



**DUE DILIGENCE ABORIGINAL HERITAGE  
ADVICE FOR LOTS 253 AND 254 HELENA  
VALLEY ROAD IN THE SHIRE OF  
MUNDARING, WESTERN AUSTRALIA**

*A report prepared for TBB Planning on behalf of Ingwe  
Helena Valley Pty Ltd*

**By Ms Louise Huxtable  
Senior Anthropologist  
Brad Goode & Associates Pty Ltd  
79 Naturaliste Terrace  
DUNSBOROUGH WA 6281  
[louise@bradgoode.com.au](mailto:louise@bradgoode.com.au)**

Report submitted December 2025 to:

Mr Luka Martin  
Senior Consultant  
TBB Planning  
Level 7 / 160 St Georges Terrace  
PERTH WA 6000  
[luka@tbbplanning.com.au](mailto:luka@tbbplanning.com.au)



79 Naturaliste Terrace  
Dunsborough WA 6281  
Website: [www.bradgoode.com.au](http://www.bradgoode.com.au)  
Email: [brad@bradgoode.com.au](mailto:brad@bradgoode.com.au)  
Phone: 0432 267 443

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- Mr Paul Reed – Department of Planning, Lands and Heritage (Assistant Manager, Aboriginal Heritage Conservation – Heritage and Property Services)
- Mr Brad Goode – Brad Goode & Associates Pty Ltd (Managing Director/Anthropologist)
- Ms Leah Mackie – Brad Goode & Associates Pty Ltd (Research & GIS Mapping)

## DISCLAIMER

All the information contained in this report is believed to be correct and accurate at the time it was recorded. The author does not take responsibility or accept any liability for errors or omissions contained in the report based upon information supplied by others.

**Note:** this advice is a general guide to the cultural heritage issues on the subject land and is given to assist the proponent with planning and compliance with the Western Australian *Aboriginal Heritage Act 1972* as amended 2023 (AHA).

All the information contained in this report was sourced from data from published literature and from the records held at the Department of Planning, Lands and Heritage (DPLH). In relation to the AHA risk assessment advice is provided under the framework for Aboriginal Heritage Due Diligence Assessment (2013, 2023) criteria.

**Note:** the proponent needs to be aware that this document does not constitute legal advice and therefore the risk in complying with the relevant legislation is their responsibility. As such if the proponent is unsure of any regulatory matters outlined in this report, then they should seek independent legal advice in relation to all requirements under the relevant legislation mentioned in this document.

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## MAPPING

Datum Used: GDA 1994 MGA Zone 50.

## GLOSSARY OF TERMS

ACH – Aboriginal Cultural Heritage

ACHC – Aboriginal Cultural Heritage Committee

ACHIS – Aboriginal Cultural Heritage Inquiry System

AHA – Western Australian *Aboriginal Heritage Act 1972* as amended 2023

AHR – *Aboriginal Heritage Regulations 1974*

ALT – Aboriginal Lands Trust

BGA – Brad Goode & Associates Pty Ltd  
BP – Before Present  
CAC – Cultural Advice Committee  
DD – Due Diligence  
DPLH – Department of Planning, Lands & Heritage  
GDA – Geocentric Datum of Australia  
GPS – Global Positioning System  
HSP – Heritage Service Provider  
ILUA – Indigenous Land Use Agreement  
LGA – Local Government Area  
LSP – Local Structure Plan  
MGA – Map Grid of Australia  
NSHA – Noongar Standard Heritage Agreement  
NTC – Native Title Claim  
PBC – Prescribed Body Corporate  
RC – Regional Corporation  
SWALSC – South West Aboriginal Land and Sea Council  
The Agent – TBB Planning  
The Consultant – Brad Goode & Associates Pty Ltd  
The Proponent – Ingwe Helena Valley Pty Ltd  
WAC – Whadjuk Aboriginal Corporation

## **GLOSSARY OF DEFINITIONS**

Archaeological Monitor – A member of the WAC engaged to observe ground disturbing activities to identify Aboriginal artefacts or objects as defined by section 5 and 6 of the AHA.

Cultural Monitor – A senior representative from the WAC who conducts rituals at sacred places prior to ground disturbance and who mitigates spiritual issues by communication with the spirit world when sacred places are impacted by development activities.

DPLH boundary – The legal boundary of a DPLH registered ACH place or lodged heritage place or historic heritage place which contains the cultural heritage values associated with the site/place.

DPLH extent – An administrative extent in which a DPLH registered ACH place or lodged heritage place or historic heritage is contained within.

Noongar/Nyungar – Aboriginal Australian people of the Perth and South West region. ‘Noongar’ spelling is preferred by groups to the south of the Blackwood River and is used for legal purposes when referring to the NSHA, whilst ‘Nyungar’ spelling is preferred by groups to the north of the river.

Waugal/Waggyl/Wagyl/Wakal – The Rainbow Serpent, a creature in Dreaming narratives who is believed to have formed waterbodies and landscapes. It is the Aboriginal belief that the spirit of the Waugal is known to be present in, and caretaking fresh and flowing water bodies, such as rivers, creeks, and springs. The Waugal is revered as the giver of life. The spelling in each Nyungar group varies.

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## REPORT

# DUE DILIGENCE HERITAGE ADVICE FOR LOTS 253 AND 254 HELENA VALLEY ROAD IN THE SHIRE OF MUNDARING, WESTERN AUSTRALIA

## ISSUE

TBB Planning, acting for Ingwe Helena Valley Pty Ltd, have requested a desktop report to identify any potential Aboriginal heritage issues for Lots 253 and 254 Helena Valley Road, Helena Valley, in the Shire of Mundaring, Western Australia.

## BACKGROUND

**On the 3<sup>rd</sup> of October 2025**, Mr Luka Martin (Senior Consultant) from TBB Planning, acting for Ingwe Helena Valley Pty Ltd, commissioned Brad Goode & Associates Pty Ltd (BGA) to provide a 'Due Diligence Risk Assessment' report to guide compliance with the Western Australian *Aboriginal Heritage Act 1972* as amended 2023 (AHA) for their proposed residential subdivision at Lots 253 and 254 Helena Valley Road (see Figure 2).

Specifically, the proposed residential subdivision will involve the following activities:

- Geotechnical boring to a maximum depth of ~2.5m;
- All surface vegetation to be cleared and removed off site (with trees grubbed and mulched for use in landscaping areas within the proposed subdivision);
- Loose ground resulting from the removal of vegetation profiled, compacted and in filled with suitably compacted fill;
- Topsoil stripped (may be used in landscape areas or blending for structural fill);
- Surface preparation for subdivision development (including shallow excavation and placement fill compaction);
- Installation of retaining walls;
- Creation of internal roads;
- Creation of 62 residential Lots;
- Creation of Public Open Space; and
- Preservation of wetland and foreshore reserve (see Figure 1).

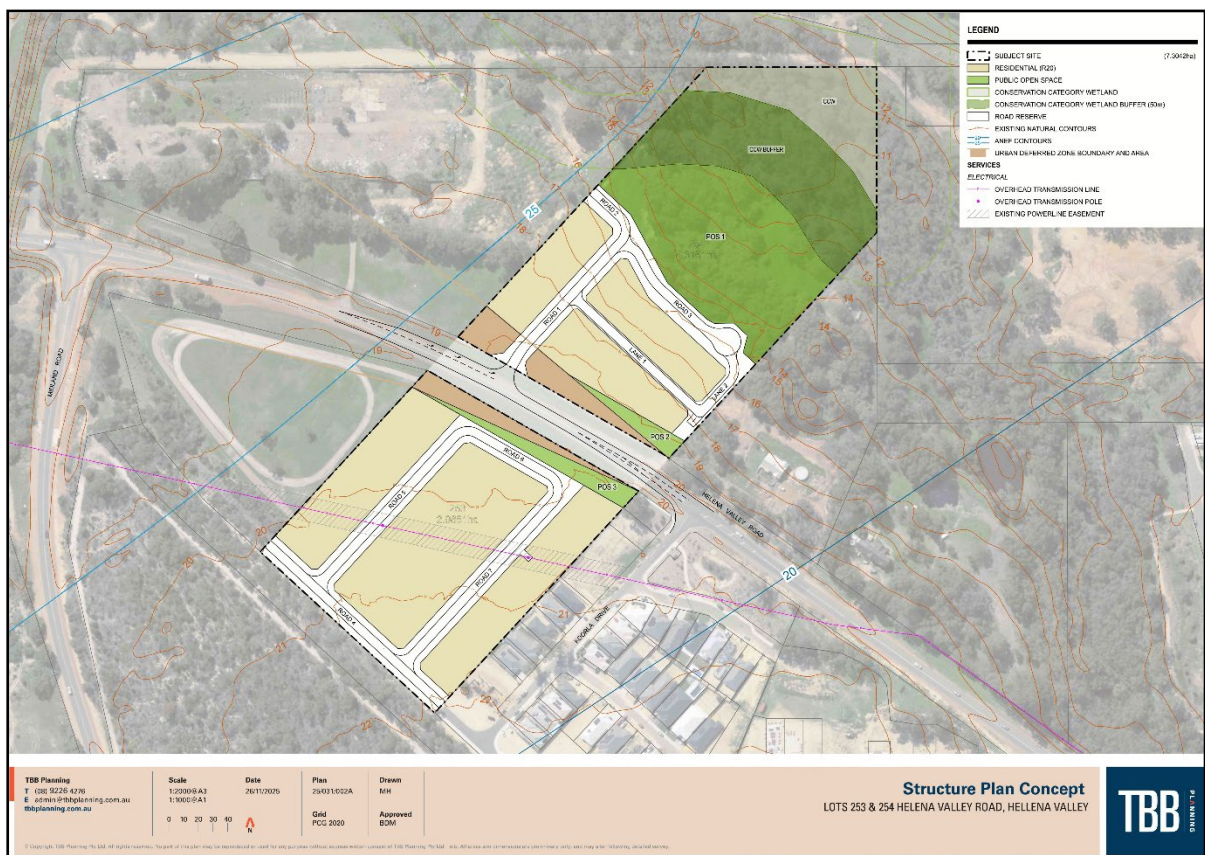
This report will provide an analysis of data held at the Department of Planning, Lands and Heritage (DPLH) in relation to heritage matters for the project under the terms of the AHA.

The determined 'Study Area' encapsulates Lot 253 and Lot 254 on Helena Valley Road, totalling an area of 7.30ha (see Figure 2).

Lot 253 encapsulates 2.99ha and is bounded by Helena Valley Road to the northeast, rural properties to the southeast and northwest, bushland to the southwest. Lot 254 encapsulates 4.31ha and is bounded by Helena Valley Road to the southwest and rural properties to the southeast, northwest and northeast (see Table 1).

**Table 1: Boundary coordinates for the study area (GDA94 MGA Zone 50)**

Survey Area	ID	Easting (mE)	Northing (mN)
Lot 253 Helena Valley Road (2.99 ha)	1	407267	6468927
	2	407409	6468846
	3	407274	6468696
	4	407154	6468804
Lot 254 Helena Valley Road (4.31 ha)	1	407288	6468951
	2	407453	6469135
	3	407569	6469138
	4	407570	6469025
	5	407431	6468872



**Figure 1: The Structure Plan Concept for Lots 253 and 254 Helena Valley Road, Helena Valley. Original Concept Plan provided by TBB Planning.**

# LOCATION MAP AND PLANS

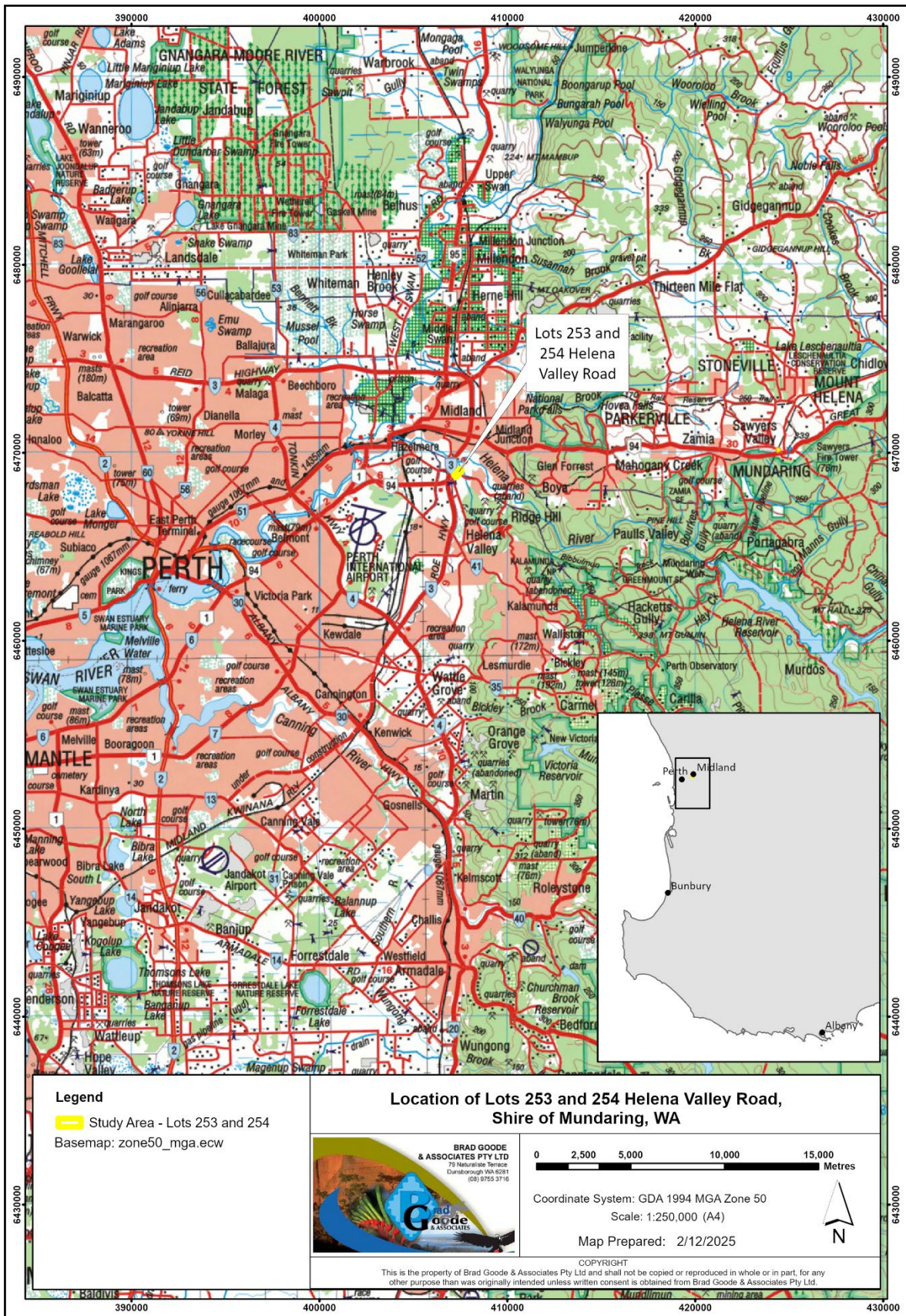


Figure 2: Location map of the Lot 253 and 254 Helena Valley Road in the Shire of Mundaring, Western Australia.

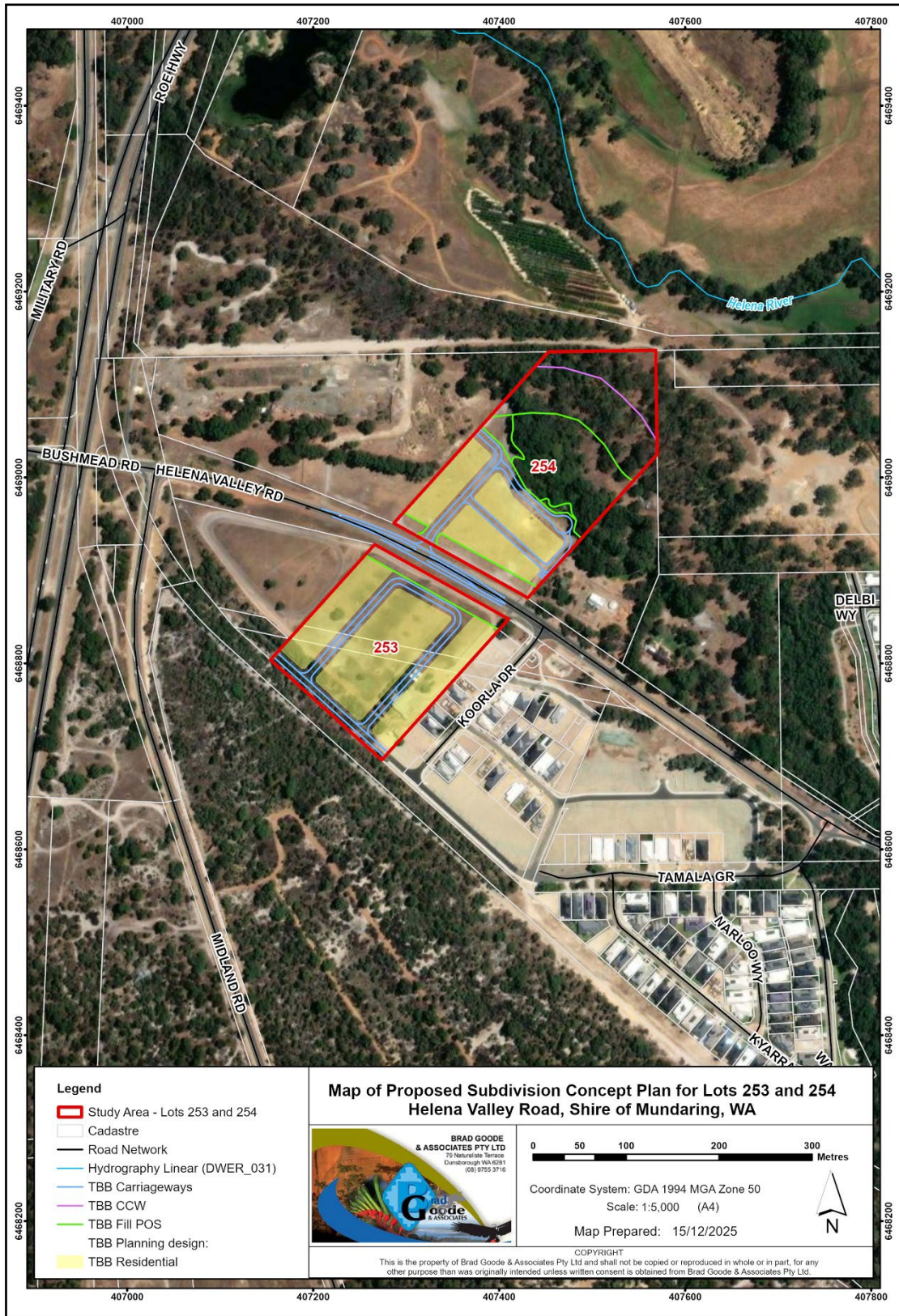


Figure 3: Map of Proposed Subdivision Concept Plan for Lots 253 and 254 Helena Valley Road, Helena Valley.

## LEGISLATIVE COMPLIANCE REQUIRED

In relation to heritage matters for the project the proponent is required to comply with the Western Australian *Aboriginal Heritage Act 1972* (as amended 2023).

### Western Australian Aboriginal Heritage Act 1972

In relation to the AHA, compliance means that the proponent is obligated to identify and protect all Aboriginal cultural heritage places as defined by section 5 of the AHA.

Under section 5 of the AHA an Aboriginal heritage place is defined as:

- 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 the 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 the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; and
- d) Any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.

Should avoidance and protect not be possible then the proponent must seek approvals under the AHA to proceed.

[https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_a3.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a3.html)

<https://www.wa.gov.au/system/files/2024-11/aboriginal-heritage-regulations-1974.pdf>

To assess the risks to Aboriginal Heritage, the DPLH Due Diligence Guidelines (DAA 2013) have been developed as a first step to assess the landscape and the risks of encountering Aboriginal cultural heritage.

These guidelines classify types of ground disturbing activities (Schedule 1) and their risks to Aboriginal heritage values. Schedule 2 provides a Risk Assessment Matrix that assesses the activities set out in Schedule 1 against land types where Aboriginal cultural heritage may be present.

The guidelines then determine the **risk rating from low to high** that a proposed activity may encounter Aboriginal Cultural Heritage (ACH).

