Report of a Desktop Aboriginal Heritage Assessment
Lot 497 Ocean Drive, Bunbury, Western Australia

DRAFT

Prepared for the City of Bunbury on behalf of TPG

By Bryn Coldrick

April 2015
Disclaimers

The results, conclusions and recommendations contained within this report are based on information available at the time of its preparation. Whilst every effort has been made to ensure that all relevant data has been collated, the author can take no responsibility for omissions and/or inconsistencies that may result from information becoming available subsequent to the report’s completion.

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This report offers independent heritage advice and recommendations to assist the proponent in meeting its obligations under WA’s Aboriginal Heritage Act 1972 (AHA). This advice is based on the authors’ own opinions, interpretations, knowledge and experience. The proponent should seek specialist legal advice, if required, regarding the AHA and the (Cth) Native Title Act 1993.
# Acronyms and Definitions

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tr>
<td>Aboriginal Site</td>
<td>A place to which the <em>Aboriginal Heritage Act (1972)</em> applies by operation of Section 5</td>
</tr>
<tr>
<td>ACMC</td>
<td>Aboriginal Cultural Material Committee</td>
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<tr>
<td>AHA (or “the Act”)</td>
<td><em>Aboriginal Heritage Act (1972)</em> as amended</td>
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<tr>
<td>AHIS</td>
<td>Aboriginal Heritage Inquiry System</td>
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<tr>
<td>AHMP</td>
<td>Aboriginal Heritage Management Plan</td>
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<tr>
<td>AIC</td>
<td>Australian Interaction Consultants</td>
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<tr>
<td>Amergin</td>
<td>Amergin Consulting (Australia) Pty Ltd</td>
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<tr>
<td>DAA</td>
<td>Department of Aboriginal Affairs (formerly Department of Indigenous Affairs)</td>
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<tr>
<td>GKB</td>
<td>Gnaala Karla Booja Native Title Claimants</td>
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<tr>
<td>MHA</td>
<td>McDonald, Hales &amp; Associates</td>
</tr>
<tr>
<td>NRM</td>
<td>Natural Resource Management</td>
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<tr>
<td>S18</td>
<td>Section 18 of the Act which provides the mechanism for a proponent to seek Ministerial consent to use land for a purpose which would otherwise be likely to result in a breach of S17</td>
</tr>
<tr>
<td>Study Area</td>
<td>Lot 497 Ocean Drive, Bunbury as depicted in Figure 2</td>
</tr>
<tr>
<td>SWALSC</td>
<td>South West Aboriginal Land and Sea Council</td>
</tr>
<tr>
<td>TPG</td>
<td>The Planning Group WA Pty Ltd</td>
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</tbody>
</table>
Executive Summary

There are no registered Aboriginal Sites within or immediately adjacent to Lot 497 Ocean Drive, Bunbury. However, the land is largely overlapped by one ‘Other Heritage Place’ as currently mapped on the Department of Aboriginal Affairs’ Aboriginal Heritage Inquiry System: DAA Place ID 21371 ‘Back Beach 03 (BB03))’ which is ‘Lodged’ with the DAA as a mythological place.

DAA Place ID 21371 comprises the sand dune ridge extending along Back Beach from the vicinity of Hayward Street in the south as far north as the basketball courts (Figure 3). In order to seek further clarification on the significance and extent of this heritage place, it is suggested that consultation be carried out with relevant Aboriginal people and that Section 18 approval be obtained if necessary prior to ground disturbance works.

It is also recommended that archaeological monitoring occur during ground disturbance activities where there is a potential for skeletal remains to be revealed, and that an Aboriginal Heritage Management Plan (AHMP) which includes stop-work procedures in the event that such material is encountered be implemented.
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1. INTRODUCTION

1.1 Purpose of the Assessment

The Planning Group WA Pty Ltd (TPG), on behalf of the City of Bunbury, is currently in the process of preparing a detailed Structure Plan for Lot 497 Ocean Drive, Bunbury, Western Australia (Figure 1 & Figure 2). Lot 497 is bounded by Scott Street to the north; Ocean Drive to the west; Lot 1 Upper Esplanade to the south; and Upper Esplanade itself to the east.

As part of its due diligence in respect of known and potential constraints and necessary development approvals, TPG on behalf of the City of Bunbury commissioned Amergin Consulting (Australia) Pty Ltd (Amergin) to carry out a desktop Aboriginal heritage assessment of the property (hereafter referred to as the ‘Study Area’) in order to better understand the known and potential Aboriginal heritage values of the land and resulting Aboriginal heritage requirements. The purpose of the desktop assessment was, in particular, to determine whether development of the lot has the potential to impact on any known or potential Aboriginal Sites as may be defined by Section 5 of the Aboriginal Heritage Act (1972) (AHA) and to provide advice regarding any further investigations or other measures that might be required in order to ensure that the proponent’s obligations under the AHA are met.

