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ABN 47 065 099 228

Aboriginal Heritage

St Andrews City Centre Aboriginal Heritage
Management Plan – Draft

Prepared for Yanchep Beach Joint Venture on behalf of Coffey
Environments

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Introduction

Coffey Environments, on behalf of Yanchep Beach Joint Venture (YBJV), is currently preparing a Local Structure Plan (LSP) for the Yanchep Beach Joint Venture 2 (JV2) project at Yanchep Beach, Western Australia. As part of this work, Coffey commissioned Ethnoscience to prepare an Aboriginal Heritage Management Plan (AHMP) for the St Andrews City Centre.

The proposed development area (PDA) is located on approximately 600 Ha of land adjacent to the existing Yanchep town site. The area is located north of Yanchep Beach Road and is bordered by Marmion Avenue (currently under extension), and extends both north and east, surrounding the existing St Andrews Golf Course and resort (Figure 1).

St Andrews City Centre contains one recorded Aboriginal site – an artefact scatter listed on the Permanent Register of Aboriginal Sites as DIA Site ID 3394 Yanchep Beach. The site was identified by archaeologist Gary Quartermaine during an archaeological survey of the Yanchep Structure Plan area in 1991 (Quartermaine 1991).

The proponents are committed to best practice in relation to Aboriginal heritage and have provided an area of Public Open Space (POS) within the LSP to contain the archaeological site and help ensure its long-term preservation. The proponents previously commissioned a desktop study and an archaeological inspection to locate the site, assess its current condition and delineate its boundaries (see Derbyshire 2007).

This AHMP, which has been prepared in response to environmental approval conditions, is designed to help ensure that the Aboriginal heritage site continues to be protected and appropriately managed during the development of the LSP area. The AHMP is necessary because the PDA contains a known archaeological site which is relatively uncommon on the Quindalup Dune System. Protecting and celebrating this site will contribute to a sense of place for residents and visitors. For Indigenous

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Australians in particular, heritage places such as these connect people to the land and their ancestors and are important for maintaining a sense of cultural identity.¹

The purpose of the AHMP is to assist the developer and the local authority in the ongoing management of the site by describing the site and providing guidance as to what activities should and should not be carried out within its boundaries. This will help to ensure that the site is protected from adverse impact in the future and that the statutory requirements of the *Aboriginal Heritage Act* (1972) (AHA) continue to be met.

The AHMP, which is based on Australian Heritage Commission guidelines for the protection of heritage places, describes:

- ❖ The Aboriginal heritage site and its setting within the development;
- ❖ The significance of the site for Aboriginal people and for archaeologists;
- ❖ Key issues affecting the future of the site (i.e. actual or potential impacts);
- ❖ What future actions are and are not appropriate considering the significance of the site (e.g. avoidance and protection, Section 18 applications, mitigative research and so on);
- ❖ Indigenous personnel with interests in the site;
- ❖ Personnel responsible for carrying out the plan's actions (the landowner, local authority, contractors etc) and for facilitating monitoring of the protection, impact or other planned activity in relation to the site; and
- ❖ How the protection of the site should be monitored and reviewed, including a process and timing for reviewing and updating the plan.

The objectives of the AHMP are outlined in more detail in the following section.

¹ Australian Heritage Commission (2002) *Ask First – A Guide to Respecting Indigenous Heritage Places and Values*.

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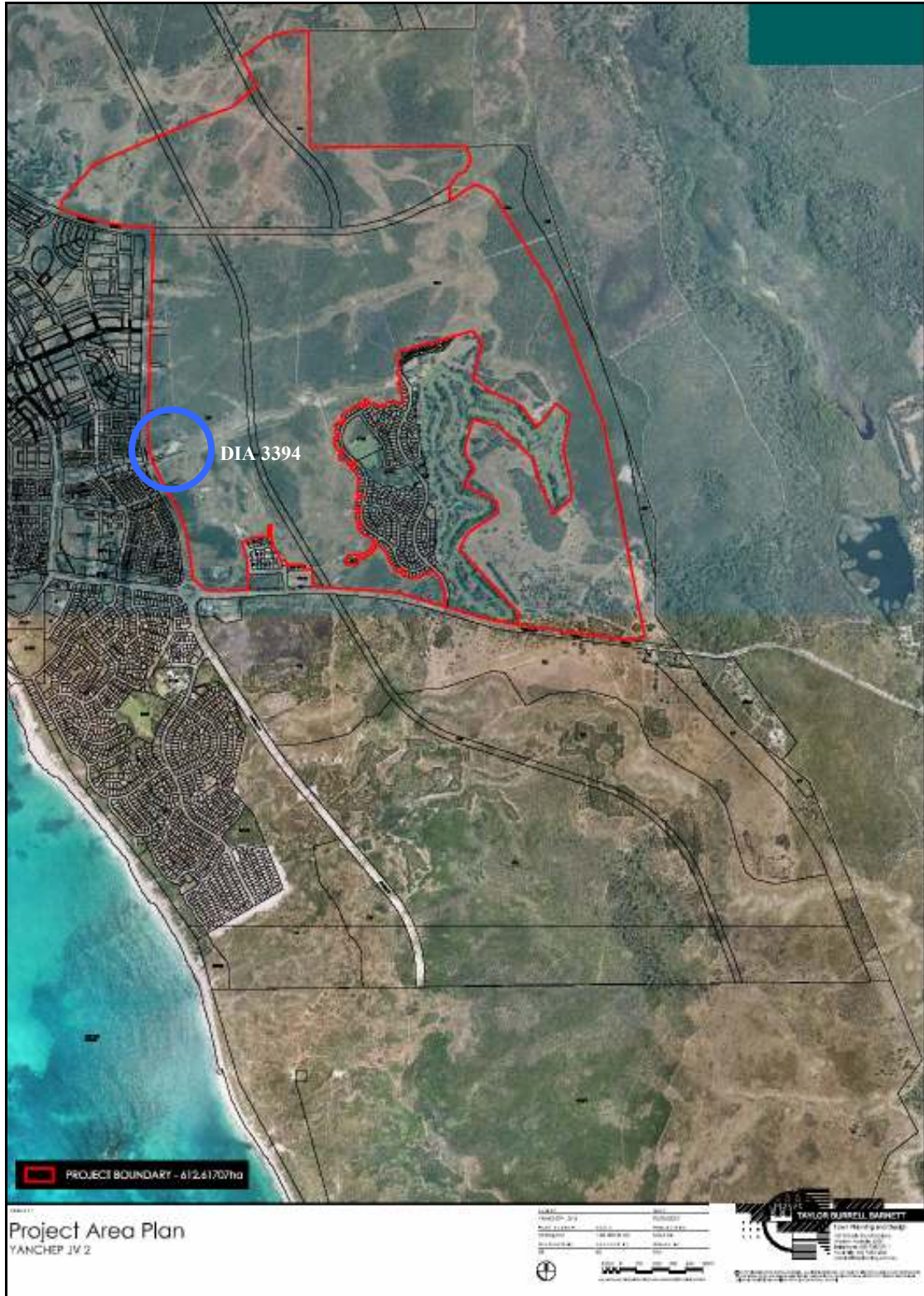


