



ABN 47 065 099 228

Report on Aboriginal Heritage, Point Grey Village Activity Centre Plan & Jetties, Shire of Murray, Western Australia

Prepared for Hatch

By Edward McDonald

August 2020, Updated July 2024



ABN 47 065 099 228

Disclaimer

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

© Ethnoscience & Strategen JBS&G 2020

Ethnoscience Job No.: AS1650-19

ABN 47 065 099 228

ACMC:	Aboriginal Cultural Material Committee
AHA:	Aboriginal Heritage Act 1972
ACHIS:	Aboriginal Heritage Inquiry System
BAAC:	Bibbulmum Aboriginal Advisory Corporation
Bilya:	Bilya Noongar Organisation Inc
DAS:	Department of Aboriginal Sites, Western Australian Museum
DC:	Dortch & Cuthbert Pty Ltd
DPLH:	Department of Planning, Land and Heritage (formerly Department of Aboriginal Affairs DAA)
EPA:	Environmental Protection Authority
HISF:	Heritage Information Submission Form
MHA:	McDonald, Hales & Associates
NSHA:	Noongar Standard Heritage Agreement
OHP:	Other Heritage Place
PDA:	Proposed development area
SoW:	Scope of Works
Strategen:	Strategen JBS&G
SWALSC:	South West Aboriginal Land and Sea Council
UCL:	Unallocated Crown Land
Winjan:	Winjan Aboriginal Corporation

Table of Contents

Introduction	1
<i>Legislative Context</i>	7
<i>Definition of an 'Aboriginal Site'</i>	9
Aboriginal Heritage Investigations Point Grey	11
Heritage Assessments of Point Grey PDA	11
Consultation with SWALSC & the Aboriginal Community	13
Point Grey Aboriginal Sites, Other Heritage Places & s18 Consent	16
Point Grey Registered Aboriginal Sites	17
Point Grey Other Heritage Places	19
Results of the Ethnographic 2020 Consultation	21
Point Grey Aboriginal Heritage Approvals: s18 Consents	21
S18 Process Required for the Two Proposed Jetties	25
Conclusions	26
References	27

List of Figures

Figure 1: The Point Grey PDA	3
Figure 2: Old Proposed Residential & Marina development Point Grey, showing Aboriginal Sites & Lodged Places	4
Figure 3: Updated Point Grey Landscape Concept Plan showing the location of the proposed jetties	5
Figure 4: Point Grey landscape Concept Plan showing the proposed location and concept design for the two proposed jetties	6

List of Tables

Table 1: Aboriginal Heritage Investigations Point Grey 1987-2020	11
Table 2: Aboriginal consultants participating in the Point Grey Aboriginal heritage investigations 1987-2020	14
Table 3: Aboriginal Sites & OHPs Point Grey	16
Table 4: Ministerial consents under 18 of the AHA in respect of the Registered Aboriginal sites and OHPs Point Grey	24

Introduction

Ethnoscience was commissioned by Strategen JBS&G (Strategen) on behalf of the Point Grey Development Company Pty Ltd (PGDC), a wholly owned subsidiary of Tian An Australia Ltd to prepare a report on Aboriginal Heritage matters associated with the Point Grey Marina Village Activity Centre Plan. The Point Grey proposed development area (PDA) is bounded on the west by the Harvey Estuary, to the north and east by the Peel Inlet, and to the south by agricultural land (Figure 1). The peninsula has been historically used for farming, primarily grazing.

Originally the proposed development comprised two integrated elements: a residential development and a 300 berth marina (Figure 2).

The residential development will consist of a medium to high density housing with a total development footprint of 261 ha, comprising 205 ha of urban zoned land, 48.67 ha of regional open space and 7.33 ha of rural zoned land. The urban residential development will be undertaken on Lots 138, 139, 672 and 1132 in accordance with the State Government land use zoning (Peel Harvey Scheme and Shire of Murray Town Planning Scheme).

The proposed marina, which had been approved by the State Minister for the Environment in August 2012 by issuing Ministerial Statement 906 (MS 906) would have a total footprint of 9.8ha, would have been located on the western side, Harvey Estuary, side of the peninsular. The marina would have been excavated to maximum depth of -3.5m AHD and approximately 660,000m³ of spoil was expected to be generated and this would have been used as infill material as required. A navigation channel of 2.5km in length and 50m wide was planned to have been dredged to a maximum depth of -3.5m AHD. The navigation channel would have connected the proposed marina to the Dawesville Channel.

As part of the necessary Aboriginal heritage approvals process, the proponents consulted the South West Aboriginal Land and Sea Council (SWALSC) and entered into a Noongar Standard Heritage Agreement (NSHA) with the local native title group, the Gnaala Karla Booja (GKB) (Reference Number: LEG.1525) with a view to undertake the required Aboriginal heritage survey and consultation.

ABN 47 065 099 228

The planned marina proved to be controversial with the wider community and in part, as a result of consultation with members of the GKB group in January 2020 (see below), the proponents abandoned the concept of the marina and now propose to install two jetties for small non-powered craft, such as kayaks, in the vicinity of the Point Grey town centre (Figures 3 & 4). The proposed jetties will have much less impact than the previously approved marina and dredged channel.

Further consultation under the NSHA with GBK members is planned and to this end an Activity Notice has been lodged with the GKB Corporation in respect of the proposed jetties. It is anticipated that the consultation will occur in August 2024.

This report focuses on the approvals required under the *Aboriginal Heritage Act 1972* (AHA). Ethnoscience was requested to address the following issues:

- Aboriginal Heritage considerations in the ACP area
- Overview of consultation with the South West Aboriginal Land and Sea Council (SWALSC)
- The Aboriginal heritage values of the proposed development area and outcomes of the 2020 consultation with GKB representatives
- Overview of existing S18 Ministerial consent for the residential development component
- Overview of the S18 process required for the jetties development.