A similar desktop assessment of Lots 1 and 2 Upper Esplanade to the south (which comprised the Welcome Inn Motel site) and Lot 76 to north of Scott Street was carried out by Amergin in 2013 (Coldrick 2013), and the Welcome Inn Motel site was also the subject of desktop research carried out by Ethnosciences in 2006 (McDonald 2006). The Study Area was also included in ethnographic and archaeological investigations undertaken by Australian Interaction Consultants (AIC) in relation to the Back Beach Redevelopment Project for the City of Bunbury in 2004 (AIC 2004).
Figure 1: Study Area location

Subject Site
Development Concept 02 - Residential Focus
Lot 497 Bunbury Back Beach

Figure 2: Draft Development Concept (Source: TPG)
1.2 Legislative Context

The Aboriginal Heritage Act 1972 (AHA) is the primary piece of State legislation relating to Aboriginal heritage and defines and protects Aboriginal Sites and objects. Aboriginal Sites are places to which the Act applies by operation of Section 5 (outlined below) and are currently protected whether they are known to the Department of Aboriginal Affairs (DAA) or not.

Section 5 of the AHA defines an Aboriginal Site as follows:

a. any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of Aboriginal people, past or present;

b. any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;

c. any place which, in the opinion of the Committee, is or was associated with Aboriginal people and which is of historical, anthropological, archaeological or ethnographic interest and should be preserved because of its importance and significance to the cultural heritage of the State;

d. any place where objects to which the Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

Under Section 39(3), the AHA gives primacy to “associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained” in the Aboriginal Cultural Material Committee’s (ACMC’s) evaluation of the importance of places and objects.

The State Government is currently proposing to amend the AHA and introduced the Aboriginal Heritage Amendment Bill 2014 into the Legislative Assembly on 27 November 2014. Although many important sections of the Act (including Sections 5 and 17, outlined below) will remain essentially unchanged, the application of Section 5 is being increasingly restricted by the DAA through their administration and interpretation of the Act. The Department recently introduced a set of ‘threshold criteria’ to assist in the interpretation of Section 5 and, in effect, to limit the application of the AHA. However, aspects of these criteria were recently

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1 This section provides an overview of the main sections of the AHA and its current administration. We note, however, that we are not lawyers. The proponent should seek independent legal advice on any matters of concern in relation to the AHA and its operation.

2 The Aboriginal Cultural Material Committee (ACMC) whose role it is, among other functions, to evaluate on behalf of the community the importance of places and objects and to advise the Minister. The Aboriginal Heritage Amendment Bill 2014 is seeking to transfer the assessment function of the ACMC to the Chief Executive Officer (CEO) of the DAA.
found by the Supreme Court to be inconsistent with the proper construction of Section 5 (Robinson v Fielding 2015) and they are now being revised.

Unauthorised disturbance of an Aboriginal Site is an offence under Section 17 which states that:

17. A person who -

excavates, destroys, damages, conceals or in any way alters any Aboriginal site; or,

in any way alters, damages, removes, destroys, conceals, or who deals with in a manner not sanctioned by relevant custom, or assumes the possession, custody or control of, any object on or under an Aboriginal site,

commits an offence unless he is acting with the authorisation of the Registrar under section 16 or the consent of the Minister under section 18.

Based on our interpretation of this section of the Act, we generally advise our clients that where a place is a registered Aboriginal Site, or might reasonably be expected to constitute an Aboriginal Site, that they should not undertake any of the activities outlined above that might result in a breach of Section 17, and that they should apply for Ministerial consent under Section 18 to limit their potential liability under the Act. In cases where a place is “Lodged” with the DAA, we also recommend that clients take a precautionary approach and seek Section 18 consent in order to clarify the status of the place under Section 5.

Section 18 provides a mechanism for landowners and proponents to seek consent to use land that might contain an Aboriginal Site(s) (i.e., a place to which the Act applies), and in effect to disturb those sites, from the Minister of Aboriginal Affairs and thereby protect themselves from potential prosecution under Section 17. After considering the recommendations of the ACMC and having regard to the “general interest of the community”, the Minister may either consent to the use of the land for the purpose sought or refuse consent. Current advice from the DAA on the need or otherwise for Section 18 consent routinely makes reference to likely impacts on “heritage values” (which are not referred to in the Act). They also routinely advise proponents to apply the Aboriginal Heritage Due Diligence Guidelines (DIA 2013) so that they can determine whether their proposed activities have the potential to breach Section 17, and to seek advice from the Department where there is doubt.

Other State legislation, such as the Environmental Protection Act 1986 (EP Act), can in some instances complement the AHA (for example, in cases where physical protection of the natural environment is required to protect sites of heritage
Aboriginal heritage can also be afforded protection by Commonwealth legislation, in particular the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Aboriginal people who believe that a significant place or object is under threat and that State Government protection is inadequate can apply to the Federal Environment Minister to protect the place or object.

