body Corporate (RNTBC), as recognised under the <em>Native Title Act 1993</em> (Cth). |
| <strong>Proponent</strong> | An individual or entity undertaking any activity to which a heritage survey relates. That is any individual or entity that proposes an action that may or will affect native title rights and interests (determined or claimed) or any Aboriginal heritage values in the landscape or pertaining to moveable objects. This can include mining companies, NGOs, federal, state and local government, pastoralists and individual landowners. |
| <strong>Scope of Works (SoW)</strong> | The term is occasionally used in older contracts and heritage agreements to refer to the survey brief. Alternatively it is also sometimes used to describe the work program, being the development plan set by the proponent. |
| <strong>Section 18</strong> | The process in the AHA by which a proponent can apply for ‘consent to certain uses’ of land, and effectively to lawfully alter or damage Aboriginal sites. |
| <strong>Site Avoidance Survey</strong> | A particular type of survey with specific methodological and reporting requirements usually involving proposed works that can be repositioned to avoid Aboriginal sites and heritage values. |
| <strong>Site Identification Survey</strong> | A particular type of survey with specific methodological and reporting requirements, for use where the proponent will seek to damage or alter a site through a section 18 application under the AHA. |
| <strong>Statement of Significance</strong> | A statement of significance is required for site identification surveys, where a section 18 may be sought as a result of a heritage survey. The scope and content of a statement of significance will vary according to the discipline of the consultant, the circumstances of the survey and any aboriginal sites identified. |</p>
<table>
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<tr>
<th><strong>Survey Area</strong></th>
<th>The area the subject of a heritage survey or other cultural heritage related consultancy services.</th>
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</thead>
<tbody>
<tr>
<td><strong>Survey Brief</strong></td>
<td>A document issued by YMAC to the consultant detailing the nature and extent of work required in undertaking a heritage survey or other cultural heritage related consultancy service, and preparing a report.</td>
</tr>
<tr>
<td><strong>Traditional Owner(s)</strong></td>
<td>Those people who hold a cultural or spiritual connection to a particular country, and who may or may not be part of a native title group.</td>
</tr>
<tr>
<td><strong>Work Area Clearance Survey</strong></td>
<td>A model of survey with specific methodological and reporting requirements usually involving a larger area where a proposed development is still in an early planning stage.</td>
</tr>
<tr>
<td><strong>Work Program Clearance Survey</strong></td>
<td>A model of survey with specific methodological and reporting requirements usually involving identified areas where specific and tightly-defined development actions are proposed, such as drill holes.</td>
</tr>
<tr>
<td><strong>Working Group</strong></td>
<td>The group of representatives from a native title claim elected as liaison between the community and external parties, and who pass on instructions to the Native Title Representative Body and/or heritage service provider.</td>
</tr>
</tbody>
</table>
Section 1: Background to the Heritage Survey Framework

General Principles in Relation to Heritage Surveys

In coordinating the delivery of heritage surveys as a means of protecting and managing the cultural heritage of its native title clients, YMAC recognises the following principles;

 **Aboriginal heritage surveys are conducted in order to identify places in the landscape which contain or embody Aboriginal heritage values, not just sites.**

Many values may be, but are not always contained within ‘sites’, which are protected by the *Aboriginal Heritage Act 1972*. Disturbance of sites, without ministerial consent, is prohibited under section 17 of the *Aboriginal Heritage Act 1972*. The purpose of consultation with Traditional Owners, however, is to assess where both values and sites exist, so that developers can avoid disturbance to both.

 **Indigenous people are the primary source of information on the value of their heritage**

Therefore active participation of Aboriginal people in the identification, assessment and management of Aboriginal heritage is integral to the effective protection of Indigenous heritage values (see also schedule 5B of the regulations to the *Environmental Protection and Biodiversity Conservation Act 1999*);

 **Indigenous people have rights and responsibilities to care for their own heritage, exercise responsibility for country and transmit cultural practices to new generations;**

These rights and responsibilities are often encapsulated in what are determined to be native title rights, and are also codified in the UN *Declaration on the Rights of Indigenous Peoples*. As such, Traditional Owners’ involvement in heritage surveys is can often be integral to exercising these rights and responsibilities.

 **The recording and management of Aboriginal sites should be conducted using the best available knowledge, skills and standards,**

This includes both ongoing technical and Aboriginal community input to decisions and actions that may impact on Aboriginal sites and heritage values. YMAC has the obligation to provide the highest standard of heritage service to its native title clients (see *The Australia ICOMOS Burra Charter 2013*).
Cultural heritage, once destroyed, cannot be recovered;

YMAC therefore have a responsibility to manage Aboriginal sites appropriately, sensitively and with best practice principles.

The heritage notice and heritage survey process is seen as a way to build a foundation of a strong relationship between the native title party and the developer.

It is a means of maintaining communication and consultation, allowing the free flow of information, which assists native title groups to assess and manage commercial interests on their country. In the case of minerals exploration, the heritage agreement is seen as the basis for the ongoing relationship between the group and the company preceding future mining operations.

A Values Based Approach to Aboriginal Heritage

Current cultural heritage theory and standards of best practice now recognise that management of heritage is best designed around the values held either by an individual, community, or other group, in relation to all forms of tangible and intangible cultural heritage, rather than the (physical) cultural heritage itself. The focus on heritage simply as objects or places disregarding the values associated with them is what is usually termed a site based approach. This is what the Aboriginal Heritage Act 1972 (and most other Aboriginal Heritage legislation), as well as the Heritage Agreement frameworks are generally built around. A site based approach is now understood to be ineffective in properly managing heritage, because simple physical conservation of a place or object (even in situ) has been demonstrated to be insufficient if the values associated with that object or place are lost.

YMAC therefore seeks to identify and record values as much as possible within the heritage survey framework, in order to ensure that proper, holistic, and effective heritage preservation and management can take place.

This is not however incompatible with a site based legislative and approvals framework which requires the identification specifically of sites or areas of cultural concern or significance. Provided all heritage values in a particular area are recorded, discrete sites or areas of concern can be identified for the purposes of avoidance by development proponents and other land stakeholders.

It should be noted that this approach does not infer that recording values as opposed to sites will necessarily require a greater amount of time or research, or that information not necessary for statutory approvals is recorded in the field. YMAC is of the view that, by identifying foremost values, the specific requirements under section 5 of the AHA of what places and objects constitute ‘sites’ can still be addressed and recorded for the advice of the Proponent, while maintaining a level of heritage protection acceptable to Traditional Owners, and in line with professional best practice. This also accommodates for any administrative changes made within DAA relating to the requirements under section 5.
This approach also means that areas with associated cultural values, although being best recorded by the respective disciplines of anthropology and archaeology are not always specifically and exclusively ‘ethnographic’ or ‘archaeological’. That is to say, many ‘sites’ recorded by an archaeologist may have associated values which are best recorded by an anthropologist. To understand the values associated with that place, a survey methodology must be applied which allows for all information to be collected in relation to the values Aboriginal people may attribute to that place.

A note on isolated artefacts: – The term ‘isolated artefacts’ has been previously designated to artefactual material in situ yet not appearing numerous enough to constitute a ‘site’, especially under section 5 of the AHA. How these artefacts are dealt with should be based on the heritage values associated with them. Indeed they may be unlikely to fit under any sections of the AHA or federal acts, but nonetheless should be recorded if the Traditional Owners express associated values. Recommendations on the management of Isolated Artefacts are therefore at the discretion of the consultant as the heritage expert, and should be made in the context of the regional archaeological background and research.

Archaeological and Ethnographic Approaches to Heritage Surveys

Typically, survey briefs will be separated into archaeological and ethnographic surveys. This is typically made as a logistical measure, for the purposes of arranging Aboriginal and heritage consultants and allocating fieldwork in relation to other schedules, such as native title meetings etc. However, there is the need for heritage values to be assessed outside of a purely archaeological/ethnographic framework.

Generally, there is some correlation between the types of sites, (particularly in relation to section 5 of the AHA) and certain types of heritage (i.e. tangible and intangible), the associated values of which are better analysed and recorded by either discipline, (e.g. artefactual and other physical material is typically best identified and recorded by archaeologists in terms of archaeological significance under section 5(a) of the AHA).

