

**THE REPORT ON ABORIGINAL HERITAGE ADVICE
FOR THE STAGE THREE EAST PORT HEDLAND
PROJECT CONCEPT PLAN, PILBARA,
WESTERN AUSTRALIA**

MAY 2015

For LandCorp

By

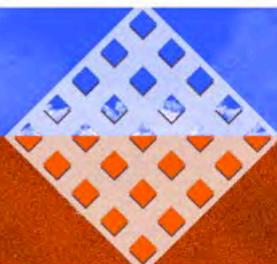
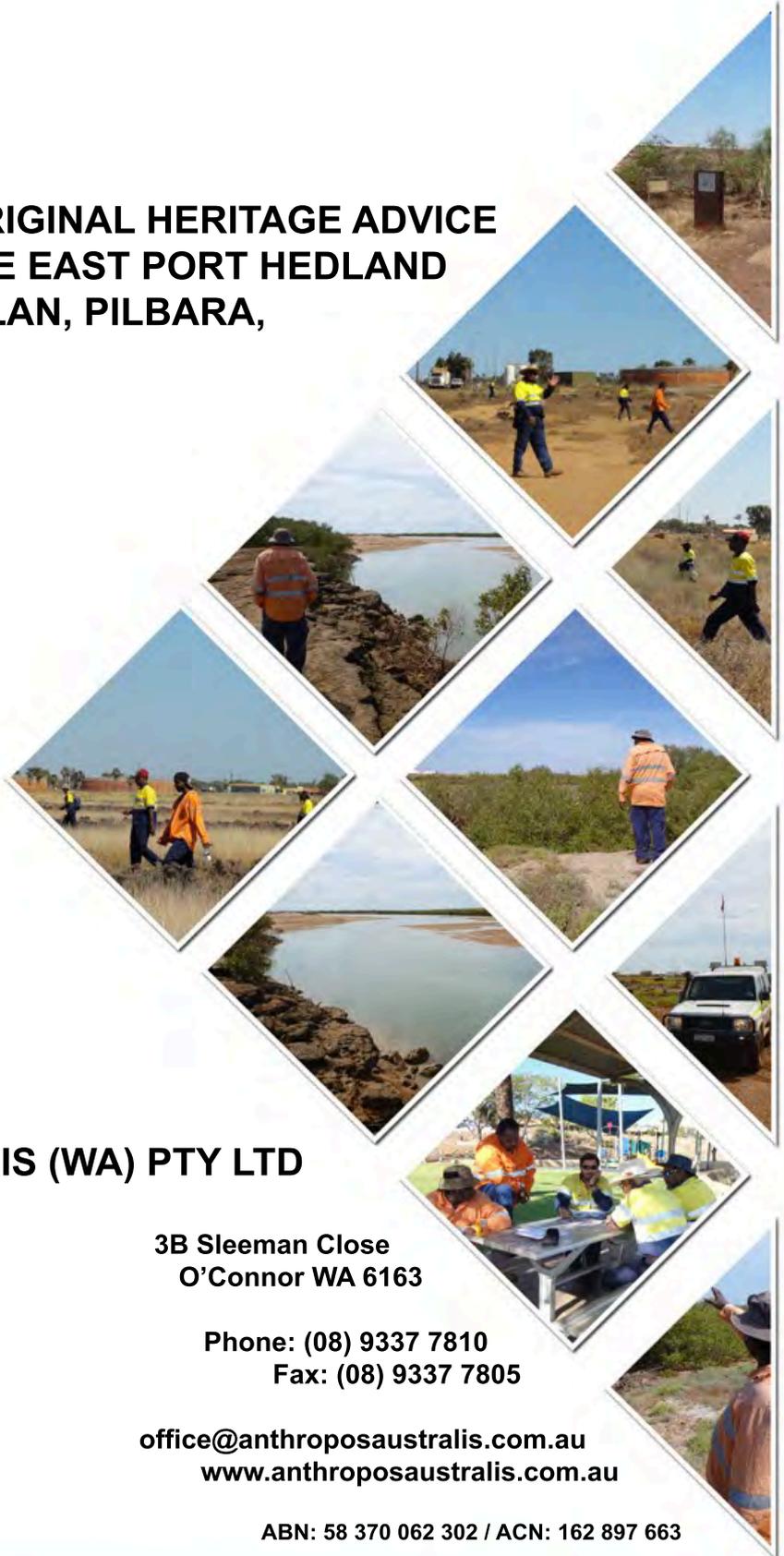
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- Anthropos Australis (WA) Pty Ltd: Nicholas Green and Emily Ashby who drafted the Report.