### 1.3 Defining an ‘Aboriginal Site’

In this report, we use the term ‘Aboriginal Site’ to refer to a place that the ACMC has determined to be an ‘Aboriginal Site’ within the meaning of Section 5 of the AHA and is therefore ‘registered’. While other places and objects may be listed on the AHIS and in other sources, this does not necessarily mean they are registered Aboriginal Sites. Indeed, many places and objects listed on the AHIS are in fact not Aboriginal Sites for the purposes of the AHA.³

For example, there are places and objects within the system that are referred to as ‘Other Heritage Places’.⁴ Such places and objects may either be ‘Lodged’ on the system which generally occurs following initial reporting of the place or object to the DAA and prior to assessment by the ACMC, or where it has been determined that there is insufficient information available to allow the ACMC to determine whether or not they are Aboriginal Sites. However, as there is a potential that such places might be found to be Aboriginal Sites in the future if further information becomes available, it is prudent to treat ‘Lodged’ places as if they are Aboriginal Sites until a determination has been made by the ACMC and the legal status of the place has been established.

Another category of listing covered by the term ‘Other Heritage Places’ and which frequently is the source of confusion is that relating to places and objects archived in ‘Stored Data’ (also referred to as ‘Archived Data’). Typically, these are places and objects for which a determination has been made by the ACMC and it has been concluded that they do not satisfy the criteria set out in Section 5 of the AHA and are therefore not ‘Aboriginal Sites’ for the purposes of the Act. Such places are therefore not subject to the Act’s provisions. However, these places and objects are not deleted from the system (AHIS), but rather are maintained as ‘Stored’ or ‘Archived’ data in order to account for the possibility that new

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³ Decisions by the ACMC and the DAA, of course, may be overturned by the courts and indeed may be revisited by the ACMC itself.

⁴ ‘Other Heritage Places’ were previously listed either on the ‘Interim Register’ or in ‘Stored Data’.
information may be presented in the future that might warrant a reassessment by the ACMC, and so that the DAA is aware if the same place is reported again.

It is also important to be cognisant of the possibility that places that do not have the legal protection of State or Commonwealth heritage legislation may still have significance for Aboriginal people and could therefore have implications for the community, and indeed for proposed developments, should they potentially be impacted.

2. DESKTOP ASSESSMENT METHODOLOGY

The desktop research involved in the first instance an examination of the Register of Aboriginal Sites using the DAA’s online Aboriginal Heritage Inquiry System (AHIS) and downloaded spatial data. Relevant site files, made available electronically by the DAA, were then reviewed along with a selection of available heritage survey reports relevant to the area. Other pertinent background reports and research material held in Amergin’s corporate archives were also reviewed.
3. DESKTOP ASSESSMENT RESULTS

3.1 Registered Aboriginal Sites

The search of the Register of Aboriginal Sites using the online AHIS found that there are no registered Aboriginal Sites within or immediately adjacent to the Study Area. As far as can be ascertained, the nearest registered site is DAA Place ID 20123 ‘Princep Street Skeletal Material – Bunbury’ which lies approximately 600m to the northeast of the Study Area (see Table 1).

DAA Place ID 20123 ‘Princep Street’ relates to the find spot of a human skull on the construction site of the Centrelink call centre between Pinceps Street and William Street in May 2003, though it was concluded that the remains had been disturbed previously. Further skeletal material was located during subsequent monitoring (Corsini 2003). Although this site will not be impacted by development within the current Study Area, it serves to highlight the potential for skeletal material to be encountered during ground disturbance activities in the coastal dunes area. Another reputed burial site lies to the north of the Study Area (DAA Place ID 1068 ‘Back Beach Burials’).

Burials are regularly uncovered throughout the coastal dunes as a result of erosion and development (including the coastal strip between Bunbury and Busselton), a number of which are listed on the AHIS. The risk of further burials being impacted is regularly identified as a concern of the local Aboriginal community and requests have been made previously for monitoring to take place whenever ground disturbance works are occurring within the dunes, including in the Back Beach area specifically (see, for example, Goode 2002:19; AIC 2004:5).

3.2 Other Heritage Places

The Study Area is largely overlapped by one ‘Other Heritage Place’ as shown on the AHIS, namely DAA Place ID 21371 ‘Back Beach 03 (BB03)’. DAA Place ID 21371 is ‘Lodged’ with the DAA as a mythological place comprising “the whole sand dune ridge” extending from the vicinity of Hayward Street in the south as far north as far as the basketball courts. The area is approximately 1.6km in length (Figure 3).