However, to properly assess both heritage values and legislative definitions under section 5, and especially in the case of a section 18 application, a combined archaeological/ethnographic approach is often required.

This may not always be at the decision of the consultant or YMAC, as proponents commissioning surveys may have logistical or financial restraints on the number and type of surveys they can commission at any one time. The Standard Heritage Agreement framework also places undue emphasis of the separation of the approaches.

Nonetheless, any deficiency or inaccuracy or lack of information noted by the consultant should be made clear in the limitations any survey report, or brought to the attention of YMAC when considering the survey brief for discussion and resolution before the survey commences.

In regard to reporting, if a consultant believes they cannot make management recommendations, or decisions on the applicability of sites to section 5 without further evidence or research from another discipline or methodological approach, this should be made clear any survey reports.

The preferred YMAC model, which strikes the balance between efficient and workable field work time, and meaningful, best-practice compliant results is a concurrent archaeological and ethnographic survey.
Heritage and Land Access Agreements

Depending on the particular circumstances of each native title group, heritage and land access agreements between proponents and groups vary in scope and how they relate to the AHA. Where native title groups have stronger rights under the NTA or hold certain kinds of tenure they are empowered to negotiate stronger heritage and land access agreements. Where native title groups have weaker negotiating power, the terms of agreements tend to weigh more in favour of the proponent. This is the reason that some agreements, and hence consultant survey briefs, require different survey types and different reporting outcomes (see the survey models section of this guideline).

There are two commonly used heritage agreement templates: a Standard Heritage Agreement and an Alternative Heritage Agreement. The Standard Heritage Agreement provides a weak level of protection for Aboriginal heritage. The Alternative Heritage Agreement is stronger in relation to section 18 and other areas. Agreements also vary in terms of the expected reporting requirements following Heritage Surveys. It is important that the consultant understands the key elements of the heritage agreement that has triggered the heritage survey or other cultural heritage related consultancy service so that any questions that native title group members may have when discussing heritage places and their values can be answered, and also so reporting is completed pursuant to the terms of the agreement.

Where a mining lease has been negotiated, claim groups will generally have a form of Land Access Agreement in place that incorporates heritage protection. The terms of this protection may vary from either the Standard Heritage Agreement or Alternative Heritage Agreement and it is important that the consultant is aware of the specifics of these Land Access Agreements in order to assess issues that are specific to each claim group.

Finally, the terms of agreements are negotiated through a process involving YMAC claim lawyers, future act officers and heritage staff acting on behalf of the native title groups, and the proponent’s staff, consultants and advisors etc. acting on their behalf. As a result, the terms of finalised agreements may vary, and may have implications for the manner in which surveys are undertaken. YMAC staff ensure that all relevant information contained in the heritage agreements relating to surveys is contained in the survey brief when provided to the consultant.

Agreement Schedules of Fees and Cost Recovery by the Heritage Services Provider

Although schedules of fees vary between agreements, most make provision for YMAC as the heritage services provider and or agent for the native title group to recover any costs reasonably borne in coordinating the heritage survey. More detailed explanations of what these costs cover are set out below;

It should be kept in mind that the original schedule of fees in the SHA was devised some time ago by the State, and as such often does not accurately reflect the costs borne by either the proponent or native title party/heritage service provider during the course of the survey.
Aboriginal Consultants

Aboriginal Consultants are the survey participants nominated through the processes set up between YMAC and the native title group.

Different native title groups have different processes for selecting survey participants, based on the area, type of survey, or the presence of gender-specific or otherwise restricted sites. YMAC constantly updates heritage instructions from native title and heritage sub-committees to ensure all processes are up to date.

The amount and accuracy of any information in a heritage notice will directly affect how well the native title group can select survey participants suitable for the survey.

Where YMAC is not the Heritage Service Provider for a native title group, or where it provides only some heritage related services, the selection of survey participants may be wholly outside of YMAC’s knowledge.

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<tr>
<th>Accommodation</th>
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<tr>
<td>This can be omitted if accommodation can be provided by the proponent. If not, YMAC will arrange accommodation and recover at cost.</td>
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<tr>
<th>Administration Fee</th>
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<td>The administration fee will cover, amongst other things, the following costs necessary to the provision of heritage services:</td>
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<tr>
<td>• Audit fees (As an Aboriginal Corporation, YMAC is required to undergo an external independent audit annually)</td>
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<td>• Managing the acquittal process</td>
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<tr>
<td>• Administrative support (staffing costs for finance co-ordination, estimation, organisation and acquittal)</td>
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<td>• Finance costs (cost of debt recovery, interest costs)</td>
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<tr>
<td>• Other indirect organisational costs (office rental, stationery, printing, postage, landline, mobile, satellite and communication costs, infrastructure costs such as IT equipment and GPS, and maintenance)</td>
</tr>
<tr>
<td>• Cancellation costs (these are occasionally borne by the proponent where costs arose as a result of a cancellation by the proponent, however occasionally these costs occur as a result of other matters beyond YMAC’s control)</td>
</tr>
<tr>
<td>• Staff recruitment and training costs</td>
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<tr>
<th>Airfares &amp; Taxis</th>
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<td>Unless organised by the proponent these will be booked and charged back to the proponent by YMAC.</td>
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<tr>
<th>CLO (HPO)</th>
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<td>YMAC’s Cultural Liaison Officers (or Heritage Project Officers) carry out the vitally important role of liaison with Aboriginal communities on all aspects of YMAC’s services to native title groups. They are Aboriginal staff who have strong connections to the community, and are trained in the various aspects of community engagement and service provision.</td>
</tr>
<tr>
<td>In terms of heritage services, CLOs can assist greatly in the coordination of heritage surveys in such things as; providing transport and other logistical support, contacting Aboriginal Consultants and other members of the native title group, and helping to ensure the smooth running of the survey by acting as liaison between the various parties.</td>
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<th>DAA Site Register Search</th>
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<td>Although a simple search of the DAA is register is both easily conducted, and in most cases, already conducted by the proponent or other party on the lodgement of the heritage notice, YMAC Heritage Officers may be required to examine or copy physical site files from the DAA prior to the survey going ahead. The DAA AHIS does not provide sufficient site information to determine things necessary to coordinating and carrying out an effective survey, such as the significance or importance of a site, or names of people who may speak for that site or area.</td>
</tr>
<tr>
<td>Once this information is procured, the Heritage Officer can pass this on to the consultant</td>
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conducting the survey, and make any other necessary arrangements in organising the survey.

YMAC can generally procure site files from DAA in a reasonable timeframe, however if this cost is not recovered as a flat rate line item, the time for doing so will be recovered under the consultant’s (either YMAC or external) survey preparation time, which will invariably be charged at a higher rate.

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<tr>
<th>Disbursements</th>
<th>This covers the costs, other than accommodation and travel, directly related to the survey, for example drug and alcohol tests, and the purchase of small equipment for the survey. The costs will be passed on to proponent.</th>
</tr>
</thead>
</table>
| External Consultants | All external consultants’ fees will be passed on to the proponent through the invoice provided to YMAC for their engagement. This may include any other fees or disbursements that consultant may charge.  
  Note that some native title groups nominate preferred consultants with whom they have a strong working relationship, and who are suitable familiar with the group and their country. YMAC acts on instruction from these groups to procure their preferred consultants on surveys in their country.  
  On request, YMAC can source competitive quotes from consultants on receipt of a heritage notice. |
| Incidental Expenses | All consumables and costs directly related to the survey (e.g. telephone, internet etc.) and incurred during the survey are passed on to the proponent. Capturing each and every cost, directly attributable to every item would be neither cost effective nor feasible as most costs are not able to be separated. YMAC uses an approximation of cost based on historical data. Independent analysis has confirmed that the rate accurately takes into account YMAC’s costs. |
| Insurance | This covers the insurance costs borne by YMAC to engage an Aboriginal consultant for the survey. It includes cover for workers’ compensation (for both aboriginal consultants and YMAC staff) and all other general insurance (e.g. Professional Indemnity, Public Liability, etc.) incurred during the daily business of organisation. Catching each and every insurance costs, directly attributable to each survey would be neither cost effective nor feasible as most insurance costs are not able to be separated, YMAC uses an approximation of cost based on historical data. Independent analysis has confirmed that the current rate accurately takes into account YMAC’s costs. |
| Mapping & GIS | YMAC employs a Spatial Information Officer to oversee handling of spatial data associated with heritage surveys. This includes logging and checking data produced by external consultants to ensure it is of the standard required by the heritage brief, and the proponent for use in planning.  
  Any mapping or GIS work conducted by YMAC anthropologists and archaeologists for inclusion in survey reports is recovered as part of their fees, and appears as such in any invoice. |
| Project Management | This covers the cost of YMAC’s Heritage Services Manager to oversee the YMAC Heritage Officers, internal consultants and CLOs conducting heritage surveys. |
| Standard Agreement | This covers the costs directly related to write the standard agreement between claim group and proponent. This costs borne by YMAC and will be recovered from a proponent. It is a one-off payment. |
| Survey Coordination | This covers the cost borne by YMAC to employ a Heritage Officer to coordinate all aspects of a heritage survey. This fee was set in the original drafting of the SHA, and in practice rarely fully recovers the actual hours required of a Heritage Officer to see a typical survey... |
through to completion.