<https://www.wa.gov.au/system/files/2019-04/Annexure%20D%20-%20Aboriginal%20Heritage%20Due%20Diligence%20Guidelines.pdf>

Once the risk profile is known the DPLH recommend various levels of heritage assessment to locate and define the Aboriginal heritage values present. These assessments then form the basis of avoidance planning or provide the supporting information to seek approvals under the AHA to proceed.

For Aboriginal heritage assessments in the South West Settlement Indigenous Land Use Agreement (ILUA) area, it is now usual that the proponents engage the Regional Corporation (RC) to determine risks to ACH and to conduct Aboriginal Heritage Surveys. In the study area this is the Whadjuk Aboriginal Corporation (WAC).

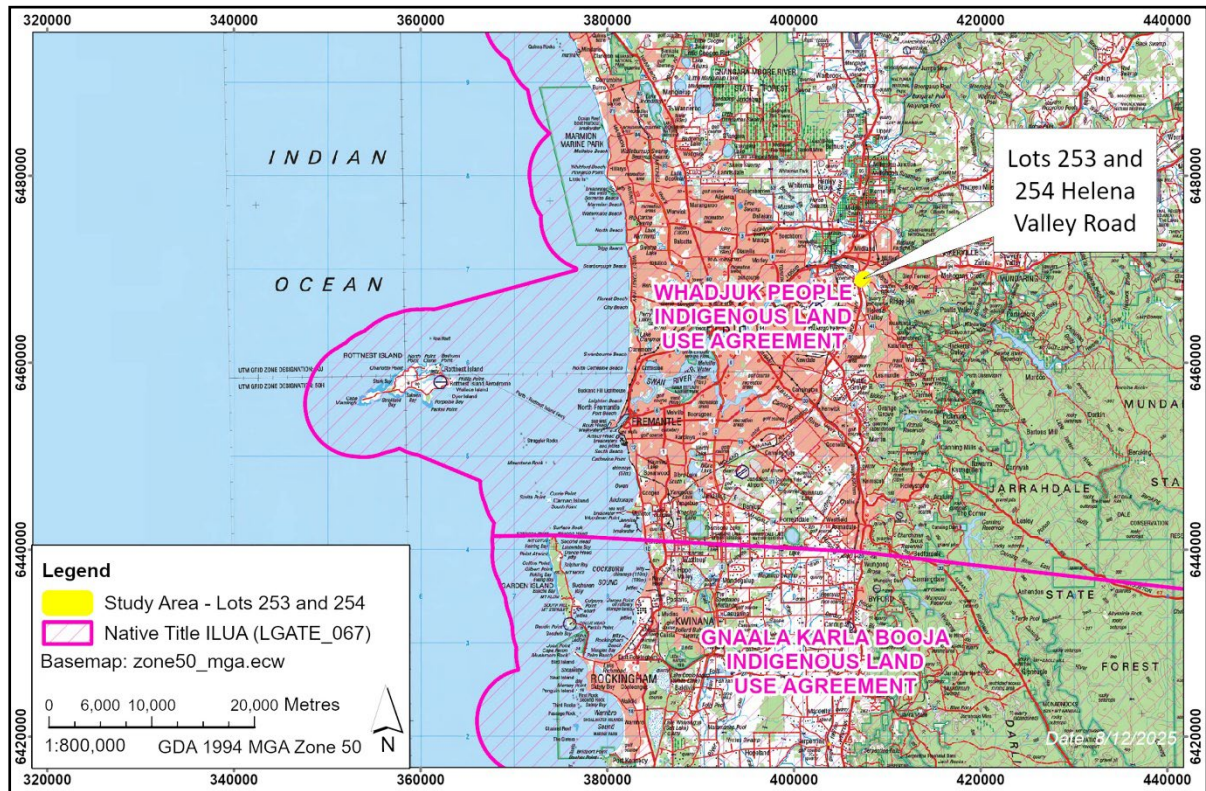


Figure 4: A map of the ILUA boundaries in relation to the project area.

Table 2: ACH place knowledge holders as listed by the DPLH AHIS

Site ID	Site Informants	Contact details
ACH ID 3758 Helena River	Mr C. Bodney (deceased) Mr F. Collard (deceased) Mr Iva Hayward-Jackson Mr William (Willie) Worrell Independent Aboriginal Environmental Group Mr K. Colbung (deceased)	Whadjuk Aboriginal Corporation Ground floor, 130 Royal Street EAST PERTH WA 6004 Phone: (08) 7095 3563 Email: <a href="mailto:heritage@whadjuknoongar.org.au">heritage@whadjuknoongar.org.au</a>
ACH ID 3966 Holding Paddock 1 - 4	N/A	Whadjuk Aboriginal Corporation Ground floor, 130 Royal Street EAST PERTH WA 6004 Phone: (08) 7095 3563 Email: <a href="mailto:heritage@whadjuknoongar.org.au">heritage@whadjuknoongar.org.au</a>

As per the WAC website, proponents are encouraged to contact the internal heritage team at the WAC directly at [heritage@whadjuknoongar.org.au](mailto:heritage@whadjuknoongar.org.au) or on 08 7095 3563 when planning development in the region:

<https://whadjuknoongar.org.au>

Here, should an Aboriginal heritage survey be required, WAC would likely require the proponent to enter into a Noongar Standard Heritage Agreement (NSHA) or an alternative Noongar Cultural Heritage Agreement (NCHA):

<https://www.wa.gov.au/system/files/2021-05/ABH-NSHA-Fact-Sheet-Issuing-an-Activity-Notice.pdf>  
<https://www.wa.gov.au/government/document-collections/noongar-standard-heritage-agreement-south-west-native-title-settlement>

Once an agreement is in place to action a survey an Activity Notice, as per Schedule 2 of the NCHA, will need to be submitted to the WAC for the proposed works:

<https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/noongar-heritageand-history/noongar-standard-heritage-agreement/resources-and-templates>

This notice will then facilitate an internal review at the WAC. WAC will then determine if the proposal requires further information, monitoring, survey, test pitting, excavation, workshop or an Aboriginal Cultural Heritage Management Plan (ACHMP).

If WAC determine that a survey is required, they will provide advice as to the type of survey for the project. Here the internal Heritage Team at the WAC will manage heritage services. They may or may not elect to be the Heritage Service Provider (HSP); the heritage officers at the WAC will provide advice regarding this aspect of the process.

When a survey is complete and all the heritage issues are known then a heritage report is finalised in consultation with the WAC.

Depending on this outcome, the proponent should make every effort to avoid harm to ACH by modifying their plans or by developing harm minimisation agreements with the WAC which would be detailed in an ACHMP to guide the work.

Should avoidance not be possible then WAC may or may not agree to negotiate support for approvals notice under the AHA.

Note: the type of approval sought depends upon the level of harm and purpose of the activity to cause harm. Advice can be sought from DPLH on the approvals process:

[https://www.wa.gov.au/system/files/2023-11/aboriginal\\_heritage\\_act\\_1972\\_guidelines.pdf](https://www.wa.gov.au/system/files/2023-11/aboriginal_heritage_act_1972_guidelines.pdf)

A section 18 notice is submitted via the ACH Knowledge portal on the DPLH's website:

[www.wa.gov.au/aboriginal-heritage](http://www.wa.gov.au/aboriginal-heritage)

Note: DPLH under procedural fairness send all Section 18 consent notices to regional Aboriginal Corporations for comment before a ministerial decision on approval or not is made.

Note: under the 2023 amendments to the AHA 1972, the Aboriginal party can lodge a challenge to the SAT if they believe that an approval under section 18 was granted without consideration of all the relevant information. The SAT can then recommend that the minister suspend or cancel the consent:

[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_46617.pdf/\\$FILE/A](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_46617.pdf/$FILE/A)

## DESKTOP ASSESSMENT AHA 1972

The Aboriginal Cultural Heritage Register at DPLH categorises places reported to be of Aboriginal Cultural Heritage (ACH) value (as defined by section 5 of the AHA 1972) into three separate categories.

The first category contains places classified as **‘Registered’** ACH places. Registered heritage places have been assessed by the Aboriginal Cultural Heritage Committee (ACHC) as meeting the definition of section 5 of the AHA 1972 and are fully protected under the law. Disturbance to land that contains such places requires ministerial consent under section 18 of the AHA 1972. Other forms of consents can also be given, Section 16 of the AHA allows for archaeological investigations. Regulation 7 and regulation 10 of the *Aboriginal Heritage Regulations 1974* (AHR) allows the Registrar to grant consent for emergency activities, or low-key activities within the extents of heritage places if harm is minimised during the conduct of that activity.

**‘Lodged’** ACH Places is the second category of places on the register. These places are where reported information has been received by the DPLH in relation to an ACH place value, but it is yet to be assessed by the ACHC under Section 5 of the AHA 1972. Disturbance to land that contains such Lodged ACH places requires the same types of consent outlined above for registered heritage places.

The third category is **‘Historic’** ACH places. Historic places have been assessed by the ACHC as **not** meeting the definition of section 5 of the AHA 1972. These are often places where insufficient information is held to make an assessment or places values under section 5 of the AHA, or are places that no longer exist because of past land use activities. With Historic places, proponents have no legal requirements to seek approvals to affect such places, unless further information is reported which would lead to such a place being reassessed in terms of the definition of section 5 of the AHA. The extents of Historic ACH places are maintained on the register to flag proponents to make further inquiries to determine if new information exists. Should new information exist about such places, proponents are required to report this information to the DPLH and ACHC for assessment.

In relation to Lot 253 and 254 Helena Valley Road, a search of the ACH Register conducted on the **9<sup>th</sup> of October 2025** identified that there are **two Registered** ACH places, **no Lodged** ACH places and **no Historic** ACH places that have extents that intersect the study area (see Table 3; see also Appendix 1).

**Table 3: Summary of Aboriginal heritage sites and places within the Helena Valley study area**

ID	Name	Status	Access	Restricted	Location (GDA94 Z50)*		Type
					mE	mN	
<b>ACH Registered Places</b>							
3758	HELENA RIVER	R	C	Y	N/A	N/A	Ritual / Ceremonial; Creation / Dreaming Narrative; Repository / Storage Place
3966	HOLDING PADDOCK 1-4	R	O	N	407592	6468901	Artefacts / Scatter

\* Please note: Coordinates are indicative locations that represent the centre of sites as shown on maps produced by the DPLH – they may not necessarily represent the true centre of all sites.

### LEGEND

R – Registered Site, I - Insufficient Information, S - Stored Data/Not a Site, L - Lodged awaiting assessment,  
O – Access Open, C - Closed Access, N – File Not Restricted, N/A – Not Available

## REGISTERED ACH PLACES WITHIN THE STUDY AREA

### ACH REGISTERED PLACE ID 3758 HELENA RIVER

Helena River is a restricted ACH place, with a closed DPLH file. It is listed on the DPLH's ACHIS as a Ritual / Ceremonial place with a Creation / Dreaming Narrative, as well as being a Repository / Storage Place. The DPLH advised the Knowledge Holders for the Helena River are C. Bodney (deceased), F. Collard (deceased), Iva Hayward-Jackson, William (Willie) Worrell, the Independent Aboriginal Environmental Group, and K. Colbung (deceased).

The consultants were unable to obtain a copy of the ACH place file; however archival research has revealed information about the place in open heritage reports.

Helena River was reported to have been created by different Dreaming figures with some site informants advising that Dreaming women created the river and are the ancestors of the Nyungar people, whilst other site informants reported that the Dreaming serpent called the *Waugal* created the river and landforms nearby, and whose spirit continues to reside in the river (AIC 2008: 15). The river was also reported to be part of a mythological Dreaming track, a camping ground, an Aboriginal travel and communication track, and provided a range of customary resources (ibid; Hallam 1971, 1979, 1986). The boundary of the Helena River ACH place was reported to comprise of the whole river system, its tributaries, floodplains and wetlands (AIC 2008: 15).

The DPLH extent of ACH ID 3758 Helena River is an irregularly shaped polygon that overlays the entirety of the Lot 253 and 254 Helena Valley Road study area (see Figure 5).

Consultation with Mr Paul Reed (Assistant Manager, Aboriginal Heritage Conservation – Heritage and Property Services) on the 4 December 2025 from the DPLH confirmed that, whilst Lot 254 partially intersects with the actual boundary of ACH ID 3758 Helena River, the residential area as depicted in the subdivision concept plan **does not** intersect with the actual boundary of ACH ID 3758 Helena River (see Figure 6)

Therefore, if ground disturbing works are restricted to the residential area as depicted in the subdivision concept plan (see Figure 3; see also Figure 1), then **no further approvals** under the AHA are required in relation to DPLH ACH Place ID 3758 Helena River.

**However**, if ground disturbing works extend northeast outside of the depicted residential area, or if ground disturbing activities are proposed in the depicted Conservation Category Wetland (CCW), CCW Buffer, Foreshore Reserve or Public Open Space (POS) areas 1 or 2, **then** the proponent **will be required** to seek consent under section 18 of the AHA in order to use the land within ACH Place ID 3758 Helena River. As part of this approvals process, **it is recommended** that an ethnographic Aboriginal heritage survey with representatives from the Whadjuk Aboriginal Corporation is conducted.

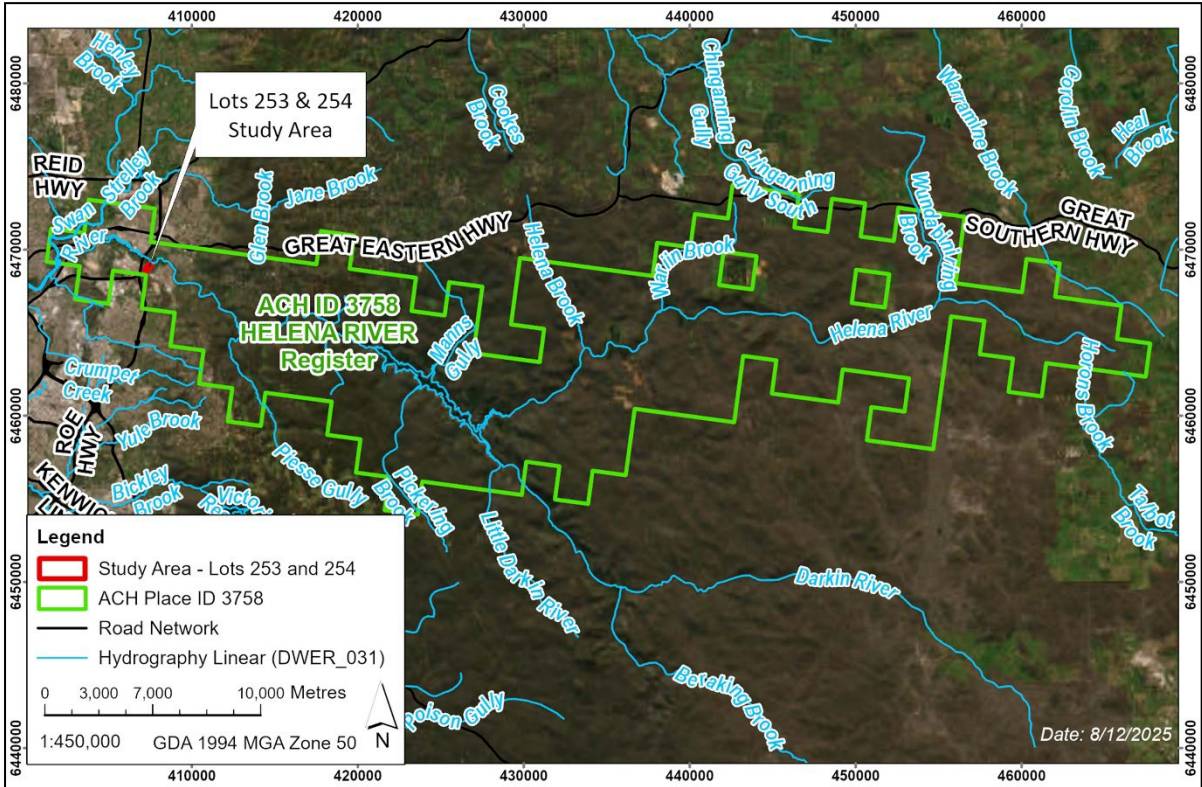


Figure 5: A map showing the DPLH extent of ACH Place ID 3758 Helena River in relation to the Helena Valley Road study area.



Figure 6: A map showing the floodplain of Helena River within ACH Registered Place ID 3758 Helena River in relation to the study area.

#### **ACH REGISTERED PLACE ID 3966 HOLDING Paddock 1-4**

Holding Paddock 1-4 was first reported to the DPLH in 1978 by M. Smith as an artefact scatter. The artefacts were reported to be located at four concentrations located in a sheep holding paddock to the east and north of the Helena Valley Road. At this time thirteen discrete artefact scatters were identified on a high, white sandy or red clay ridge which runs parallel to and 0.4km south of the Helena River. These thirteen discrete artefact scatters extended over an area approximately 1.2km long and 0.2km wide. ACH ID 3966 Holding Paddock 1 – 4 only refers to artefacts scatters 1, 2, 3 and 4. The remainder are located further east and have been split into two groups and assigned separate site identification numbers.

At the time, the four artefact scatters that comprise ACH ID 3966 Holding Paddock 1 – 4 were recorded it was noted that the area they had been identified in had been subjected to some erosion due to overstocking and clover harvesting, with artefacts visible in ploughed firebreaks. The western edge of artefact scatter 4 had also been disturbed by car tracks.

Artefact scatter 1 is described in the relevant file as covering an area 20m x 20m and having an artefact assemblage that comprised 22 lithic artefacts and some utilised bottle glass. The lithic artefacts are described as amorphous and all had been manufactured on quartz. They were all collected at the time the site was recorded. Artefact scatter 1 is the most westerly of the four artefact scatters.

According to maps and plans contained within the relevant site file, artefact scatter 2 is located approximately 150m east of artefact scatter 1. Artefact scatter 2 is described as covering an area 40m x 10m and having an artefact assemblage that comprised 11 amorphous quartz artefacts, all of which were collected at the time this artefact scatter was recorded.

Artefact scatter 3 is located approximately 100m SSE of artefact scatter 2. Artefact scatter 3 is described as covering an area 10m x 10m and having an artefact assemblage that comprised 18 predominantly quartz artefacts including a fabricator and adze as well as a mylonite fabricator. All artefacts were collected at the time artefact scatter 3 was recorded.

Artefact scatter 4 is located immediately east of artefact scatter 3 and is described as covering an area 130m x 40m. It appears to have a much larger artefact assemblage, possibly many hundreds. A sample of 215 artefacts were recorded and collected in 1978 from various sample squares. Over 98% of the collected artefacts were manufactured on quartz with the remainder manufactured on various other lithologies including mylonite, and dolerite. The artefact assemblage is described as comprising mostly chips and unworked pieces. The exceptions to these were a large muller, a piece of grindstone, fabricators, adzes and backed blades.

The ACHC have assessed Holding Paddock 1-4 and found that it met the definition of a site under section 5(a) and 39.2(c) of the AHA, placing it on the Permanent Register of Aboriginal sites on the 13 June 2000 (Resolution ID 3080).

The DPLH extent of Holding Paddock 1-4 is an irregularly shaped polygon that covers approximately 4.8 hectares.