Figure 1.1: Point Grey

Figure 1: The Point Grey PDA

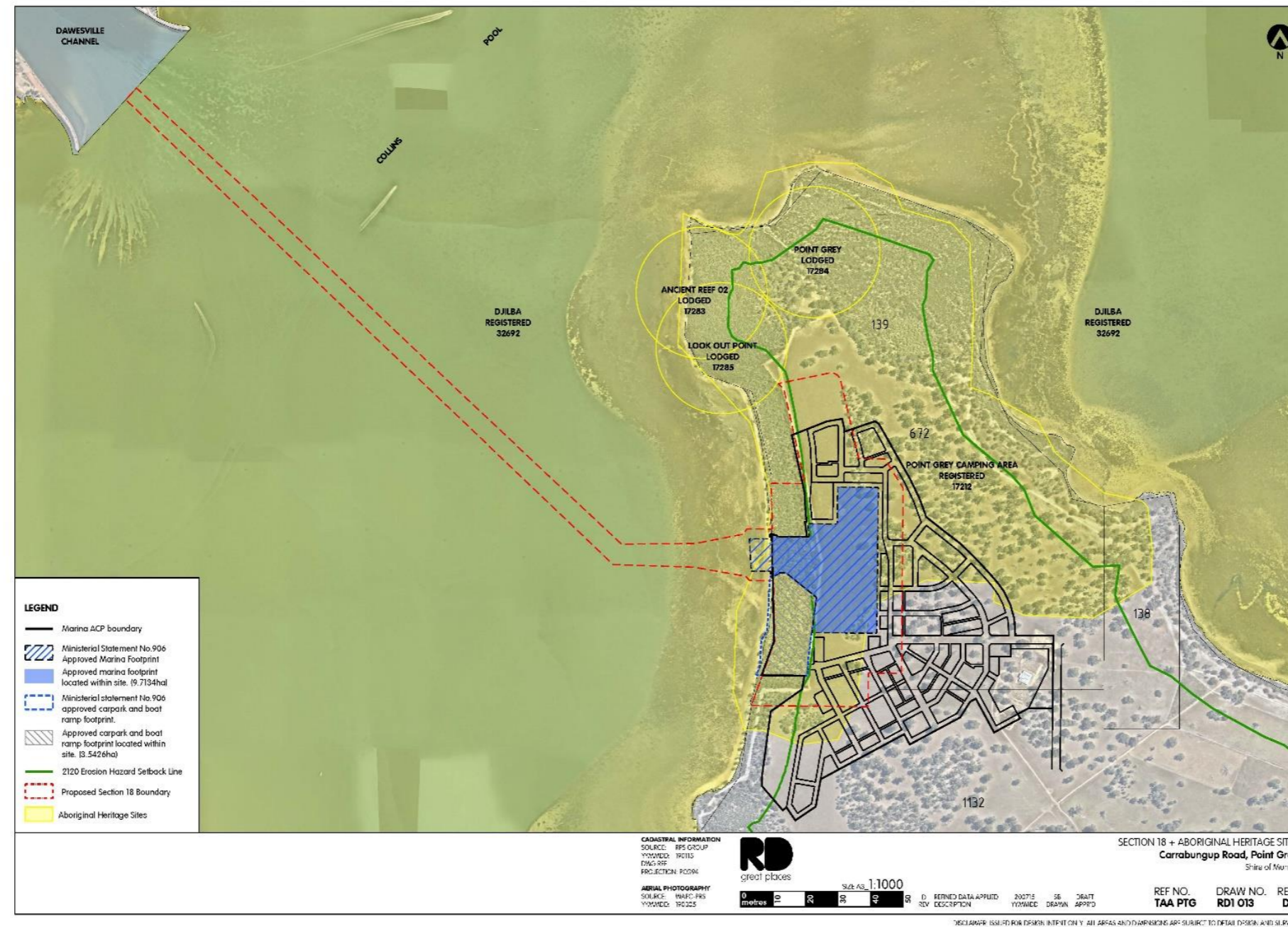


Figure 2: Old Proposed Residential & Marina development Point Grey, showing Aboriginal Sites & Lodged Places



Figure 3: Updated Pont Grey Landscape Concept Plan showing the location of the proposed jetties



**POINT GREY
TOWN CENTRE/ FORESHORE LANDSCAPE INTERFACE**

CHARACTER
The landscape character of the foreshore will be substantially enhanced. Currently the majority of the future foreshore area is cleared flat grazing land. It is proposed that rehabilitation planting occur in some areas with additional avenues of shady tree planting and manicured grass areas catering for active uses. Large significant trees within the foreshore will be retained where possible and integrated into the design and location of open space areas. The existing in-tact foreshore strip will be substantially retained.

FACILITIES
The foreshore area is a suitable location for a suite of public facilities to support and encourage a range of social, recreational and passive uses. Facilities may include picnic shelters, bbqs, open grass areas, street furniture, adventure playground, nature play playground, bike trails and strategic lighting.

It is envisaged that a built structure will be located close to the water enabling the storage and hire of canoes and kayaks which can access the water easily from the widened sandy beach area. Two jetties extend from the park into the water enabling fishing, walking and canoe and small sailing craft launching. Users may include the general public, sea scouts, local canoe clubs and fishing clubs.