**Travel Expenses/Hire Vehicles**
Where the proponent cannot provide vehicles, YMAC will coordinate hire vehicles and recover the costs. In some cases where a YMAC consultant or CLO is attending the survey, YMAC may be able to provide vehicles. In this case, fuel and vehicle wear is charged pro rata.

**YMAC Consultants**
YMAC’s internal anthropologists and archaeologists can attend most surveys in the place of an external consultant. Being a Not-for-Profit organisation, YMAC can offer lower consultant fees than most private consultants.
YMAC staff are highly knowledgeable on all aspects of YMAC’s represented native title claims, including claim history and culture, as well as current social dynamics. In some cases, YMAC staff may be the group’s preferred consultant for heritage surveys.

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### The need for a heritage survey framework under the Alternative Heritage Agreement

The following points should be made outlining YMAC’s position on heritage agreements;

- **Heritage surveys do not solely address the proponent’s obligations under the *Aboriginal Heritage Act 1972*.**

Surveys are one of the means used to manage and conserve Aboriginal Heritage as per the provisions a heritage agreement to protect the groups’ native title rights and interests, **while at the same time providing the proponent with the necessary clearances to conduct works.**

- **YMAC acts on instruction from native title groups in regard to heritage matters, and will always act in the best interests of native title groups by negotiating the strongest possible heritage protection measures.**

Instructions from native title groups to YMAC may include such things as preferred management strategies for particular sites, the identification of people or groups to speak for certain sites or areas of country, selection of preferred heritage consultants, or preferred survey methodologies.

- **The AltHA ultimately allows for Traditional Owners to have more say in the management of their heritage, and on their own terms**

Altering a heritage agreement from the standard template allows Traditional Owners to see that management strategies, including the conduct of heritage surveys can be tailored to the specific context of the native title claim, important sites, and heritage values. The restrictive template format of the Standard Heritage Agreement provides certainty largely only to the proponent in meeting their obligations relating to the *Aboriginal Heritage Act 1972*.

For this reason primarily, YMAC will always strive to see that Alternative Heritage Agreements are executed so as to ensure the highest standard of heritage protection for native title groups.
Section 2: Legislation

Section 5 of the Aboriginal Heritage Act 1972

The DAA has provided guidance as to the specific criteria used to interpret the meaning of ‘Aboriginal Sites’ under Section 5 of that Act.

These guidelines are available from the DAA website and may be updated without notice.

It is the obligation of the consultant to address the requirements of the DAA guidelines for assessing sites under the AHA, especially in regard to filling out Heritage Information Submission Forms (see below).

Points to note in regard to section 5 of the AHA include;

- The AHA is not the sole relevant legislation in regard to Traditional Owners’ heritage values.
- If more information or time is required to properly address the requirements of a HISF, or to address section 5, the consultant must make this clear in any associated survey reports and/or preliminary advices.
- Consultants should design survey methodology to ensure they can provide all necessary background and field research required to address the requirements set out by the DAA in regard to section 5 at a minimum.
- If a site does not meet the criteria under section 5 it may still constitute a site under other legislation, and/or still contain heritage values, and should therefore be recorded (and may be registered as on ‘Other Heritage Place’ by the DAA).

DAA Heritage Information Submission Forms (HISFs)

As per section 15 of the Aboriginal Heritage Act 1972, it is a statutory obligation for anyone knowing the locations of an Aboriginal site to report it to the Registrar of Aboriginal Sites. DAA now uses the standard Heritage Information Submission Form (HISF) to lodge site records.

Heritage Consultants recording Aboriginal heritage sites, especially under a Site Identification model, are therefore reasonably bound by section 15 to report these sites. Generally it is the responsibility of the consultant to lodge any HISFs with the DAA upon completion of a survey.

In addition, the proponent or Traditional Owners may specifically request the recording, using a HISF of heritage sites or values for lodgement and consideration by the ACMC, for purposes including the lodgement of a section 18 application, or the recording of cultural information.
Keeping in mind the general principles and purpose of heritage surveys sections above, and the requirements of heritage agreements, consultants must employ methods which can specifically address the questions posed by DAA relating to section 5, as well as any other information they, or Traditional Owners deem relevant and pertinent to the effective management of Aboriginal heritage values, or which are required to be recorded as dictated by the heritage agreement.

**Note on section 18 applications:** Consultants are reminded that the HISF is typically used by the ACMC for consideration in areas under a Section 18 application. If, in the consultant’s opinion, the HISF is insufficient, ineffective or incomplete in any way relating to capturing the importance and significance of a site or sites, and where such information is contained in a survey report, this should be made clear in both the HISF and survey report.

**Note on Informants:** YMAC may sometimes, on instruction from the native title group, act as informant for the purposes of lodging HISFs, rather than specific individuals. If this instruction is made by the group, the consultant will be informed in the survey brief.

### Legislation Relating to Aboriginal Heritage Places and Objects and Heritage Surveys

At the conclusion of all heritage surveys (regardless of the survey type) a consultant must be able to advise YMAC of whether any identified places or objects with Aboriginal heritage values have relevance under the following legislation:

- Any ‘Aboriginal Site’ as defined in the WA Aboriginial Heritage Act 1972 (AHA);
- Any ‘Significant Aboriginal Area’ or ‘Significant Aboriginal Object’ as defined in the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984;
- Any ‘area or site of particular significance’ within the meaning of section 237(b) of the Commonwealth Native Title Act 1993;
- Any places that may qualify for National Heritage Listing under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Depending on the survey brief, a consultant may be required to report against one or all of the above legislation.

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*It should also be noted in certain circumstances sites may have a range of Aboriginal heritage values or significance outside of the survey brief specifications; for instance, in addition to their specific archaeological values, archaeological sites may have ethnographic significance or values, and these should be recorded.*
The DAA Due Diligence Guidelines

The WA Department of Aboriginal Affairs and Department of the Premier and Cabinet have jointly released a series of *Aboriginal Heritage Due Diligence Guidelines* as a framework for informing developers on their obligations relating to the *Aboriginal Heritage Act 1972*. The *Aboriginal Heritage Due Diligence Guidelines* have undergone several iterations, and are subject to changing without notice.

The DAA Guidelines provide only the minimum framework for avoiding disturbance to Aboriginal heritage, for the following reasons;

- They relate solely to the *Aboriginal Heritage Act 1972*, which itself is ineffective at addressing or protecting all forms and expressions of Aboriginal heritage.
- They rely on a site-based approach, as opposed to identifying and managing heritage values.
- They put the onus of determining the likelihood of a site and potential disturbance on the developer, without indicating what the best means of consultation with Traditional Owners might be.
- They do not address the significance of sites or values as a factor in management
- They rely on the use of the DAA Site Register, which is neither an accurate nor complete record of Aboriginal heritage in Western Australia
Section 3: Heritage Consultants

YMAC recognises that the heritage consultant is an expert in the field of cultural heritage management, and therefore, methodology, survey design and execution may vary between consultants, in addition to the specific requirements and requests by proponents seeking approvals through the heritage survey process.