Figure 1: Yanchep Beach Joint Venture 2 LSP Area (outlined in red) showing the location of DIA Site ID 3394 Yanchep Beach

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Principles and Objectives

A heritage management plan is “a document that sets out the significant heritage aspects of a place, and details the appropriate policies to manage it, so that its values are retained for future use and appreciation” (Department of the Environment and Heritage 2003). This AHMP is based on the following broad principles:

- ❖ That Yanchep Beach Joint Venture (YBJV) will strive for best practice in relation to the Aboriginal heritage values associated with the St Andrews City Centre development and will work within the provisions of the AHA;
- ❖ That YBJV will strive to avoid and/or minimise impacts on Aboriginal sites whenever possible;
- ❖ That YBJV will conduct mitigative work and undertake additional research (e.g. site recording) and community consultation where necessary;
- ❖ That YBJV will ensure that construction contractors comply with the principles of the AHMP by making it a condition of contract;
- ❖ That YBJV will establish programs to monitor construction processes in culturally sensitive areas and in areas of archaeological potential in order to avoid inadvertent impact on hitherto unrecorded Aboriginal sites;
- ❖ That YBJV will establish a mechanism to review and evaluate the Aboriginal heritage management planning and specific component plans in order to ensure compliance with the AHMP’s principles and ensure that specific heritage goals are met.

The AHMP presented here provides a framework to assist YBJV in fulfilling its obligations under the AHA and to establish long-term management guidelines for the known heritage values of the St Andrews City Centre development. In particular, the objectives of this AHMP are:

1. To manage the long-term preservation of the archaeological site and associated material;
2. To ensure that YBJV operates within any Section 18 conditions set down by the Minister for Indigenous Affairs; and
3. To ensure the appropriate management of any disturbance to areas of POS containing Aboriginal sites, and to ensure that archaeological investigation and recording is undertaken to best practice should ground disturbance of POS be necessary.

Aboriginal Heritage Values Requiring Management

The St Andrews City Centre development contains one previously recorded Aboriginal site. Listed on the Permanent Register of Aboriginal Sites as DIA Site 3394 Yanchep Beach, the site was first identified by archaeologist Gary Quartermaine in 1991 during an archaeological survey of the Yanchep Structure Plan area for Toyku Corporation (Quartermaine 1991).

The archaeological site, originally referred to as Field Site 1, is an artefact scatter on an eroding crest of a longitudinal sand hill orientated east-west. The site was reported to cover an area of 110 x 25m, and in one part of the site more than 2m of sand had been blown away leaving a pedestal of sand with some vegetation remaining. The total surface assemblage, which comprised 40 artefacts, was recorded. The assemblage included one fossiliferous chert flake, one quartzite backed blade, one quartz microlith, one basalt grinding fragment, two limestone flakes, eight quartz flakes, five quartz nodules, one quartz piece and twenty quartz chips. Also found were two small marsupial mandibles and one marine bivalve (Quartermaine 1991).

The Yanchep Beach archaeological site lies on the oldest stage of the Quindalup Dune sequence and Quartermaine assessed the site as “important because it is presently the only known extant archaeological site on the Quindalup Dune System in the Metropolitan Region. The presence of fossiliferous chert indicates an age of at least 5,000 years. There may be sub-surface artefacts in areas that have not deflated” (Quartermaine 1991, p. 13).

Due to the significance of the site, Quartermaine recommended that it be preserved and that if the site was to be disturbed as a result of future development, Ministerial consent under Section 18 of the AHA would be required and further research, including test-pitting, should be carried out. Due to the potential for further sites to be obscured by sand and vegetation, Quartermaine also concluded that archaeological monitoring may be necessary inside the project area (Quartermaine 1991, p. 15).