The sand dune ridge, along with other natural features in the Back Beach area including basalt and limestone outcrops (DAA Place IDs 21372 & 21373), was
reported by Australian Interaction Consultants (AIC) as having mythological significance following an ethnographic survey carried out with representatives of the Gnaala Karla Boodja (GKB) Native Title Claimants in advance of the City of Bunbury's Back Beach Redevelopment Project in 2004 (AIC 2004:25).

In their report, AIC describe the sand dune ridge as being a "site of significance" associated with "an episode of the Nyiiting, or "Dreaming" era” featuring the Wargyl [Waugal] in its journey from the Blackwood River (AIC 2004:22), and they conclude that the dune constitutes a “major Wargyl site”, though only the section of the dunes along Back Beach was mapped and reported (AIC 2004:29). AIC recommended that the ACMC assess the features with respect to the AHA and that Section 18 approval be sought for the project (AIC 2004:26). However, the ACMC subsequently concluded in August 2004 that there was “insufficient information” to determine whether these features met the criteria of Section 5.

Although the Waugal or Rainbow Serpent is more commonly associated with waterscapes (for example, most of the major rivers which drain the Darling Range and a great many smaller creeks, springs, pools, swamps and lakes on the Swan Coastal Plain and throughout the South West more broadly are associated with Waugal beliefs), this Dreamtime ancestor is also associated with other topographical features such as hills, rocks, trees, caves, sand dunes, limestone ridges, etc. where it "left traces of its journeys" (Bates 1985:221; see also McDonald, Coldrick & Villiers 2005:29; O’Connor, Quartermaine & Bodney 1989; and Coldrick & McDonald 2009). For instance, resting-places on the Waugal’s journey were marked by limestone which was its excreta and certain large stones are believed to be Waugal eggs (McQuade 1999 cited in McDonald, Coldrick & Villiers 2005:28). However, features similar to those reported along Back Beach have also been reported by AIC as being of mythological significance in the Alkimos/Eglinton coastal region to the north of Perth (see, for example, Parker, Parker & Lantzke 2003) but were subsequently determined by the ACMC not to be Aboriginal Sites under the AHA (e.g., DAA Place IDs 20765–20771). It has even been suggested that the entire coastal dunes system "from Two Rocks to Augusta is spiritually significant … as it represents the dreaming track of the Waugal (Wagyl, Wagyle)” and should be considered a site (AIC 2006; see also Macintyre Dobson & Associates 2005).

Also located at Back Beach, approximately 700m south-southwest of the Study Area, is an archaeological site reported by Joe Northover (a senior member of the GKB claimant group and former DIA officer). The site, known as DAA Place ID
24585 ‘Slavko's Site’, consists of a midden reportedly uncovered during works on the Back Beach on the western side of Ocean Drive opposite William Street. Further inspection of the site reportedly identified shellfish and a number of artefacts. The site was subsequently covered over (Source: DAA Place ID 24585 site file).

<table>
<thead>
<tr>
<th>DAA Place ID</th>
<th>Site Name</th>
<th>Site Type</th>
<th>Register Status</th>
<th>Approx. Distance/Direction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1068</td>
<td>Back Beach Burials</td>
<td>Skeletal material/Burial</td>
<td>Lodged</td>
<td>580m N</td>
</tr>
<tr>
<td>20123</td>
<td>Princep Street Skeletal Material - Bunbury</td>
<td>Skeletal material/Burial</td>
<td>Registered Site</td>
<td>600m NE</td>
</tr>
<tr>
<td>21371</td>
<td>Back Beach 03 (BB03)</td>
<td>Mythological</td>
<td>Lodged</td>
<td>0m (overlaps Study Area)</td>
</tr>
<tr>
<td>21372</td>
<td>Back Beach 02 (BB02)</td>
<td>Mythological</td>
<td>Lodged</td>
<td>500m SSW</td>
</tr>
<tr>
<td>21373</td>
<td>Back Beach 01 (BB01)</td>
<td>Mythological</td>
<td>Lodged</td>
<td>700m N</td>
</tr>
<tr>
<td>24585</td>
<td>Slavko's Site</td>
<td>Midden/Scatter</td>
<td>Lodged</td>
<td>700m SSW</td>
</tr>
</tbody>
</table>

Table 1: Registered Aboriginal Sites and ‘Other Heritage Places’ within approximately 2km of the study area (Source: AHIS)
Figure 3: AHIS screenshot showing the Study Area overlapped by DAA Place ID 21371 'Back Beach 03' (Source: AHIS)
3.3 Previous Aboriginal Heritage Surveys

The AHIS identifies two previous Aboriginal heritage surveys incorporating the current Study Area: the archaeological and ethnographic survey carried out by AIC in relation to the Back Beach redevelopment project (AIC 2004), and the Bunbury-Wellington Regional Planning Study by McDonald, Hales & Associates (1990). Although not identified on the AHIS, the Study Area was also included in an Indigenous Natural Resources Management (NRM) assessment of the Greater Bunbury Area carried out by Amergin Consulting for the DIA [DAA] and the City of Bunbury in 2009 (Coldrick & McDonald 2009). These and other relevant studies are summarised briefly below.