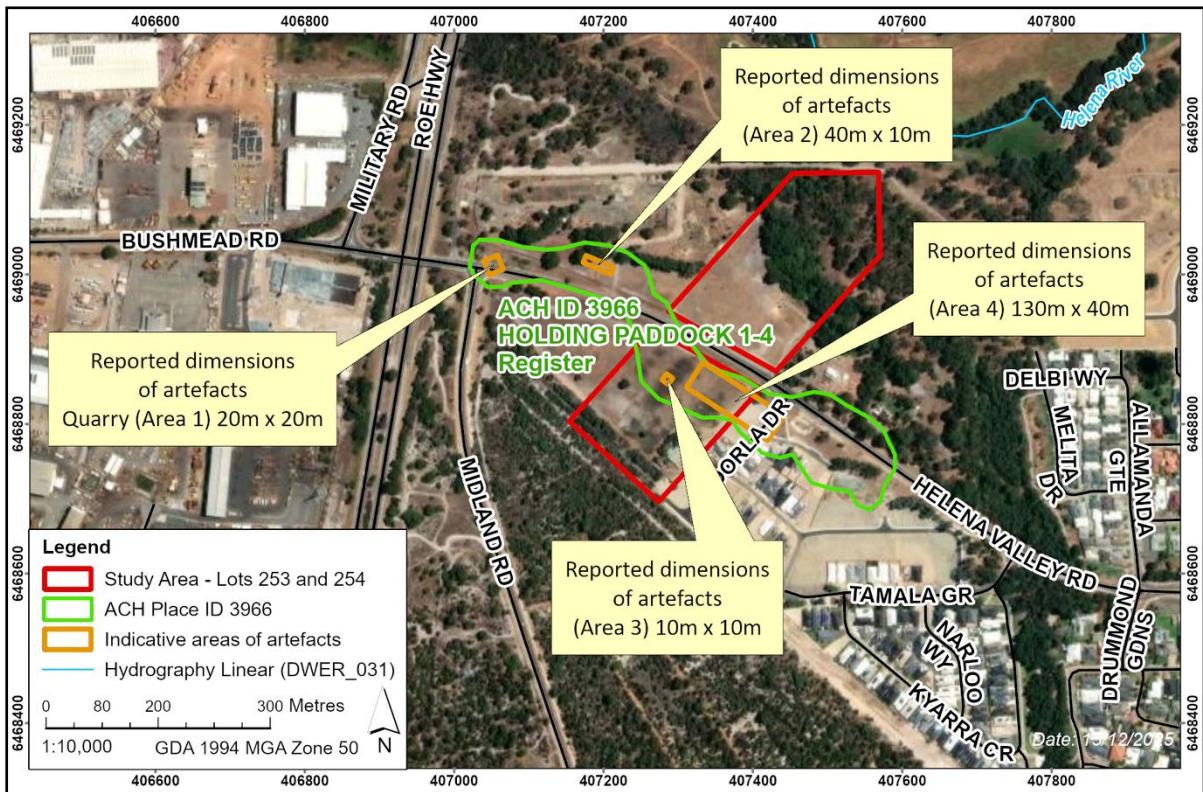


Figure 7: A map showing the DPLH extent ACH Place ID 3966 Holding Paddock 1-4 in relation to the study area.

In relation to the current study area, approximately 1.08ha of the northeastern extent of Lot 253 Helena Valley Road and approximately 0.01ha of the very southwestern corner of Lot 254 traverses the DPLH extent of ACH ID 3966 Holding Paddock 1-4 (see Figure 7).

The DPLH site file for ACH Registered Place ID 3966 Holding Paddock 1-4 contains no documentation with respect to consent being granted under the AHA to any proponent to proceed with activities that may disturb the Holding Paddock 1 – 4 ACH place. It is a Registered ACH place and as such is protected under the AHA until such time as the DPLH determine that this is a place to which the AHA **does not** apply. Given this, and in spite of the fact that evidence suggests that artefact scatters 1 and 2 have been destroyed, it will still be necessary for the proponent to avoid any impact upon and/or disturbance to ACH ID 3966 Holding Paddock 1 – 4.

If it is not possible to avoid any impact upon and/or disturbance to ACH ID 3966 Holding Paddock 1 – 4, the proponent **will need approvals** under the AHA in order to conduct ground disturbing activities within Lot 253 Helena Valley Road within the boundaries of this ACH place. As part of this approvals process, **it is recommended** that an archaeological Aboriginal heritage survey in consultation with the Whadjuk Aboriginal Corporation is conducted.

## PREVIOUS ABORIGINAL HERITAGE SURVEYS THAT OVERLAP THE STUDY AREA

The project area comprises of 7.3 hectares (see Table 1; see also Figure 3). Eight previous Aboriginal heritage reports have been conducted in the area, however the majority of these reports detail large-scale regional comprehensive studies.

As such, whilst it appears that 100% of the study area has been previously surveyed, none of the DPLH previous survey reports actually consider the specific study area as they are large-scale regional studies. This will be discussed in more detail in the ‘Heritage Context’ portion of this report.

The extent of these previously recorded DPLH Aboriginal heritage surveys (as mapped by the DPLH on the ACHIS) are shown in the following table (see Table 4) and overview map (see Figure 8).

Four other reports not contained on the DPLH database (Schwede 1983; Strawbridge 1987; McDonald 1989; Pocock 1989) and three other surveys conducted by BGA in the vicinity of the study area (Goode et al. 2020; Goode 2020; Goode 2022) have also been added to this list for review:

**Table 4: Previous Aboriginal heritage surveys conducted within the vicinity of the project area.**

ID	Aboriginal Heritage Surveys	Survey area intersecting with the current study area
21817	<b>Machin, B. (1994)</b> <i>Ballaruk (Traditional Owners) Aboriginal Site Recording Project</i> , report prepared for the National Estates Program Heritage Council of Western Australia, October 1994.	7.30ha or 100%
21818	<b>Machin, B. (1995)</b> <i>Ballaruk (Traditional Owners of Whadjuk Territorial Boundaries the Lands of the Ballaruk Peoples) Aboriginal Site Recording Project: Additional Material</i> , report prepared for the National Estates Program Heritage Council of Western Australia, 1995.	
101808	<b>Chappell, J. (1989)</b> <i>Late quaternary history of the middle and upper Swan Valley near Perth, Western Australia</i> , 1989.	7.05ha or 97%
102073	<b>Centre for Social Research and Edith Cowan University (1997a)</b> <i>Western Australia Regional Forest Agreement: Aboriginal Consultation Project</i> , volume 1 prepared for The Regional Forest Agreement Steering Committee, November 1997.	5.52 ha or 76%
102074	<b>Centre for Social Research, Edith Cowan University and McDonald, Hales &amp; Associates (1997b)</b> <i>Western Australia Regional Forest Agreement: Aboriginal Consultation Project</i> , volume 2 prepared for The Regional Forest Agreement Steering Committee, November 1997.	
102670	<b>O’Connor, R., Bodney, C. and L. Little (1985)</b> <i>Preliminary Report on the Survey of Aboriginal Areas of Significance in the Peth Metropolitan and Murray River Regions</i> , report prepared for the Centre for Prehistory at the University of Western Australia on behalf of the Department of Aboriginal Sites at the Western Australian Museum, July 1985.	7.30ha or 100%
103564	<b>The University of Western Australia (1971)</b> <i>An Archaeological Survey Project: The Perth Area, Western Australia</i> , report	7.30ha or 100%

ID	Aboriginal Heritage Surveys	Survey area intersecting with the current study area
	prepared for the Australian Institute of Aboriginal Studies, April 1971.	
104379	<b>Hallam, S. (1986)</b> <i>Prehistoric Aboriginal Populations on the Swan Coastal Plain, Western Australia</i> , final report on the project prepared for the Australian Research Grants Scheme, 1986.	7.30ha or 100%
104505	<b>Strawbridge, L. (1988)</b> <i>Aboriginal Sites in the Perth Metropolitan Area: A Management Scheme</i> , report prepared for the Department of Aboriginal Sites, Western Australian Museum, 1988.	7.30ha or 100%
104661	<b>Schwede, M. (1983)</b> <i>An Archaeological Investigation of the Helena River Site</i> , report prepared for Main Roads Department, April 1983.	0.00ha or 0%
23145	<b>Quartermaine, G. (2000)</b> <i>Report on an archaeological investigation of Aboriginal Sites Metropolitan Region Scheme rezoning of Lots 2, 3, pt. 204, pt. 205, pt. 206, 207, 230 and 231, Helena Valley</i> , 2000.	0.00ha or 0%
28843	<b>Quartermaine Consultants (n.d.)</b> <i>Report on an Archaeological Salvage Programme DIA 3971 and 3972 Lot 206 Helena Valley Road Helena Valley</i>	0.00ha or 0%
104071	<b>Pocock, C. and Strawbridge, L. (1989)</b> <i>An Archaeological Survey for Aboriginal Sites on the Bushmead Rifle Range, Helena Valley</i> , report prepared for McDonald, Hales and Associates, June 1989.	0.00ha or 0%
201249	<b>Goode, B., Preller, G. and T. O'Reilly (2020)</b> <i>Report on an Aboriginal Heritage Survey for the Roe / Great Eastern Highway Bypass Interchanges Project, Western Australia</i> , report prepared for Main Road Western Australia, October 2020.	0.00ha or 0%
-	<b>Goode, B. (2020)</b> <i>Addendum to a Report on an Aboriginal Heritage Survey for the Roe / Great Eastern Highway Bypass Interchanges Project, Western Australia</i> , report prepared for Main Roads Western Australia, December 2020.	0.00ha or 0%
-	<b>Goode, B. (2022)</b> Letter to Tania Anglin, 10 October 2022.	0.00ha or 0%

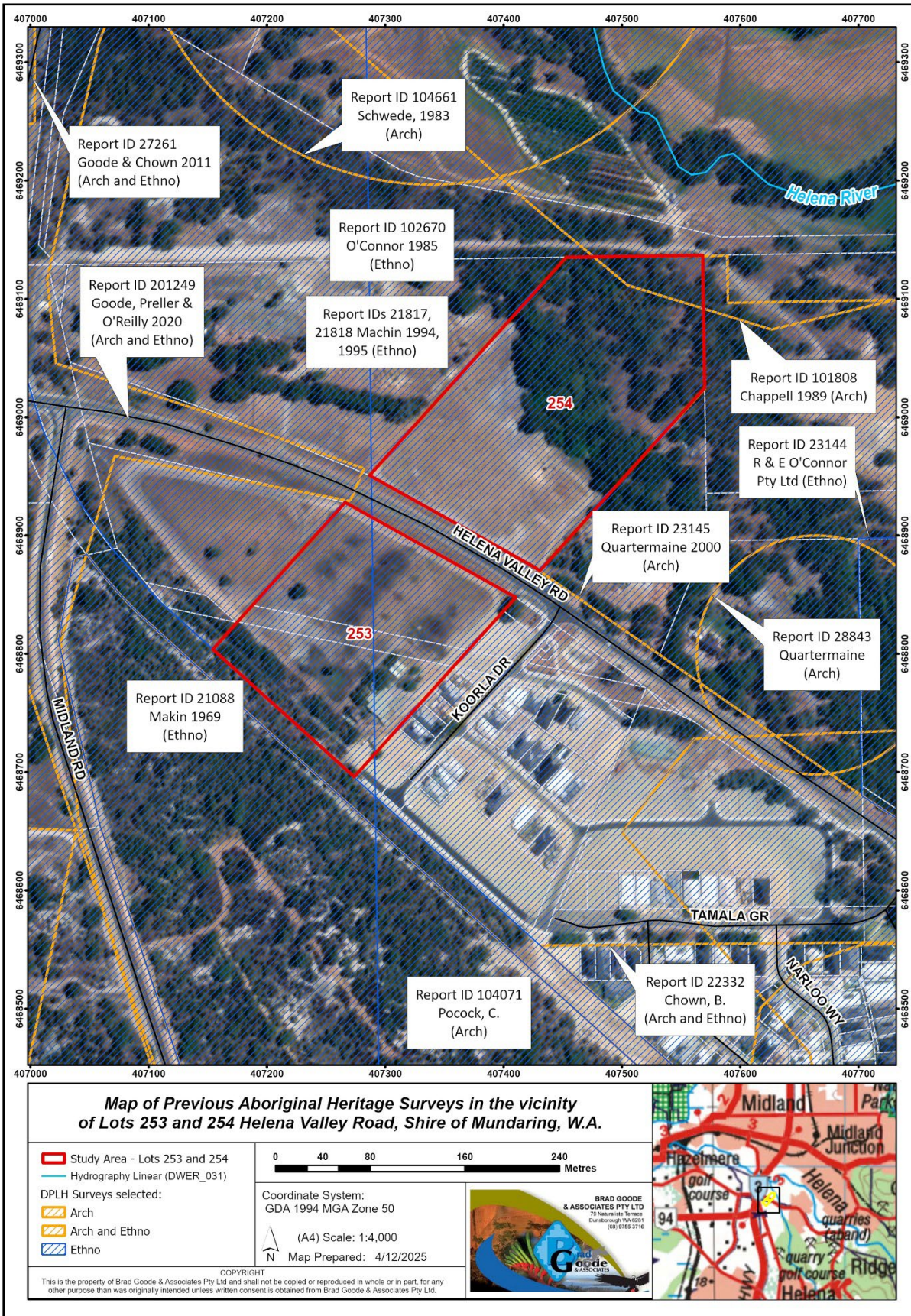
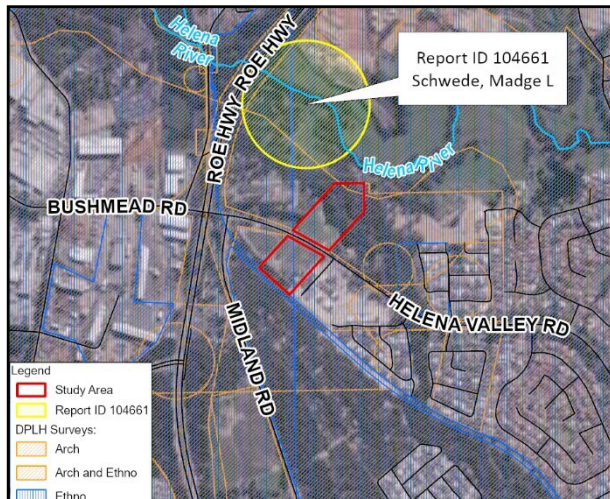


Figure 8: Map of Previous Aboriginal Heritage Surveys conducted within the project area.

## **REVIEW OF RELEVANT REPORTS**

**Schwede, M.L. (1983)** *An Archaeological Investigation of the Helena River Site*, report prepared for Main Roads Department, April 1983 [DPLH Report ID 104661].

This report details the results of an archaeological excavation and test pitting at the Helena River site. The site covered an area of 0.2975ha located adjacent east of the Roe Highway to the north of Helena



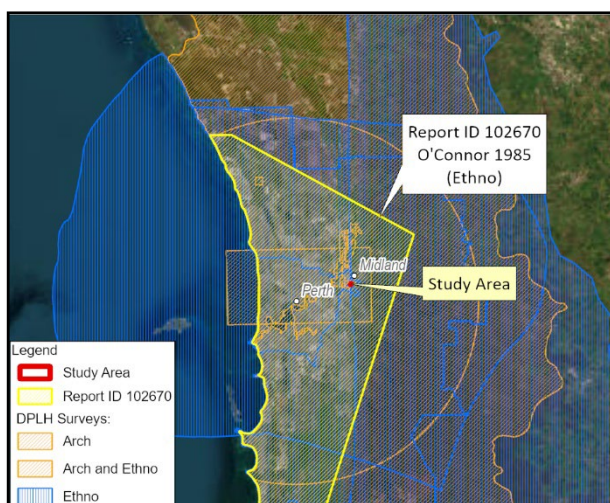
Valley Road, along the southern side of the Helena River (Schwede 1983: 1). This is the same area as DPLH Registered ACH Place ID 3967 Helena River A-C.

The investigations revealed the site was an old alluvial river terrace with a sparse distribution of artefactual material likely older than 30,000 years (Schwede 1983: 20). 426 artefacts were uncovered in the test pitting, predominately comprising of quartz chips (ibid: 13, 22).

The Schwede (1983) survey area is located approximately 100 metres further northwest of the northwestern corner of Lot 254 of the current study area.

**O'Connor, R., Bodney, C. and L. Little (1985)** *Preliminary Report on the Survey of Aboriginal Areas of Significance in the Perth Metropolitan and Murray River Regions*, report prepared for the Centre for Prehistory at the University of Western Australia on behalf of the Department of Aboriginal Sites at the Western Australian Museum, July 1985 [DPLH Report ID 102670].

This report details an ethnographic survey examining Aboriginal site in the Perth Metropolitan region as bounded by the Yanchep National Park, Giddegannup, Pinjarra and the Indian Ocean (O'Connor et al. 1985).

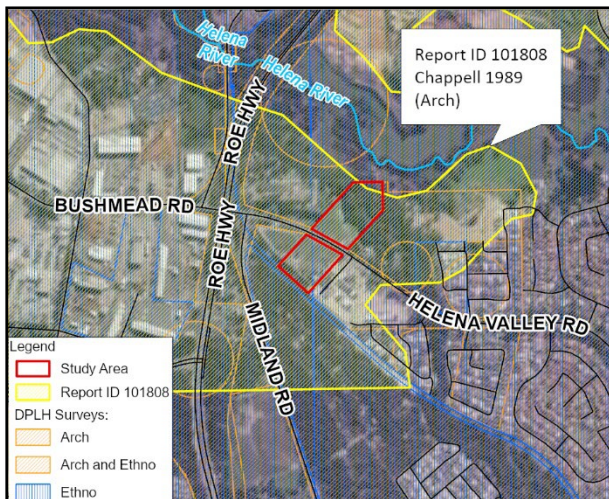


During the survey the Helena River was reported to be a mythological Waugal site (O'Connor et al. 1985: 100-102). The Helena River was reported to have been created by a powerful Waugal associated with rainmaking (ibid: 101-102). With the creation of the lower Helena River between Mundjalline (Mundaring) to Guildford, a "main run" (walk path) was also created for different Aboriginal groups (ibid). The river was reported to originate from the Darling Range on the western side of York, and flows in a western direction to the Darkin River, Helena Reservoir,

Pauls Valley, Darlington, the Helena Valley and Hazelmere, before meeting the Swan River at Guildford (ibid: 100-101).

The survey area by O'Connor et al. (1985) overlays the entirety of the current study area.

**Chappell, J. (1989)** *Late quaternary history of the middle and upper Swan Valley near Perth, Western Australia*, 1989 [DPLH Report ID 101808].



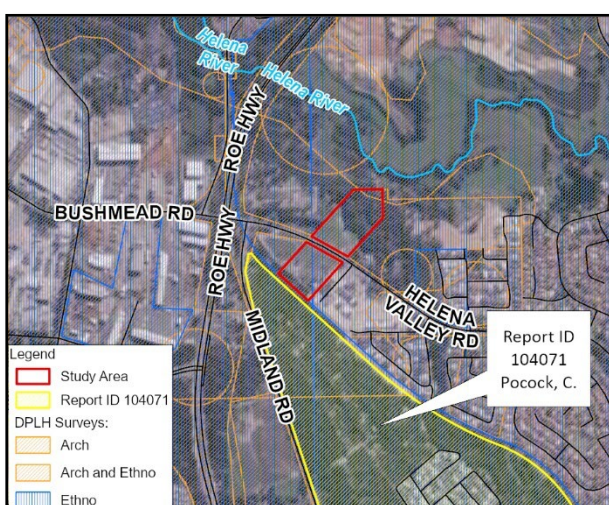
This report provides a detailed archaeological history of the Swan Valley between Guildford and Upper Swan (Chappell 1989: 2).

The report gives a sediment, soil and stratigraphy analysis of the terraces on the northside of the Helena River as part of the Guildford Formation (Chappell 1989: 15, 19).

The survey area by Chappell (1989) overlays approximately 7.05ha or 97% of the southwestern extent of the current study area.

**Pocock, C. and Strawbridge, L. (1989)** *An Archaeological Survey for Aboriginal Sites on the Bushmead Rifle Range, Helena Valley*, report prepared for McDonald, Hales and Associates, June 1989 [DPLH Report ID 104071].

This report details the results of an archaeological survey for Aboriginal sites for the Bushmead Rifle Range at Helena Valley (Pocock & Strawbridge 1989: 1).



DPLH Historic ACH Place ID 3970 Wild Horse Hill A-D was identified to be a previously recorded archaeological site comprising of artefact scatters (Pocock & Strawbridge 1989: 7). This ACH place is located approximately 750 metres southeast of the southern point of Lot 253 of the current study area.

The report concluded that the Bushmead survey area was intensively used and were either occupied regularly by large groups of people or frequently revisited, as based upon the high density and number of artefacts

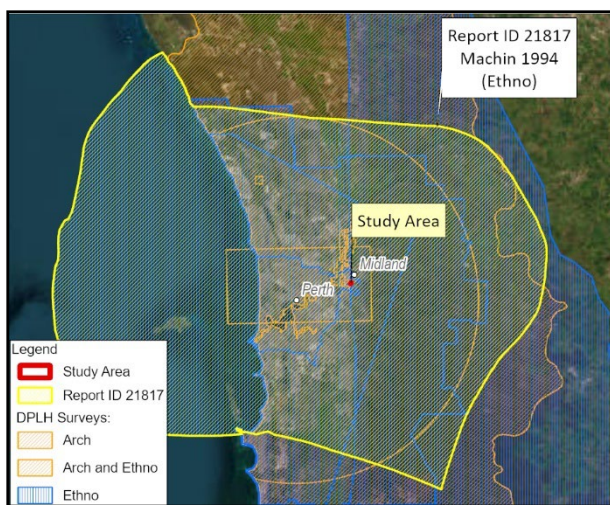
recorded (Pocock & Strawbridge 1989: 10). The area was reported to be rich in food resources, providing a range of fauna and flora, with small swamps in low lying areas also rich in resources (ibid). The archaeological sites were reported to have been considerably disturbed by erosion, ploughing,

vehicle movement and development activities (ibid). It was further reported that subsurface material could be present at the Wild Horse Hill scatter (ibid).