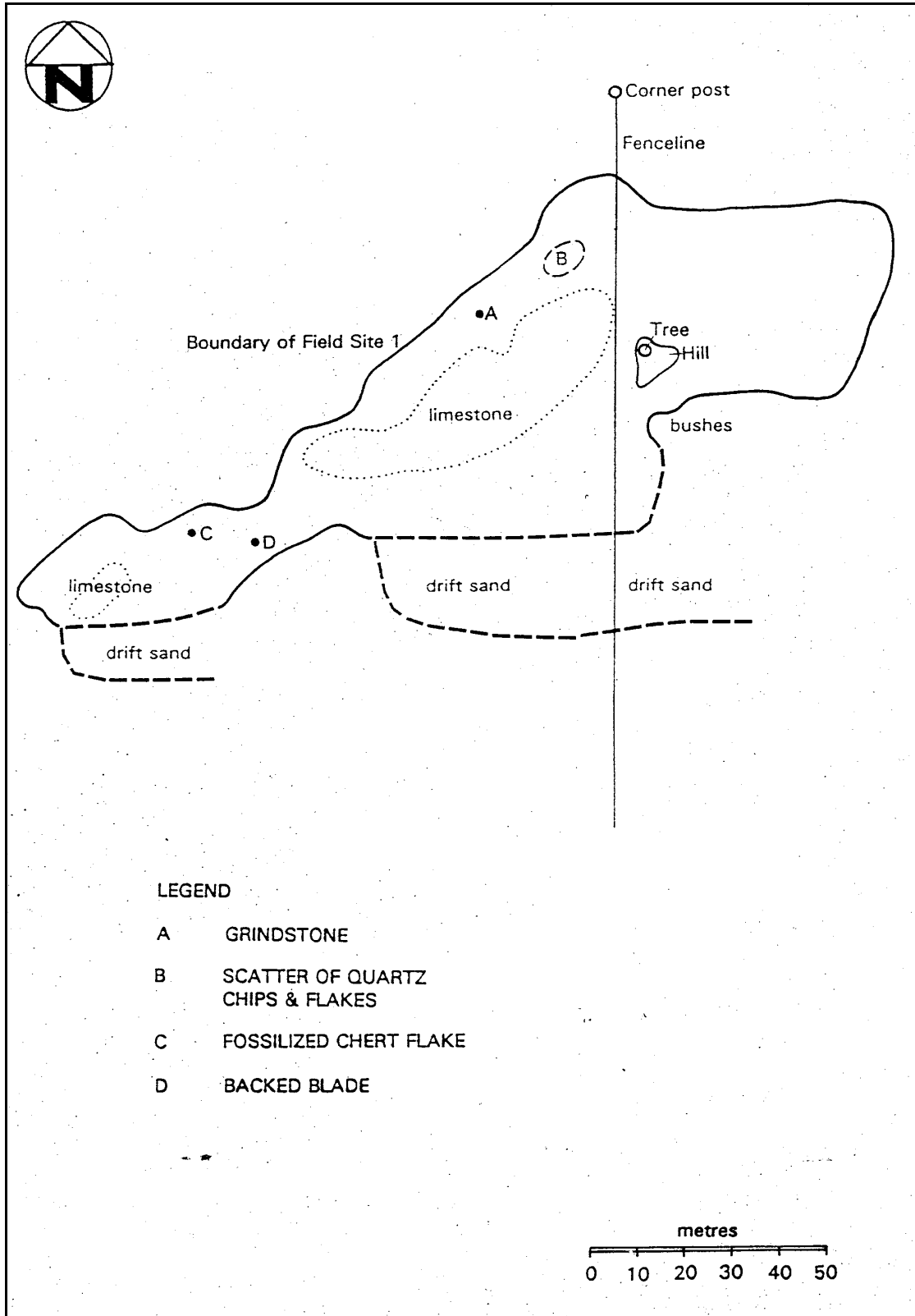


Figure 2: DIA Site ID 3394 Yanchep Beach (after Quartermaine 1991)

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In August 2007, a site inspection of DIA Site ID 3394 was carried out by archaeologist Carol Derbyshire on behalf of Ethnoscience (Derbyshire 2007). The inspection was requested by the proponent in order to locate the previously recorded archaeological site and make a record of its status in order to assist with the development of the LSP and the design and location of POS.

During the inspection, three flaked quartz artefacts were recorded in detail, photographed and their positions documented. Heritage flagging tape (pink and black diagonal stripe) was tied to four wooden stakes hammered into the dune in the general location of the artefacts and GPS locations were recorded (Table 1).

No.	GPS Zone 50		Type	Dimensions	Description
Artefact 1	370501E	6509851N	Quartz Flake Fragment	18.6 mm wide, 10.1 mm long and 5.18 mm thick.	Platform absent, cortex behind, feather termination.
Artefact 2	370502E	6509845N	Complete Quartz Flake	12.48 mm long, 11.14 mm wide and 3.02 mm thick.	Flat platform measuring 3.96 mm long by 2.39 mm wide.
Artefact 3	370497E	6509837N	Complete Quartz Flake	12.47 mm long, 18.44 mm wide and 3.29 mm thick. Flat platform 11.15 mm wide and 3.29 mm thick.	2 negative flake scars behind, feather termination.

Table 1: Artefacts Recorded at DIA Site ID 3394, August 2007

The archaeological site inspection confirmed that archaeological material was present at the location identified by Quartermaine and that the site extent is essentially as he defined it in his original recording (see Figure 2). The potential for further artefacts to be recorded within the dune system was also considered significant as the surface assemblage described in the site file is considerably more diverse than that located during the inspection (Derbyshire 2007:7). Although only a small number of artefacts were observed, it was considered likely that this is a result of erosion and taphonomic processes which have combined to obscure artefacts (Derbyshire 2007:12).