This document is therefore intended to provide the minimum expected standards of practice, and provide a broad conceptual framework in which consultants can employ the methodologies and techniques which they see fit in achieving outcomes from heritage surveys which satisfactory to both Traditional Owners and proponents.

The Role of Consultants

The role of the consultant is to ensure the terms and provisions contained in the survey brief are executed. Whether the representative of a company or sole trader, the consultant is contracted on the basis that he or she has the necessary qualifications and experience to act as an independent expert should the results of the survey or other cultural heritage related consultancy services be challenged in any public, professional or legal fora.

The roles and obligations of consultants are defined in section 2 and schedule 4 of the YMAC Cultural Heritage Services Consultancy Agreement. However, particular attention is drawn to the following clauses of the agreement:

Clause 2.1 (b): The consultant shall fulfil the requirements and obligations set out in the survey brief and must have the necessary information, experience, skills and professional qualifications to conduct an appropriate type of survey and complete a reliable and independent report.

Clause 2.1 (d): The consultant’s methodology, findings and reports shall not be influenced by any party and shall form a defensible, independent professional opinion as to the matters set out in the survey brief.

The consultant is required to undertake the survey (or other cultural heritage related consultancy services) with the approval and involvement of members of the native title group. It is expected that knowledgeable representatives of the group will provide the consultant with information as part of the research. From time to time it may also be necessary to engage with Aboriginal consultants that are members of other native title groups that may hold knowledge in regards to a specific place. Depending on the particular survey brief the consultant may be required to work in collaboration with other professionals.

In most instances, YMAC will provide the consultant with assistance to identify and meet with members of the native title group for the purpose of the heritage survey or other cultural heritage related consultancy services. YMAC acts on instructions relating to heritage surveys from either native title working groups, heritage sub-committees and other groups when nominating Aboriginal Consultants for surveys, however, it is the consultant’s role to address whether the people nominated for a survey can speak with authority, knowledge, and support research for a reliable and independent report that meets the terms of the survey brief and Cultural Heritage Services Consultancy Agreement.
It is noted that YMAC will be responsible for fees due to the Aboriginal survey participants (known as ‘Aboriginal Consultants’ for the purpose of their engagement for any survey or other cultural heritage related consultancy services).

It is the role of the consultant to ensure that the survey methodology is sufficient in order to locate all places with heritage values likely to be present within the survey area(s). In some instances, the Consultant will assist YMAC and the proponent, through meetings and/or direct correspondence, in selecting or designing a survey methodology suitable for the proposed scope of works, and compliance with YMAC’s position on heritage surveys as listed above. It is the consultant’s responsibility to establish whether there may be factors impacting on how places with heritage values are explained and understood by the native title group members participating in the heritage survey or other cultural heritage related consultancy services being conducted. This includes cultural factors relating to speaking for traditional country and places, as well as understanding the development context the work is being conducted in. The consultant’s expert opinion should consider all of the above noted factors.

It is also noted that YMAC’s Cultural Heritage Services Consultancy Agreement states that field note books, video, film recordings and still photographs produced for the purpose of the contracted survey or other cultural heritage related consultancy services can be requested by YMAC at the conclusion of the survey.

YMAC expects that the consultant will meet the specified timeframes for deliverables, as detailed in the Cultural Heritage Services Consultancy Agreement. If there is any indication that the agreed timeframes will not be met, the consultant must notify YMAC immediately.

Consultant Codes of Ethics

YMAC engages consultants with the understanding that they share and adhere to the code of ethics under which their relevant professional body operates. For the avoidance of doubt, please refer to the Australian Anthropological Society and the Australian Archaeological Association codes of ethics.

In addition, with the exception of any conflict with the terms of the Cultural Heritage Services Consultancy Agreement, the consultant is expected to undertake the heritage survey or other cultural heritage related consultancy services according to the standard set by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Australian Indigenous Studies 2012.

Consultant Code of Conduct

YMAC expects that consultants will adhere to the following YMAC Consultant Code of Conduct, which is outlined in the terms of the Cultural Heritage Services Consultancy Agreement.

The Consultant shall;

- Act in a manner that upholds YMAC’s corporate values of respect, honesty, loyalty and commitment to providing professional and high quality service.
- Use due care and diligence in the course of the consultancy.
Not make improper use of information acquired in the course of the consultancy.

Not use or be in the possession of alcohol or illicit drugs while undertaking the tasks the subject of the consultancy.

Not use YMAC property (including computers, mobile phones, photocopiers, vehicles, email and internet facilities) for purposes not specifically authorised by YMAC.

Not engage in conduct that is discourteous, offensive, discriminatory, harassing or threatening.

YMAG’s Responsibilities to Consultants

YMAG has the following responsibilities to the Consultant;

To meet the terms set out in the Cultural Heritage Services Consultancy Agreement, including remuneration and reimbursement of costs.

To provide adequate background advice to the consultant so that informed professional advice and opinion can be provided pursuant to the terms of the Cultural Heritage Services Consultancy Agreement.

To inform the consultant of the reason for the heritage survey or other cultural heritage related consultancy services, including the terms of any relevant heritage agreements.

To inform the consultant of any matters of knowledge to YMAC that may impact on the selection of Aboriginal Consultants who will attend the survey or research, and which may influence their opinion about places with Aboriginal heritage values.

Provide the consultant with copies of previous heritage survey reports and other research information relevant to area and people the subject of the heritage survey or other cultural heritage related consultancy services. Native title connection material will not be provided where matters are still unresolved, however a verbal briefing may be provided with regard to information relevant to the specific heritage survey.

Confirm with the consultant via email who will communicate with the proponent at various stages of the heritage survey, and what will be communicated.
Section 4: Heritage Surveys

How is a Heritage Notice considered?

Heritage notices allow native title groups to consider the proposed works on their country, and decide on the best course of action given the potential impacts and significance of any sites or values. This approach promotes consultation and communication prior to the survey going ahead, resulting in the most effective, cost-efficient outcome.

When considering a heritage notice, the Traditional Owners, or YMAC as instructed on their behalf, consider the notice in reference to:

❖ Any previous disturbance to the area

Highly disturbed ground is unlikely to contain intact archaeological sites, and heritage values may have already been affected, however certain ethnographically significant areas or landforms could still retain their significance despite long terms and heavily ground disturbance or other activity.

The Traditional Owners should still retain the opportunity to consider the heritage notice to come to an agreement on this.

❖ The presence of sites or heritage values in or near the proposed works, or which might in any way be affected by them.

Sites recorded with the DAA will typically have already been avoided in planning by the developer. However, there may be sites which remain unrecorded, or which do not fit under section 5 of the AHA, yet nonetheless contain heritage values, which are important to Traditional Owners.

Certain features of the natural landscape also contain significant heritage values which may not be captured by the AHA – particularly waterways, water holes, areas where traditional foods are abundant or are collected, or landforms associated with a Dreaming story or myth.

In this case, Traditional Owners may see ‘checking on country’ with the developer as the best means of assessing potential disturbance to these values. This can also be an important step in building a relationship between the proponent and the native title group. These kinds of heritage values can still be recorded in a survey report so that they can be managed by the developer.

❖ The significance of any sites or values

Some sites are highly significant, which can mean that disturbance of any kind can affect the heritage values of those sites, even non-ground disturbing and low-impacts works. This could be the case for extremely significant sites or natural features, to which Traditional Owners would prefer that physical access is restricted to certain people or groups.

To determine the significance of sites, Traditional Owners must be consulted on the values that may be present there.
Previous Heritage Surveys

YMAC does not see value in re-surveying areas where heritage surveys have already taken place. However, any previous heritage work must be taken on its merits; the Traditional Owners and YMAC on their instructions will assess any previous survey reports in the context of:

- The age of the report – most reports completed in the last two decades are acceptable, however some very old reports (i.e. 1970s and prior) may rely on outdated survey methodologies, or contain unreliable information and maps etc.
- The applicability to the proposed works in extent and nature – surveys are typically designed around a particular scope of works; therefore can the results and recommendations be applied to the current scope?
- The participants of the survey – Did representatives from the same or relevant native title groups attend the survey? Were the participants appropriate for that area?
- The type of survey (e.g. ethnographic or archaeological) – In older surveys, archaeological assessments are often missing or completed to a lower standard than which is currently accepted.
- The level of detail to which values and/or sites were recorded – Especially in older reports, site locations may be too imprecise to ensure they will not be affected by the proposed works. This situation may be remedied by a shorter survey or monitoring.
- The overall quality of the survey and report – Some reports commissioned outside YMAC can be of a low quality, and therefore cannot be relied upon to properly record and manage heritage concerns.