CIRCULATION
Pedestrian, cycle and vehicular circulation is catered for via an integrated circulation system. Sealed pedestrian and dual use paths traverse the foreshore creating a foreshore walk which runs along the foreshore linking various new precincts and limiting road crossings. Carparking for residents and visitors is proposed in a series of locations including on street parallel parking, park front public car parks and adjacent private parking within private land. Parking via a park access road is envisaged to extend into the foreshore to enable universal and easy access closer to the water, this also caters for maintenance and emergency service vehicles.

TOPOGRAPHY
The existing topography will be substantially retained. The existing grade up from the water will be modified to allow for universal access where required and to create a series of level usable open space areas. The majority of the foreshore is placed well above current and calculated flood levels. The existing smaller dunes will be reworked in the former marina site to create selective open vista views to the water and enable general new mounding to define and separate public spaces.

DRAINAGE
Drainage will be managed via the road and swale infiltration system. Drainage typically runs along the road system and is collected, cleaned and infiltrated within the foreshore park at the low point at the end of each street. A series of planted nutrient stripping detention basins will assist in cleansing water prior to groundwater recharge. Planted basins will be aligned with the sites existing native foreshore edge character.

SPECIES
Proposed new plantings of tree and plant species will be overwhelmingly endemic native species. Exotic species may be used in select areas as feature plantings to assist in movement and precinct legibility subject to future approvals.

Figure 4: Point Grey landscape Concept Plan showing the proposed location and concept design for the two proposed jetties

Legislative Context

The Aboriginal Heritage Act (1972) (AHA) is the primary piece of State legislation relating to Aboriginal heritage and defines and protects Aboriginal Sites and objects. Aboriginal Sites are places to which the Act applies by operation of Section 5 (outlined below) and are currently protected whether they are known to the Department of Planning, Lands and Heritage (DPLH, formerly the DAA/DIA and originally Department of Aboriginal Sites WA Museum (DAS)) or not.

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

- a. any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of Aboriginal people, past or present;*
- b. any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;*
- c. any place which, in the opinion of the Committee,¹ is or was associated with Aboriginal people and which is of historical, anthropological, archaeological or ethnographic interest and should be preserved because of its importance and significance to the cultural heritage of the State;*
- d. any place where objects to which the Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.*

Under Section 39(3), the AHA gives primacy to “associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained” in the Aboriginal Cultural Material Committee’s (ACMC’s) evaluation of the importance of places and objects. Otherwise, the evaluation of the importance of places and objects is undertaken with respect to the criteria set out in s39(2) of the AHA:

- (a) any existing use or significance attributed under relevant Aboriginal custom*
- (b) any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment*
- (c) any potential anthropological, archaeological or ethnographical interest*
- (d) aesthetic values*

¹ The Aboriginal Cultural Material Committee (ACMC) whose role it is, among other functions, to evaluate, on behalf of the community, the importance of places and objects and to advise the Minister.

ABN 47 065 099 228

These criteria place a heavy emphasis in the evaluative process on Aboriginal custom, tradition, sentiment and aesthetic values, which are typically assessed through ethnographic research and consultation of all places, including archaeological sites. Archaeological sites are therefore also assessable not just with respect to their ‘potential archaeological interest’ but also their ‘potential anthropological or ethnographical interest’; that is, how they fit into Aboriginal custom, tradition and so on (McDonald & Coldrick 2020 discuss these issues with respect to archaeological sites in the Pilbara; however, as highlighted by McDonald (2016) for example, the key issues are also applicable to the Southwest).

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

17. A person who -

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

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

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

Section 18 provides a mechanism for landowners and proponents to seek consent to use land that might contain an Aboriginal Site(s) (i.e., a place to which the Act applies), and in effect to disturb those sites, from the Minister of Aboriginal Affairs and thereby protect themselves from potential prosecution under Section 17. After considering the recommendations of the ACMC and having regard to the “general interest of the community”, the Minister may either consent to the use of the land for the purpose sought, give consent with conditions or refuse consent. Current guidance from the DPLH routinely advises proponents to apply the

ABN 47 065 099 228

Aboriginal Heritage Due Diligence Guidelines (DIA 2013) so that they can determine whether their proposed activities have the potential to breach Section 17, and to seek advice from the Department where there is doubt (see below for further discussion).

Other State legislation, such as the *Environmental Protection Act 1986* (EP Act), can in some instances complement the AHA (for example, in cases where physical protection of the natural environment is required to protect sites of heritage significance) (EPA 2004). Aboriginal heritage can also be afforded protection by Commonwealth legislation, in particular the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Aboriginal people who believe that a significant place or object is under threat and that State Government protection is inadequate can apply to the Federal Environment Minister to protect the place or object.

Definition of an 'Aboriginal Site'

In this report, we use the term 'Aboriginal Site' to refer to a place that the Aboriginal Cultural Heritage Committee (ACHC, formerly the ACHC) has determined to be an 'Aboriginal Site' within the meaning of Section 5 of the AHA and is therefore 'registered'. While other places and objects may be listed on the ACHIS and in other sources, this does not necessarily mean they are registered Aboriginal Sites. Indeed, many places and objects listed on the ACHIS are in fact not Aboriginal Sites for the purposes of the AHA.²

The ACHIS defines the status of listed Aboriginal cultural heritage places as:

- Registered: 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.

² Decisions by the ACHC and the DPLH, of course, may be overturned by the courts, as was the situation in *Marapikurrinya Yintha* (DAA 22874) case (Robinson v Fielding [2015] WASC 108) and indeed may be revisited by the ACHC itself.

ABN 47 065 099 228

- **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.

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

Aboriginal Heritage Investigations Point Grey

Heritage Assessments of Point Grey PDA

The Point Grey Marina Village Activity Centre area has been subject to a series of Aboriginal heritage investigations over the past 33 years. These investigations have included both archaeological and ethnographic surveys and community consultation (see Table 1 below).