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Taphonomic processes in this context refer to environmental and artificial mechanisms affecting the preservation and visibility of archaeological material. Such processes can include a range of forces such as wind and rain action, landscape modification and pedestrian and animal activity, all of which can act to disturb, obscure and even remove archaeological material. This may explain why there were considerably fewer surface artefacts visible at the Yanchep Beach during the inspection than originally recorded in 1991. It should also be noted, however, that these same processes can also reveal material and future inspections of the site may potentially identify a greater number of surface artefacts.

Statement of Significance

The scientific significance of archaeological sites in Western Australia is commonly assessed on the basis of 'representativeness' (or rarity) and research potential.

Representativeness is linked to significance on the basis that less common sites are inherently more significant than common ones. As mentioned previously, when DIA Site ID 3394 Yanchep Beach was first recorded in 1991, it was considered significant partly due to its location on the Quindalup Dune System, a geographical zone with few recorded archaeological sites. Indeed, on the basis of data captured as a result of the Swan Area Archaeological Survey, it had been concluded that "in all periods there are barely any sites in the coastal dunes" (Hallam 1986) and subsequent research supports this statement.

Although a number of archaeological sites are now known on the Quindalup Dune System, it remains the case that DIA Site ID 3394 Yanchep Beach was the only archaeological site identified during the survey of the entire Tokyu landholding in 1991 and that archaeological material is still seldom identified in this area (see, for example, Locke, Smith & McDonald 1990; O'Connor, Quartermaine & Bodney 1990a; O'Connor, Quartermaine & Bodney 1990b; Edwards, Fish & McDonald 2001; Macintyre Dobson & Associates & O'Reilly 2005). In this sense, the Yanchep Beach site is still relatively rare given its geographical context.

In terms of research potential, archaeologists refer to research priorities when assessing a site's significance, such as those developed by Strawbridge to address questions relating to demography, chronology, technology and site formation processes. Sites that have the potential to contain further archaeological material in a clear sequence and with dateable samples to support or dispute the existing scheme of technological changes are of particular interest. Also of interest are sites containing fossiliferous chert, a raw material lost when the sea level rose after the last Ice Age approximately 6,000 years ago (Strawbridge 1988).

As noted above, the Yanchep Beach site as originally recorded displayed a range of artefact types and lithic material including fossiliferous chert, and the site continues to display considerable subsurface potential. It was also noted above on the basis of

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the recent archaeological inspection of the site that taphonomic processes appear to have obscured the majority of the artefacts originally recorded by Quartermaine. However, this does not reduce the site's potential to address research questions. Indeed, as Tempus Archaeology has recently noted in relation to other archaeological sites on the Swan Coastal Plain:

It should be stressed that the negative impact of disturbance processes on the research potential of archaeological sites can be overstated. While taphonomic processes may complicate analyses, it is recognised by many researchers that these processes need not impede interpretation, but merely impose greater constraints on the types of research priorities that can be addressed. For example, even where disturbed sites lack internal chronological control (something that has not been fully established), they still may represent assemblages of artefactual material accumulated over several thousand years that could be compared to assemblages from other sites as a way of understanding long-term cultural change, dealing with research priorities that may be scientifically important at a local or even State level (Tempus Archaeology 2007:14).

On the basis of representativeness and rarity, therefore, DIA Site ID 3394 can be considered a scientifically significant archaeological site.

In June 2000, the site was assessed by the Aboriginal Cultural Material Committee (ACMC) which advises the Minister for Indigenous Affairs on heritage issues. The committee concluded that DIA Site ID 3394 was indeed an Aboriginal site as defined under Section 5(a) of the AHA and is, therefore, a "place of importance and significance" where persons of Aboriginal descent have left objects "connected with the traditional cultural life of the Aboriginal people". Any unauthorised disturbance to the site would constitute a breach of the AHA and therefore would be an offence under Section 17 of the Act.

Key Issues Affecting the Site

The proponent has been advised that Ministerial consent to use the land containing DIA Site ID 3394 Yanchep Beach will be required under Section 18 of the AHA. However, the Yanchep Beach LSP appears to provide adequate Public Open Space (POS) to allow the site to be preserved within the development (Figure 3).

In the short term, the site is at risk, albeit minor, from inadvertent impact as a result of construction activities in the surrounding area. This risk is somewhat limited by the site's location on a prominent parabolic dune ridge which will reduce the likelihood of inadvertent encroachment on the site, particularly by heavy machinery. As a precaution, it may be appropriate to erect a temporary fence to discourage access and to highlight the site's presence and status under the AHA to contractors.

The site is also subject to natural erosion which can obscure as well as reveal artefacts. Wind action and natural degradation of the dune are natural processes which affect sites such as this. Stabilisation of the dune surface would assist in the long-term preservation of the material (see below for further discussion).