Generally speaking, where a survey has previously been conducted for the same purpose, and over the same area, (e.g. for exploration drilling), no further surveys would be expected to be conducted for that area, should the appropriate survey report be located and produced by either party.

Where a previous survey report exists, it is unlikely that Traditional Owners would request another survey takes place unless there are serious concerns about any of the above factors, for instance, where a known site or value has been under (or not) recorded.

The nature and extent of the proposed works

The nature (i.e. the level of ground disturbance) of the proposed works will have to be considered in light of the significance of any relevant heritage values.

As a rough guide, discrete, low-impact works in areas where there are no significant sites are of lesser concern to Traditional Owners than large scale projects requiring high impact and irreversible ground disturbance, which may affect highly significant sites. However, on or near to very significant sites, even low impact activities may affect heritage values.

In considering these factors, Traditional Owners will take into account, and will be greatly assisted in doing so by the provision of such information relating to:

- What kind of drilling or excavation methods will be employed?
- What area(s) are required to be cleared?
- Will new access tracks be constructed?
How many people will be involved in the project?

How are impacts on country (natural and cultural) managed by the company (e.g. cultural awareness training etc?)

In summary, the following key points on heritage notices should be noted;

- The more the native title party knows about the proposed activity, the more they can assess what the potential disturbance might be.
- For many low-impact activities, as long as the native title party is properly informed, there will be little risk of disturbance.
- For any ground-disturbing activity, a heritage notice needs to be considered by the Traditional Owners.

**Types of Development Activity and Potential Heritage Concerns**

All scopes of work will need to be assessed individually; however as a general rule, most development activities can fall into two categories based on the level of ground disturbance, being high and low impact.

Often a heritage or other agreement will define high and low impact activities, but in broad terms the following applies;

Low impact activities are those which require physical access to areas of country by personnel and vehicles, but do not involve mechanical excavation or permanent construction. This may include such things as;

- Vehicular Access
- Soil sampling and other handheld sampling
- Seismic surveys
- Mapping

High Impact or ground disturbing activities are those often associated with mining, exploration and other development. This may include such things as;

- Construction of new tracks, or the widening or alteration of existing tracks
- Trenching for pipelines or cable routes
- Exploration drilling
- Construction of permanent buildings or other Infrastructure
- Clearing of land for construction or other activity
- Digging of mining pits and borrow pits
Survey Models

Generally the approach to heritage surveys will follow certain established models, traditionally termed Work/Area Clearance, Site Avoidance, and Site Identification. There is variation on what these definitions entail between consultants, proponents and other heritage-related professionals across the state.

In addition, various heritage agreements and protocols may utilise these and other definitions to describe different kinds of approaches to heritage surveys (e.g. see Rio Tinto Heritage Survey Guidelines). The following are intended as a general outline of what YMAC expects when providing a consultant with a survey brief in terms of the survey design, research, and reporting standards.

The models of survey are also designed to find the balance between cost-effectiveness for proponents, providing meaningful results and clarity for use in approvals processes, while maintaining a standard of heritage protection to the satisfaction of Traditional Owners. This balance is maintained by matching the survey model to the proposed development. The underlying principle is to minimise the time spent recording in the field, and providing cultural information only to the level that is necessary to manage heritage values in light of any proposed development or land use.

To what detail a site or value is recorded will depend on the survey model employed. Different models are described in table below.

<table>
<thead>
<tr>
<th>Survey Model</th>
<th>Alternate name(s)</th>
<th>Suitable For</th>
<th>Site Recording Standard</th>
<th>Reporting Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Work Program Clearance</strong></td>
<td>Site Bypass (Rio Tinto)</td>
<td>Narrowly defined, flexible development</td>
<td>No site records, occasionally full or partial boundary to aid in avoidance</td>
<td>Short Report, generally no Preliminary Advice</td>
</tr>
<tr>
<td><strong>Work Area Clearance</strong></td>
<td>Site Bypass (Rio Tinto) / 'First pass archaeology' / 'Broad-scale ethnographic'</td>
<td>Initial ethnographic survey to avoid large/significant sites or landscape features. ‘First pass’ on fixed infrastructure corridors etc. where Site Avoidance will be carried out subsequently</td>
<td>No site records, generally full or partial boundary when within a proposed development area.</td>
<td>Short Report, generally no Preliminary Advice unless requested.</td>
</tr>
<tr>
<td><strong>Site Avoidance</strong></td>
<td>Site Location (Rio Tinto)</td>
<td>Most development applications</td>
<td>Site boundaries and minimal site information</td>
<td>Full report with background info</td>
</tr>
<tr>
<td><strong>Site Identification</strong></td>
<td>Site Assessment (Rio Tinto)</td>
<td>Section18 application</td>
<td>Full recording and significance assessment</td>
<td>Full report and Preliminary Advice</td>
</tr>
</tbody>
</table>
The preferred approach for archaeological surveys is a Site Avoidance survey; however Work Program/Area Clearance methodology may be used for tightly confined surveys (i.e. generally drill lines and road alignments).

For ethnographic surveys, the preferred initial model is a Work Area Clearance method, followed by Site Avoidance of any sites (including subsequently recorded archaeological sites) within a proposed development area.

Site Identification is generally only undertaken when the information is required prior to a Section 18 application, because a proposed development will unavoidably disturb any heritage places, or when places within a proposed development area are likely to be affected by any works undertaken within a section 18 application area.

Consultants shall employ the methods set out below as per the survey model nominated in the survey brief as a minimum standard (i.e. and employ any further or alternate principles or approaches as directed in the survey brief).

Ultimately, the choice of survey model identified in the survey brief is based upon one or several of the following factors;

- The terms of the heritage agreement in place between the native title group and the proponent
- The likelihood of places with Aboriginal heritage values existing on the land the subject of the proposed activity
- The nature of the proposed activity on the land
- The likelihood of the proposed activity causing disturbance, change, or destruction to places with Aboriginal heritage values
- The requirement to provide the proponent with professional advice adequate for the proponent’s purpose(s) (usually legal compliance with the AHA and the heritage agreement).
- Any prior discussions or consultation involving variously, the proponent, consultant, Traditional Owners, and YMAC around designing a suitable survey methodology.
The Site Avoidance Principle

When designing survey methodologies, YMAC strongly supports the site avoidance principle in the first instance.

The preferred process for the employment of survey models is to use the lowest level possible at any time, progressing to Site Identification only where heritage cannot be avoided or managed, and/or where a section 18 applications is necessary.

This approach prioritises the Site Avoidance principle in the first instance, and where avoidance may not be possible, promotes consultation with Traditional Owners to develop mutually-acceptable management strategies, including in the case where a section 18 application is necessary.

This process is preferred for the following reasons;

- Avoidance is the most time and cost-effective method of avoiding disturbance to heritage places, while addressing legislative obligations and due diligence principles.
- Consultation and joint management with Traditional owners are the best outcomes, but meetings to facilitate these present cost and time obstacles for Proponents. By avoiding heritage places first, further meetings are generally only required to discuss management of places which cannot be avoided.
- It ensures Site Identification and Section 18 applications remain as last resort – promoting genuine attempts to avoid, consult, and manage before disturbing heritage.

Practically, this means;

- Every effort should be made to avoid Aboriginal heritage and preserve heritage values when negotiating and gaining land access.
- Heritage surveys should be designed to capture that information which is necessary to instruct the proponent on how to avoid any areas of cultural concern.
- Sites and recommendations should be made to the proponent which allow avoidance of areas not just in a physical sense, but in such a way as to minimise disturbance to heritage values.
- Although the minimum of cultural information is required to be included in survey reports or provided to the proponent for them to avoid any areas of concern, it may be required to be understood and recorded by the consultant nonetheless.
- Access into or close to areas of cultural value, and the management of culturally significant areas in a project areas should be a process designed through consultation with Traditional Owners.
- Section 18 applications should be seen as a last resort, and made only after consultation with Traditional Owners.