The Pocock & Strawbridge (1989) survey area is located approximately 40 metres further southwest of the southwestern boundary of Lot 253 of the current study area.

**Machin, B. (1994)** *Ballaruk (Traditional Owners) Aboriginal Site Recording Project*, report prepared for the National Estates Program Heritage Council of Western Australia, October 1994 [DPLH Report ID 21817].

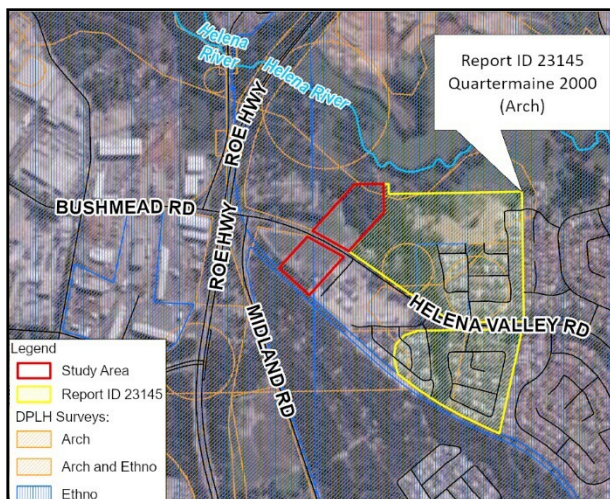
This report details the results of an Aboriginal site recording project over the Whadjuk territorial boundaries, bounded approximately by Rockingham in the south, Clackline in the east, Two Rocks in the north and the Indian Ocean in the west (Machin 1994).



The report details identifiable group territories at the time of European contact, with the Helena area reported to be the land of Binan under the leadership of Yagan (Machin 1994: 20). The report also details the movement of Whadjuk men Monday/Munday and Midgegooroo around the Helena River and the conflicts that arose at this time (ibid: 128, 129). The Helena River was also reported to have known mythological association, however no further information was provided (ibid: 127).

The survey area by Machin (1994) overlays the entirety of the current study area.

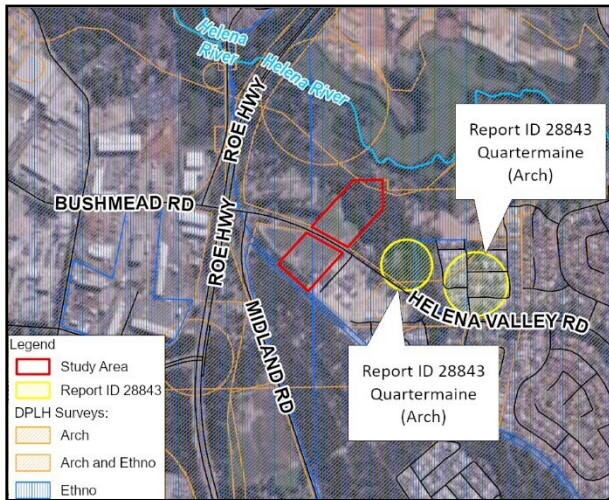
**Quartermaine, G. (2000)** *Report on an Archaeological Investigation of Aboriginal Sites Metropolitan Region Scheme rezoning of Lots 2, 3, pt. 204, pt. 205, pt. 206, 207, 230 and 231, Helena Valley*, [DPLH Report ID 23145].



Unfortunately, the consultants were unable to obtain a copy of this survey report and therefore are unable review it for the purposes of this report.

The Quartermaine (2000) survey area abuts the southeastern boundary of Lot 254 Helena Valley Road of the current study area.

**Quartermaine Consultants (n.d.)** *Report on an Archaeological Salvage Programme DIA 3971 and 3972 Lot 206 Helena Valley Road Helena Valley [DPLH Report ID 28843].*

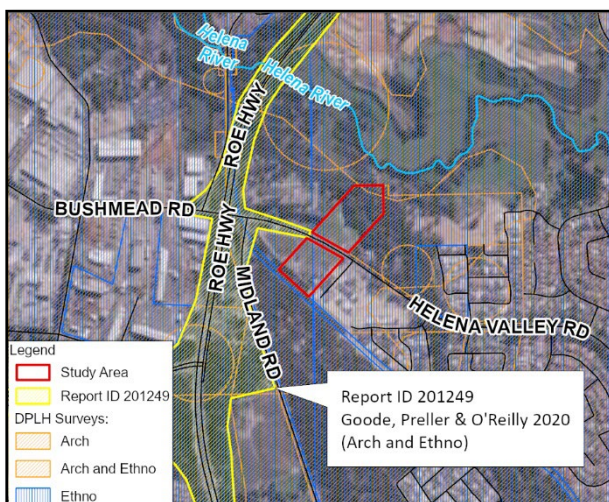


Unfortunately, the consultants were unable to obtain a copy of this survey report and therefore are unable to review it for the purposes of this report.

The Quartermaine (n.d.) survey area is located approximately 150 metres east of the southeastern boundary of Lot 254 Helena Valley Road of the current study area.

**Goode, B., Preller, G. and T. O'Reilly (2020)** *Report on an Aboriginal Heritage Survey for the Roe / Great Eastern Highway Bypass Interchanges Project, Western Australia, report prepared for Main Road Western Australia, October 2020 [DPLH Report ID 201249].*

This report details the result of an ethnographic and archaeological survey for the proposed upgrade of a section of the Great Eastern Highway Bypass, Roe Highway and Abernethy Road (Goode et al. 2020: 9).

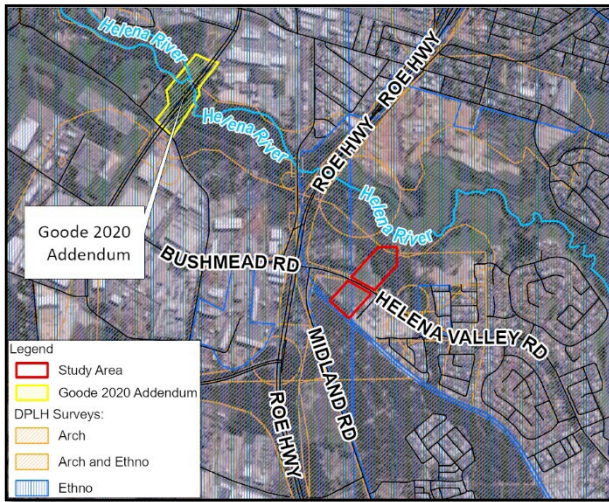


As a result of consultations held with representatives from the Whadjuk group, the significance of the Helena River was confirmed as a “sacred site associated with the Waugal”, with the deity “believed to be both responsible for the river’s creation and the maintenance of the water and its flows” (Goode et al. 2020: 39). As a result of the archaeological survey, no material associated with ACH ID 3758 Helena River was identified (ibid: 69).

The Goode et al. (2020) survey area abuts the northwestern boundary of Lot 253 and the southwestern boundary of Lot 254 of the current study area.

**Goode, B. (2020)** *Addendum to a Report on an Aboriginal Heritage Survey for the Roe / Great Eastern Highway Bypass Interchanges Project, Western Australia, report prepared for Main Roads Western Australia, December 2020.*

This report details the results of an additional ethnographic consultation for the Roe / Great Eastern Highway Bypass Interchanges project (Goode 2020: 6). An additional area for a new bridge proposed at Lloyd Street over the Helena River was surveyed (ibid).

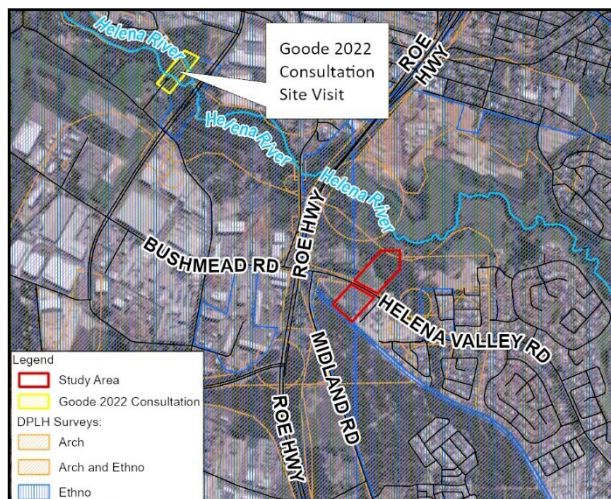


Representatives from the Whadjuk group reported that spirits called *Woodatchi* or *Mummies* inhabit the Helena riverscape (Goode 2020: 13). The Helena River was also confirmed to be a sacred site and an important historical Nyungar camping area (ibid: 15).

The Goode (2020) survey area is located approximately 3km northwest of the western boundary of the current study area.

**Goode, B. 2022**, Letter titled ‘Aboriginal Heritage Meeting with Mr Greg Ugle at Old Whiteman Road Bridge’, letter report prepared for Greater Connect Alliance, 10<sup>th</sup> October 2022.

This letter details an ethnographic consultation held with a Whadjuk Traditional Owner, Mr Greg Ugle, at the old Whiteman Road Bridge on the Helena River (Goode 2022: 1). The consultation regarded the new bridge proposed at Lloyd Street over the Helena River that Main Roads were proposing as part of the Roe / Great Eastern Highway Bypass Interchange (ibid).



Mr Ugle reported the Helena River area contained a number of Aboriginal sites, artefacts, a rockshelter where *Woodatchi* live, and wildlife habitat along the floodplain of the river including a billabong which was home to turtles with an eagle’s nest also identified along the riverbank (ibid: 1-2).

The Goode (2022) survey area is located approximately 3km northwest of the western boundary of the current study area.

## HERITAGE CONTEXT

DPLH GIS mapping facilities show that 7.3ha (100%) of the Lots 253 and 254 Helena Valley Road study area in Helena Valley have undergone some previous Aboriginal heritage survey work that involved detailed inspections of the land (see Figure 8).

However, all of these surveys are large-scale regional studies and did not specifically target the current study area. Therefore, many of these surveys offer limited relevance to the present assessment, except for helping predict the likelihood of archaeological sites existing on the subject land based on wider area site patterns.

In addition, the reports which have been deemed to have some relevance to the general Helena Valley area, they are all dated, with the majority of the reports occurring in the 1980s and 1990s (see Schwede 1983; O'Connor et al. 1985; Chappell 1989; Pocock & Strawbridge 1989; Machin 1994). Conclusions from these reports are likely to be outdated and will only provide a limited ability to formulate predictive statements on the potential for the current study area to contain archaeological sites.

Archaeological research of the reports reveals the Helena Valley study area is located within the Bassendean Sand Dunal System, which comprises an old coastal dune system and consists of low ridges running parallel to the coast (Beard 1981). A chain of wetlands occurs within the interdunal swales of the Bassendean Dune System and comprise a mixture of swamps, lakes, sump lands, and damp lands (Dame & Moore 1998). Extensive archaeological research of the Swan Coastal Plain in the 1970s to early 1980s by Hallam (1981, 1986) determined that the vast majority of Aboriginal archaeological sites within the Bassendean Sands tend to be associated with these waterways.

Sources of reliable and potable freshwater were favourable camping locations for hunter gatherer populations throughout prehistory (Beard 1981; Harris 2016). Larger archaeological sites and site clusters are therefore found at these highly favourable locations, indicating they were occupied repeatedly over a long time (Hallam 1981, 1986). Alongside the fresh water itself, plants and animals associated with water were crucial resources for Nyungar people in traditional and into modern times (Meagher & Ride 1979; Anderson 1984; Guilfoyle et al. 2015). At times of plenitude the security of these resources facilitated the support of large gatherings that served to enhance group identity and cohesion (Gibbs 1987). Anderson (1984) further inferred that Aboriginal mobility patterns primarily involved aggregations of people near bodies of water on the coastal plain during late spring and summer, before moving into the Darling Ranges in the winter and early spring.

As the focus for Aboriginal habitation centred on potable fresh water, dense archaeological deposits are more likely to be found around such sources, such as the Helena River. O'Reilly (cited in Goode et al. 2020: 111) reports that the high seasonal productivity and availability of fresh water at these waterways would clearly have made them a focus for Aboriginal habitation. The archaeological evidence around the Helena River Valley in the vicinity of the study area reveals the land was occupied either regularly by large groups of people or frequently revisited (Schwede 1983; Pocock & Strawbridge 1989).

This potential, however, must be balanced against historical land use patterns. Archaeologists report that in the Perth region there is much pre-existing ground disturbance caused by historical land use (Goode et al. 2020: 77). As such, much of the existing and predicted archaeological signature is likely to have been removed or masked by the high incidence of pre-existing ground disturbance from agriculture and urban development (ibid). Indeed, the archaeological survey by O'Reilly (cited in Goode et al. 2020: 114) concludes that, after being unable to relocate the artefact scatters 1 and 2 of DPLH ACH ID 3966 Holding Paddock 1-4, the scatters "no longer exists at or about the locations they were initially identified as a consequence of road realignment and contemporary land use practices". It should be noted here that O'Reilly did not examine artefact scatters 3 and 4 of DPLH ACH ID 3966 Holding Paddock 1-4, which were originally reported to be located within current study area.

Ground visibility may further hinder the identification of archaeological material resulting from Aboriginal occupation of the area. There is also a risk that archaeological material that may have been present on the surface of the land has been disturbed due to down-slope erosion, water washing, wind erosion and deflation or mechanical damage.

Archaeological survey methods have also changed over time. Whilst it was quite normal to survey without Traditional Owners more than a decade ago, today, archaeological surveys tend to be undertaken with Traditional Owners and the benefit of their local knowledge and cultural understanding of landscape use greatly enhances site discovery.

As such, it is the conclusion of the consultants that, based upon the available data and archaeological record for the area, that there is some potential for yet-to-be-discovered small-scale surface sites to be found in the study area where no recent surveys have occurred. An archaeological survey with Whadjuk people should therefore occur before development proceeds. Alternatively, given the restriction of proposed ground disturbing activities to the residential area of the subdivision concept plan which has been previously cleared of vegetation, archaeological monitoring by representatives from the Whadjuk Aboriginal Corporation for these activities may instead be deemed appropriate.

In relation to ethnographic ACH places, anthropologists in previous surveys have identified that the most important mythological places to Nyungar people are usually the permanent pools along the major drainage lines on rivers, lakes, and swamps. These places are usually associated with the Rainbow Serpent or Waugal, the water snake thought to be the creator of water and responsible for the maintenance of the water (O'Connor et al. 1989: 46). Several researchers suggest the Waugal is believed to be a creative Dreaming spirit who created all the waterways and other significant landscape features (Bates 1966, 1985; Hallam 1979; O'Connor et al. 1989; Gibbs 1995; Jackson & de Gand 1996; Goode 2003; Toussaint et al. 2005). Wherever the Waugal had stopped or lived was considered to be winnaitch (meaning Taboo or sacred), a place where the spirit remained and a place where a special ritual is required to be performed to approach (Bates 1985: 221).

The Helena River system and its tributaries are highlighted as being created by the Waugal as it moved down and over the landscape forming the route and shaping the banks, pools and nearby lakes as it went (see O'Connor et al. 1985). Goode et al. (2020: 39) reports that the deity is "believed to be both responsible for the river's creation and the maintenance of the water and its flows". In addition, other

spirits called Woodatchi or Mummaries were reported to inhabit the Helena riverscape (Goode 2020: 13; Goode 2022: 1-2).

ACH ethnographic places also include ceremonial sites, birth sites, graves, places of habitual use, where camping and hunting occurred, and other places containing sentiment or importance and special significance to Nyungar people that is of anthropological or historical interest to the state (see O'Connor 1989; Gibbs 1995; Jackson & de Gand 1996; Goode 2003).

As such, an ethnographic survey with Whadjuk people should occur before development proceeds, particularly in relation to the impact that the proposed development could have upon waterways such as DPLH Registered ACH Place ID 3758 Helena River.

## RISK ASSESSMENT & MITIGATION

Ingwe Helena Valley Pty Ltd are proposing a residential subdivision at Lots 253 and 254 Helena Valley Road in Helena Valley (see Figure 3).

Specifically, the proposed residential subdivision will involve the following activities:

- Geotechnical boring to a maximum depth of ~2.5m;
- All surface vegetation to be cleared and removed off site (with trees grubbed and mulched for use in landscaping areas within the proposed subdivision);
- Loose ground resulting from the removal of vegetation profiled, compacted and in filled with suitably compacted fill;
- Topsoil stripped (may be used in landscape areas or blending for structural fill);
- Surface preparation for subdivision development (including shallow excavation and placement fill compaction);
- Installation of retaining walls;
- Creation of internal roads;
- Creation of 62 residential Lots;
- Creation of Public Open Space; and
- Preservation of wetland and foreshore reserve (see Figure 1).

Spatial data provided by TBB Planning on behalf of Ingwe Helena Valley Pty Ltd and mapped by BGA shows that Lot 253 and 254 Helena Valley Road have been partially cleared of vegetation and comprises a mixture of cleared farming land and remanent native bushland. Lot 253 Helena Valley Road has predominantly comprises of cleared land, with a residential building, sheds, water tank, driveways and fencing situated in the southeastern extent of the Lot. Along the southwestern boundary of the Lot remanent bush is present. The southwestern portion of Lot 254 Helena Valley Road has been cleared of vegetation for farming. The northern and northeastern extent of Lot 254 Helena Valley Road comprises native vegetation fringing the Helena River watershed.

The Aboriginal Heritage Due Diligence Guidelines (DAA 2013: 7-8) states that:

The possibility of a landscape containing Aboriginal sites will differ between land which has had considerable previous land use, for example intensive land clearing or development, and land which is largely in its natural state or is remote and undisturbed by previous development.

Similarly, some landforms are more likely than others to serve as an indicator of Aboriginal traditional activity than others. Landscape features which may contain Aboriginal sites and should be approached with some caution include, but are not limited to rock outcrops, rock shelters, caves, alluvial terraces, foreshores and coastal dunes, ranges and hills, natural wetlands, waterholes, springs, gnamma holes, rivers, creeks, streams, swamps, hills and mound formations, or areas with potential archaeological deposits (Department of Aboriginal Affairs [DAA - now the Western Australian Department of Planning, Lands and Heritage] 2013: 7-8).

Utilising Aboriginal Heritage Due Diligence Guidelines Schedule 2, previous land use within the Lots 253 and 254 Helena Valley Road are classified as a **Moderately Altered Environment**.

Utilising Aboriginal Heritage Due Diligence Guidelines Schedule 1 – Land Activities by Category, different land activities constitute different levels of disturbance.

Subdivision and development plans include ground disturbing works, such as geotechnical boring, clearing of surface vegetation, the in fill of loose ground, shallow excavation for land preparation for development, creation of new roads, and the installation of retaining walls. Under the Due Diligence Guidelines, this activity is considered to cause **Significant Disturbance**.

**Table 5: Summary of the Study Area and environment/landscape types and risks**

Study Area	Area (hectares)	Environment / Landscape Type	Environment Alteration	Risk
Lot 253 Helena Valley Road	2.99ha	Partially cleared land	Moderately Altered	Medium
Lot 254 Helena Valley Road	4.31ha	Partially cleared land with watershed	Moderately Altered	Medium

According to the Aboriginal Heritage Due Diligence Guidelines Schedule 2 Aboriginal Heritage Risk Matrix these activities classed as **Significance Disturbance** undertaken in those areas deemed to be a **Moderately Altered Environment** pose a **Medium Risk** to Aboriginal Heritage (see DAA 2013: 15 ‘Schedule 2 – The Aboriginal Heritage Risk Matrix’).

Where the risks are deemed to be ‘Medium’ the Aboriginal Heritage Due Diligence Guidelines recommends the proponent review the landscape and proposed activity (as above) and then apply the precautionary principle. This would require the proponent to check the ACHIS and conduct desktop research to assess the potential for Aboriginal sites to exist based upon previous studies – the subject of this desktop assessment. The results of these studies would mitigate the risk or inform decision making whereby the proponent could also contact DPLH for advice or seek consultation with the relevant Aboriginal people, conduct an Aboriginal heritage survey, or modify the proposed activity to avoid or minimise impact to high-risk landscapes or sites that are identified by desktop research.