Date	Aboriginal Heritage Investigations	Elements included in the proposed Point Grey Development
1987	Quartermaine (1987)- archaeological survey O'Connor (1987) - ethnographic survey	Thomas Peel College, residential development & tourist/holiday complex, golf course, etc
1996	MHA archaeological & ethnographic surveys (Prince, Hovingh and McDonald 1996)	Residential development & tourist complex, including a marina, golf course and wilderness lodge chalets
2010	DC archaeological & ethnographic surveys (Dortch and McCabe 2010)	Residential subdivision, primary school, retail outlets, public open space (POS) and a marina, & opportunities for an eco-tourism development.
2020	Ethnoscience ethnographic survey (McDonald and Phillips 2020)	Proposed marina & related infrastructure

Table 1: Aboriginal Heritage Investigations Point Grey 1987-2020

The original heritage ethnographic and archaeological studies of Point Grey were undertaken in 1987 by Rory O'Connor (1987) and Gary Quartermaine (1987) respectively for Dames and Moore on behalf of Mallina Holdings Limited. Development proposals at the time included the Thomas Peel College, residential neighbourhoods of a variety of Lot sizes, large leisure living lots, tourist and holiday development, golf course and open space and foreshore reserves. O'Connor and Quartermaine's initial studies were followed by an archaeological survey and an ethnographic survey and community consultation by McDonald, Hales & Associates (MHA) in 1996 (Prince, Hovingh and McDonald 1996) on behalf of T. S. Plunkett Pty Ltd, which included three on-site consultative meetings in June and September 1996 with key Aboriginal consultants. The Outline Development Plan (ODP) for Point Grey at the time

ABN 47 065 099 228

included a residential development of various density zonings and tourist complex, including a marina, golf course and wilderness lodge chalets.

Development plans were not proceeded with and as the regulatory authority require surveys and community consultation to be up to date, Port Bouvard Ltd subsequently commissioned Dortch & Cuthbert Pty Ltd (DC) to conduct a further archaeological survey and ethnographic survey/community consultation and in May 2009 on behalf of PGDC. The former was conducted by Joe Dortch and the later by Tim McCabe (Dortch and McCabe 2010). The development proposal previously included a residential subdivision comprising approximately 3000 homes on various Lot sizes, a primary school, retail outlets, below-ground utilities, public open space (POS) and a marina, with opportunities for an eco-tourism development. Based on the Dortch and McCabe (2010) investigations Notices under s18 of the AHA for Ministerial consent for both the proposed residential estate development and the marina were submitted by Port Bouvard Ltd in February 2010. In the event Ministerial consent was obtained for the residential estate aspect of the proposed development in April 2010 (see below for further comment).

In November 2019 Ethnoscience was commissioned by Strategen JBS&G (Strategen), environmental consultants to Tian An Australia Ltd (the current owners of PGDC), to undertake an ethnographic assessment of the proposed marina component of the development. PGDC had earlier entered into a Noongar Standard Heritage Agreement (NSHA) with the South West Aboriginal Land and Sea Council (SWALSC) on behalf of the Gnaala Karla Booja (GKB) native title claimants (Reference Number: LEG.1525). Ethnoscience's heritage assessment was undertaken in accord with the NSHA. An on-site consultation was undertaken in January 2020 with GKB representatives nominated by SWALSC, in addition to several other GKB members participated in the process (McDonald and Phillips 2020).

Several regional studies also encompassed the Point Grey area including O'Connor, Bodney, and Little (1985), MHA (1992) and Dortch, Cuthbert, Cuthbert and Walley (2006) Phase 1 study of the Peel Landscape.

ABN 47 065 099 228

Consultation with SWALSC & the Aboriginal Community

It should be noted that the regulatory authority's (now DPLH, formerly DAA/DIA and DAS, for example) expectations with regard to the breath of ethnographic surveys and community consultations has changed over the years since the initial investigations were undertaken at Point Grey in the 1980s. The early focus was on working with key 'knowledgeable' senior people from the relevant community, typically identified by the heritage consultant in liaison with the DAS. This focus was reflected in the early studies by O'Connor (1987) and MHA (Prince, Hovingh and McDonald 1996). During the 1990s demands grew for a wider consultative process. This demand frequently resulted in up to 50 Nyungar people being engaged in paid consultation on projects. This process was recognised as being financially unsustainable and as a result solutions were devised to narrow the consultation to a more manageable number of representatives from community and/or native title claim group. The currently NSHA includes limits on the number of community members been engaged in paid consultation and typically eight (8) representatives are selected by the Land Council (SWALSC) from the relevant native title group, in the present case the GKB. Though SWALSC also quite frequently includes non-claim members where it is considered that individuals have particular knowledge of, or associations with, the country within which the PDA is located.

Table 2 below lists the Aboriginal consultants who participated in the various Point Grey Aboriginal heritage investigations since 1987.