3.3.1 Back Beach Redevelopment Project (AIC 2004)

AIC’s Back Beach survey was undertaken prior to a public works program by the City of Bunbury and the South West Development Commission (SWDC) designed to enhance a 2km section of coastal strip along Back Beach. The research comprised a desktop review, ethnographic consultations with representatives of the Gnaala Karla Booja Native Title Claimants and an “archaeological inspection”.

AIC reported that the Back Beach project area “has substantial heritage significance to Aboriginal people” (AIC 2004:16). This statement was based on previous reports of burials in the area (i.e., the reputed ‘Back Beach Burials’ (DAA Place ID 1068) to the north of the current Study Area and DAA Place ID 20123 ‘Princep Street’ referred to above), and on reports of camping in the Maidens Reserve area further south, as well as movement and exploitation of natural resources. As indicated above, a number of natural features along Back Beach, including the sand dune ridge, were reported to have mythological (Waugal) associations as a result of AIC’s ethnographic survey (AIC 2004:4–5, 22) and are now listed on the AHIS. It would appear that the key informant for this information was Mr Joe Northover, a prominent GKB representative.

Although AIC reported that the Elders were “concerned about the culturally sensitive dune ridge” (DAA Place ID 21371), they stated that the Elders’ “main concern” was the risk of disturbing burials and therefore requested that monitors be present during earthmoving works due to the potential for subsurface archaeological material, including skeletal remains, to be exposed. Otherwise, the
Elders apparently had no objections to the proposed enhancement works along Back Beach (AIC 2004:5, 20, 23, 25).

No archaeological sites were identified during the “archaeological inspection” (AIC 2004:4).

### 3.3.2 Bunbury-Wellington Regional Planning Study (MHA 1990)

In 1990, McDonald, Hales & Associates (MHA) carried out an Aboriginal heritage and planning survey of the Bunbury-Wellington area as part of the Bunbury-Wellington regional planning study for the Department of Planning and Urban Development.

The study, which included the coastal strip between Minninup and Australind and involved consultation with a range of Aboriginal groups and individuals, highlighted the significance of “discovered and hypothesised burial sites and campsites” and the potential for further burials to be encountered along the coast as development continues. However, neither the Back Beach nor the wider coastal dune system was identified as a mythological site during this research (MHA 1990; McDonald pers. comm., May 2013).

### 3.3.3 Back Beach Enhancement Project (O’Connor 1996)

In 1996, Rory O’Connor carried out an ethnographic study of the proposed Back Beach and South Bunbury Beach enhancement project. Submissions received from the local Nyungar community pointed out the significance of the Maidens’ Reserve (“Mimi Hills”) and surrounding dunes which were reportedly used as an occasional camping area in the 1920s and 1930s, and the [reputed] ‘Back Beach Burials Site’ at Lot 431 to the north of the current study area (DAA Place ID 1068). O’Connor recommended that consultations take place to discuss the development of an Aboriginal memorial park at this location (O’Connor 1996:12). Following extensive consultations (Coldrick & McDonald 2009), the Wardandi Memorial Park at Back Beach was officially opened in April 2013.

### 3.3.4 Greater Bunbury Area NRM Assessment (Amergin 2009)

The 2009 NRM assessment of the Greater Bunbury Area carried out by Amergin for the City of Bunbury and DIA, which also included the Study Area, was based on desktop research and preliminary consultations with members of the local Nyungar community. The study aimed to identify key priorities for natural
resource and cultural heritage management with a particular focus on the reputed Aboriginal burial ground to the north of the Study Area (DAA Place ID 1068) and its redevelopment as a Nyungar memorial park.

Although the research was not intended to be a comprehensive heritage survey, the coastal dunes were reported by the community to be of cultural significance for a number of reasons including their use as movement runs and lookouts and, most particularly, due to their demonstrated potential to contain traditional Aboriginal burials. Particular places within the local dune system, including the Maidens Reserve and Boulters Heights, were identified as specific places of interest due to their reported use as lookouts and sources of bush medicine. However, as with the Bunbury-Wellington study before it, the Back Beach was not identified as a mythological site requiring management during these consultations (Coldrick & McDonald 2009).

3.3.5 Welcome Inn Motel Site (Ethnosciences 2006)

In 2006, Ethnosciences was engaged to provide anthropological advice on the potential Aboriginal heritage values of the Welcome Inn Motel site. The advice was based on a preliminary examination of available archival material including the Register of Aboriginal Sites.