Lots 253 and 254 Helena Valley Road poses a medium risk of encountering ethnographic Aboriginal heritage values or archaeological material resulting from Aboriginal occupation of the land due to the proximity of fresh, potable water at the Helena River. This risk profile is very much in keeping with the results of previous Aboriginal heritage surveys and the predictive models of site location as developed by Schwede (1983), O’Connor et al. (1985), Chappell (1989), Pocock & Strawbridge (1989), Machin (1994), Goode et al. (2020) and Goode (2020).

To mitigate these risks the proponent should conduct discussions with the Whadjuk Aboriginal Corporation and consider an Aboriginal heritage survey in consultation with the relevant Aboriginal people should they wish to proceed with the development of the study area. Consultation will determine if the proposed development can proceed in a manner that minimises harm to the Aboriginal heritage values present in the area.

The proposed development does include the preservation and protection of the Helena River foreshore and wetland reserve (see Figure 1). These activities minimise impacts to the environment within the study area deemed to have a medium risk to Aboriginal cultural heritage values (see DAA 2013: 10-11 'sections 2.24 - 2.28').

Ultimately, consultation with the WAC and an ethnographic and archaeological Aboriginal heritage survey will determine whether the land contains ACH places, as defined by the AHA. A survey would provide further clarity as to the proponents' obligations in regard to DPLH Registered ACH Place ID 3758 Helena River and DPLH Registered ACH Place ID 3966 Holding Paddock 1-4 (see DAA 2013: 11 'section 2.26').

## RECOMMENDATIONS

As a result of research conducted for this report it has been identified that there is a medium risk of encountering Aboriginal cultural heritage for the residential subdivision proposed at Lots 253 and 254 Helena Valley Road in the Shire of Mundaring.

**It is recommended** that, prior to ground disturbing works and land development, Ingwe Helena Valley Pty Ltd engage the Whadjuk Aboriginal Corporation in regard to conducting an ethnographic and archaeological Aboriginal Heritage Survey for the proposed residential development.

**It is recommended** that Ingwe Helena Valley Pty Ltd avoid impacting upon ACH places. If this is not possible **it is recommended** that the proponent conducts consultations with the relevant Aboriginal people through the Whadjuk Aboriginal Corporation to establish the cultural significance of such ACH places before lodging notice under section 18 of the AHA to use the land that may contain such sites.

**It is recommended** that if skeletal remains are unearthed during any ground disturbing activities for the project, the proponent will be required to stop work in the immediate area and contact the Western Australian Police Service (in accordance with the *Coroners Act 1996*).

If the remains are an Aboriginal set or partial set of remains, **it is further recommended** that the proponent report the matter to the Registrar of Aboriginal Sites at the Department of Planning, Lands and Heritage and the appropriate Aboriginal representative bodies for advice.

A procedures manual regarding the discovery of skeletal remains is available at the DPLH website: <https://www.wa.gov.au/organisation/departments-of-planning-lands-and-heritage/aboriginal-sites-objects-and-ancestral-remains>

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## APPENDIX 1: DPLH ACH REGISTER SEARCH



### Search Criteria

2 Aboriginal Cultural Heritage (ACH) Register in Shapefile - Lots\_253\_and\_254\_Helena\_Valley\_Rd

### Disclaimer

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The ILUAs bind the parties (including 'the State', which encompasses all State Government Departments and certain State Government agencies) to enter into a Noongar Standard Heritage Agreement (NSHA) when conducting Aboriginal Heritage Surveys in the ILUA areas, unless they have an existing heritage agreement. It is also intended that other State agencies and instrumentalities enter into the NSHA when conducting Aboriginal Heritage Surveys in the ILUA areas. It is recommended a NSHA is entered into, and an 'Activity Notice' issued under the NSHA, if there is a risk that an activity will 'impact' (i.e. by excavating, damaging, destroying or altering in any way) an Aboriginal heritage site. The Aboriginal Heritage Due Diligence Guidelines, which are referenced by the NSHA, provide guidance on how to assess the potential risk to Aboriginal heritage.

Likewise, from 8 June 2015 the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) in granting Mineral, Petroleum and related Access Authority tenures within the South West Settlement ILUA areas, will place a condition on these tenures requiring a heritage agreement or a NSHA before any rights can be exercised.

If you are a State Government Department, Agency or Instrumentality, or have a heritage condition placed on your mineral or petroleum title by DEMIRS, you should seek advice as to the requirement to use the NSHA for your proposed activity. The full ILUA documents, maps of the ILUA areas and the NSHA template can be found at <https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/south-west-native-title-settlement>.

Further advice can also be sought from the Department of Planning, Lands and Heritage via <https://achknowledge.dplh.wa.gov.au/ach-enquiry-form>.

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### Terminology

**ID: ACH on the Register** is assigned a unique ID by the Department of Planning, Lands and Heritage using the format: ACH-00000001. For ACH on the former Register the ID numbers remain unchanged and use the new format. For example the ACH ID of the place Swan River was previously '3536' and is now 'ACH-00003536'.

#### Access and Restrictions:

- **Boundary Reliable (Yes/No):** Indicates whether to the best knowledge of the Department, the location and extent of the ACH boundary is considered reliable.
- **Boundary Restricted = No:** Represents the actual location of the ACH as understood by the Department.
- **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 4km<sup>2</sup>) provides a general indication of where the ACH is located. If you are a landowner and wish to find out more about the exact location of the place, please contact the Department of Planning, Lands and Heritage.
- **Culturally Sensitive = No:** Availability of information that the Department of Planning, Lands and Heritage holds in relation to the ACH is not restricted in any way.
- **Culturally Sensitive = Yes:** Some of the information that the Department of Planning, Lands and Heritage holds in relation to the ACH is restricted if it is considered culturally sensitive information. This information will only be made available if the Department of Planning, Lands and Heritage receives written approval from the people who provided the information. To request access please contact via <https://achknowledge.dplh.wa.gov.au/ach-enquiry-form>.
- **Culturally Sensitive Nature:**
  - **No Gender / Initiation Restrictions:** *Anyone* can view the information.
  - **Men only:** Only *males* can view restricted information.
  - **Women only:** Only *females* can view restricted information.

#### Status:

- **Register:** Aboriginal cultural heritage places that are assessed as meeting Section 5 of the *Aboriginal Heritage Act 1972*.
- **Lodged:** Information which has been received in relation to an Aboriginal cultural heritage place, but is yet to be assessed under Section 5 of the *Aboriginal Heritage Act 1972*.
- **Historic:** Aboriginal heritage places assessed as not meeting the criteria of Section 5 of the *Aboriginal Heritage Act 1972*. Includes places that no longer exist as a result of land use activities with existing approvals.

**Place Type:** The type of Aboriginal cultural heritage place. For example an artefact scatter place or engravings place.

**Legacy ID:** This is the former unique number that the former Department of Aboriginal Sites assigned to the place.

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## Aboriginal Cultural Heritage Inquiry System

### List of Aboriginal Cultural Heritage (ACH) Register

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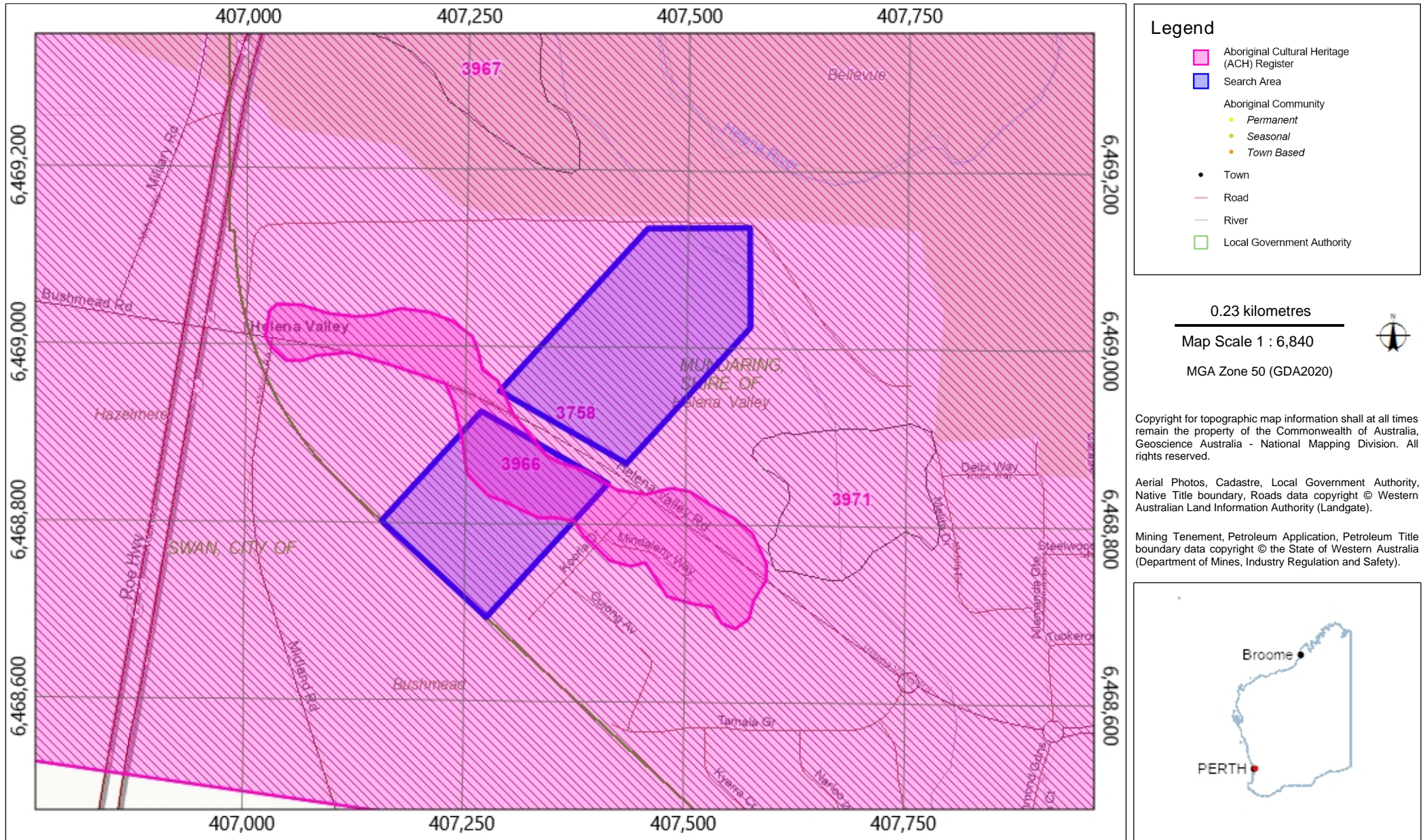
ID	Name	Boundary Restricted	Boundary Reliable	Culturally Sensitive	Culturally Sensitive Nature	Status	Place Type	Knowledge Holders	Legacy ID
3758	HELENA RIVER	Yes	Yes	Yes	No Gender / Initiation Restrictions	Register	Ritual / Ceremonial; Creation / Dreaming Narrative; Repository / Storage Place	*Registered Knowledge Holder names available from DPLH	S02148
3966	HOLDING Paddock 1-4	No	Yes	No	No Gender / Initiation Restrictions	Register	Artefacts / Scatter	*Registered Knowledge Holder names available from DPLH	S01452



# Aboriginal Cultural Heritage Inquiry System

## Map of Aboriginal Cultural Heritage (ACH) Register

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### Legend

- Aboriginal Cultural Heritage (ACH) Register
- Search Area
- Aboriginal Community
  - Permanent
  - Seasonal
  - Town Based
- Town
- Road
- River
- Local Government Authority

0.23 kilometres

Map Scale 1 : 6,840

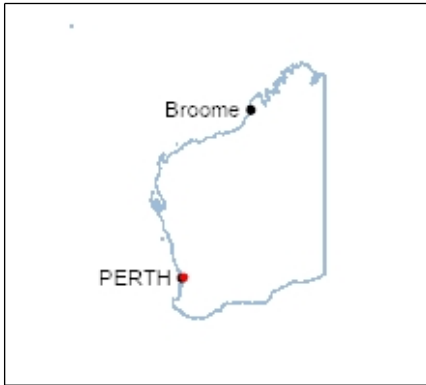
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### Search Criteria

No Aboriginal Cultural Heritage (ACH) Lodged in Shapefile - Lots\_253\_and\_254\_Helena\_Valley\_Rd

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## Aboriginal Cultural Heritage Inquiry System

### List of Aboriginal Cultural Heritage (ACH) Lodged

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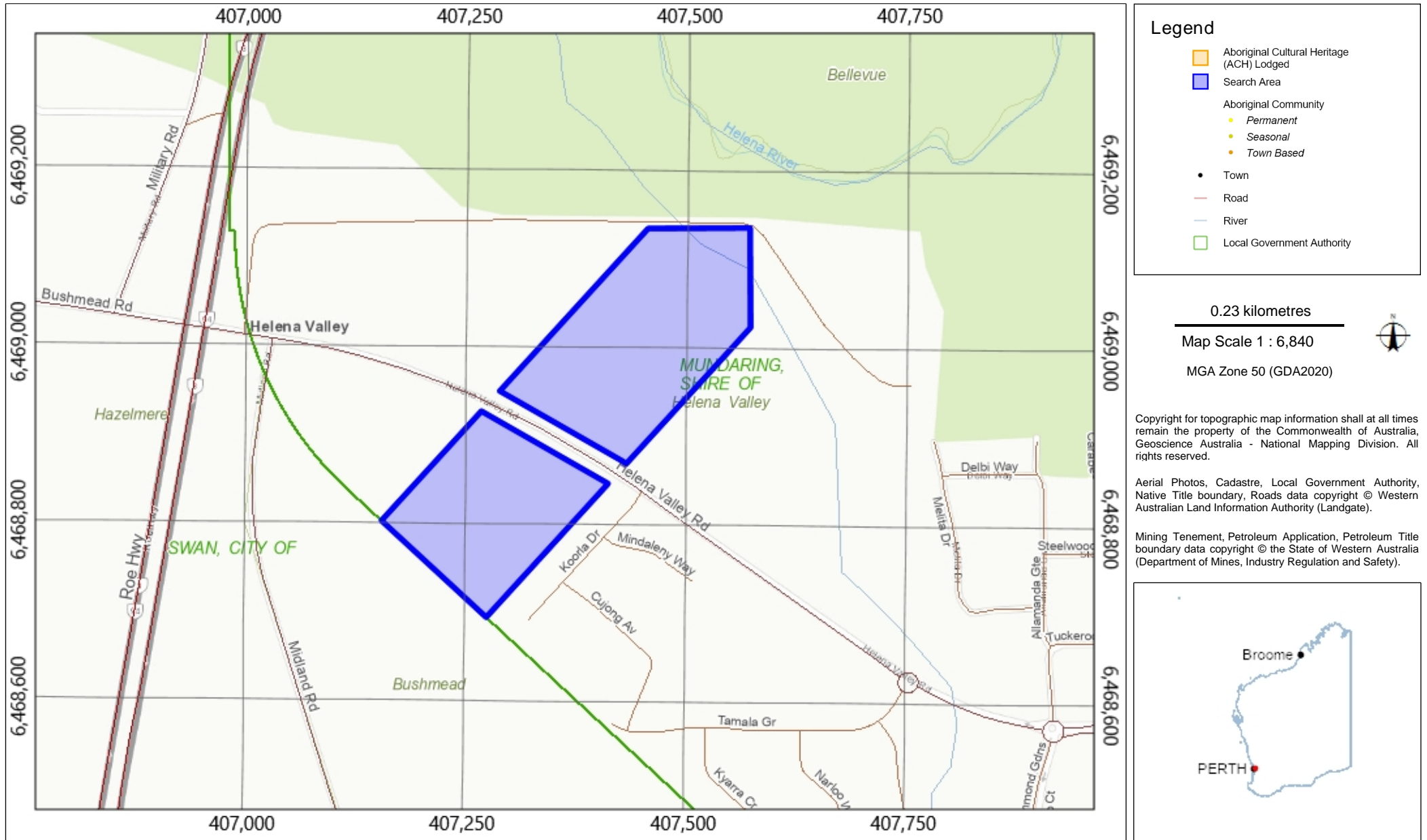
Topographic basemap sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community.



# Aboriginal Cultural Heritage Inquiry System

## Map of Aboriginal Cultural Heritage (ACH) Lodged

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**Legend**

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  - Permanent
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0.23 kilometres  


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No Aboriginal Cultural Heritage (ACH) Historic in Shapefile - Lots\_253\_and\_254\_Helena\_Valley\_Rd

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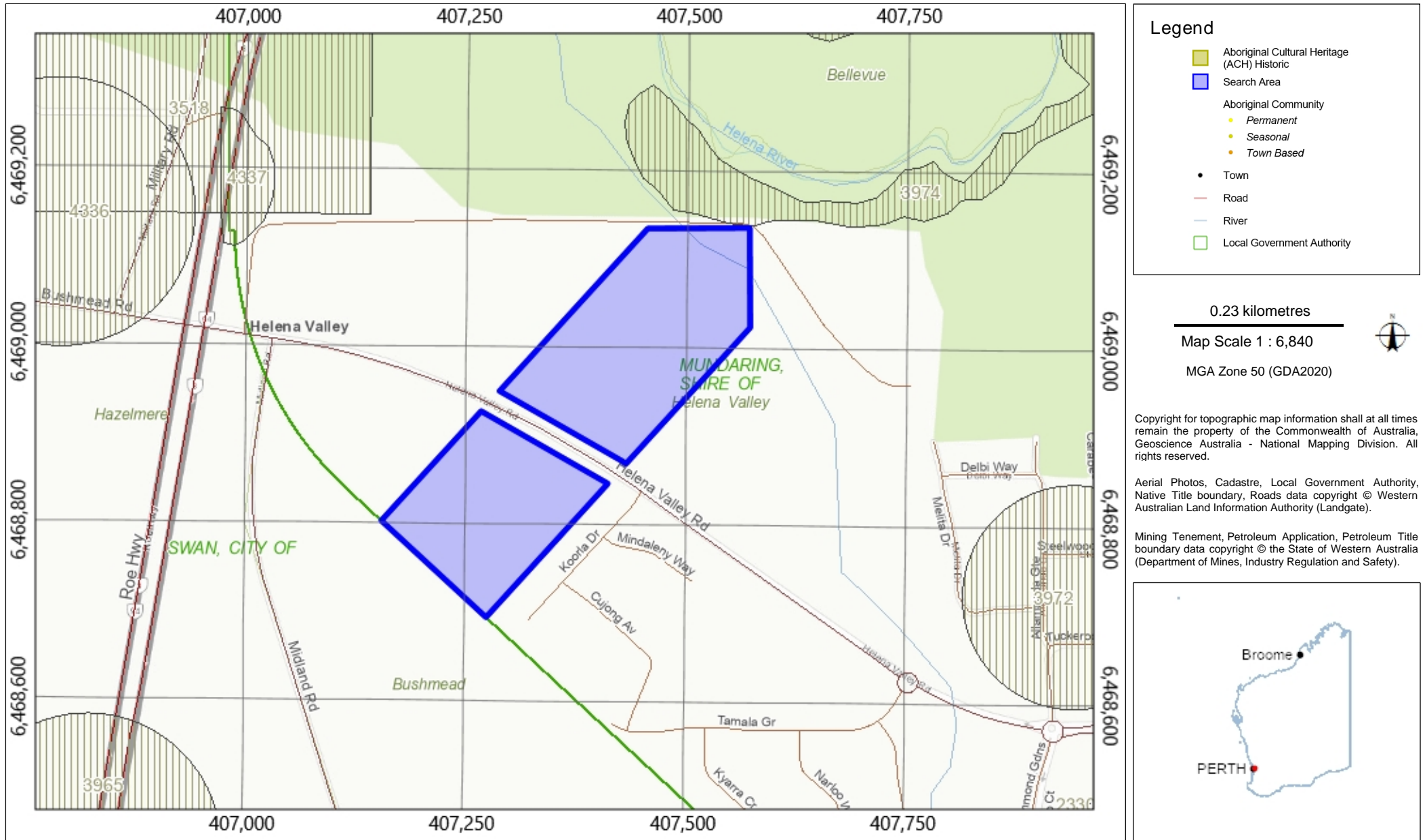
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# Aboriginal Cultural Heritage Inquiry System

## Map of Aboriginal Cultural Heritage (ACH) Historic

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## APPENDIX 2: ABORIGINAL HERITAGE DUE DILIGENCE GUIDELINES



Department of **Aboriginal Affairs**  
Department of the **Premier and Cabinet**

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# **Aboriginal Heritage Due Diligence Guidelines**

**Version 3.0**

**30 April 2013**

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## About these Guidelines

These Guidelines and the Aboriginal Heritage Matrix are for general assistance only. Land users should always obtain independent advice on the application of the *Aboriginal Heritage Act 1972* (AHA) (WA) to their particular circumstances. When using these Guidelines the 'precautionary principle'\* should be applied to any circumstance where doubt exists, particularly about:

- the potential impact to Aboriginal heritage; and/or
- the nature and level of potential impact of the proposed activity(s).