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SECTION ONE – INTRODUCTION

INTRODUCTION

LandCorp is undertaking concept planning, a full Environmental Assessment and initiating a Scheme Amendment request to rezone an area of developable land from “Rural” to “Urban Development” within East Port Hedland, in the Pilbara region of Western Australia (the Project).

The area of land that is the subject of the Project is located in East Port Hedland, and is bound by Styles Road, Cooke Point Drive, Pretty Pool and existing residential development along Matherson Drive (the Study Area). The Study Area has been identified as Stage 3 within the East Port Hedland Concept Plan (August 2012) and is commonly referred to as “The Stables” area (see Figure 1).

LandCorp has engaged Anthropos Australis (WA) Pty Ltd to provide the Services which is comprised of three deliverables in regards to the Project:

- Part A: a brief Report on the European and Aboriginal historical research about the Study Area in the context of the broader Port Hedland Area (see Anthropos Australis (WA) Pty Ltd: 2014a);
- Part B: A brief Memorandum summarising comments on the proposed concepts from a heritage constraints and approvals perspective and recommendations for improvement/changes and provision of inputs into the Scheme Amendment documentation (see letter from Nicholas Green to Olivia Abrugiato dated 3rd February 2015); and
- Part C: A concise Report/Memorandum which includes a summary of issues and required approvals to deliver the Final Concept as part of the Scheme Amendment process, recommendations for the retention/integration of important heritage features into the urban development of the land, and details of all further heritage investigations/studies required to be completed to permit urban development of the Study Area inclusive of potential timeframes and costs.

This Report details the results of Part C above. The advice provided in this Report is designed to assist LandCorp to guide any future land developer that is interested in developing the land in the Study Area in the mid-term, say 15 plus years, to address the Aboriginal heritage issues/constraints that affect the Study Area as well as suggestions for engagement with *Marapikurrinya* people and the *Kariyarra* native title claimant group.



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This advice is based upon current “Best Practice” standards and well as the existing procedures under the *Aboriginal Heritage Act 1972* (Western Australia) and the *Aboriginal and Torres Strait Islander Heritage Act 1984* (Commonwealth) and does not second guess what those standards and procedures may look like 15 years into the future. In addition, the views and desires of the Aboriginal parties with an interest in the land may also change, as culture is not static.

REPORT FORMAT

This Report is divided into two sections:

Section One contains this Introduction, providing details of the Study Area including Figure 1; and

Section Two provides advice on the Aboriginal Heritage Issues/Constraints in the Study Area, advice on the ongoing engagement with *Marapikurrinya Pty Ltd*, Figure 2 and Figure 3 as well as the Conclusions and the References cited.

Figure 1: Location of the Study Area



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SECTION TWO – ABORIGINAL HERITAGE ISSUES/CONSTRAINTS AND ONGOING ENGAGEMENT WITH MARAPIKURRINYA

PREVIOUS ABORIGINAL HERITAGE SURVEYS OF THE STUDY AREA

The land within the Study Area has been the subject of an Aboriginal heritage survey (ethnographic and archaeological), undertaken by Anthropos Australis (WA) Pty Ltd in September 2011 (see Anthropos Australis Pty Ltd: 2012a).

That survey was undertaken under the terms of a Memorandum of Understanding (MoU) dated February 2010 between the Western Australian Land Authority (LandCorp), and the Representative Body, in this case *Marapikurrinya* Nominees Pty Ltd as Trustee for the *Marapikurrinya* Charitable Trust (referred to in this Report as *Marapikurrinya* Pty Ltd), which manages the conduct of Aboriginal heritage surveys in the Port Hedland area on behalf of and by agreement with the broader *Kariyarra* native title claimant group.

That survey was undertaken over 450 ha of land, which includes the Study Area and the generic recommendations in the subsequent report are valid here for any future land developer (see Anthropos Australis Pty Ltd: 2012a), which are as follows:

- *It is recommended that, should LandCorp wish to use the land containing any of the above mentioned Aboriginal sites, then they will need to be recorded to Site Identification standard to enable a Section 18 Notice under the Aboriginal heritage Act 1972 to be lodged with the Department of Indigenous Affairs. Any proposed Section 18 Notice will need to be discussed with Marapikurrinya Pty Ltd.*
- *It is **recommended** that, as there exist unrecorded engravings in close proximity to the eastern boundary of the Survey Area, along Gray Street, and if LandCorp wishes to gain access through Gray Street, this area will need to be the subject of an additional Aboriginal Heritage Survey undertaken by Marapikurrinya Pty Ltd prior to any ground disturbing activity.*
- *It is **recommended** that the LandCorp ensure continual land and water access for Marapikurrinya people to the Pretty Pool Creek system in order for the Marapikurrinya people to maintain their cultural connection with the area.*
- *It is **recommended** that, given the potential for Aboriginal cultural material, including skeletal, to be disturbed within **sand dune areas**, two Marapikurrinya Pty Ltd nominated Marapikurrinya Heritage Monitors be engaged by LandCorp through Marapikurrinya Pty Ltd during initial ground disturbing activity associated with the proposed works.*



- It is **recommended** that LandCorp implements the following Stop Work Procedure should any sub-surface skeletal material and other cultural material be uncovered during the proposed ground disturbing activity:
 1. Should any sub-surface skeletal material (or any other cultural material) be uncovered during excavation work associated with the proposed construction, contractors are to cease **all work immediately** and the area cordoned off;
 2. Contractors are to formally notify the South Hedland Detectives (in the case of skeletal material), Marapikurrinya Pty Ltd and the Department of Aboriginal Affairs;
 3. LandCorp appoints a Bio-Archaeologist via Anthropos Australis (WA) Pty Ltd to document and record the skeletal material (or any other cultural material); and
 4. Further mitigation strategies and consultation with Marapikurrinya Pty Ltd and Anthropos Australis (WA) Pty Ltd will need to be instigated by LandCorp in response to this Stop Work Procedure.
- It is **recommended** that where possible, LandCorp provide employment opportunities for the Marapikurrinya people.
- Finally, it is **recommended** that LandCorp keep Marapikurrinya Pty Ltd informed of the proposed development, through regular meetings.

What is significant about the MoU is that the parties that entered into it did so to ensure that the proposed development of the land, including the Study Area, will occur in a manner where the works:

- Are not likely to interfere directly with the community life of the local Indigenous people;
- Where practicable and in accordance with the law, avoid damage, disturbance or undue interference with areas or sites of particular significance to the local Indigenous representatives; and
- Are in compliance with the provisions of the *Aboriginal Heritage Act 1972* (Western Australia) and the *Aboriginal and Torres Strait Islander Heritage Act 1984* (Commonwealth).

Additionally, the processes in the MoU are intended to:

- Allow the local Indigenous representatives to maintain their cultural obligations over country in accordance with traditional law and custom;
- Provide a basis for a mutually beneficial future relationship; and



- Be transparent, timely, certain and cost effective for all parties in protecting Aboriginal heritage in areas where the works take place.

The subsequent survey identified four Aboriginal sites (LAN22-11-09 through to and including LAN22-11-12) and Other Heritage Place ID 28249 (Pretty Pool), which are all located within the Study Area. The Department of Aboriginal Affairs (the DAA) has provided the four Aboriginal sites with an interim label of Lodged but have not assigned them an ID number nor have they been mapped. Until the DAA formally considers the status of these Aboriginal sites under the *Aboriginal Heritage Act 1972* (Western Australia), LandCorp and any future land developer needs to assume that they are Aboriginal sites within the meaning of the *Aboriginal Heritage Act 1972* (Western Australia) and should therefore be protected.

It should be noted that the four Aboriginal sites and one Other Heritage Place have been recorded to Site Avoidance standard only as advised in the recommendations above (see Anthropos Australis Pty Ltd: 2012a). Should LandCorp or any future developer wish to use the land containing all or any of these Aboriginal sites/Place, then the Aboriginal sites/Place will need to be recorded to a Site Identification standard to enable the DAA to determine whether they are in fact Aboriginal sites within the meaning of Sections 5 and 39 of the *Aboriginal Heritage Act 1972* (Western Australia) or not. If they are, then a notice under Section 18 of the *Aboriginal Heritage Act 1972* (Western Australia) would need to be lodged by the land owner or agent with the DAA to enable the Aboriginal Cultural Material Committee (ACMC) to consider the notice and to provide their formal advice to the Minister for Aboriginal Affairs.

ABORIGINAL SITES RECORDED WITHIN THE STUDY AREA

The Final Concept Plan Option 1 and Option 2 has the four Aboriginal sites and Other Heritage Place located and therefore protected in the proposed Public Open Space (see Figure 2 and Figure 3). While this approach reflects “Best Practice” in the protection of Aboriginal cultural heritage as suggested by the *Australia ICOMOS Burra Charter 2013*, it does mean that there will be an ongoing commitment by the landowner to ensure that the Aboriginal sites/Place have an agreed Cultural Heritage Management Plan to ensure their protection and potential enhancement.