The report identifies the listings in the vicinity of the Welcome Inn site including DAA Place IDs 21371–21373. With respect to the sand dune ridge (DAA Place ID 21371), it was suggested, apparently based on advice received from Mr Northover, that the site may not actually impinge on the Welcome Inn property (McDonald 2006:2). However, the purported significance of the sand dune ridge is not discussed in detail. The report does comment, however, on the potential for skeletal material to be present in the coastal dune system including the Welcome Inn site (McDonald 2006:2).

McDonald concluded that neither the current listings on the AHIS nor the potential for as-yet unrecorded Aboriginal heritage values to be present represented a “fatal flaw” to the development of the property as long as Section 18 consent was obtained with respect to DAA Place ID 21371. However, it was advised that a more detailed investigation should be undertaken, including consultation with the Gnaala Karla Booja Native Title Claimants, and that other steps (e.g., preparation of an Aboriginal Heritage Management Plan and monitoring by a qualified archaeologist with community involvement) be undertaken as required (McDonald 2006:4). A similar desktop assessment of Lots 1, 2 and 76 Upper Esplanade was
subsequently carried out by Amergin with the assistance of McDonald and resulted in similar conclusions and recommendations (Coldrick 2013).

3.4 Aboriginal Heritage Due Diligence Guidelines

The DAA recommends that prior to any development occurring, proponents refer to the State’s Aboriginal Heritage Due Diligence Guidelines (DIA 2013) in order to inform themselves of the potential risk of a proposed development impacting on Aboriginal heritage.5

The Guidelines remind proponents that under Section 17 of the AHA, a person who excavates, destroys, damages, conceals or in any way alters any Aboriginal site commits an offence, unless he or she acts with the authorisation of the Registrar of Aboriginal Sites under Section 16 or the consent of the Minister of Aboriginal Affairs under Section 18. All land users who wish to use land for a purpose which might contravene Section 17 of the AHA must exercise due diligence in trying to establish whether or not their proposed activity on a specified area may damage or destroy an Aboriginal site (DIA 2013:4). This is done through a number of due diligence exercises including consideration of the existing land form and the nature of the proposed works, searching the Register of Aboriginal Sites, undertaking consultation with relevant Aboriginal people, undertaking a heritage survey if required, and contacting the DAA for advice.

The Guidelines include a risk assessment matrix to assist in assessing the risk of impacting Aboriginal heritage (DIA 2013:15). Under this matrix, the proposed development of the Study Area would require “Major Disturbance” in a “Moderately Altered Environment”. The DAA would therefore be likely to consider there to be a “High” risk of impacting Aboriginal heritage in this case. However, this is offset to some extent by the research undertaken previously (e.g., MHA 1990, AIC 2004, Coldrick & McDonald 2009) and the due diligence now being applied by TPG and the City of Bunbury in commissioning this desktop assessment. The guidelines advise in such cases that proponents:

- Refer to the AHIS;
- Consult with the DAA and the relevant Aboriginal people;
- Potentially undertake an Aboriginal heritage survey;

5 The guidelines, which were developed by the DIA and the Department of the Premier and Cabinet, are accessible at:
• Modify the proposed activity and/or employ other heritage management strategies to avoid or minimise impact to sites; and/or
• Apply for approval or consent to undertake the activity.

3.5 Relevant Aboriginal People

The *Due Diligence Guidelines* advise that information about the Aboriginal heritage of a particular area is best obtained through consultation with “the relevant Aboriginal people” (DIA 2013:9). The guidelines identify four categories of ‘relevant Aboriginal people’ who “at least” should be consulted where there is a possibility that an Aboriginal Site will be affected (DIA 2013:9). They are:

1. Determined Native Title Holders;
2. Registered Native Title Claimants;
3. Persons named as informants on Aboriginal site recording forms held in the Register at DIA [DAA]; and
4. Any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area (DIA 2013:9–10).

There are currently no determined Native Title Holders in the South West. However, the Study Area is overlapped by a registered Native Title Claim, namely the Gnaala Karla Booja Native Title Claim (WC98/58) which is represented by the South West Aboriginal Land and Sea Council (SWALSC).

The Gnaala Karla Booja Native Title Claimants are also the listed informants for DAA Place ID 21371, with Mr Joe Northover identified as the key contact. Mr Northover, a former DAA officer, is widely regarded as a knowledgeable spokesman and has been actively involved for many years in identifying, recording and managing Aboriginal sites in the greater Bunbury area including those associated with the *Ngarngungudditj Walgu*.6

The final category specified under the DAA’s Due Diligence Guidelines (“any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area”) is more problematic to quantify. However, we suggest that consultation, where undertaken, should aim to facilitate maximum feasible participation within the parameters of reasonable budgetary and other practical constraints.