If doubt exists the land user should contact the Department of Aboriginal Affairs in the first instance:

Telephone: 1300 651 077 or 08 6551 8004

Website: [www.daa.wa.gov.au/](http://www.daa.wa.gov.au/)

### \*The Precautionary Principle

To apply a precautionary approach to the assessment of risk to Aboriginal heritage ensures all aspects of potential risk are considered and appropriate steps are applied to avoid or minimise damage to Aboriginal sites.

## PART 1 - INFORMATION TO ASSIST IN USING THESE GUIDELINES

### Aboriginal Heritage Act 1972

- 1.0 The *Aboriginal Heritage Act 1972 (AHA)* (WA) was enacted to ensure that Aboriginal heritage to which the AHA applies could be appropriately protected and preserved.
- 1.1 Under section 10 of the AHA, the Minister's role is to ensure that, as far as reasonably practicable, all places in Western Australia which are traditionally or currently of sacred, ritual or ceremonial significance to Aboriginal people are properly recorded and their importance evaluated. This is to assist in determining priorities for the protection and preservation of Aboriginal heritage.
- 1.2 See **Appendix 1 – Definitions** for a list of terms and their definitions as used in the AHA or these Guidelines.

### Definition of an Aboriginal Site

- 1.3 As defined in section 5 of the AHA an Aboriginal site is:
  - (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 the 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 the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State; and
  - (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.
- 1.4 See **Appendix 2 – Types of Aboriginal Sites and Landscape features which may contain a site** – for a brief description of the various types of Aboriginal sites that can be found in Western Australia.

## Offences relating to Aboriginal Sites

- 1.5 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 (Registrar) under section 16 or the consent of the Minister of Aboriginal Affairs (Minister) under section 18.
- 1.6 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.
- 1.7 Section 15 of the AHA provides that any person who has knowledge of any thing or place to which the AHA applies or might reasonably be suspected to apply has an obligation to report it to the Registrar. However, according to section 7(1)(b) Aboriginal people are not compelled to disclose information or otherwise act contrary to any prohibition of the relevant Aboriginal customary law or tradition.

## Administration of the AHA

### The Minister for Aboriginal Affairs

- 1.8 Responsibility for the administration of the AHA is vested in the Minister for Aboriginal Affairs under section 11A. The Minister is required to have regard to the recommendations of the Registrar for Aboriginal Sites and the Aboriginal Cultural Material Committee but is not bound by these recommendations.

### The Register

- 1.9 The Register is established under section 38 of the AHA and must, so far as is practicable, include:
  - (a) protected areas (section 19);
  - (b) Aboriginal cultural material; and
  - (c) Aboriginal sites and objects to which the AHA applies.
- 1.10 The Register lists all **known** Aboriginal sites reported to the Registrar pursuant to section 15 of the AHA and all areas currently protected under section 19.
- 1.11 The Register does not include undiscovered or unregistered sites. Irrespective of a site being either known, or assessed by the DAA, and/or on the Register,

importantly the AHA affords protection to **all Aboriginal sites** which can be determined to meet the section 5 definitions.

- 1.12 The Register is an essential reference tool which can assist land users in identifying locations where Aboriginal heritage is present.

### The Registrar

- 1.13 The Registrar of Aboriginal Sites (**Registrar**) is appointed to undertake various obligations under the AHA including the management of the Register of Aboriginal Places and Objects (often referred to as the Register of Aboriginal Sites).

### The Department of Aboriginal Affairs

- 1.14 The Department of Aboriginal Affairs (**DAA**) is responsible for administering the AHA. The DAA works with Aboriginal people to preserve and manage Aboriginal sites of importance and significance.

### The Aboriginal Cultural Material Committee

- 1.15 The Aboriginal Cultural Material Committee (**Committee**) also referred to as the APMC, evaluates on behalf of the community the importance or significance of Aboriginal places and objects and recommends to the Minister places and objects which are, or have been of special significance to Aboriginal people. The Committee's advice may include recommendations about the preservation or management of Aboriginal sites and objects.
- 1.16 The members of the Committee are drawn from various parts of Western Australia and are people who, in the opinion of the Minister, have special knowledge, experience or responsibility that will assist the Committee in the recognition and evaluation of the cultural significance of matters coming before the Committee.

### Distinction between Aboriginal heritage and native title

- 1.17 The *Native Title Act 1993* (Cwlth) (**NTA**) provides for the recognition and protection of native title rights and interests by which Aboriginal people have maintained a traditional connection to their land and waters since sovereignty. The NTA further provides that native title rights have been extinguished over land that has been subject to particular grants of land tenure (e.g. freehold and leasehold). By contrast, regardless of the underlying land tenure, the AHA applies to all land in Western Australia.

- 1.18 Where the Federal Court makes a native title determination that certain Aboriginal people hold native title rights, it will generally include rights to, for example, "visit, maintain and protect from physical harm, areas, places and sites of importance in the Determination Area" which are essentially rights to manage cultural heritage. In that regard, native title holders should be afforded primary authority for Aboriginal heritage within an area where native title rights have been determined.

### Further Information

- 1.19 Copies of the Western Australian *Aboriginal Heritage Act 1972* and the Regulations can be accessed online through the State Law Publisher website ([www.slp.wa.gov.au](http://www.slp.wa.gov.au)) and copies of the Commonwealth *Native Title Act 1993* can be accessed through the ComLaw website ([www.comlaw.gov.au](http://www.comlaw.gov.au)).
- 1.20 Any questions regarding the AHA or the Regulations can be referred to the DAA:  
**Department of Aboriginal Affairs**  
Telephone: 1300 651 077 or 08 6551 8004  
Website: [www.daa.wa.gov.au/](http://www.daa.wa.gov.au/)
- 1.21 Any questions about native title claims or Indigenous land use agreements in Western Australia can be referred to the Native Title Unit:  
**Department of the Premier and Cabinet – Land, Approvals and Native Title Unit**  
Telephone: 08 6552 5333  
Website: [www.dpc.wa.gov.au/LANTU](http://www.dpc.wa.gov.au/LANTU)

## **PART 2–ABORIGINAL HERITAGE– DUE DILIGENCE GUIDELINES**

### **Purpose of the Due Diligence Guidelines (Guidelines)**

- 2.0 All Aboriginal sites are protected by the AHA, whether or not they have previously been identified or registered, provided that the site can be determined to meet the section 5 definitions.
- 2.1 A land user is obliged to comply with the provisions of the AHA and failure to do so may result in prosecution. Section 17 of the AHA provides that it is an offence to excavate, destroy, damage, conceal or in any way alter an Aboriginal site. Therefore land users should carefully evaluate how a proposed activity may affect Aboriginal heritage.
- 2.2 In proceedings for an offence under the AHA, section 62 provides a ‘special defence of lack of knowledge’. Section 62 states that "it is a defence for the person charged to prove that he did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which [the AHA] applies".
- 2.3 The purpose of these Guidelines is to assist land users to be more aware of how their activities could adversely impact an Aboriginal site. Compliance with these Guidelines will not of itself guarantee compliance with the AHA. However, where the Guidelines are followed, it is less likely that Aboriginal sites will be harmed.
- 2.4 Due diligence may involve one or all of the following actions:
  - (a) assessing the landscape where an activity is to take place;
  - (b) assessing the proposed activity and the potential impact on the landscape;
  - (c) searching the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System;
  - (d) consulting with the relevant Aboriginal people;
  - (e) agreeing to an Aboriginal heritage survey; or
  - (f) other heritage management strategies.

### **Assessing the landscape where an activity is to take place**

- 2.5 The possibility of a landscape containing Aboriginal sites will differ between land which has had considerable previous land use, for example intensive land clearing or

development, and land which is largely in its natural state or is remote and undisturbed by previous development.

- 2.6 Similarly, some landforms are more likely than others to serve as an indicator of Aboriginal traditional activity than others. Landscape features which may contain Aboriginal sites and should be approached with some caution include, but are not limited to: rock outcrops, rock shelters, caves, alluvial terraces, foreshores and coastal dunes, ranges and hills, natural wetlands, waterholes, springs, gnamma holes, rivers, creeks, streams, swamps, hills and mound formations, or areas with potential archeological deposits.
- 2.7 An assessment of the area where an activity is proposed may reveal evidence (artefacts or other signs) about previous Aboriginal traditional activity. Please see **Appendix 2 – Types of Aboriginal sites & landscape features which may contain a site.**

### Assessing the proposed activity and the potential impact on the landscape

- 2.8 A land use activity can range in effect, from an activity unlikely to impact on Aboriginal sites to an activity highly likely to impact (i.e. damage and destroy) Aboriginal sites. For example, an aerial survey will not physically damage Aboriginal sites whereas blasting or ground excavation can cause extensive damage to an Aboriginal site.
- 2.9 **Schedule 1 – Land Activities by Category** – provides a brief list of land activities categorised by the level of likely disturbance. **Schedule 2 – The Aboriginal Heritage Matrix** – provides an indicative guide to the relationship between previous land use and the category of land activity.

### Major Development Projects

- 2.10 A major project which potentially involves multiple ground-disturbing activities over a large area (for example, a port with rail and road access) may require the preparation of an integrated plan to manage Aboriginal heritage, rather than applying a piecemeal approach to different activities within the total project area.
- 2.11 Aboriginal heritage is one compliance requirement a project developer should address as early as possible. Early consultation with Aboriginal people can help to identify how to minimise or avoid any disturbance of Aboriginal sites. Leaving heritage management to the later stages of project planning can risk delays whilst the relevant

information or approvals are obtained.

- 2.12 See the Department of State Development's website for general information about the range of project approvals linked to major projects ([www.dsd.wa.gov.au/6734.aspx](http://www.dsd.wa.gov.au/6734.aspx)).

### Searching the Register of Aboriginal Sites and the Aboriginal Heritage Inquiry System

- 2.13 Once a land user has identified the proposed activity and considered the level of previous land use, the next step is to establish the possible existence of an Aboriginal site. The key reference tool is the Register of Aboriginal Sites accessible online via the DAA's website. The Register is incorporated into the Aboriginal Heritage Inquiry System (AHIS).
- 2.14 The Register lists all **known Aboriginal sites** reported to the Registrar pursuant to section 15 of the AHA and all areas protected under section 19. See paragraphs 1.9-1.12 of these Guidelines for a fuller description of the Register.
- 2.15 The AHIS enables members of the public to search areas in Western Australia for identified Aboriginal sites and areas previously subject to heritage surveys processed by DAA. The surveys may indicate whether or not Aboriginal sites are present or whether some areas have been marked for avoidance.
- 2.16 The AHIS can be accessed online through DAA's website ([www.daa.wa.gov.au/AHIS/default.aspx](http://www.daa.wa.gov.au/AHIS/default.aspx)).
- 2.17 Please note: Land users should exercise caution in areas where no surveys have been completed, or where surveys have only been completed for parts of the area where the proposed activity is intended. Caution is required because heritage surveys over only part of the land may not have identified all possible sites. Sole reliance on information contained in the Register may not be sufficient and consultation in the first instance with the DAA is recommended, depending on the DAA's advice this consultation may extend to include the relevant Aboriginal people.

### Consulting with the relevant Aboriginal people

- 2.18 Information about the Aboriginal heritage for a particular area is best obtained through consultation with the relevant Aboriginal people. Whilst there is no definitive list of Aboriginal people who should be consulted for an area, the Committee suggests that the following people at least should be consulted:

- (a) determined native title holders;
- (b) registered native title claimants;

- (c) persons named as informants on Aboriginal site recording forms held in the Register at DAA; and
  - (d) any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area.
- 2.19 Consultation in this context means engaging meaningfully with the relevant Aboriginal people. The purpose of such consultation could be:
- (a) to provide easily understood information about the proposed land use and to seek responses from the relevant Aboriginal people;
  - (b) to identify sites in the area that may not have been registered;
  - (c) to assess whether the proposed land activity might damage Aboriginal sites; and
  - (d) to develop strategies for heritage management for the proposed land use and for any longer term disturbance that might occur as part of the activity (e.g. construction of power poles and later periodic maintenance).
- 2.20 Consultation might not lead to consensus but provide a basis upon which decisions can be made.
- 2.21 It should be noted that Aboriginal people are not obliged to divulge culturally specific or sensitive information and in some cases Aboriginal law and custom may prevent such disclosure. Nonetheless, heritage management strategies can be developed to protect sites even if details are limited.
- 2.22 If a land use activity is likely to impact upon Aboriginal heritage, it is best that heritage management strategies are implemented early in the planning process. **Early engagement and consultation** can help to identify ways to minimise and avoid damage to or disturbance of Aboriginal sites. Leaving heritage management to the later stages of project planning can potentially delay the land user whilst he/she obtains the relevant information or approvals.
- 2.23 Please note. Consultation with the relevant Aboriginal people is a pre-condition to the Committee's consideration of an application for consent or approval under the AHA.

## Native Title Future Acts

- 2.24 Where a license or permit application is submitted under a state law which triggers the 'future act' provisions (Division 3 of the NTA), particularly where a license proposes a significant ground disturbing activity, it is likely that an Aboriginal heritage survey of the area will be required.

- 2.25 An Aboriginal heritage agreement cannot dis-allow or modify the operation of the AHA. All parties are bound by the provisions and obligations of the AHA.

### Failure to reach agreement about conducting an Aboriginal Heritage Survey

- 2.26 Where agreement cannot be reached with the relevant Aboriginal people for the area to undertake an Aboriginal heritage survey, the land user continues to be bound by the provisions of the AHA. The land user is still obliged to either avoid the site or to apply for consent to impact the site.
- 2.27 If at any time it is likely that the proposed activity will in any way impact on a registered Aboriginal site, or a suspected Aboriginal site is uncovered and consent under section 16 or 18 has not been granted to impact the site, then the activity should cease immediately and the land user should contact the DAA and the relevant Aboriginal people.

### Strategies for managing Aboriginal heritage

#### Site avoidance strategies

- 2.28 If an Aboriginal site is on or close to an area where a land user proposes an activity which may damage, destroy or alter an Aboriginal site the land user should investigate strategies for avoiding the site or limiting disturbance to the site. The land user will consult with the relevant Aboriginal people to:
- (a) seek advice as to how best the activity may be managed to avoid damage;
  - (b) where necessary, conduct an Aboriginal heritage Survey;
- 2.29 The land user may seek authorisation or consent to the activity under either the AHA or the Regulations to proceed with the activity, ideally with the support of the relevant Aboriginal people.

#### Consent to an activity

- 2.30 Consent or authorisation is usually given in one of three ways:
- (a) **section 18** of the AHA provides that, in order to avoid committing an offence under section 17, a land owner may give notice to the Committee that he or she requires to use the land for a purpose that might impact on a heritage site

unless consent is given by the Minister to the use of the land for that purpose. The Committee considers the notice and makes a recommendation to the Minister for Aboriginal Affairs. The Minister then makes a decision whether or not to consent to the use of the land. If consent is granted, the Minister can also impose conditions;

- (b) **section 16** of the AHA provides that the Registrar, on the advice of the Committee may authorise entry upon and excavation of a site and removal of items from that site; or
- (c) **regulation 10** of the *Aboriginal Heritage Regulations 1974* (WA) (AHR) details particular activities that require written authorisation from either the Registrar or the Minister before any such activities can occur on land and/or property to which these Regulations apply.

### Limiting impact to an Aboriginal site

- 2.31 Particular care should be taken where a land user proposes to undertake activities that may potentially cause further disturbance inside the boundaries of a registered Aboriginal site, or where there are sites which are yet to be assessed by the Committee, or in areas which have not previously been surveyed and may include landscape features as set out under **Appendix 2 – Types of Aboriginal sites and landscape features likely to contain a site.**
- 2.32 It is important to be informed about the possibility of an area containing an Aboriginal site. Extra care must be taken prior to proceeding with any land activity that may cause disturbance to an Aboriginal site.

### Schedules 1 and 2 of these Guidelines

- 2.33 Schedules 1 and 2 are provided for general guidance only. In case of doubt a land user should contact the DAA for further information and/or assistance on 1300 651 077 or through their website: <http://www.daa.wa.gov.au/contact-us/>.

## SCHEDULE 1 – LAND ACTIVITIES BY CATEGORY

The below five lists are examples of typical development activities. Land users should apply the precautionary principle and use their own initiative to assess their intended activity with those described below. In cases where the activity does not correspond with those listed below, a land user should compare it as closely as possible with one or more of the listed activities.

Please note: The following lists of activities are not intended to be exhaustive. Their inclusion is to demonstrate the likely activities within the categories. If in doubt please seek advice from the DAA on 1300 651 077 or through the website: [www.daa.wa.gov.au/contact-us/](http://www.daa.wa.gov.au/contact-us/).

These categories are intended to be used in conjunction with the **Aboriginal Heritage Matrix (Matrix)** in **Schedule 2**.

### 1. Negligible Disturbance

Activities which are non-invasive and cause negligible or no impact to the land may include:

- walking, photography, filming;
- aerial surveying/magnetic surveys;
- use of existing tracks, water courses;
- environmental monitoring;
- water and soils sampling;
- fossicking using hand held instruments;
- spatial measurement; and
- scientific research, using hand held tools.

### 2. Minimal Disturbance

Activities that cause minimal disturbance to the land may include:

- cultivation/grazing in areas previously cultivated/grazed;
- maintenance of existing paths, walls, roads, tracks, bridges, public infrastructure (e.g. electrical, water, sewage) and community utilities within the existing footprint and adjacent service areas;
- feral animal eradication, weed, vermin and pest control, vegetation control and fire control; and
- light vehicular access and camping.

### 3. Moderate Disturbance

Activities that cause moderate disturbance to the land may include:

- work program clearance;
- sampling using hand held rig or rig mounted on a light vehicle;
- new fire breaks;

- re-vegetation;
- temporary power lines;
- temporary gravel or soil stockpile; and
- temporary camps.

#### **4. Significant Disturbance**

Activities that cause significant disturbance to the land may include:

- creation of new roads or tracks;
- new public access ways, bridges, culverts, flood remediation and erosion levies;
- land clearing over more than a small area;
- intensive soil/core sampling;
- new pipelines;
- significant reclamation works; and
- major landscaping/contouring.

#### **5. Major Disturbance\***

Activities that cause major and lasting disturbance to the land may include:

- large-scale land clearing;
- exploration drilling;
- bulk sampling, soil excavation;
- mechanical earthmoving, blasting;
- major construction works;
- open cut mining;
- large scale changes to waterways; and
- industrial development.

\*Major developments (for example a new freeway or a port) can create the need for comprehensive heritage management plans i.e. planning which amounts to more than an assessment of individual activities and their possible impact on Aboriginal heritage. For guidance on major development projects see section 2.10 – 2.12 of these Guidelines.