Study	Aboriginal consultants
O'Connor 1987	The late T. Copper & the late Frank Nannup
Prince, Hovingh & McDonald (1996)	The late Frank Nannup & the late Joe Walley
Dortch & McCabe (2010)	Bilya - Clarrie Walley, Elder Abraham, Johnny Abraham, Shannon Kearing, Tom Little, Michael Wright GKB - James Khan, Geri Hayden, Ted Hart, Gloria Kearing, Kerrie-Ann Kearing, Franklyn Nannup, Barbara Councillor-Corbett Stammner & George Walley
Ethnoscience 2020	GKB - Anthony Abraham, Barbara Abraham, Alice Kearing, Shannon Kearing, Cheryl Martin, Kay Walley, Vaughn McGuire & Franklyn Nannup: plus Harry Nannup & Louise Hanson

Table 2: Aboriginal consultants participating in the Point Grey Aboriginal heritage investigations 1987-2020

O'Connor's (1987) initial survey of Point Grey involved the late Frank Nannup and the late T. Copper, who had been identified as knowledgeable about the heritage values of the Point Grey area. The late Frank Nannup also was a key informant in MHA's 1996 survey of Point Grey (Prince, Hovingh and McDonald 1996), together with his cousin late Joe Walley. Both were acknowledged to be senior Murray River elders, and both were involved with the establishment of the Winjan Aboriginal Corporation (Winjan). Both men were also the key informants in MHA's (1992) Peel Regional Park Study and worked tirelessly for the advancement of their community and the protection of its heritage. Later conflict within the community led to a split and the establishment of Bilya Noongar Organisation Inc (Bilya), which in the main represents the interests of the Walley extended family, whereas Winjan reflects Nannup extended family interests.

Both the studies by O'Connor and Quartermaine in 1987 and those of MHA in 1996 were undertaken prior to the establishment of SWALSC in 2001, following the close of its predecessor, the Noongar Land Council, which had been set up in 1995.

Dortch & McCabe's (2010) study, which was undertaken prior to the establishment of the South West Settlement and the implementation of NSHA in 2015, involved the participation of Aboriginal consultants selected from Bilya and from the Gnaala Karla Booja Native Title Claim (GKB), which encompasses the Point Grey area, through SWALSC. The senior Bilya person is Clarrie Walley, who is a brother of the late Joe Walley. The GKB consultants included

ABN 47 065 099 228

Franklyn Nannup, who is the son of the late Frank Nannup and his cousin George Walley, in addition to Gloria Kearing and Kerrie-Ann Kearing, who are the sister and niece respectively of the late Frank Nannup. Also participating are other members of the GKB claim, from various other parts of the claim area.

The January 2020 study undertaken by Ethnoscience for the proposed Point Grey marina involved eight Aboriginal consultants selected by SWALSC, following the signing of an NSHA between PGDC and SWALSC . All those nominated are members of the GKB Native Title group. Two additional GKB elders (i.e., Ms Louise Hanson & the late Mr Harry Nannup, brother of the late Frank Nannup) who, though not selected by SWALSC to participated in the study, had expressed the desire to have their views recorded and as a result were consulted. Ms Louise Hanson attended the on-site consultation, and the late Mr Nannup was interviewed separately. Several members of the Ethnoscience' survey team are members of the Walley extended family and directly related to the late Joe Walley. Both the late Harry Nannup and his nephew, Franklyn Nannup were also consulted as part of the 2020 heritage assessment.

In summary SWALSC has been consulted twice since its inception regarding the proposed Point Grey development and as noted, the most recent (2020) investigations have been undertaken in accordance with a NSHA between SWALSC and PGDC. The NSHA includes provisions to consult SWALSC about a range of matters in respect of the proposed development and the operations and outcomes of the heritage investigations.

Point Grey Aboriginal Sites, Other Heritage Places & s18 Consent

As a result of the previous heritage studies and reports by the members of the local Aboriginal community, several heritage places have been reported on the Point Grey peninsula. DPLH's online ACHIS reveals that there is one registered Aboriginal site: ID 17212, Point Grey Camping Area) and five (5) Other Heritage Places (OHPs) overlapping the Point Grey PDA (Table 3 below). However, recent advice from the DPLH is that ID 32696, Djilba, which encompasses the entire Harvey-Peel Estuarine system, was assessed by the ACMC in February 2020 and determined to be a site within the meaning of s5b of the AHA. For some reason the ACHIS has not been updated to reflect the place's status.

DPLH ID	Name	Site Type	Status
17212	Point Grey Camping Area	Camp	Registered
32696	Djilba	Mythological	Registered
17282	Caves Hill	Mythological	Lodged
17283	Ancient Reef 02	Other	Lodged
17284	Point Grey	Historical, Skeletal Material / Burial	Lodged
17285	Look Out Point	Other: Look out	Lodged

Table 3: Aboriginal Sites & OHPs Point Grey

ABN 47 065 099 228

Point Grey Registered Aboriginal Sites

ID 17212 Point Grey Camping Area, which encompasses the entirety of the tip of the Point Grey peninsula, was recorded by O'Connor (1987: C7) in his original survey of the Point Grey area:

A survey of the Point Grey region has revealed the existence of a traditional Aboriginal camping ground on the northern shores of the peninsula. The camping ground has been defined as an Aboriginal site and has been recorded as such in accordance with the Aboriginal Heritage Act, 1972-1980.

The place had not been listed by time of MHA's investigations in 1996 (Prince, Hovingh and McDonald 1996), however, it was subsequently registered. During MHA's investigations, two Aboriginal consultants, the late Frank Nannup and the late Joe Wally, the former had participated in O'Connor's original survey, reported that north-west corner of Point Grey was significant to them for the following reasons:

- ❖ The north-west corner of Point Grey was considered by the Aboriginal consultants to have been a significant living area for Aboriginal people in prehistoric times
- ❖ Two Aboriginal men were reputedly murdered and buried in the area in colonial times
- ❖ A standing stone located on the north-west foreshore of Point Grey was interpreted by the Aboriginal consultants as being a directional and signal marker
- ❖ One of the Aboriginal consultants reported experiencing 'funny feelings' while he was in the area; that is feelings associated with the spirits of the reputedly murdered Aboriginal men and other 'old people', the cultural legitimacy of the man's 'feelings', in was supported by the Aboriginal consultant³
- ❖ The remnant bush land in the area was considered by the Aboriginal consultants to be important to both Aboriginal and non-Aboriginal people.