The following table describes the steps in using the Site Avoidance principle.
Application of Survey Models to Development Activities

Below are more detailed descriptions of each survey model, the outcomes and intended application by development activity. The table on page 32 provides a matrix for matching the survey model to the proposed works.

**Work Program and Work Area Clearance Surveys**

A Clearance Survey involves a survey of an area of land within which certain proposed developments will occur. Portions of the work area are designated as ‘clear’ or ‘not clear’ based on the presence or absence of Aboriginal values and/or sites.

A ‘Work Area’ is defined as the area nominated by the proponent in which they intend to carry out works, or require to be surveyed for heritage sites and values. A ‘Work Program’ is also practically speaking an area, but represents a more defined Work Area, which can be adjusted where necessary to avoid sites, objects or other locations. The distinction facilitates the consultant in formulating their survey methodology, and in making recommendations relating to any sites in light of the nature of the planned development.
A Clearance survey type is recommended for:

- The early stages of mineral and petroleum exploration, where low cost and short timeframes are a higher priority, than gathering precise data on site locations, or in other situations where areas of land are required but where the exact locations of the work program are not yet known, or where limited ground disturbance or a flexible disturbance footprint is involved, for instance, broad area drilling programs, stock pile areas, work camps and other similar facilities. It is expected that these works will be flexible in design and placement, especially within the work area to be surveyed, and are able to be modified and adjusted in order to avoid any Aboriginal heritage.

- Areas where native title groups do not wish to divulge sensitive cultural information.

Clearance surveys are not recommended for:

- Proposed activities that are likely to result in unavoidable disturbance to Aboriginal heritage.

- Instances where the proponent needs to know precisely where sites and heritage values may exist, for example, in long-term planning.

Clearance surveys are therefore typically a preferred option for ethnographic surveys rather than archaeological surveys. This is due to the following:

- Important ethnographic sites are usually preferably best avoided by a more general delineation of the area of concern, allowing the Traditional Owners to both restrict the amount of information released, and maintaining works a comfortable distance from such places.

- Areas of archaeological concern are best mapped as they are located, as estimating loosely defined areas is generally ineffective, in that significant areas may be required to be deemed ‘not clear’ so as to cover all discrete ‘sites’ in a given area, whereas a more detailed Site Avoidance assessment will provide boundaries of those sites, allowing the Proponent much more flexibility.

It should be noted that although Clearance model surveys may allow a quick assessment of an area, future works, or more intensive works could require additional surveys to delineate actual site boundaries if the ‘cleared’ areas are not sufficient to avoid those locations. As a result, some proponents have begun to favour the Site Avoidance model as a minimum, so as to avoid the need for further surveys in the future, and facilitate long-term project planning.

The Survey

For an anthropological survey, the anthropologist and Aboriginal Consultants will typically target vantage points in and around the work area in order to identify any ethnographic values and/or sites in the survey area that could potentially face disturbance during the proposed work program. These vantage points may not be within the survey area, and could also include visiting sites outside the area.

During an archaeological clearance survey, the survey team will typically conduct a pedestrian survey of the entire survey area to identify the presence or absence of Aboriginal values.

Site Recording

Native title groups may wish to withhold cultural information other than that which is necessary to indicate those portions of a work area that are clear, and those that are not.
Where an Aboriginal value, heritage concern or site is identified, the extent or boundaries of the area are provided in only as much detail needed to allow decisions to be made about which section(s) of the work area should be designated as ‘not clear’. Typically, there is sufficient flexibility within the work area to allow for works to proceed while avoiding the area that is designated as ‘not clear’.

If a representative of the proponent is present, it may also be possible to establish a mutually suitable alternative location for any ‘not clear’ section(s) of the work area within which proposed works would be able to proceed without disturbance to any Aboriginal heritage. This may lead to a requirement for additional clearance survey(s) of locations offered as alternatives.

It should be noted here that ‘alternative areas’ differ from entirely separate work areas or scopes of work. Generally, only the areas within the scope of works will be surveyed, but from time to time (e.g. in the event of a survey running ahead of schedule), the opportunity may arise to survey areas outside the original scope of works. These kinds of additional areas should only be added to the survey area, or surveyed separately on the same survey when;

- There is agreement between the Aboriginal consultants present on the survey
- The YMAC Heritage Services Manager has been notified via either phone or email during the survey.

In addition to the approval of the YMAC Heritage Services Manager, these additions and/or changes to the survey areas must be clearly noted in any associated preliminary advices or survey reports, and a written record summarising the additions/changes (in the form of a letter, memo or the YMAC Heritage Survey Summary Report) must be sent to the Heritage Services Manager by the consultant on completion of the survey.

Reporting and Outcomes

In general, any ground disturbing activities can proceed within the ‘clear’ portions of the work area without affecting any Aboriginal heritage; however, some restrictions may be placed on this should particularly significant or sensitive Aboriginal values or sites be identified within the work area.

Ground disturbing activities cannot proceed within any portion of the work area that is designated as ‘not clear’ without significant risk of damaging, destroying or otherwise affecting Aboriginal heritage values or sites.

Occasionally a preliminary advice will be provided by the consultant, as directed in the survey brief. A report detailing the results will be presented to YMAC for review following the completion of the survey.

Areas deemed ‘not clear’

For areas where Aboriginal heritage values have been identified, on a case-by-case basis the extent of reported ‘not clear’ areas will encompass identified site(s) as well as a buffer area to protect the site(s) integrity and to avoid accidental damage. Consequently, the consultant is required to document how the extent of any site(s) was established in relation to any surrounding areas defined as a ‘not clear’ area.

Cultural information relating to any “not clear” areas in the work area will not be disclosed to the proponent, other than that which is necessary to indicate those portions of the work area which are clear, and those which are not.

The report must include relevant information for the purposes of avoiding any sections of the work area that have been designated as ‘not clear’.
Site Avoidance Surveys

A Site Avoidance Survey is intended to ensure that a precise picture of the cultural landscape is gained to provide for greater certainty for development plans. Typically, proponents use the details provided from the Site Avoidance Survey to inform their engineering and planning decisions about which Aboriginal sites can be avoided and which may need to be disturbed. The on-the-ground methodology for Site Avoidance Surveys varies very little from other survey types, other than a need to inform native title groups of the purpose of the survey and requiring more in-depth recording and reporting. Site avoidance Surveys are therefore typically more labour intensive and take longer to complete.

A Site Avoidance Survey is generally preferable in the more advanced stages of project planning where extensive areas of land are involved, but where ground disturbance is required, a high level of flexibility in final design is still possible. It is expected that these works will be flexible enough for most Aboriginal sites identified to be avoided in the first instance. Some examples of proposed works that require a Site Avoidance Survey include:

- Exploration where the proponent has a small or otherwise restricted area in which to plan drilling
- Areas which are site rich, or which could, based on background research, geological or environmental factors, be site rich.
- Extensive project areas such as mine infrastructure areas such as stock pile locations, borrow pits, processing plants and road and rail alignments, or expansion of existing mine operations.

This type of survey is not recommended for:

- Proposed activities that are likely to result in unavoidable disturbance to Aboriginal sites.
- The purposes of a section 18 application.

Site Avoidance is generally the preferred methodology for archaeological surveys as despite requiring additional time to assess and designate site boundaries, provides a much more useful result for the proponent in terms of the archaeological landscape, and Traditional Owners are typically comfortable for the boundaries of such sites to be recorded and given to the proponent.

Conversely, Site Avoidance surveys are generally not recommended for ethnographic surveys as Traditional Owners sometimes request that the location of highly significant sites is not made public or provided to the proponent. In this case, it may be more effective to simply designate an area ‘not clear’ where both parties agree no work will be carried out in order to avoid a site or area containing heritage values.

The Survey
For an anthropological survey, the consultant and Aboriginal Consultants will typically target vantage points in and around the Work Area in order to identify any ethnographic values and/or sites in the survey area that could potentially face disturbance during the proposed work program.

