Case Study – Lenthall's Dam CHMP

- Wide Bay Water Corporation project.
- Lenthall's Dam to be raised by two metres by 5 moveable crest gates on existing spillway.
- Increase available yield by approximately 17100ML but inundate 399 ha.
- EIS identified a range of Aboriginal cultural heritage and native title impacts.
- Native title compulsorily acquired.
- Aboriginal cultural heritage dealt with by CHMP under the *Aboriginal Cultural Heritage Act* between June 2004 and November 2004.
Why consider Aboriginal Cultural Heritage?

- All Aboriginal cultural heritage legally protected by the *Aboriginal Cultural Heritage Act, 2004* (offence to cause harm).
- New Aboriginal Cultural Heritage Duty of Care –
  
  "A person who carries out an activity must take all reasonable and practical measures to ensure the activity does not harm Aboriginal cultural heritage."

- New, broader definition of Aboriginal cultural heritage. Can include *objects* and *areas* of cultural or historical significance to Aboriginal people.

- Aboriginal cultural heritage is worthy of protection in its own right.
The consequences of non-compliance

- Offences under the *Aboriginal Cultural Heritage Act* with penalties on conviction.
- Orders to repair damage or meet the costs of repair.
- Ministerial stop orders.
- Injunctions restraining activities proceeding.
- Applications under the *Aboriginal and Torres Strait Islander Heritage Protection Act, 1984* (Cth).
- Delays.
- Costs.
- Political damage.
- Damage to relationships with the Aboriginal party.
What are the options for compliance?

- Complete all measures which *satisfy duty of care*.
- Activity covered by *another provision* in the legislation.
- Activity covered by *approved CHMP*.
- Activity covered by a *native title agreement* or *other agreement* with the Aboriginal party.
- Activity covered by *cultural heritage duty of care guidelines*.
- Activity covered by *native title protection conditions*.
- Activity done by *owner* of cultural heritage or with the *owner's agreement*.
- Activity done because of emergency.
Cultural heritage compliance assessments

- Do it early.
- Many projects will not be affected if the whole site is already disturbed.
- Caution where there are geographic features, site is on database or register or cultural heritage find is made.
- Assess all the options and record outcome including reasons for preferred option.
- Sometimes a CHMP will be the preferred option – a voluntary CHMP.
- Sometimes there is no choice. A CHMP is required by law – a mandatory CHMP.
Mandatory CHMPs

- **Required where:**
  - An EIS is needed for the project under other legislation.
  - An Environmental Authority is needed *and* the project is prescribed by regulation.
  - Chief Executive of DNRM requires a condition in an IPA planning approval for a CHMP.

- **Except where:**
  - The project is already subject to an "existing agreement".
  - The project is already the subject of a registered ILUA.
How to develop a CHMP

Step 1 - Searches to commence CHMP process and written notice.
Step 2 - Public notice (not always required).
Step 3 - Endorsing the Aboriginal party.
Step 4 - Consultations about the CHMP.
Step 5 - Consultation results in agreement (Chief Executive approves).
Step 6 - Consultation does not result in agreement (referred to LRT).
Step 7 - Approval by Minister on recommendation of LRT.
Minimum requirements for CHMP

- Must adequately detail how a project is to be managed:
  - to avoid harm to cultural heritage;
  - if harm cannot reasonably be avoided, to minimise harm.

- Adequate dispute resolution provisions (particularly for mandatory CHMPs).

- Legislation contains other general guidance for content of CHMPs.

- CHMP Guidelines contain guidance on methodology for CHMPs.

- Draft CHMPs can be submitted to Cultural Heritage Coordination Unit for review.
CHMP methodologies for identifying cultural heritage

- CHMP contains holistic procedure for all aspects of identifying and managing cultural heritage.
- Full site survey completed in advance of CHMP with CHMP managing any cultural heritage identified during the survey.
- Informal site visit in advance of CHMP with CHMP containing procedure for full site survey of some parts of project area and managing cultural heritage.
Other points regarding methodology

- Generally, two Aboriginal representatives for site surveys.
- Generally, two Aboriginal representatives for monitoring.
- Other means of protecting cultural heritage.
- Aboriginal human remains.
- Contingency planning – coordinating committee.
- Experts to assist.
- Handling sensitive information.
- Costs of developing and implementing the CHMP.