³ Nyungars frequently report that they are able to feel the presence of spiritual elements in the land. At times such a report of a spiritual feeling about a place is also accompanied by other supporting evidence, such as stories or biographical details of the person's own or another's associations with the place. It is not uncommon, however, for Nyungars to report the presence of sites on the basis of feelings or other types of apparent transpersonal or extrasensory perceptions (i.e., hearing voices, feeling an unusual wind, experiencing body tremors and so on), without other supporting information. Reported 'feelings' about places may be difficult to evaluate, especially when different Aboriginal consultants' report contradictory feelings: 'I feel such and such here' / 'I don't feel anything here'. Reports of feelings therefore have to be both culturally plausible and accepted as socially legitimate (Berger & Luckmann, 1966). In other words, the other participants in a survey or others may not accept the reports of the narrator. A related issue here is that of reading the 'natural signs' by Nyungars, which again must be treated methodologically with caution (McDonald & Locke 2002).

The Aboriginal consultants' reference to the vicinity as a significant living area for Aboriginal people in prehistoric times, reflects the original report by O'Connor's Aboriginal consultants. However, the area lacks archaeological evidence of prehistoric/historic camping, Cuthbert, Cuthbert and Dortch (2007: 14) point out however, that various activities besides camping: such as hunting, travel, mythology [sic], and historic, 'would leave relatively few stone artefacts'. Additionally, Dortch and Cuthbert (2008: v) conclude that the "major reason for the failure to find archaeological material at Point Grey is probably the density of vegetation covering any surface heritage material" and they note that there is a "potential for more heritage material to be located below surface". In contrast, Dortch and McCabe (2010: 24) note that "Point Grey itself lacks major fresh-water sources" and "[a]rchaeological surveys near the survey area report few traces of past occupation except around wetlands (2010: 20) and that this would seem to be the case at Point Grey where no archaeological sites and very little archaeological material what so ever has been found, which they conclude points to "a different occupation pattern on the peninsula, compared to wetlands and swamps to the east and south".

Nevertheless, as Dortch and McCabe (2010: 4) note: "The north western portion of the peninsula is particularly significant". In particular, they report: "Areas of remnant bush on the peninsula hold significant natural heritage value for custodians" and as they indicate that this has been a major issue of concern that runs through all of the heritage surveys undertaken at Point Grey since O'Connor's original ethnographic survey (O'Connor 1987). It was also a key issue raised during the survey and consultation undertaken by MHA (Prince, Hovingh and McDonald 1996). Several examples, of 'bush tucker' resources (e.g., quandong bushes) were identified by the Aboriginal consultants during various consultations in the north-west corner of Point Grey.

ID 17212 Point Grey Camping Area was included in the 2010 s18 Notice for the residential development.

ABN 47 065 099 228

ID 32696, Djilba,⁴ a registered mythological site, which, as noted, covers the entire Peel-Harvey Estuarine System, was reported separately from the Aboriginal heritage investigations of Point Grey. A Heritage Information Submission Form (HISF) was lodged by Mr George Walley and heritage consultant, Amanda Yates, in 2012. The site file contains only the HISF and does not include for example, the documentation relating to ACMC decisions about the place. It is understood that though the site continues to be depicted as an OHP on the ACHIS, the ACMC determined that it met the criteria for registration at its February 2020 meeting (M. Franklin, DPLH, pers comm).

The registration is based on the Dreaming story, as narrated by the late Joe Walley, regarding the creation of the waterway by the Waugal, with additional information provided by Mr George Walley. According to the information provided, the place reported includes not just the Peel-Harvey Estuarine System but also the Serpentine, Murray, Harvey and Dandalup Rivers, as well as Lakes Preston and Clifton. The area encompassed by the site as far north as Mt Brown in the Beeliar Regional Park,⁵ on the boundary between the Town of Kwinana City of Cockburn, east to the Hotham River and south to Binninup. Any impact by the proposed Point Grey development on the Peel-Harvey Estuarine System, will require a s18 Ministerial consent.

ID 32696, Djilba was not included in the 2010 s18 Notice for the residential development.

Point Grey Other Heritage Places

ID 17282 Caves Hill has a Lodged status and is listed as Creation/Dreaming Narrative (formerly mythological site) comprises a large hill or reef of limestone. Information on the site about the place is limited (see also Dortch et al. 2007). The listing of ID 17282 occurred several years after the two original surveys, ID 17282 would seem to be associated with the ridge where Avalon Cave is located. This cave apparently was known to O'Connor's (1987) informants, however, was not attributed any particular significance at the time and was not

⁴ Djilba, is one of the six Nyungar seasons, referred to as the first spring (August-September) and the season of conception, characterised by a mixture of wet days with increasing number of clear, cold nights and pleasant warm days (Indigenous Weather Knowledge @ <http://www.bom.gov.au/iwk/calendars/nyoongar.shtml>)

⁵ The Nyungar name for Mount Brown, is *Booyeeanup*, formed from the root word 'booyee', meaning 'rock'. Mount Brown is a mythological site associated with the Waugal and is lodged on the AHIS as an OHP (ID 20865). The nearby Lake Brown is also associated with the Waugal mythological narrative.

ABN 47 065 099 228

reported to Prince, Hovingh and McDonald (1996). Moreover, no Creation/Dreaming Narrative places, were reported nor were any places associated with ritual or ceremonial use in the initial surveys by O'Connor (1987) and MHA (Prince, Hovingh and McDonald 1996), the latter involving three on-site consultations.

ID 17282 Caves Hill was included in the 2010 s18 Notice for the residential development.