## SCHEDULE 2 – THE ABORIGINAL HERITAGE RISK MATRIX

Previous Land Use	LAND ACTIVITIES – CATEGORIES 1-5					
		1. Negligible disturbance	2. Minimal disturbance	3. Moderate disturbance	4. Significant disturbance	5. Major disturbance
	<b>Built Environment</b> - e.g. urban environment, towns, metropolitan region.	Low	Low	Low	Low	Medium
	<b>Significantly Altered Environment</b> - e.g. cultivated and cleared land.	Low	Low	Low	Medium	High
	<b>Moderately Altered Environment</b> - e.g. partially cleared lands, re-vegetated landscape.	Low	Low	Medium	Medium	High
	<b>Minimally Altered Environment</b> - e.g. urban bush land, regrowth areas	Low	Medium	Medium	High	High
	<b>Unaltered Environment</b> - e.g. protected areas or pristine environment.	Low	Medium	High	High	High
<b>Risk Assessment</b>	<b>Actions</b>					
Low Risk (Review)	Review the landscape and proposed activity (see sections 2.4 - 2.8 - assessing the landscape and the activity). Refer to the AHIS.					
Medium Risk (Review /Exercise Caution)	Review the landscape and proposed activity (as above). The precautionary principle (see page 2) applies. Refer to the AHIS and contact the DAA. A range of actions may be recommended, including: no action, consultation with the relevant Aboriginal people, an Aboriginal heritage survey or modification of the proposed activity to avoid or minimise site impact.					
High Risk (Consult / Survey / Approvals)	Refer to the AHIS. Consult with the DAA and the relevant Aboriginal people. Dependent on consultation outcomes you may need to include: an Aboriginal heritage survey, modification of the proposed activity to avoid or minimise (see sections 2.24 - 2.28) impact to the site and/or other heritage management strategies. The land user may also need to apply for approval or consent (see section 2.26) to the activity.					
For major development projects refer to sections 2.10 - 2.12 for further advice.						

*These Guidelines and the Aboriginal Heritage Risk Matrix are for general assistance only. Land users should always obtain independent advice on the application of the AHA to their particular circumstances and if doubt exists the land user should contact the DAA.*

## Appendix 1 – Definitions

In addition to the definitions used in the AHA the following definitions are used within these guidelines:

**Aboriginal heritage** means the Aboriginal site or object as defined in sections 5 and 6 of the AHA.

**Aboriginal Heritage Risk Matrix** means the document attached at Schedule Two of these Guidelines (as amended from time to time).

**Aboriginal Heritage Survey** means a survey conducted by a suitably qualified archaeologist, ethnographer, anthropologist or other heritage professional who investigates the Aboriginal heritage of an area. For site identification, work area clearance or site avoidance surveys the relevant Aboriginal people will nominate Aboriginal consultants (usually 6 people) from their group who provide first-hand knowledge and guidance about the Aboriginal heritage of the area. There are several types of Aboriginal heritage surveys:

- desk top study, a preliminary investigation of Aboriginal heritage;
- site identification survey;
- work area clearance survey; and
- site avoidance survey.

**Aboriginal Heritage Survey Report** means a report by a suitably qualified archaeologist, ethnographer, anthropologist or other heritage professional, that communicates the results of the Aboriginal heritage survey. Aboriginal heritage survey reports constitute a significant portion of the Register of Aboriginal Sites. Guidance about the type of information to be included in the various types of Aboriginal Heritage Survey Reports is available from the DAA's website.

**Consultation** means a process of enquiry and response between a land user and relevant Aboriginal people to provide information or assistance in identifying any need for site identification, heritage survey and/or land use activity proposal modification. Consultation should include details of proposed land use activity.

**Disturbance** means any activity which will physically alter the surface or ground of the land or waters.

**Proposed activity** means any planned activity on the land or water that may result in varying degrees of disturbance.

**Native Title Claimant** means the Aboriginal people who have lodged a native title determination application over a particular area of land and waters.

**Native Title Holder** means there has been a determination by the Federal Court that a named group of Aboriginal people hold the native title rights and interests over a particular area of land and/or waters.

## Appendix 2 -Types of Aboriginal sites and landscape features which may contain a site

The following is an overview of the various types of sites that can be found in Western Australia. This list is not exhaustive.

**Artefacts:** An artefact site is a place where human activity is identifiable by the presence of a portable object/s (e.g., stone, glass, bone, shell) utilised or modified by Aboriginal people in relation to traditional cultural life past or present.

**Fish Trap:** A stone, wood, or other similar structure made by Aboriginal people for catching fish. Such structures are generally found on the coast of Western Australia, and in its lakes and rivers.

**Man-made structure:** The placement or arrangement, by Aboriginal people, of stone, wood or other material made into a structure for ceremonial or utilitarian purposes.

**Mythological:** A place that is connected to the great spirit ancestors, in their various manifestations, of the 'Dreamtime' which continues to be important and of special significance to persons of Aboriginal descent.

**Repository/Cache:** A place where cultural or utilitarian objects are/were taken, or stored, by Aboriginal people, either past or present.

**Ceremonial:** A place used for a formal act or series of acts prescribed by ritual, belief in a mythological manifestation, religious belief or observance, protocol or convention that is connected with the traditional cultural life of Aboriginal people past or present.

**Grinding patches/Grooves:** A place where grinding patches or grooves can be found. Grinding patches or grooves are smoothed areas or grooves on rock surfaces (non-portable) that have been created by grinding activity associated with food production such as seed milling, preparation of pigments, tool manufacture and/or maintenance and ritual.

**Midden:** A place where there is an accumulation of shell refuse that is derived from exploitation of a mollusc resource by Aboriginal people. Such sites may also contain artifacts, fireplaces, burnt shell and bones.

**Painting:** Places where Aboriginal people have painted on surfaces. Paintings (including daubings, drawings, stencils, prints) can be figurative or non-figurative markings or motifs on surfaces such as rocks, rock walls and trees at fixed locations that are produced by adding pigments and or mediums, such as ochre, blood, beeswax, animal fats, vegetable dyes, tree saps.

**Skeletal material/Burial:** A place where Aboriginal skeletal material is buried and/or where mortuary practices occurred.

**Engraving:** A motif (either figurative or non-figurative) on a rock surface produced by percussion or abrasion. Engravings are also often referred to as petroglyphs.

**Historical:** A place that has historical associations with Aboriginal people and may or may not contain physical evidence of those associations.

**Modified or Scarred tree:** A place with one or more tree(s), living or dead, that has been modified by Aboriginal people by removing the bark or wood resulting in the formation of a scar. This sort of modification was and is frequently done for the making of implements, tools or other materials that were used in traditional cultural practices.

**Quarry:** Places where there is evidence for the extraction of stone or ochre.

Landscape features, which possibly contain Aboriginal sites and should therefore be approached with care, include but are not limited to:

- (a) rock outcrops;
- (b) caves;
- (c) foreshores and coastal dunes; (d) ranges and hills;
- (d) areas of bio-geographical significance, such as natural wetlands;
- (e) permanent and semi-permanent waterholes, natural springs, gnamma holes, and watercourses;
- (f) some hill and mound formations; and
- (g) areas with potential archaeological deposit, such as rock shelters, caves, alluvial terraces, dune deposits and other relevant geo-morphological features.

The views of the relevant Aboriginal people are a key factor in identifying and assessing sites. Appropriately qualified persons such as anthropologists, archaeologists and historians can also provide valuable assistance.

### Appendix 3 – Contact Details for the Relevant Aboriginal People

Information about the Aboriginal heritage for a particular area is best obtained through consultation with the relevant Aboriginal people. Whilst there is no definitive list of Aboriginal people who should be consulted for an area, the Committee suggests that the following people at least should be consulted:

- (a) determined native title holders\*;
- (b) registered native title claimants;
- (c) persons named as informants on Aboriginal site recording forms held in the Register at Department of Aboriginal Affairs (DAA); and
- (d) any other Aboriginal people who can demonstrate relevant cultural knowledge in a particular area.

\*When a determination of native title is made, the NTA requires the native title holders to establish a prescribed bodies corporate (PBC), also known as a registered native title body corporate. PBC's hold in trust, or manage, the native title rights and interests of the native title holders.

The following contact details are subject to change. To confirm contact details please use the website of the 'Office of the Registrar of Indigenous Organisations' (ORIC).

Organisation Type	Name	Contact Details
Prescribed Body Corporate	Bardi and Jawi Niiimidiman Aboriginal Corporation	Postal Address: 36 Pembroke Street, via, Broome WA 6725  Phone Number: 08 91923483
Prescribed Body Corporate	Buurabalayji Aboriginal Corporation	Postal Address: PO box 55, Onslow WA 6710  Phone Number: 08 91846876
Prescribed Body Corporate	Bunuba Dawangarri Aboriginal Corporation	Postal Address: PO Box 5451 Cable Beach WA 6726  Phone number: 0431 350 620
Prescribed Body Corporate	Jidi Jidi Aboriginal Corporation	Postal Address: PO Box 128, Meekatharra WA 6642  Phone Number: 0899812021
Prescribed Body Corporate	Karajarri Traditional Lands Association Aboriginal Corporation	Postal Address: Kimberley Land Council, 36 Pembroke Road, Broome WA 6725  Phone Number: 08 91940142
Prescribed Body Corporate	Kunin (Native Title) Aboriginal Corporation	Postal Address: PO Box 1375, Broome WA 6725  Phone Number: 0891936651
Prescribed Body Corporate	Miriuwung and Gajerrong #1 and #4	Postal Address: PO Box 2110,

*These Guidelines and the Aboriginal Heritage Risk Matrix are for general assistance only. Land users should always obtain independent advice on the application of the AHA to their particular circumstances and if doubt exists the land user should contact the DAA.*

	(NTPBC) Aboriginal Corporation	Kununurra WA 6743 Phone Number: 08 91664800
Prescribed Body Corporate	Mungarlu Ngurrarankatja	Postal Address: C/- Central Desert Native Title Services, 170 Wellington Street, East Perth WA 6004 Phone Number: 0894252000
Prescribed Body Corporate	Ngarluma Aboriginal Corporation	Postal Address: PO Box 263, Roebourne WA 6718 Phone Number: 08 9182 1351
Prescribed Body Corporate	Nyangumarta Karajarri Aboriginal Corporation	Postal Address: C/- Kimberley Land Council, PO Box 2145, Broome WA 6725 Phone Number: 08 91940124
Prescribed Body Corporate	Nyangumarta Warrarn Aboriginal Corporation	Postal Address: C/- Pilbara Native Title Services, 3 Brand Street, South Hedland WA 6722 Phone Number: 0891725433
Prescribed Body Corporate	Parna Ngururpa Aboriginal Corporation	Postal Address: C/- Central Desert Native Title Services Ltd, 170 Wellington Street, East Perth WA 6004 Phone Number: 08 94252000
Prescribed Body Corporate	Pila Nguru Aboriginal Corporation	Postal Address: PO Box 1014, Kalgoorlie WA 6430 Phone Number: 08 90371147
Prescribed Body Corporate	Tjamu Tjamu Aboriginal Corporation	Postal Address: Central Desert Native Title Services Ltd, 170 Wellington Street, East Perth WA 6004 Phone Number: 08 94252000
Prescribed Body Corporate	Tjurabalan Native Title Land Aboriginal Corporation	Postal Address: PO Box 280, Halls Creek WA 6770 Phone Number: 0891688988
Prescribed Body Corporate	Wanjina-Wunggurr (Native Title) Aboriginal Corporation	Postal Address: PO Box 821, Kununurra WA 6743 Phone Number: 0891682298
Prescribed Body Corporate	Wanparta Aboriginal Corporation	Contact Officer: Colin McKellar Postal Address: 3 Brand Street,

		South Hedland WA 6722 Phone Number: 0891725433
Prescribed Body Corporate	Western Desert Land Aboriginal Corporation: Jamukurnu-Yapalikunu	Postal Address: The Secretary, WDLAC, 4 Clive St, West Perth WA 6005 Phone Number: 0894869797
Prescribed Body Corporate	Wintawari Gurama Aboriginal Corporation	Postal Address: 8/18 Hedland Avenue, Karratha WA 6714 Phone Number: 08 24757467
Prescribed Body Corporate	Wyamba Aboriginal Corporation	Postal Address: 12 Pincombe Street, Carnarvon WA 6701 Phone Number: 08 99413267
Prescribed Body Corporate	Yanunijarra Aboriginal Corporation	Postal Address: PO Box 2145, Broome WA 6725 Phone number: 08 9194 0100
Prescribed Body Corporate	Yarnangu Ngaanyatjarraku Parna Aboriginal Corporation	Postal Address: PO Box 644, Alice Springs NT 0872 Phone Number: 08 89501711
Prescribed Body Corporate	Yawuru Native Title Holders Aboriginal Corporation	Postal Address: 6A Coghlan Street, Broome WA 6725 Phone Number: 08 91925155
Prescribed Body Corporate	Yindjibarndi Aboriginal Corporation	Postal Address: PO Box 111, Roebourne, WA 6718 Phone Number: 08 9182 1497
Prescribed Body Corporate	Yungngora Aboriginal Corporation	Postal Address: PO Box 601, Applecross WA 6953 Phone Number: 0418912952
<b>Organisation Type</b>	<b>Name</b>	<b>Contact Details</b>
Native Title Representative Bodies	Central Desert Native Title Services	Postal Address: 76 Wittenoom Street, East Perth WA 6004 Phone Number: 08 9425 2000
Native Title Representative Bodies	Goldfields Land and Sea Council Aboriginal Corporation	Postal Address: PO Box 10006 Kalgoorlie, WA 6433 Phone Number: 08 9091 1661
Native Title Representative	Kimberley Land Council	Postal Address: PO Box 2145,

*These Guidelines and the Aboriginal Heritage Risk Matrix are for general assistance only. Land users should always obtain independent advice on the application of the AHA to their particular circumstances and if doubt exists the land user should contact the DAA.*

Bodies		Broome WA 6725 Phone Number: 08 9193 6199
Native Title Representative Bodies	South West Aboriginal Land and Sea Council Aboriginal Corporation	Postal Address: PO Box 585 Cannington WA 6987 Phone Number: 08 9358 7400
Native Title Representative Bodies	Yamatji Marlpa Aboriginal Corporation	Postal Address: PO Box 3072 Hay St, East Perth WA 6892 Phone Number: 08 9268 7000

## Appendix 4 – Contact Details – Government Agencies with heritage and land management responsibilities

The following contact details are subject to change.

Agency	Contact Details
Department of Aboriginal Affairs	Postal Address: PO Box 3153, East Perth, Western Australia 6892  Phone number: 1300 651 077
Department of Housing	Postal Address: 99 Plain Street, East Perth, 6004  Phone number: 1800 093 325
Department of Lands	Postal Address: PO Box 1143, West Perth WA 6872  Phone number: 61 8 6552 4400
Department of Regional Development	Postal Address: PO Box 1143, West Perth WA 6872  Phone number: 08 6552 1800
Department of Mines and Petroleum	Postal Address: 100 Plain Street, East Perth, Western Australia 6004  Phone number:08 9222 3333
Department of Parks and Wildlife	Postal Address: 17 Dick Perry Avenue Technology Park, Western Precinct Kensington WA 6151  Phone number: 08 9219 9000
Department of Planning	Postal Address: Locked Bag 2506, Perth, Western Australia 6001  Phone number:08 6551 9000
Department of State Development	Postal Address: Level 7, 1 Adelaide Tce, East Perth, Western Australia 6004  Phone number:08 9222 0555
Department of Water	Postal Address: PO Box K822, Perth, Western Australia 6842  Phone number:08 6364 7600
Land, Approvals and Native Title Unit (Department of the Premier and Cabinet)	Postal Address: Locked Bag 3001, West Perth, Western Australia 6872  Phone number: 08 26552 5333
Main Roads	Postal Address: PO Box 6202,

	<p>East Perth, Western Australia 6892</p> <p>Phone number:138 138</p>
Water Corporation	<p>Postal Address: PO Box 100, Leederville, Western Australia 6902</p> <p>Phone number:08 9423 7777</p>
Western Power	<p>Postal Address: GPO Box L921 Perth, Western Australia 6842</p> <p>Phone number:131087</p>

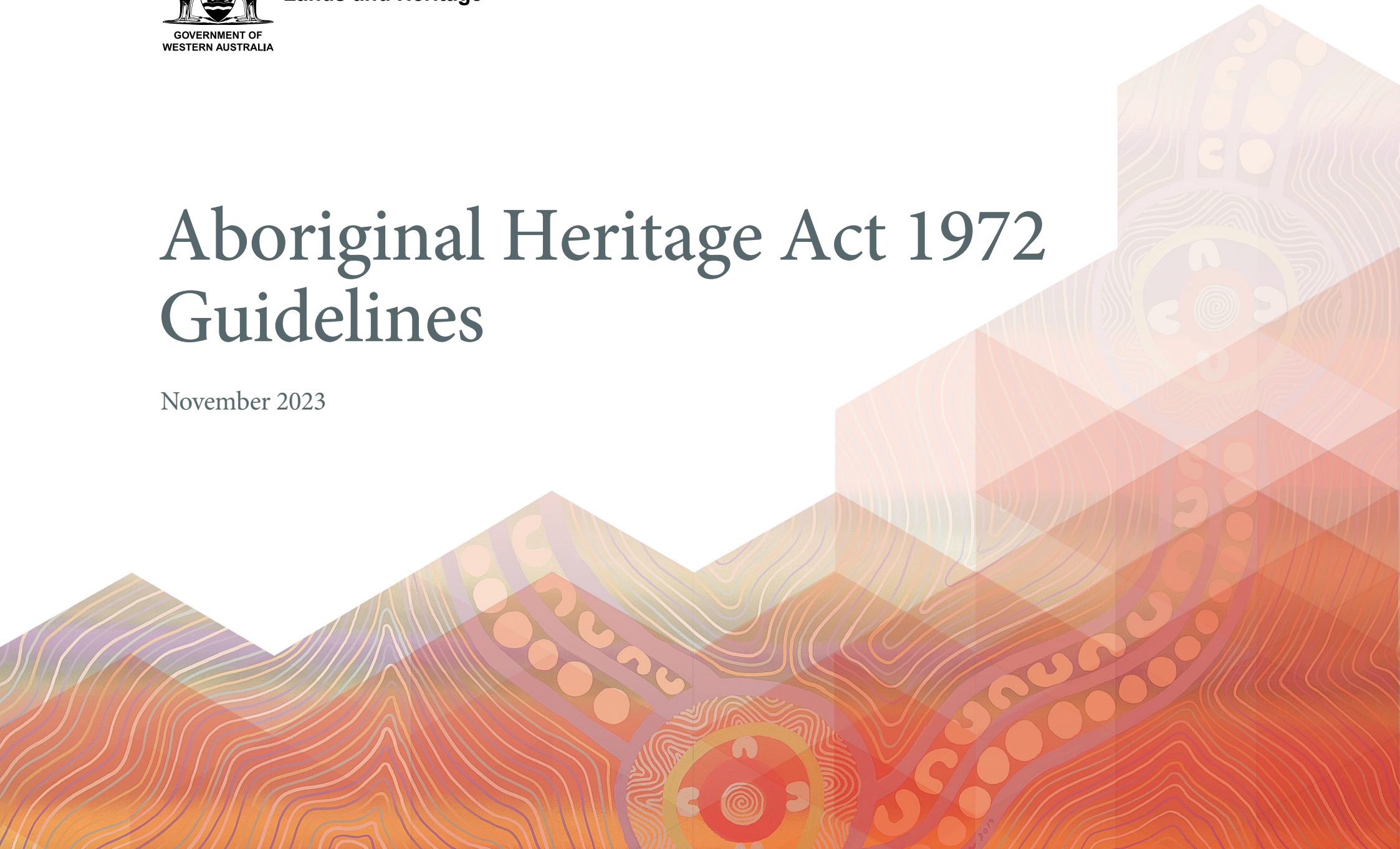
## **APPENDIX 3: ABORIGINAL HERITAGE ACT 1972 GUIDELINES (NOVEMBER 2023)**



Department of **Planning,**  
**Lands and Heritage**

# Aboriginal Heritage Act 1972 Guidelines

November 2023



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The Department of Planning, Lands and Heritage acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

#### Disclaimer

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website: [www.wa.gov.au/dplh](http://www.wa.gov.au/dplh)  
email: [info@dplh.wa.gov.au](mailto:info@dplh.wa.gov.au)

tel: 08 6551 8002  
fax: 08 6551 9001  
National Relay Service: 13 36 77

This document is available in alternative formats on application to the Department of Planning, Lands and Heritage Communications Branch.



The purpose of these guidelines is to assist landowners to determine whether a consent from the Minister for Aboriginal Affairs is required to undertake a proposed land use that may impact Aboriginal heritage, and avoid committing an offence under the *Aboriginal Heritage Act 1972* (Act).

## 1. Introduction

Aboriginal culture is the oldest living cultures in the world, requiring recognition, protection, preservation and management.

An Aboriginal site is defined by section 5 of the Act to mean:

- (a) any place of importance where persons of Aboriginal descent have left any object, or have used, in connection with the traditional cultural life of the 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 is, or was, associated with Aboriginal people and which is of historical, anthropological, archaeological or ethnographical importance to the State; and
- (d) any place where objects to which the Act applies are stored.