Plate 1: Looking east across the eroding dune containing DIA Site ID 3394

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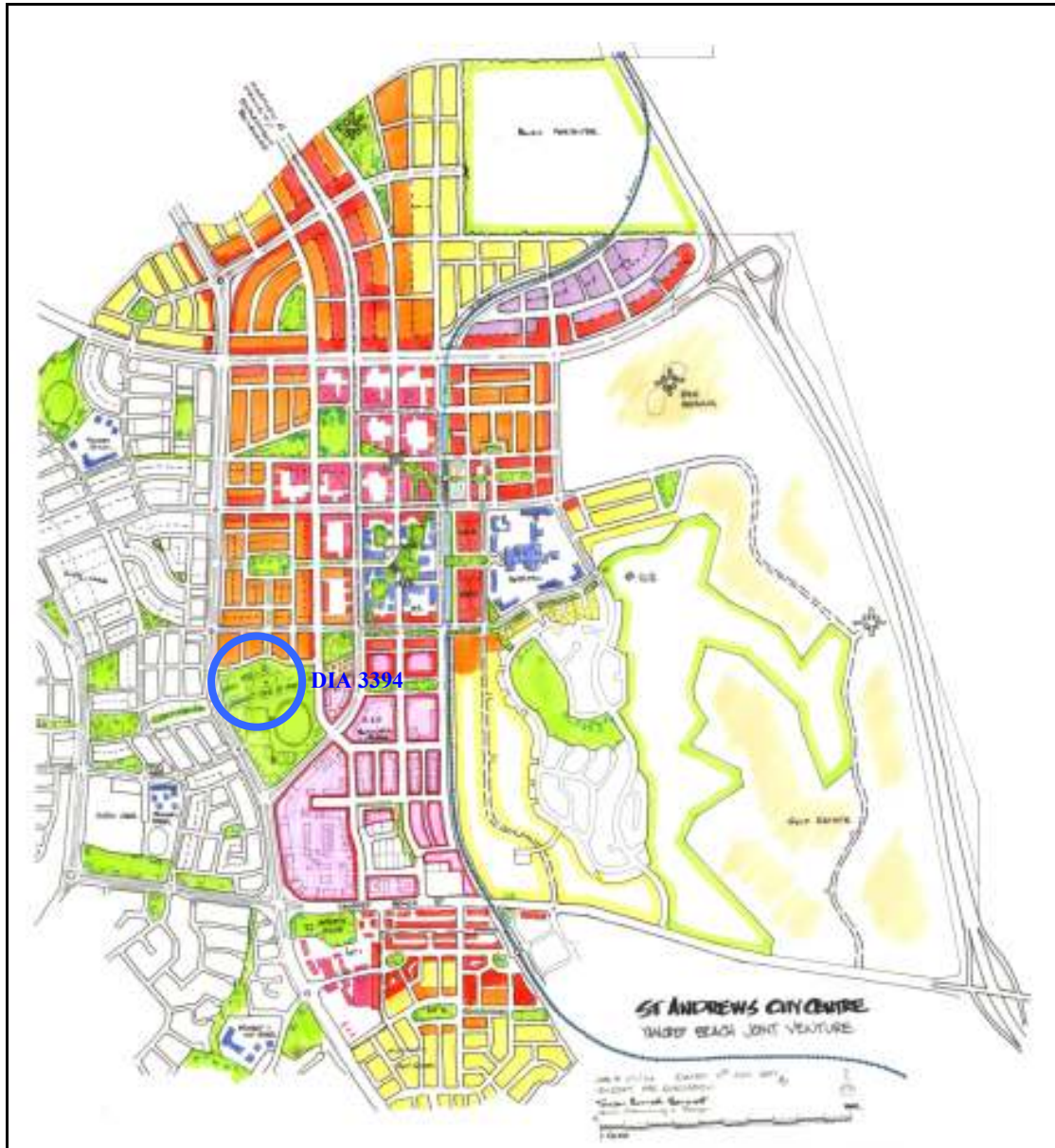


Figure 3: St Andrews City Centre Concept Plan showing the location of DIA Site ID 3394 Yanchep Beach (Source: Taylor Burrell Barnett)

Future Actions

Recommendations Arising from the Archaeological Inspection

As a result of the recent archaeological inspection, it was recommended that DIA Site ID 3394 Yanchep Beach be retained and enhanced to the greatest extent possible. Where it is not practicable to retain the site in its entirety, the proponent should apply for permission to use the land upon which the site is located in accordance with Section 18 of the AHA. This may require consultation with members of the Aboriginal community (see the following section for Indigenous groups with an interest in the site) and/or the engagement of a suitably qualified archaeologist to undertake more detailed recording of the archaeological material including an assessment of the site's subsurface potential (Derbyshire 2007:12).

If consent is granted to use the land containing the site, additional archaeological mitigation may also be required. This could include the engagement of a suitably qualified archaeologist to undertake a data recovery/salvage programme at the site with Aboriginal community involvement. Such a data recovery programme could include but not be limited to:

- ❖ Surface recording, mapping and collection of archaeological material;
- ❖ Archaeological excavation and/or subsurface evaluation;
- ❖ Radiometric dating (where possible or applicable)²;
- ❖ Analysis of recovered material; and
- ❖ Provision by the proponent for long-term storage and curation of recovered archaeological material.

It was also recommended that all staff and contractors associated with the development be briefed with regard to Aboriginal heritage issues to ensure ongoing compliance with respect to AHA and any future requests of the local Aboriginal community. It was recommended that all staff and contractors be made aware of the protocols and practices to be followed in the event of any additional Aboriginal

² Radiometric dating is a technique used to date lithic materials by comparing naturally occurring radioactive isotopes with their known decay rates.

site(s) being encountered during the course of the development (Appendix 1) including human skeletal remains (Appendix 2) (Derbyshire 2007:12-13).