ID 17283 Ancient Reef 02 has a Lodged status and listed as 'other' place type. By all accounts is the 'directional and signal marker' originally reported to MHA in 1996 (Prince, Hovingh and McDonald 1996). The 'marker' is a two-metre high limestone pinnacle, which reportedly aligned to what now is the Dawesville Cut, where prior to the channels construction a hill was apparently located. This was also believed to be the location of a burial place of Nyungar people killed in a nearby battle (BAAC 1996). The elevated 'marker' was also reportedly used by Noongar people to signal to one another across Harvey Inlet (Prince, Hovingh and McDonald 1996).

ID 17283 was not included in the 2010 s18 Notice for the residential development as it is located in the planned foreshore reserve.

ID 17284 Point Grey has a Lodged status on the ACHIS and listed as a burial with a historical component. The site file contains little information. However, according to information elicited by Prince, Hovingh and McDonald (1996: 26-27) the site relates to the reported murder and burial of the two Aboriginal men by local settlers (this site was also reported in the course of the Peel Regional Park Study (MHA 1992). The specific burial site was not identified by Aboriginal consultants involved in the 1996 and 2010 surveys of the Point Grey area. However, it is believed to be somewhere near the north-western tip of Point Grey, though it is unlikely to be located on the limestone, but rather in a sandy location (Prince, Hovingh and McDonald 1996: 27)

ID 17284 Point Grey was included in the 2010 s18 Notice for the residential development.

ID 17285 Lookout Point is Lodged on the ACHIS and listed as 'other' (lookout) place type. The place reportedly is a high point on the estuary shore where people could see the campfires of other family groups on the western side of the estuary.

ABN 47 065 099 228

ID 17285 Lookout Point was included in the 2010 s18 Notice for the residential development

Results of the Ethnographic 2020 Consultation

No new Aboriginal sites were identified, as defined by s 5 of the *Aboriginal Heritage Act 1972*, by the GKB representatives during the January 2020 ethnographic survey. This result is consistent with Dortch & McCabe's reported results (2009).

The GKB Aboriginal consultants, including the late Mr Harry Nannup, who was later consulted off-site, were unanimous in their opposition to the proposed Marina development expressing concern over three key issues:

- ❖ The Point Grey area's mythological (Dreaming) or cosmological significance
- ❖ The impact on historical and cultural associations
- ❖ The perceived environmental impacts on the 'social surroundings', including culturally valued natural terrestrial and estuarine resources and customary practices associated with them.

These comments were made in the context of the perceived negative impacts on the area specifically and the estuarine system in general that had already have occurred, including the construction of the Dawesville Cut . As one noted: 'it makes me sick to my heart to see the damage'. None of the GKB consultants expressed any support for the proposed marina development. One of the GKB consultants summarised the group's response: 'it's a big emphatic no to development'.

As noted, above, the proponents have abandoned the proposal for a 300 berth marina and instead are proposing to install two jetties for non-powered craft.

Point Grey Aboriginal Heritage Approvals: s18 Consents

As highlighted above, unauthorised disturbance of an Aboriginal Site is an offence under Section 17 of the AHA. In order to avoid a breach of the Act, landowners can apply for Ministerial consent to the use of the land on which a site is or might be located for a particular purpose. In February 2010, two s18 Notices were submitted by Dortch & Cuthbert Pty Ltd, heritage consultants, on behalf of the PGDC, to the DAA in respect of the proposed Point Grey development. The first, covered the proposed residential development and the second, the proposed marina development. It is understood that the Notices were lodged separately because the proposed developments were subject to different approvals processes. In the

ABN 47 065 099 228

latter case the marina was subject to a Public Environmental Review and a further approval by the Federal Government's DWHA (now DAWE).

The s18 Notice for the proposed residential development outlined the purpose as:

Development of a residential estate, including minor levelling of selected areas; minor vegetation clearing and removal of selected trees; construction of roads, houses, a retail area, a primary school, installation of sub-surface sewerage, drains and power, and re-vegetation of selected areas (s18 Notice #1 February 2010)

The s18 Notice for the proposed marina stated the purpose of land use as follows: "Development of an onshore marina and associated parking and boating facilities" (s18 Notice #2 February 2010). The s18 Notices were supported by a report of archaeological and ethnographic investigations and consultation by Dortch and McCabe (2010). Both Notices stated:

All Aboriginal consultants have recommended that the proposed development is allowed to proceed, on condition that the proponent follows recommendations detailed in the heritage survey report ... (s18 Notice #1 & #2 February 2010: 5-6).

The s18 Notice for the residential development listed the following site and OHPs: ID 17212, Point Grey Camping Area; ID 17282, Caves Hill, ID 17284, Point Grey. OHP ID 17283, Ancient Reef 02 was not applied for as it is located in the proposed foreshore reserve, and it was assumed would not be impacted upon. The s18 Notice for the marina listed on ID 17212 Point Grey Camping Area. ID 32696, Djilba was at that time not listed on the ACHIS (see Table 4 below).

It is understood that both s18 Notices were considered by the ACMC and recommendations for the Minister prepared. In the event, however, only the Committee's recommendations regarding the residential development were forwarded to the Minister. Their recommendations with regard to the marina were put on hold until the necessary additional approvals were obtained by the PGDC. However, despite the PGDC subsequently receiving the necessary EPA and other approvals, ACMC's recommendations were, for some unknown reason, apparently not forwarded to the Minister for his consideration.

ABN 47 065 099 228

Ministerial consent, with conditions, for the proposed residential development and associated infrastructure was granted to the PGDC on April 23, 2010. The conditions, which were standard. First, related to engaging two Aboriginal consultants from the groups consulted by Dortch and McCabe to monitor earth works where ground disturbance appeared to be for the first time or where the project archaeologist had identified high archaeological potential. Second, the cessation of work if skeletal material was unearthed and reporting the event to the WA Police and the Registrar of Aboriginal Sites. Third, reporting to the Registrar whether and to what extent any Aboriginal sites or objects on the land had been disturbed, the nature of the disturbance and whether any salvage had taken place.