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6 The *Ngarngungudditj Walgu* (“Hairy Faced Serpent”) Dreaming story is a local variant of the widespread rainbow serpent myth generally known in the South West as the Waugal (McDonald & Coldrick 2007:19).
4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

The desktop assessment has found that there are no registered Aboriginal Sites within or immediately adjacent to the Study Area, but that the Study Area is largely overlapped by one ‘Other Heritage Place’ as shown on the AHIS (DAA Place ID 21371 ‘Back Beach 03 (BB03)’).

DAA Place ID 21371 comprises a sand dune ridge of reported mythological significance extending from the vicinity of Hayward Street in the south as far north as far as the basketball courts and incorporates the majority of the Study Area (Figure 3). The feature was reported as being of mythological significance during a survey of Back Beach in 2004 due to its association with a Dreamtime story featuring the “Wargyl” [Waugal] (AIC 2004:22). The ACMC subsequently concluded that there was ‘Insufficient Information’ to determine whether it constitutes an Aboriginal Site under Section 5 of the AHA and it remains ‘Lodged’ with the DAA. Given the existence of this listing, however, it may be necessary to seek Section 18 approval prior to carrying out ground disturbance works within its boundary. Current advice from the DAA indicates that for a place to be assessed (or in this case reassessed) by the ACMC, a Section 18 Notice must be submitted.

Section 18 consent would provide the landowner with indemnity against prosecution under Section 17 to use the land and may clarify the legal status of DAA Place ID 21371. In order for DAA Place ID 21371 to be regarded as an Aboriginal Site under Section 5(b) of the AHA, it would need to be established that it is a “sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent”. If sufficient evidentiary information is not forthcoming, the ACMC may conclude that it is not an Aboriginal Site under the AHA and should therefore be archived in ‘Stored Data’ or may resolve to leave the place as ‘Lodged’.

We have argued elsewhere (see, for example, Coldrick & McDonald 2007, 2008, 2012) that a distinction can be made between specific places reported in the context of more detailed Dreaming narratives and those identified through expressions of generalised significance in which, for example, all visible limestone features and even entire dune systems have been reported to be “significant”, “sacred”, “sites”, part of a “Waugal Dreaming Track” and so on. We have concluded, for example, based on what has been reported over the past two decades, that a reported Waugal “site” involving the entire coastal dune system
from Two Rocks to Fremantle/Augusta or Jurien Bay to Augusta could not reasonably be found to constitute a site within the meaning of Section 5 of the *Aboriginal Heritage Act 1972*. McDonald in particular has argued that the nature of the reporting of the dunes demonstrates a marked discontinuity with ‘traditional’ practices of Aboriginal site identification, involving instead what can be referred to as generalised statements about mythological significance and the attribution of significance to everyplace. As outlined above, similar topographical features to those reported at Back Beach in the Alkimos/Eglinton area north of Perth, described in similarly generalised terms, have been determined not to be Aboriginal Sites (e.g., DAA Place IDs 20765–20771).

Prior to the lodgement of a Section 18 Notice, the proponent should undertake further consultation with ‘relevant Aboriginal people’ as recommended under the DAA’s due diligence guidelines. The consultations should seek to determine whether the sand dune ridge has specific mythological associations connected, for example, with the *Ngarnungudditj Walgu* or some other specific cultural narrative, or whether it is a place of generalised significance, and to seek the views of the Aboriginal community on whether proposed development within the Study Area would adversely impact the reported mythological values of the place. Consultation would also be beneficial in keeping the Aboriginal community abreast of developments so that any other concerns can be identified and addressed.

The desktop assessment has highlighted, for example, the potential for skeletal remains to be revealed during ground disturbance works within the coastal dune system generally, including the Study Area, and the Aboriginal community’s concern that this potential be properly managed (MHA 1990; AIC 2004; Coldrick & McDonald 2009). It is suggested that this could occur through archaeological monitoring of ground disturbance activities by a qualified archaeologist and appropriate Aboriginal representatives, and the implementation of an Aboriginal Heritage Management Plan (AHMP) that includes stop-work procedures in the event that such material is encountered.

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7 For further analysis and discussion of these issues, see McDonald, Coldrick & Christensen 2008; for more on ‘traditional’ forms of place-making, see Merlan 1998, Myers 2000 and Sansom 1983.
4.2 Recommendations

1. It is recommended that consultation with relevant Aboriginal people take place in order to gain a better understanding of the significance of DAA Place ID 21371 and its implications for development of the Study Area;

2. It is recommended that the proponent obtain Ministerial consent under Section 18 of the AHA to use the land if it is established that an Aboriginal Site is likely to be impacted;

3. It is recommended that archaeological monitoring be carried out during ground disturbance activity within the Study Area, particularly if ground is being disturbed for the first time or what appears to be the first time; and

4. It is recommended that an Aboriginal Heritage Management Plan (AHMP) be developed and implemented that includes stop-work procedures to be put into effect in the event that any previously unidentified Aboriginal sites or objects, including skeletal material, are encountered during earthworks associated with the development of the lot.
5. REFERENCES


Coldrick, B. (2013) Report of a Desktop Aboriginal Heritage Assessment of Lots 1, 2 and 76 Ocean Drive, Bunbury, Western Australia. Unpublished report prepared by Amergin Consulting (Australia) Pty Ltd for AET Limited on behalf of TPG.