It should also be noted that there is the possibility of additional Aboriginal sites and or objects being uncovered by the mobile landscape within which they occur due to rain, wind and human activity on the land. Therefore, additional Aboriginal heritage survey work may be required in the future.

From a cultural heritage management point of view, either Concept Plan option is acceptable as both have the same outcome, which is to protect the Aboriginal sites/Other Heritage Place, and both Concept Plan options imply the same level of commitment from any future land developer.



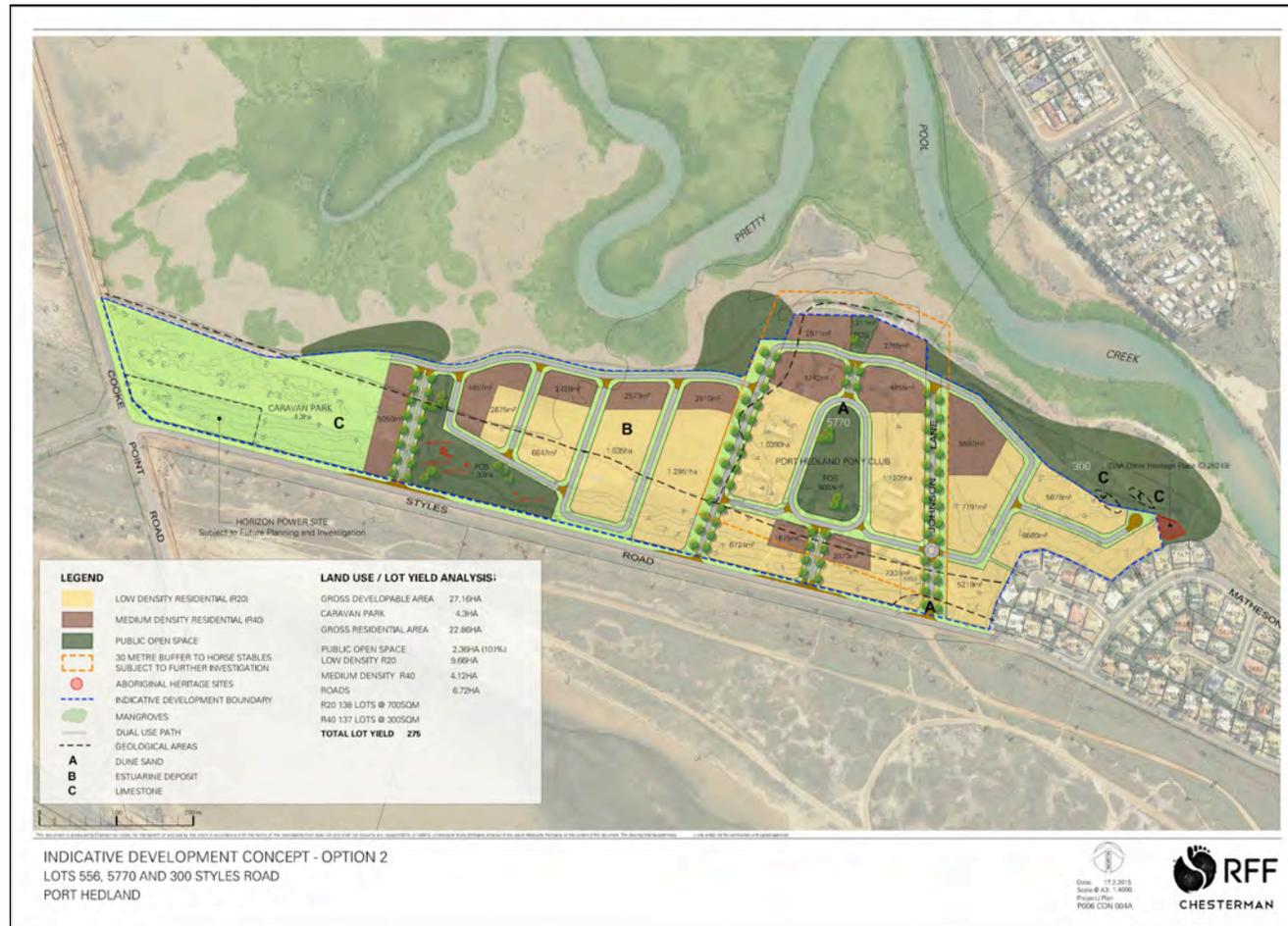
Figure 2: Final Concept Plan Option 1



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Figure 3: Final Concept Plan Option 2