AHMP Recommendations

In addition to the above and in order to avoid impacting the site during construction and into the longer term, the following recommendations are made:

1. That the site be protected by the erection of suitable fencing (to be installed under archaeological supervision and in consultation with the Department of Indigenous Affairs) until all construction activities have ceased in the surrounding area. During this time, access to the site should be restricted. Fencing should then be removed and replaced by less conspicuous barriers to discourage pedestrian access.
2. No major disturbance should take place within the POS area containing the archaeological site (e.g. vehicular access, landscaping, tree planting, or the installation of subsurface reticulation and/or recreational amenities).
3. Any future landscaping within the POS containing the site should be of a minor nature and should include the restoration of native flora where possible. It is recommended that a Landscape Plan be prepared for the POS and that this plan include planting shallow-rooted native vegetation (e.g. grasses) over the site to obscure and protect the artefacts.
4. It is suggested that site capping be considered prior to any landscaping of the POS containing the site. Site capping involves preserving the archaeological material in situ by covering the site beneath a stabilising medium which is separated from archaeological deposits by a membrane or geotextile. Such work should only be carried out under archaeological supervision and with the approval of the Registrar of Aboriginal Sites.
5. The developer (and subsequently the local authority if it assumes management of the POS) is encouraged to seek guidance from the Registrar of Aboriginal Sites under Regulation 10 of the *Aboriginal Heritage Regulations 1974* with regards to minor works that can be undertaken at the site without Section 18 approval (see Appendix 3).
6. In the event that the POS is to be developed in the future (including major landscaping or the installation of subsurface reticulation and/or recreational amenities), consent would be required from the Minister for Indigenous Affairs under Section 18 of the AHA.
7. It is recommended that signage and interpretive panels be provided to acknowledge former Aboriginal use of the area. These should be placed in such a way as to minimise disturbance to the archaeological site itself.

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It should be noted that alternative and/or additional recommendations could be made as conditions of future Section 18 approvals and that such conditions would take precedence over the recommendations listed above.

Indigenous Groups with an Interest in the Site

The following Indigenous people and groups have an interest in the Aboriginal heritage of the Yanchep area and some or all of these groups may need to be consulted if any activities are planned in future that are likely impact on the archaeological site:

- ❖ Ballaruk Aboriginal Corporation (Bodney and related families);
- ❖ Bibbulmun Tribal Group (Colbung and related families);
- ❖ The various subgroups of the Single Noongar Native Title Holders;
- ❖ The Independent Aboriginal Environmental Group (Hume and Yarran families); and
- ❖ The Jacobs Family.

Other families and individuals with an interest in the site may be identified during future consultation. The Department of Indigenous Affairs (DIA) also has a specific and direct interest in the site and should be kept informed of any works not permitted by Section 18 approvals, or where clarification on this issue is required.

Personnel Responsible for Implementing the Plan

The landowner, their agents and contractors are responsible for implementing the recommendations contained in this plan. Moreover, the landowner is responsible for ensuring that the requirements of the AHA are met and that any Ministerial conditions outlined in any future Section 18 approvals are satisfied.

Section 18 approvals are typically required where any activity is likely to lead to a breach of the AHA under Section 17 and/or where the proposed land use or land ownership is different from that specified in any existing Section 18 approvals. Should there be a change of ownership in the future, responsibility for ensuring the ongoing protection of the site will pass to the new owners and their agents and contractors. Proponents are reminded that unauthorised disturbance to an Aboriginal site is an offence under Section 17 of the AHA.³

If the developer or any other party is unsure about whether or not particular works will impact heritage values, they are encouraged to take a precautionary approach before commencing any works that involve a risk of causing significant irreversible damage to any heritage site.

In practice, this precautionary approach could include consulting this AHMP, contacting a heritage consultant and/or relevant Indigenous people and/or contacting the Registrar of Aboriginal Sites to seek clarification about what works would be permitted under Regulation 10 of the *Aboriginal Heritage Regulations 1974* without the need for Ministerial consent under Section 18 (Appendix 4).

³ Under Section 17 of the AHA, it is an offence to excavate, destroy, damage, conceal or in any way alter an Aboriginal site without the authorisation of the Registrar under Section 16 or the consent of the Minister under Section 18. See Appendix 3 for a more detailed discussion of Section 18 of the AHA.

Monitoring and Reviewing the Plan

Heritage management plans require regular review and it is recommended that this plan be reviewed annually or whenever major developments occur that might affect its scope and/or recommendations (e.g. when construction work is being undertaken in the vicinity of the site or when a Landscape Plan affecting the site is developed or changed).

The plan may also have to be revised if, for example:

- ❖ The objectives defined in the plan (and hence the strategies linked to them) have proven to be unsuitable and the plan is no longer a useful guide for management;
- ❖ Major changes have affected the site warranting a new approach to its management; or
- ❖ New information comes to light about the heritage values of the site which means that the basis for the plan has changed and new objectives and strategies to protect the site are required.⁴

The scope of the plan should be widened to cover any additional sites that may come to light and require management in order to fulfil the requirements of the AHA.

⁴ Australian Heritage Commission, n.d.

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Appendix 1: Reporting an Aboriginal Site (Excluding Human Remains)⁵

Process to be followed should personnel associated with the proposed development suspect the presence of an unreported archaeological site or feature (excluding human remains):

1. Work to cease immediately within a 30m radius of the discovery.
2. The area to be demarked with caution/flagging tape to prevent unauthorised entry.
3. The site manager (or other authorised person) is to be informed immediately. The site manager is to contact the Department of Indigenous Affairs (Heritage, Culture and Policy Advice, Main Office) or an Aboriginal Heritage officer if one has been appointed.
4. The proponent is to appoint a suitably qualified archaeologist to undertake an inspection and evaluation of the site/feature in consultation with the relevant Aboriginal community(s). A report on the findings should be prepared and submitted to the Department of Indigenous Affairs.
5. Depending on the outcomes of the archaeological evaluation, the proponent may need to apply for permission to use the land upon which the site is located in accordance with Section 18 of the Aboriginal Heritage Act (1972) (unless previously granted).
6. Any archaeological mitigation recommended as a result of the evaluation and/or stipulated as part of the existing consents (where granted) should be undertaken by a suitably qualified archaeologist in consultation with the relevant Aboriginal community(s).