For an archaeological survey, the survey team will typically conduct a pedestrian survey of the entire survey area to identify the presence or absence of Aboriginal sites, and record those sites in as much detail as necessary to define an accurate boundary, and make recommendations to ensure the sites are not disturbed.
Site Recording

Native title groups may elect to withhold sensitive cultural information other than that which is necessary to facilitate the avoidance of any Aboriginal site identified during the survey (such as location, size and general nature of the site).

Where an Aboriginal site is identified, the boundaries of the site are established but only minimal information is recorded about the site and any material it contains. Aboriginal sites should be recorded in sufficient detail to enable effective management and disturbance mitigation recommendations to be provided to the Proponent.

Site boundaries should be concise and accurate enough to facilitate effective avoidance by the Proponent, taking into account the extent of physical material and values expressed by the Aboriginal Consultants. If these two factors result in varied site boundaries, this should be recorded by the Consultant.

It should be noted that Aboriginal sites recorded to a Site Avoidance Survey standard will not meet the requirements to be assessed by the Aboriginal Cultural Material Committee (ACMC) for the purposes of a section 18 application under the AHA. For this reason, Site Avoidance Surveys are often followed by a targeted Site Identification Survey (see following section) of those Aboriginal sites that the proponent is unable to avoid, after further consultation with the native title group.

The same process applies to surveying areas outside of the original scope of works as for Work Area and Work Program Clearance Surveys (see above).

Reporting and Outcomes

In general, any ground disturbing activities can proceed in the survey area or portions of the survey area where no Aboriginal sites have been identified.

Typically, for this type of survey YMAC heritage agreements require that preliminary advice will be provided by the consultant. The preliminary advice should provide a brief summary of the conduct and results of the survey in order to provide YMAC, the native title group and the proponent with some initial written advice on the outcomes of the survey, and any preliminary management recommendations.

Following the preliminary advice, a draft final report on the survey should be produced by the consultant, which contains full background and methodological information, as well as finalised recommendations.

Site Identification Survey

A Site Identification Survey usually follows a Site Avoidance Survey, where it is not possible for the proponent to alter their proposed works sufficiently to avoid one or more of the Aboriginal sites identified in the work area, and where as a result, the proponent has consulted with the native title group on making an application under section 18 of the AHA to use the land on which those sites are located. During Site Identification Surveys, the recording of Aboriginal sites is undertaken to a sufficient level of detail to allow a Statement of Significance to be provided for each Aboriginal site. The Statement of significance must meet DAA’s requirements for section 18 purposes. It is noted that DAA’s requirements for a statement of significance have changed frequently in recent years and the consultant is expected to have liaised with DAA to ensure expectations are aligned. The purpose of a Site Identification Survey is to provide the proponent with sufficient information on the nature, extent and significance of any identified Aboriginal site to satisfy the requirements of the ACMC when considering an application under section 18 of the AHA.

Similar to Site Avoidance Surveys, the on-the-ground methodology for anthropological Site Identification Surveys varies very little compared with other types of surveys, other than a need to inform the Aboriginal Consultants of the purpose of the survey. For archaeological Site Identification Surveys, the on-ground
methodology must be rigorous enough to ensure that all possible values are recorded, as well as enough information to determine the importance and significance of any sites.

Site Identification Surveys are recommended for:

- The advanced stages of project planning where the disturbance footprint is fixed (for example, the position of mine pits) and where the nature and extent of impacts on the land and associated Aboriginal sites and heritage values are well understood.

The Survey

An anthropological Site Identification Survey should take the same amount of field time to complete as other standard survey types; however more detailed reporting will be required.

An archaeological Site Identification Survey will typically take significantly longer to conduct than any other survey type, due to the level of site recording required.

Site Recording

The survey team will typically concentrate on recording Aboriginal sites in sufficient detail to adequately characterise them and assess their cultural significance. This will involve drawing a plan of the site and recording, as well as researching and interviewing native title groups to develop a detailed cultural context of the site. Anthropological and archaeological surveys may be required to be run concurrently, and consultants may be required to share information.

Native title groups may be required to divulge to the ACMC any or all information about the heritage and cultural values of sites.

Once all forms of significance have been assessed, effective management and disturbance mitigation recommendations for each site can then be provided to the proponent.

Reporting and Outcomes

Sufficient information must be recorded for each Aboriginal site identified to enable the proponent to make an application under section 18 of the AHA. Reporting must take appropriate note of DAA’s Cultural Heritage Due Diligence Guidelines and DAA’s guidelines for preparing Aboriginal heritage survey reports, and guidance on section 5 of the AHA.

Typically, for this type of survey YMAC Heritage Agreements require that preliminary advice will be provided by the consultant. The preliminary advice should provide a brief summary of the conduct and results of the Survey in order to provide YMAC, the native title group and the proponents with some initial written advice on the outcomes of the survey, and any preliminary management recommendations.

Following the preliminary advice, a draft final report on the survey should be produced by the consultant, which contains full background and methodological information, as well as finalised recommendations.

Aboriginal Monitors

The recommendation to engage monitors will typically be made by the heritage consultant in the survey report.

In line with the WA Department of Aboriginal Affairs and Department of the Premier and Cabinet Guidelines for the Engagement of Aboriginal Heritage Monitors, YMAC promotes the use of monitors where;
- A proposed activity is taking place in the vicinity of a particularly significant or culturally-sensitive site or area.
- Where there is reasonable grounds to conclude that Aboriginal heritage could be disturbed or in any way affected by the proposed works (such as excavation works uncovering subsurface material such as burials, in areas known to contain them).

Monitoring should not be viewed as a replacement for a heritage survey. The use of monitors is intended as a means of reducing potential impact to sites or cultural values, where further heritage surveys would not be effective, yet there still remains some risk of impact, or other concern from the Traditional Owners.

Any reports produced by consultants engaged by YMAC are checked through the YMAC proofing process (see below), where such recommendations are considered. The proponent will typically provide comment on these recommendations as well, as most heritage agreements will have more specific provisions relating to monitors.
<table>
<thead>
<tr>
<th>Survey Type</th>
<th>Underground cable and piping</th>
<th>Construction of new tracks, or expansion of existing tracks</th>
<th>Exploration drilling</th>
<th>Exploration drilling with infill drilling planned in future</th>
<th>Small Infrastructure (e.g. sheds and other small buildings)</th>
<th>Large infrastructure (e.g. railway corridors)</th>
<th>Mining pits</th>
<th>Section 18 application</th>
<th>Other major projects</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work Program Clearance</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fast, easy to organise, simple results.</td>
<td>Only clears specific work program – later changes or additions would require further surveys over those areas</td>
</tr>
<tr>
<td>Work Area Clearance</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Greater area than WPC cleared, allows future work in cleared areas without additional surveys, faster than Site Avoidance</td>
<td>May need to declare large areas ‘not clear’ (e.g. site-rich areas, or site complexes) in given timeframe.</td>
</tr>
<tr>
<td>Site Avoidance</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>Very precise areas of sites and values delineated – Proponent can plan around and manage heritage in close proximity to their proposed works.</td>
<td>Takes longer to complete than WAC, potentially time consuming in site-rich areas.</td>
</tr>
<tr>
<td>Site Identification</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>Full recording of any sites/values in an area for submission under section 18 of the AHA.</td>
<td>Longest timeframe, very research and fieldwork intensive</td>
</tr>
<tr>
<td>Monitoring</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>X</td>
<td>X</td>
<td></td>
<td>Recommended as necessary</td>
<td>Recommended as necessary</td>
</tr>
</tbody>
</table>
Section 5: Heritage Survey Processes and Reporting

Below is the generally applicable process from the lodgement of heritage notice or request form, to the completion of a survey.

1. Proponent lodges heritage survey request form and spatial data
2. YMAC Heritage Officer assesses request and carries out background checks (i.e. tenure, site searches etc.)
3. Survey type and method agreed
4. Heritage Officer liaises with proponent regarding survey schedule and logistics
5. Heritage Officer engages consultant(s)
6. Aboriginal consultants organised
7. YMAC Finance sends budget estimate to proponent
8. On acceptance, proponent pays 50% of estimate
9. On receipt, Heritage Officer finalises survey arrangements
10. Survey takes place
11. Preliminary Advice issued
12. Draft report issued and sent to proponent for comment
13. Draft report accepted
14. YMAC Finance invoice for remaining amounts to be billed
Recording and Reporting Requirements

Regardless of the survey type, the consultant is required to document as much information as possible about the place(s) and values to address the requirements of the survey brief. It should be noted that this requirement may differ to how Aboriginal sites are reported in relation to the AHA and, depending on the heritage or agreement in place with a proponent.