For the purposes of these guidelines, “Aboriginal sites” includes both:

- (i) Aboriginal sites which have been assessed by the Aboriginal Cultural Heritage Committee (Committee) as meeting the definition of an Aboriginal site under section 5 of the Act and are shown as ‘registered Aboriginal sites’ on the Aboriginal Cultural Heritage Inquiry System (ACHIS); and
- (ii) Aboriginal heritage places about which information has been provided to the Registrar of Aboriginal Sites (Registrar) within the

Department of Planning, Lands and Heritage (Department), or to the landowner, but which has not yet been assessed by the Committee against section 5 (these are shown as ‘lodged places’ on ACHIS).

Until lodged places have been assessed by the Committee against section 5, it is recommended that they be treated as places that the Act might apply to in order to avoid any unintended breaches of the Act.

It should be noted that the Act protects all Aboriginal sites including sites about which the Department does not hold any information (see Step 1 on page 5).

It has been unlawful to harm Aboriginal heritage for more than 50 years. A person who excavates, destroys, damages or conceals or in any way alters any Aboriginal site commits an offence. It is also an offence to alter, damage, remove, destroy, conceal or deal with in a manner not sanctioned by relevant custom, or assume possession, custody or control of any object on or under an Aboriginal site.

Under section 18 of the Act, landowners (as defined in the Act) can apply for consent to use the land for a purpose which would be likely to damage, destroy or in any way alter an Aboriginal site, or would otherwise be an offence under section 17 of the Act.

A ‘landowner’ includes a lessee from the Crown, and the holder of any mining tenement or mining privilege, or of any right or privilege under the *Petroleum and Geothermal Energy Resources Act 1967* and the holder of a licence under the *Water Services Act 2012* giving rights or powers in respect of the land.



Approval of the Registrar under section 16 of the Act can also be sought where it is proposed to excavate or remove any thing from an Aboriginal site. This approval often relates to research activities only. The same considerations outlined below generally apply to applications for a section 16 approval.

If a person is in the process of carrying out an activity and identifies that there is a risk of harming an Aboriginal site, they should stop the activity immediately and contact the Department for advice. This could help them avoid committing an offence under the Act.

## 2. Purpose

These guidelines provide practical guidance to assist landowners where their proposed use of land may require a section 18 consent from the Minister for Aboriginal Affairs (Minister), and in understanding the requirements for a section 18 consent, including requirements for reporting new information.

These guidelines also assist landowners in how to prepare an application for a section 18 consent.

They should not be taken to limit the information which a landowner can provide to the Committee. Landowners should obtain their own professional, legal and other advice on the application of the Act to their particular circumstances.

## 3. What landowners need to do

The potential for land to contain Aboriginal sites varies across Western Australia. The level and amount of previous land use may be relevant in determining whether a person is likely to breach section 17 of the Act.

Particular landforms are more likely to contain Aboriginal sites and objects. These include rock outcrops and shelters, waterways, coastal waters and other water sources, and foreshores and dunes. Please refer to 'Types of Aboriginal heritage and relevant landscape features' at Appendix 1 for more information on the types of landscape features which are more likely to contain Aboriginal sites and objects.

In assessing whether a proposed land use may affect Aboriginal sites or objects, it is recommended that a landowner take the following steps:

### Step 1: Assess the likelihood of there being an Aboriginal site on the land

- There are a number of ways to assess whether the land has, or may have, Aboriginal sites or objects.
  - **Registered Aboriginal sites and Aboriginal heritage places**  
Registered sites and Aboriginal heritage places can be found on ACHIS at [www.wa.gov.au/aboriginal-heritage](http://www.wa.gov.au/aboriginal-heritage). ACHIS also includes a directory of Aboriginal

heritage surveys that may indicate whether or not Aboriginal places or sites are present or identify specific areas that should be avoided.

- **Consultation with Aboriginal people**  
Information about the Aboriginal heritage for a particular area is best obtained through consultation with the relevant Aboriginal people. This step is of particular importance in informing a section 18 application. More information on consultation is provided below and in the Consultation Policy for section 18 applications. Consultation may result in avoiding the need for section 18 consent by planning activities to avoid any Aboriginal heritage present.

If required, the Department can be contacted for assistance.

### Step 2: Consider potential for any harm to that Aboriginal site

- Landowners should consider whether any Aboriginal sites or objects on the land may be harmed by the proposed land use. This extends to excavation, destruction, damage, concealment or alteration of an Aboriginal site.

### Step 3: Determine the nature and level of the potential harm

- Landowners should consider the level of harm to any Aboriginal site on the land, such as whether any potential harm to the site would be minimal, partial or total.



- The type of activity and level of harm may mean an alternative approval, such as approval under Regulation 10 of the Aboriginal Heritage Regulations 1974, is all that is required.

## 4. What happens if there is an Aboriginal site?

If the landowner's risk assessment determines that there is an Aboriginal site that is likely to be harmed by the intended land use, it is the landowner's responsibility to seek approval and obtain a section 18 consent - or alternative approval - before commencing any work on the land that may harm the Aboriginal site.

## 5. How do landowners start a section 18 application?

A landowner needs to give a section 18 notice to the Committee via the Registrar using the online ACHknowledge portal. The notice [or application] seeks the Minister's consent for the use of land for any purpose that may excavate, damage, destroy, conceal or alter an Aboriginal site on the land, or otherwise be a breach of section 17 of the Act.

The purpose and geographical location of the land use needs to be included in the notice.

Applicants are advised to contact the Department to discuss their proposed activity before submitting a section 18 notice.

## 6. Timeframes

Timeframes apply to the application process which commence upon the giving of a valid section 18 notice to the Committee.

A pre-lodgement discussion with heritage officers at the Department is strongly encouraged to verify that the proposed activity warrants a section 18 notice, as opposed to some other form of regulatory approval or no approval required, and to ensure that the application when lodged is complete.

An application that is missing details or requires further information may result in stop-the-clock provisions being applied thereby impacting the capacity of the Department and the Committee to process in a timely manner.

More information is available at [www.wa.gov.au/aboriginal-heritage](http://www.wa.gov.au/aboriginal-heritage).

## 7. Who can and cannot give notice for a section 18 consent?

The applicant must be either:

- the owner of the land (as defined in the Act); or
- a person authorised by the landowner to submit the section 18 notice on their behalf.

An applicant who is not the landowner and who cannot supply, evidence of authorisation from the landowner, cannot submit an application.

## 8. What information needs to be included in an application?

A section 18 notice:

- needs to clearly describe the elements of the proposed project, activity or works and any consultation that has been undertaken with the relevant Aboriginal people; and
- where applicable, should describe the measures that will be adopted to avoid or minimise harm to the Aboriginal sites or objects on the land or outline why harm to the Aboriginal sites or objects cannot be avoided.

The application fields will guide applicants regarding what information is required, including the following:

- contact details;
- details of the owner of the land and/or applicant. An applicant who is not the owner of the land must include authorisation by the landowner to undertake the purpose described in the application;
- maps of the land;
- details of the purpose (the proposed use of the land);
- final versions of any Aboriginal heritage survey reports. Draft reports will not be accepted;
- details for all newly recorded Aboriginal sites or objects and all existing Aboriginal sites that have new information recorded;



- spatial information must be provided for the land and each of the Aboriginal sites and objects on the land. Shapefiles must be GDA94;
- details of the consultation undertaken with Aboriginal people; and
- potential harm and management responses.

## 9. Who do I need to consult with before lodging an application?

The Minister and the Committee recognise that Aboriginal people:

- have deep spiritual connections to the land and cultural obligations to care for their country;
- are the primary source of information about the existence and value of their heritage and are best placed to have input into the assessment of the cultural significance; and
- are best placed to provide information as to how activities may impact their heritage.

Consultation is important to understand the heritage values of any Aboriginal sites or objects and to obtain the views of Aboriginal people as to the impacts of the proposed land use on those values. This assists the Committee and the Minister in performing their statutory functions when considering section 18 notices. The Minister is also required to have regard to the general interest of the community in deciding whether to grant consent.

Consultation with Aboriginal people will ensure the Minister and the Committee have regard to relevant information relating to:

- the location, importance and significance of any Aboriginal heritage;
- strategies for the protection and management of any Aboriginal heritage;
- comments on the section 18 application including support and/or any suggested conditions and mitigation strategies; and
- any agreement reached between the parties in relation to the undertaking of the land use and the protection and/or management of any Aboriginal sites.

More detailed information is available in the [Consultation Policy](#).

## 10. What is the application process?

Once an application is lodged with the Registrar, the Department reviews the application to ensure the information fields set out in ACHknowledge have been completed before assessing the application and providing it to the Committee for its consideration. The Committee must form an opinion as to whether there is an Aboriginal site on the land and evaluate the importance and significance of any such site. The Committee then makes a recommendation, including as to any conditions that could or should be imposed on the section 18 consent, to the Minister.

After considering the recommendations of the Committee, and the general interests of the community, the Minister may either consent to the use of the land or refuse consent. If the Minister consents, the Minister may choose to include conditions, such as conditions relating to the Aboriginal sites or objects, mitigation strategies or the use of the land.

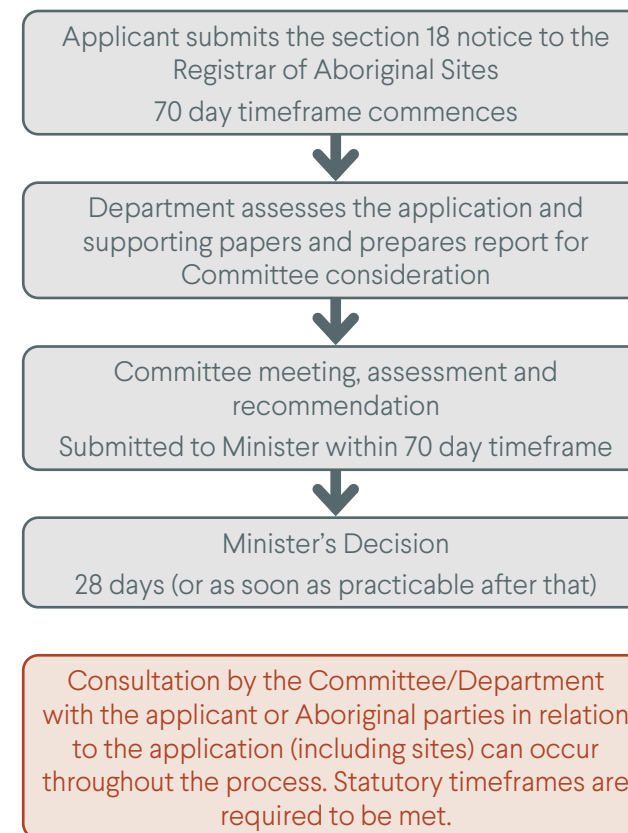


Figure 1: provides a high-level overview of the section 18 process.



## 11. Obligation to report sites and objects

The Act places an obligation on all persons in Western Australia to report anything that they believe may be a site or object to which the Act applies, unless they have reasonable cause to believe that the existence of the site or object in question is already known to the Registrar. This obligation does not extend to Aboriginal people acting in accordance with customary law or tradition.

The Department encourages persons wishing to report Aboriginal sites or objects to lodge relevant information via the ACHknowledge portal. This information is necessary for the Committee to be able to carry out its functions under section 39 of the Act. Alternatively, the Department can be contacted for advice.

## 12. How to submit a section 18 notice

The section 18 application process is administered by the Department.

A section 18 notice is lodged via the ACHknowledge portal on the Department's website [www.wa.gov.au/aboriginal-heritage](http://www.wa.gov.au/aboriginal-heritage).

## 13. Application fees

The [Aboriginal Heritage \(Fees\) Regulations 2023](#) sets out fees that apply for applications under sections 16 and 18 the 1972 Act. The fees are:

- Commercial and Government proponents:
  - (i) \$250 application fee; and
  - (ii) \$5,096 multiplied by the number of proposed investigation sites for section 16 applications and identified sites and places for section 18 applications.
- Individuals, small business and not-for-profit organisations are to pay a \$250 application fee, with no fee per proposed investigation site or identified place.

Special exemption provisions apply for Aboriginal corporations who are undertaking not-for-profit activities.

The Director General has the ability to waive, reduce or refund fees and extend the time within which to pay fees. These options will be considered on a case-by-case basis.

## 14. What happens if landowners become aware of new information after consent has been granted?

It is a condition on all section 18 consents that the landowner must notify the Minister within 21 days, via ACHknowledge, if the owner becomes aware of any new information about an Aboriginal site on the land that is the subject of the consent.

New information about an Aboriginal site means there is additional information that the Minister was not made aware of when the Minister made their decision, and which has come to the attention of the landowner from the relevant dates as specified on page 6.

As referred to in the Introduction, the Act protects all Aboriginal sites, including sites about which there is no information known by the Department. New information about Aboriginal heritage may relate to a new site or an existing site.

Such new information must be reported to the Minister as if it were identified prior to the section 18 application being made or considered. The section 5 criteria and threshold for new information once a consent has been granted is the same as it is when first applying for consent. The Act protects Aboriginal sites that meet section 5 and the timing of information relating to Aboriginal sites is irrelevant.



New information may typically include:

- new information about a known Aboriginal site on the land that is the subject of the section 18 consent e.g. the age of the site;
- new information about any place that the Committee – when considering the section 18 notice – determined did not meet section 5 of the Act to be an Aboriginal site, and the new information may mean the place does meet section 5 of the Act;
- new information about an Aboriginal site on the land not known at the time the section 18 consent was given.

Under the Act, a landowner who holds a section 18 consent must notify the Minister when the owner becomes aware of the new information:

- on or after 1 July 2023 – if the notice seeking consent was given to the Committee before 23 December 2021;
- on or after 23 December 2021 – if the notice seeking consent was given to the Committee on or after 23 December 2021 but before 1 July 2023;
- on or after the day on which the consent was given – if the notice seeking consent was given to the Committee on or after 1 July 2023.

Where the Minister becomes aware of new information, in having regard to the general interest of the community, the Minister may take into consideration the following factors:

- Whether the land use that is the subject of the existing applicable section 18 consent would

likely harm the Aboriginal site that is the subject of the new information.

- Whether the Minister considers that the new information:
  - if in relation to a registered Aboriginal site – changes its existing importance or significance; or
  - if in relation to a place which was previously not considered to be an Aboriginal site – now meets section 5 of the Act and is an Aboriginal site.

Where the Minister becomes aware of new information about an Aboriginal site through being notified by the landowner who holds a section 18 consent, the Minister must, having regard to the general interest of the community, do one of the following:

- amend the consent by amending the conditions to which it is subject, imposing new conditions or changing the specification of the land to which it relates;
- revoke the consent;
- revoke the consent and give a new consent; or
- confirm the consent.

Where the Minister becomes aware of new information about an Aboriginal site through any other means, the Minister may, but is not required to, do one of the above.

The Minister may also temporarily suspend the section 18 consent in part or in full while considering whether to make one of the above decisions.

## 15. Right of review

The applicant or a native title party in relation to the land in question can apply to the State Administrative Tribunal (SAT) for a review of the Minister's decision. This applies to both the original application and where the Minister makes a decision on new information.

The Premier can call in an application to SAT if the Premier considers that the application raises issues of State or regional importance.

To call in the application, the Premier must give a direction to the SAT President within 28 days of an application for review being lodged with SAT.

The Premier may direct SAT to:

1. refer the application to the Premier for determination; or
2. hear the application and refer it, with recommendations, to the Premier for determination.

The Premier must then determine the application within 28 days or as soon as practicable after that.

In determining the application, the Premier must do one of the following:

- (1) if the decision that is the subject of the application was to give, amend or confirm a consent:
  - (i) confirm the decision that is the subject of the application;



- (ii) amend the consent by amending the conditions to which it is subject, imposing new conditions or changing the specification of the land to which it relates;
  - (iii) revoke the consent; or
  - (iv) revoke the consent and give a new consent.
- (2) otherwise:
- (i) confirm the decision that is the subject of the application;
  - (ii) give a consent; or
  - (iii) reverse the decision.

## 16. Transfer of consent on change of land ownership

Section 18B of the Act allows for a consent to be transferred between landowners.

In the event of a change of ownership of land that is the subject of a section 18 consent, the new landowner must notify the Minister, via the Registrar<sup>1</sup>, within 14 days of becoming the landowner and must include:

- (a) a copy of the consent;
- (b) the name and contact details of each new owner; and
- (c) the date of change of ownership.

The new landowner must give a copy of the notice to the Committee and any native title party within 28 days of the change in ownership.

The Minister:

- can amend the consent having regard to the new owner and whether the original consent and conditions still have their intended effect;
- is required to give written notice to the new owner of any amendments to the consent, and publish the decision on the Department's website; and
- at the request of the new landowner, is able to revoke the consent.

This process preserves an existing consent and allows for it to be amended to ensure it continues to have its intended effect. It does not validate or revive a consent which was not otherwise valid.

A consent and any conditions will often have been drafted broadly enough to apply to future landowners without requiring amendment - for example, a condition which requires works not to be undertaken in a designated portion of the land or reporting requirements.

If a new landowner wants to conduct a different land use, or undertake the land use in a different location, they will need to lodge a new section 18 notice.

## 17. Support and advice

If a landowner is unsure about whether there may be a risk of harm or whether the Minister's consent is required, they can contact the Department to discuss the situation.

Landowners are also strongly encouraged to contact the Department when preparing their section 18 notice. This will ensure that the notice includes the relevant and appropriate information the Committee and Minister will require to ensure no risk of delay.

Email: [aboriginalheritage@dplh.wa.gov.au](mailto:aboriginalheritage@dplh.wa.gov.au)

Telephone: 6551 8002

## 18. Further information

For more information, please refer to:

1. [Amended Act](#)
2. [Webpage](#)
3. [ACHknowledge portal](#)

<sup>1</sup> Notification may occur via ACHknowledge



## Appendix 1: Types of Aboriginal heritage and relevant landscape features

The following is an overview of the various types of Aboriginal sites that can be found in Western Australia. This list is not exhaustive.

**Artefacts:** An artefact site is a place where human activity is identifiable by the presence of a portable object/s (e.g., stone, glass, bone, shell) utilised or modified by Aboriginal people in relation to traditional cultural life past or present.

**Ceremonial:** A place used for a formal act or series of acts prescribed by ritual, belief in a mythological manifestation, religious belief or observance, protocol or convention that is connected with the traditional cultural life of Aboriginal people past or present.

**Engraving:** A motif (either figurative or non-figurative) on a rock surface produced by percussion or abrasion. Engravings are also often referred to as petroglyphs.

**Fish Trap:** A stone, wood, or other similar structure made by Aboriginal people for catching fish. Such structures are generally found on the coast of Western Australia, and in its lakes and rivers.

**Grinding patches/Grooves:** A place where grinding patches or grooves can be found. Grinding patches or grooves are smoothed areas or grooves on rock surfaces (non-portable) that have been created by grinding activity associated with food production such as seed milling, preparation of pigments, tool manufacture and/or maintenance and ritual.

**Historical:** A place that has historical associations with Aboriginal people and may or may not contain physical evidence of those associations.

**Man-made structure:** The placement or arrangement, by Aboriginal people, of stone, wood or other material made into a structure for ceremonial or utilitarian purposes.

**Midden:** A place where there is an accumulation of shell refuse that is derived from exploitation of a mollusc resource by Aboriginal people. Such sites may also contain artifacts, fireplaces, burnt shell and bones.

**Modified or Scarred tree:** A place with one or more tree(s), living or dead, that has been modified by Aboriginal people by removing the bark or wood resulting in the formation of a scar. This sort of modification was and is frequently done for the making of implements, tools or other materials that were used in traditional cultural practices.

**Mythological:** A place that is connected to the spirit ancestors, in their various manifestations, of the 'Dreamtime' which continues to be important and of special significance to persons of Aboriginal descent.

**Painting:** Places where Aboriginal people have painted on surfaces. Paintings (including daubings, drawings, stencils, prints) can be figurative or non-figurative markings or motifs on surfaces such as rocks, rock walls and trees at fixed locations that are produced by adding pigments and or mediums, such as ochre, blood, beeswax, animal fats, vegetable dyes, tree saps.

**Quarry:** Places where there is evidence for the extraction of stone or ochre.

**Repository/Cache:** A place where cultural or utilitarian objects are/were taken, or stored, by Aboriginal people, either past or present.

**Skeletal material/Burial:** A place where Aboriginal skeletal material is buried and/or where mortuary practices occurred.