As there is no legislative time limit on Ministerial consent obtained under s18 of the AHA, it can be assumed that PGDC have a valid s18 to proceed with the proposed Point Grey residential development and associated infrastructure.

ABN 47 065 099 228

DPLH ID	Name	Status	S18 Consents
17212	Point Grey Camping Area	Registered	Ministerial Consent April 2010 for residential development, etc. Ministerial Consent required for Marina development and proposed navigation channel
32696	Djilba	Registered	Ministerial Consent required for Marina development and proposed navigation channel
17282	Caves Hill	Lodged	Ministerial Consent April 2010 for residential development, etc
17283	Ancient Reef 02	Lodged	No Ministerial Consent applied for as is located in foreshore reserve
17284	Point Grey	Lodged	Ministerial Consent April 2010 for residential development, etc.
17285	Look Out Point	Lodged	Ministerial Consent April 2010 for residential development, etc.

Table 4: Ministerial consents under 18 of the AHA in respect of the Registered Aboriginal sites and OHPs Point Grey

ABN 47 065 099 228

S18 Process Required for the Two Proposed Jetties

A Notice under s18 of the AHA will be required for the two proposed jetties as ID 32696, Djilba is now a registered Aboriginal site and was not included in the original s18 Notices.

As stated above, a new Activity Notice regard to the jetties has bene submitted to GKB/SWALSC and further consultation with GBK representatives is planned in order to progress the Notice.

Undoubtedly it would be necessary to ensure that all the listed 'knowledge holders' for ID 32696, Djilba are consulted, as well as any other persons that SWALSC might consider necessary. Five people are listed by the DPLH as 'knowledge holders' for the site, including Messrs Franklyn, Clarrie Walley, George Walley and Ms Gloria Kearing, the other person being the late Harry Nannup.

Conclusions

The proposed Point Grey development area has been the subject of three specific Aboriginal heritage investigations between since 1987 and 2010. More recently (January 2020) the proposed marina development together with the associated navigation channel has been the subject of Aboriginal community consultation, which was undertaken in accordance with a NSHA between the PGDC and SWALSC. SWALSC.

As a result of the previous heritage investigations and reports by the members of the local Aboriginal community two registered Aboriginal sites (ID 17212, Point Grey Camping Area & ID 32696, Djilba) and three OHPs (17282, Caves Hill; 17284, Point Grey & 17285, Look Out Point) are listed as overlapping the Point Grey PDA. Another (17283, Ancient Reef 02) is listed in the foreshore reserve and apparently will not be impacted by the proposed residential or marina developments.

Separate s18 Notices were submitted in 2010 in respect of the proposed residential and marina developments. Ministerial consent was obtained by PGDC in 2010 for the proposed residential development. This consent remains valid.

The proponents have decided not to proceed with the 300-berth marina and associated work and have instead opted for two jetties for non-powered craft. As ID 32696, Djilba, the estuary, is now a registered Aboriginal site a Notice under Section 18 of the AH will be required. To this end an Activity Notice has been submitted to the GKB to undertake the necessary consultation.

References

- Dortch, J. & Cuthbert, D. (2008) A review of Aboriginal heritage at Point Grey, Shire of Murray, Western Australia, with addendum prepared for Port Bouvard Ltd. Unpublished report prepared Dortch and Cuthbert Pty Ltd.
- Dortch, J. & McCabe (2010) Report of an Aboriginal heritage survey at Point Grey, Shire of Murray, Western Australia. Unpublished report prepared for Point Grey Development Company Pty Ltd, on behalf of Port Bouvard Ltd.
- Dortch, J. Cuthbert, B. Cuthbert, D. Walley, J. (2006) A review of previous research and archival data for Phase 1 of the Peel Cultural Landscape Assessment Project, prepared for The Restoring Connections Project (South-West Catchments Council and South Coast Regional Initiative Planning Team.
- McDonald, E.M. and R.G. Locke (2002) 'Extemporising It Up': Memory, Interpretation and Accounts: Implications of Cultural Revitalisation for Aboriginal Heritage Assessment in Western Australia". Paper delivered at Ireland's Heritage Conference, Castlebar, Co. Mayo, October 2002.
- McDonald, Hales and Associates (1992) Peel Regional Park Study, Surveys on Aboriginal and European Heritage in the Study Area of the Proposed Peel Regional Park. Unpublished report, Department of Planning and Urban Development. Perth.
- O'Connor, R. (1987) Report on an Ethnographic Survey of Point Grey. Appendix C to Dames and Moore Environmental Review and Management Program, Point Grey Development Project. Unpublished report prepared for Dames and Moore.
- O'Connor, R., Bodney, C. and Little, L. (1985) Preliminary report on the survey of Aboriginal areas of significance in the Perth Metropolitan and Murray River regions. Unpublished report, Aboriginal Affairs Department, Perth.
- Prince, C., Hovingh, R. and McDonald, E.M. (1996) Report of an Aboriginal Heritage Survey Point Grey, Pinjarra. Unpublished report prepared by McDonald, Hales and Associates for T. S. Plunkett Pty Ltd.
- Point Grey Proposal – Inquiry under section 46 under the *Environmental Protection Act 1986* to amend Ministerial Statement 906, Point Grey Development Company Pty Ltd, August 2018.
- Quartermaine, G. 1987 Report on an Archaeological Survey of Point Grey. Appendix B to Dames and Moore Environmental Review and Management Program, Point Grey Development Project. Unpublished Report.