Of note also is that the main divergence between archaeological and anthropological surveys is in recording and reporting, as different methodologies pre-suppose differing time periods for research, in the field, and numbers of personnel depending on the size of the site(s) and the area(s) to be surveyed.

All surveys that identify places with heritage values for native title groups must record information about the place and values so that the extent of the location or area and (in the case of Site Identification surveys) the basis for its significance can be explained as fully as possible should the consultant be required to provide detailed evidence in the future. The consultant is informed that, pursuant to the survey brief, all surveys regardless of model (e.g. Work Program Clearance, Work Area Clearance, Site Avoidance and Site Identification) require the same degree of preliminary research (anthropological, archaeological or otherwise) to be applied to determine the existence of Aboriginal values and sites, and the basis for their identification. Different survey types have different reporting requirements, but the degree of research underpinning the expert opinion provided in relation to Aboriginal sites should be approximately similar for all survey types.

At a minimum, all heritage survey reports must include the information contained in the survey brief, as well as any additional information required by a proponent’s brief or as otherwise requested.

Detailed instructions of the format and contents of reports are contained in the survey brief.

Preliminary Advices

The purpose of a preliminary advice (PA) is to provide the proponent with update on survey progression (i.e. for survey programs taking place over multiple swings), or where the current survey program has concluded, to provide a brief summary of survey results, and preliminary recommendations for the management of any sites or heritage values recorded during the Heritage Survey.

A preliminary advice is not simply a summary of full report. Any results presented in a preliminary advice have not necessarily been subject to analysis or contextualisation within the background or other aspects of the survey, and similarly, any recommendations may require further refining after analysis of those results.
These results and recommendations should therefore be reliable and complete to the extent indicated by the consultant in the preliminary advice. Generally speaking, results and recommendations should not vary greatly from preliminary advice to final report, but where the consultant feels that such variation could occur, this should be made clear in the preliminary advice.

**Note on GIS data provided with a PA:** Although typically provided with a PA, this data is also preliminary in nature. It may conform to spatial data standards set by the proponent and/or YMAC and set out in the survey brief, and therefore be to a high and complete standard, but is not intended to be viewed outside of the context of a full, finalised report.

### Reporting Processes and Proofing

YMAC proofs all consultants’ reports and checks them against the requirements of the brief. YMAC has a responsibility to deliver to the standard set by the heritage agreement. This quality assurance is also central to YMAC’s ability to assess and review the performance of its engaged consultants.

Similarly, as part of the process defined by most heritage agreements, the proponent and native title group will be provided opportunity to comment on a draft of the report before it is finalised. YMAC coordinates and tracks this process of report review and finalisation.

Although generally not specified in agreements, the allowance made for this process is a single iteration of the draft, with any updates or amendments before the report is finalised. As per the YMAC Heritage Survey Estimate, any additional time required by the Heritage Officer or other YMAC staff to track multiple versions of reports, or to coordinate meetings relating to the matter will be recovered pro-rata.

In terms of making amendments to reports, YMAC remains firmly of the position that the consultant is engaged as an expert to provide a specialised report. The results, analyses, methods, and recommendations in a survey report are therefore the consultant’s expert findings. While proponents may request that reports or data are presented in certain ways (e.g. for consistency or compatibility with internal systems), no discussion which in any way changes the findings in a report will be entered into.

Where any party finds that they are irreconcilably in disagreement with an aspect of a report or conduct of a survey, most agreements contain a separate dispute resolution process.

### ‘Third-Party’ Heritage Service Providers

In some cases a native title group, although represented by YMAC in native title matters, will elect a private entity to provide heritage services, or may carry out its own heritage service provision through a Prescribed Body Corporate or other organisation.

In this instance, the arrangements between the native title party and the heritage services provider vary, and are out of the control of YMAC. The native title group may endorse the heritage provider
to recover whatever costs they may incur while providing those services through additional administration or other fees.

YMAC can provide contact details for the relevant organisations where it does not provide heritage services to a native title group.

YMAC however cannot provide any heritage services or assist with the coordination of heritage surveys unless specifically instructed by the native title group.

Opportunities for Collecting of Native Title-related Research Material

In the interest of progressing native title claims, and adding to the body of knowledge which may assist native title groups in asserting their native title rights and interests in country, where the opportunity arises on heritage surveys, particularly ethnographic surveys, YMAC also requires that consultant’s inquiries and recording extend to the following;

- References to people
- Associations to country, whether specific to a certain area or in general to a native title claim
- Information relating to life histories
- References to cultural practices
- Genealogical information
- Information relating to boundaries
- Burial and birth places, and additional information on sites that are not appropriate for the level of detail to the methodology the consultant is using for the survey report, but nonetheless could be useful for the claim’s site register.
- Direct quotes relating to all of the above

This information, should it be recorded is likely to not be suitable to form part of the survey report, but should nonetheless be forwarded to YMAC (either as an internal report or other correspondence).
Internal Reports for YMAC and Native Title Groups Only

A separate internal report for YMAC and native title groups may be required where cultural information is recorded, but deemed, either by YMAC, the Aboriginal Consultants, or the consultant to be too sensitive for inclusion in the proponent’s report.

In such cases, the information sent to YMAC as either an internal report, or as a memorandum or other correspondence between the consultant and YMAC (typically the claim anthropologist) should be clearly labelled as confidential. Internal reports should be labelled as such and some indication that they are Not for Public Distribution (or words to that effect) should be made.

Also in this situation, any places or values to which such sensitive information relates will likely still need to be addressed in terms of the proposed works. It is the role of the consultant, in cooperation with YMAC staff where required, to address how these places or values will be recorded and reported in a survey report.

It is not expected that such internal reports or memoranda should require a large amount of additional time by the consultant to produce, as the amount of material produced should be small, and therefore this should not imply that the proponent is liable for considerable fees to produce data or information to which they are not privy. Any such sensitive information would be recorded during the normal course of a survey, and then shall be simply forwarded to YMAC on completion.

YMAC Heritage Survey Summary Report

This form should be used to make a written record of any feedback from the consultant to YMAC, usually for the attention of the YMAC Heritage Services Manager. It can be used as a means of noting changes or additions to the scope of works (see above), problems with the survey, concerns raised by any person present on the survey, OHS issues or incidents, or any other matters raised in relation to YMAC’s native title and Heritage Service Provision, or the native title group. It is a key mechanism YMAC utilises to manage and improve its service to native title groups.
Consultant Field Note Request Form

YMAC may for any reason request copies of field note books, video, film recordings and still photographs produced during the undertaking of the contracted heritage survey or other cultural heritage related consultancy services as per the Cultural Heritage Services Consultancy Agreement.

In this instance, the YMAC Heritage Services Manager, or other YMAC employee (e.g. claim anthropologist) will issue the consultant with a written request for the relevant materials, and will notify the consultant of the preferred format and means of submitting that material (i.e. this may include the use of YMAC’s field note template, or separate templates for restricted material).

Other Heritage Outcomes

The consultant may be required to research and prepare other heritage outcomes, such as a Heritage Management Plan for a mine site or other development, material for a National Heritage Listing, or undertake detailed cultural mapping. YMAC will provide a specialised brief for any work that falls into these categories.

YMAC Aboriginal Heritage Policy

YMAC’s position on Aboriginal Cultural Heritage Management, including the role of bodies providing Heritage Services to native title and other Aboriginal groups in contained in the YMAC Aboriginal Heritage Policy.
YMAC Heritage Contacts:

Brooke St James – Heritage Services Manager
Perth Office – 9268 7000 or 0419 689 392
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Jason Harman – Lead Heritage Officer
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Anys Price – Heritage Officer
Geraldton Office – 9965 6222 or 0419 425 698
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Tim Olliver – Heritage Officer
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