⁵ After Derbyshire 2007

Appendix 2: Reporting an Aboriginal Site (Human Remains)⁶

Process to be followed should personnel associated with the proposed development suspect the presence of an unreported archaeological site or feature (human remains):

1. Work must cease immediately within a 30m radius of the discovery. The area is to be demarked by caution/flagging tape to prevent unauthorised entry.
2. By law, the area becomes a crime scene and the Police Department must be notified immediately. The site manager (or other authorised person) should also be contacted.
3. The site manager should contact the Department of Indigenous Affairs (Heritage, Culture and Policy Advice, Main Office) or an Aboriginal Heritage Consultant if one has been appointed.
4. If the human skeletal material is deemed to be modern, the appropriate law enforcement officials shall assume jurisdiction and the Aboriginal management process shall be concluded.
5. Developers should arrange for a suitably qualified archaeologist to undertake an inspection and evaluation of the skeletal material in consultation with the relevant Aboriginal community(s). A report of the findings of the evaluation should be prepared and submitted to the Department of Indigenous Affairs.
6. The relevant Aboriginal community(s) should be consulted regarding the management of the skeletal material once jurisdiction has been determined.
7. No further work at the location should be undertaken until all relevant parties have been consulted and agreement has been reached.

The location of the skeletal material should be recorded in accordance with guidelines outlined by the Department of Indigenous Affairs *Draft Spatial Standards* to ensure its future protection. Any proposed remedial work should be undertaken by a suitably qualified archaeologist in consultation with the relevant Aboriginal community(s).

⁶ After Derbyshire 2007

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Appendix 3: Section 18 of the Aboriginal Heritage Act 1972

Section 18 of the *Aboriginal Heritage Act 1972* (AHA) provides a mechanism for a landowner or lessee to obtain permission to use the land on which an Aboriginal site is located, as outlined below.

Consent to certain uses

1) *For the purposes of this section, the expression "the owner of any land" 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 Act 1967, in relation to the land.*

(1a) A person is also included as an owner of land for the purposes of this section if –

(a) the person –

(i) is the holder of rights conferred under section 34 of the Dampier to Bunbury Pipeline Act 1997 in respect of the land or is the holder's nominee approved under section 34(3) of that Act; or

(ii) has authority under section 7 of the Petroleum Pipelines Act 1969 to enter upon the land;

or

(b) the person is the holder of a distribution licence under Part 2A of the Energy Coordination Act 1994 as a result of which the person has rights or powers in respect of the land.

(2) Where the owner of any land gives to the Committee notice in writing that he requires to use the land for a purpose which, unless the Minister gives his consent under this section, would be likely to result in a breach of section 17 in respect of any Aboriginal site that might be on the land, the Committee shall, as soon as it is reasonably able, form an opinion as to whether there is any Aboriginal site on the land, evaluate the importance and significance of any such site, and submit the notice to the Minister together with its recommendation in writing as to whether or not the Minister should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which his consent should be given.

(3) Where the Committee submits a notice to the Minister under subsection (2) he shall consider its recommendation and having regard to the general interest of the community shall either –

(a) consent to the use of the land the subject of the notice, or a specified part of the land, for the purpose required, subject to such conditions, if any, as he may specify; or

(b) wholly decline to consent to the use of the land the subject of the notice for the purpose required,

and shall forthwith inform the owner in writing of his decision.

(4) Where the owner of any land has given to the Committee notice pursuant to subsection (2) and the Committee has not submitted it with its recommendation to the Minister in accordance with that subsection the Minister may require the

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Committee to do so within a specified time, or may require the Committee to take such other action as the Minister considers necessary in order to expedite the matter, and the Committee shall comply with any such requirement.

(5) Where the owner of any land is aggrieved by a decision of the Minister made under subsection (3) he may, within the time and in the manner prescribed by rules of court, appeal from the decision of the Minister to the Supreme Court which may hear and determine the appeal.

(6) In determining an appeal under subsection (5) the Judge hearing the appeal may confirm or vary the decision of the Minister against which the appeal is made or quash the decision and substitute his own decision which shall have effect as if it were the decision of the Minister, and may make such order as to the costs of the appeal as he sees fit.

(7) Where the owner of any land gives notice to the Committee under subsection (2), the Committee may, if it is satisfied that it is practicable to do so, direct the removal of any object to which this Act applies from the land to a place of safe custody.

(8) Where consent has been given under this section to a person to use any land for a particular purpose nothing done by or on behalf of that person pursuant to, and in accordance with any conditions attached to, the consent constitutes an offence against this Act.

The Committee comprises, among others, an anthropologist and archaeologist and Indigenous Affairs Departmental and Crown Law representatives along with Aboriginal community representatives. In practice, the Committee's work involves consideration of such applications to disturb land on which Aboriginal sites are known to be located, either by development (governed by Section 18 of the Act) or scientific investigation (governed by Section 16 of the Act).