Macintyre Dobson & Associates (2005) Report on an Ethnographic Survey Capricorn Village Joint Venture Southern Landholding at Yanchep, City of


APPENDIX 1: AHIS SEARCH RESULTS — REGISTERED ABORIGINAL SITES
APPENDIX 2: AHIS SEARCH RESULTS — OTHER HERITAGE PLACES
Search Criteria
0 Registered Aboriginal Sites in Coordinates search area; 372476.00mE, 6311417.00mN z50 (MGA94) : 372466.00mE, 6311386.00mN z50 (MGA94) : 372470.00mE, 6311378.00mN z50 (MGA94) : 372521.00mE, 6311362.00mN z50 (MGA94) : 372547.00mE, 6311375.00mN z50 (MGA94) : 372552.00mE, 6311392.00mN z50 (MGA94)

Disclaimer
The Aboriginal Heritage Act 1972 preserves all Aboriginal sites in Western Australia whether or not they are registered. Aboriginal sites exist that are not recorded on the Register of Aboriginal Sites, and some registered sites may no longer exist.

The information provided is made available in good faith and is predominately based on the information provided to the Department of Aboriginal Affairs by third parties. The information is provided solely on the basis that readers will be responsible for making their own assessment as to the accuracy of the information. If you find any errors or omissions in our records, including our maps, it would be appreciated if you email the details to the Department at HeritageEnquiries@daa.wa.gov.au and we will make every effort to rectify it as soon as possible.

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Coordinate Accuracy
Accuracy is shown as a code in brackets following the coordinates. Map coordinates (Latitude/Longitude and Easting/Northing) are based on the GDA 94 Datum. The Easting/Northing map grid can be across one or more zones. The zone is indicated for each Easting on the map, i.e. ‘500000mE:Z50’ means Easting=500000, Zone=50.
Terminology (NB that some terminology has varied over the life of the legislation)

Place ID/Site ID: This a unique ID assigned by the Department of Aboriginal Affairs to the place

Status:
- **Registered Site:** The place has been assessed as meeting Section 5 of the *Aboriginal Heritage Act 1972*
- **Other Heritage Place which includes:**
  - **Stored Data / Not a Site:** The place has been assessed as not meeting Section 5 of the *Aboriginal Heritage Act 1972*
  - **Lodged:** Information has been received in relation to the place, but an assessment has not been completed at this stage to determine if it meets Section 5 of the *Aboriginal Heritage Act 1972*

Access and Restrictions:
- **File Restricted = No:** Availability of information (other than boundary) that the Department of Aboriginal Affairs holds in relation to the place is not restricted in any way.
- **File Restricted = Yes:** Some of the information that the Department of Aboriginal Affairs holds in relation to the place is restricted if it is considered culturally sensitive. This information will only be made available if the Department of Aboriginal Affairs receives written approval from the informants who provided the information. Download the [Request to Access Restricted Information](#) letter and form.
- **Boundary Restricted = No:** Place location is shown as accurately as the information lodged with the Registrar allows.
- **Boundary Restricted = Yes:** To preserve confidentiality the exact location and extent of the place is not displayed on the map. However, the shaded region (generally with an area of at least 4km²) provides a general indication of where the place is located. If you are a landowner and wish to find out more about the exact location of the place, please contact DAA.

- **Restrictions:**
  - **No Restrictions:** Anyone can view the information.
  - **Male Access Only:** Only males can view restricted information.
  - **Female Access Only:** Only females can view restricted information

Legacy ID: This is the former unique number that the former Department of Aboriginal Sites assigned to the place. This has been replaced by the Place ID / Site ID.
List of Registered Aboriginal Sites with Map

No Results
Search Criteria
1 Other Heritage Places in Coordinates search area (2); 372476.00mE, 6311417.00mN z50 (MGA94) : 372466.00mE, 6311386.00mN z50 (MGA94) : 372470.00mE, 6311378.00mN z50 (MGA94) : 372521.00mE, 6311362.00mN z50 (MGA94) : 372547.00mE, 6311375.00mN z50 (MGA94) : 372552.00mE, 6311392.00mN z50 (MGA94)

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- Restrictions:
  - No Restrictions: Anyone can view the information.
  - Male Access Only: Only males can view restricted information.
  - Female Access Only: Only females can view restricted information

Legacy ID: This is the former unique number that the former Department of Aboriginal Sites assigned to the place. This has been replaced by the Place ID / Site ID.
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