The Committee is required first to determine whether a place referred to in any such application is indeed an Aboriginal site (under Section 5 of the Act), then assess the relative significance of the place if it is considered to be within the ambit of the Act. The legislation is silent, however, on precisely how this significance should be attributed, although a series of guidelines are offered (Section 39[2] and [3]), giving primacy to sites of 'mythological', 'ceremonial and ritual significance'. Dependent upon the degree to which the APMC believes a site to be of importance, any application can be recommended for consent (i.e. permission is given for disturbance), consent with conditions or refusal.

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The listing of conditions on an approval usually mirrors recommendations made by heritage consultants and/or Aboriginal people. Conditions typically listed include further archaeological recording, archaeological monitoring of ground disturbance, the recognition of Aboriginal heritage values through the use of information displays, naming of streets and public open space etc, and/or further consultation.

Any decision made by the Committee is presented to the Minister for Indigenous Affairs in the form of a recommendation and he/she makes the final decision on any matter. Ministerial decisions in general reflect the recommendations of the ACMC except in exceptional circumstances. If aggrieved by Ministerial decisions, a proponent has the right of appeal. Similarly, members of the Aboriginal community have the right to make a common law appeal through the court system.

As a consequence of the Act's drafting, it is only possible for landowners to apply for permission to use land under Section 18 of the Act. However, those who are actually the registered proprietors do not necessarily undertake development. Consequently, there are mechanisms for a limited power of attorney to be provided by landowners to proponents to enable them to act as agents for the purposes of the *Aboriginal Heritage Act (1972 as amended)*. The "authority to act as an agent" pro-forma, which is the only instrument acceptable to the ACMC, specifically limits the scope of the agency to the operation of the Act. As a result, landowners are not in danger of assigning any broader rights or responsibilities to proponents.

All Section 18 notices must include a description of the subject land, Aboriginal sites for which permission is sought and a detail of the land use/activities which are likely to disturb the identified sites. Any permission subsequently granted is phrased in similarly specific terms, especially the land use envisaged. Thus, a proponent can only obtain consent to use the land for the purposes they request. Should either the purpose or proponent change, then the permission obtained effectively lapses, as does any agency associated with earlier applications. Thus the landowner's proprietary rights are ensured additional protection.

Because consent given under the Act does not run with the land but with the applicant and is specific to the land use/purpose stated in the application, the agent

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could/should be a person or body corporate that will either control or have a long-term involvement in the development. Under normal circumstances, Section 18 consent functions as though it was granted in perpetuity. However, there have been cases where a radical change in land use from that outlined in a Section 18 submission has resulted in a need to reapply for Ministerial consent (e.g. residential subdivision to industrial use). In addition, consent is not technically given to disturb or destroy an Aboriginal site. As a consequence, once the Committee defines a place as a site, its legal status is not actually altered by the Ministerial consent to use the land. It is important, therefore, that any application is framed as widely as possible (e.g. residential subdivision, commercial and retail and related infrastructure – services, roads and so on) to ensure that it operates under the widest possible parameters.

In the absence of specific conditions, the Section 18 consent allows a proponent to proceed without further reference to the Act. However, there may be circumstances where further action is necessary. For example, new archaeological material may be discovered, the presence of which could not be determined by standard survey techniques (such as a subsurface deposit or an Aboriginal burial which would require further attention). However, reports are usually prepared with these contingencies in mind. In other words, a development area is assessed not only on the actual research findings, but also on its potential with regards to burials and subsurface deposits and appropriate recommendations are presented.

Prior to the Committee reviewing an application and supporting documentation, a Departmental officer assesses both and prepares briefing notes. If problems are encountered, they routinely contact the proponent and/or the heritage consultants and seek clarification. The key point with regard to an application for Ministerial consent under Section 18 of the Act is that hundreds of such applications are handled annually and without major problems by the Department of Indigenous Affairs and the Aboriginal Cultural Material Committee.

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Appendix 4: Regulation 10 of the Aboriginal Heritage Regulations 1974

Regulation 10 outlines activities that can and cannot be undertaken on or at an Aboriginal site without Section 18 approval.

Under Regulation 10, a person shall not, without the written consent of the Minister or the Registrar or a person authorised in writing by the Minister or the Registrar,

- (a) alter, damage, or destroy any notice, boundary, fence, shelter, grille, cutting, drain, protective work or other thing which the Registrar or any officer of the Department has, or has caused to be, erected, constructed, made or placed thereon or therein;*
- (b) dig any hole or otherwise disturb the surface of the ground, or remove or disturb any stone, soil, sand, rock or gravel, or any other natural object;*
- (c) cut, pick, pull, break, remove, take, injure, poison, strip or destroy any tree, shrub, herb, grass or other plant or part thereof whether living or dead;*
- (d) post, stick, stamp, stencil, paint, draw or otherwise affix or make any mark, symbol, lettering, notice, advertisement poster, sign or document of any description;*
- (e) except in a place approved or provided for the purpose:
 - (i) drive, tow, operate or park any vehicle;*
 - (ii) camp, erect tents or shelters, light fires or make fireplaces;*
 - (iii) deposit or leave any refuse, rubbish or litter; or*
 - (iv) take, ride or drive, graze or agist any horse, cattle, sheep, goat, camel, donkey or pig, or allow any such animal to remain;**
- (f) sell any food, beverage or other article;*
- (g) unlock, unfasten or leave open any gate unless duly authorised to do so; or*
- (h) except with the prior written approval of the Minister, or the Registrar, and in accordance with such requirements as he may impose, take any photograph or make any recording for the purpose of commercial reproduction or publication.*

Note: It is recommended that clarification be sought from a heritage consultant and/or the Registrar of Aboriginal Sites before undertaking any activities on an Aboriginal heritage site.