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Aboriginal Site LAN22-11-09 (Shell Midden/Scatter)

Grid Reference

50K 670260mE 7752982mN

670261mE 7752974mN

670254mE 7752977mN

670255mE 7752985mN

Location

Aboriginal site LAN22-11-09 is located in the centre of the Survey Area, 10 m north west of LAN22-11-10 and 30 m north west of LAN22-11-11. The site is located to the north of Styles Road.

Site Environment

The site is located on a limestone outcrop. Vegetation at the site includes Spinifex, Butterfly Bush (*Petalostylis* spp.) and Buffel Grass (*Cenchrus ciliaris*). Ground surface visibility at the time of recording was approximately 80% (see Plate 1).

Archaeological Site Description

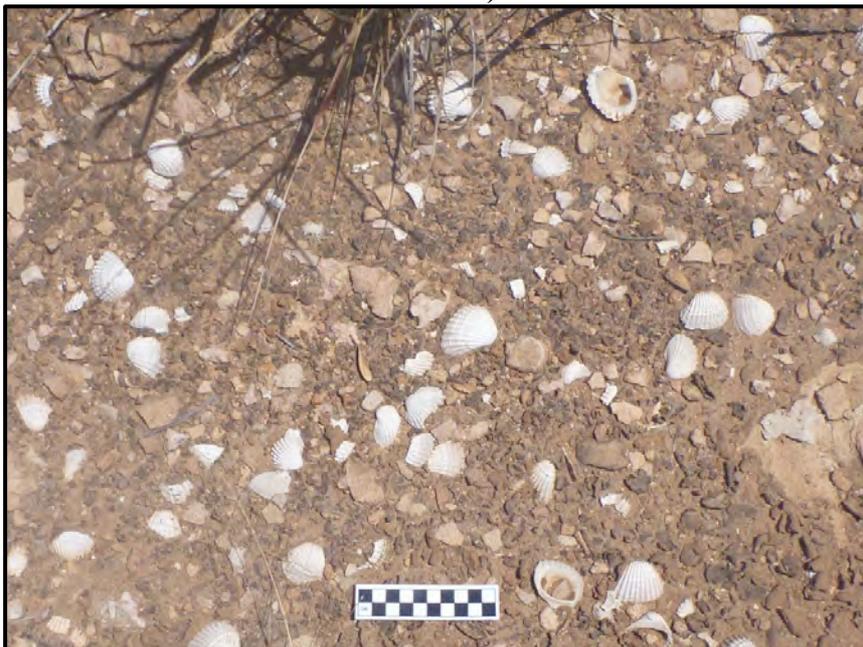
The site, which covers an area 10 m N/S by 10 m E/W, and 45 m², consists of a discrete shell scatter. Shell types noted include *Anadara granosa* and Baler (*Melo amphora*)(see Plate 2 and Plate 3). No artefacts were noted within the site.



Plate 1: View north of Aboriginal site LAN22-11-09 (scale = 2 m)



Plate 2: Close up of *Anadara granosa* within Aboriginal site LAN22-11-09 (scale = 10 cm)



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Plate 3: Close up of Baler fragment within Aboriginal site LAN22-11-09 (scale = 10 cm)



Aboriginal Site LAN22-11-10 (ENGRAVING)

Grid Reference

50K 670262mE 7752973mN
 670265mE 7752974mN
 670267mE 7752974mN
 670266mE 7752970mN

Location

Aboriginal site LAN22-11-10 is located in the centre of the Survey Area, 10 m south east of LAN22-11-09 and 20 m west of LAN22-11-11. The site is located to the north of Styles Road.

Site Environment

The site is located on a limestone outcrop south of mangroves and the associated creek line. Vegetation at the site includes Buffel Grass (*Cenchrus ciliaris*), Spinifex (*Triodia* spp.) and Butterfly Bush (*Petalostylis* spp.). Ground surface visibility at the time of recording was approximately 95% (see Plate 4).



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Archaeological Site Description

The site, which covers an area 5m N/S by 5 m E/W, and 10 m², consists of a single engraved enigmatic motif (see Plate 5 and Plate 6). No other archaeological material was noted within the site.

Plate 4: View south of Aboriginal site LAN22-11-10 (scale = 2 m)



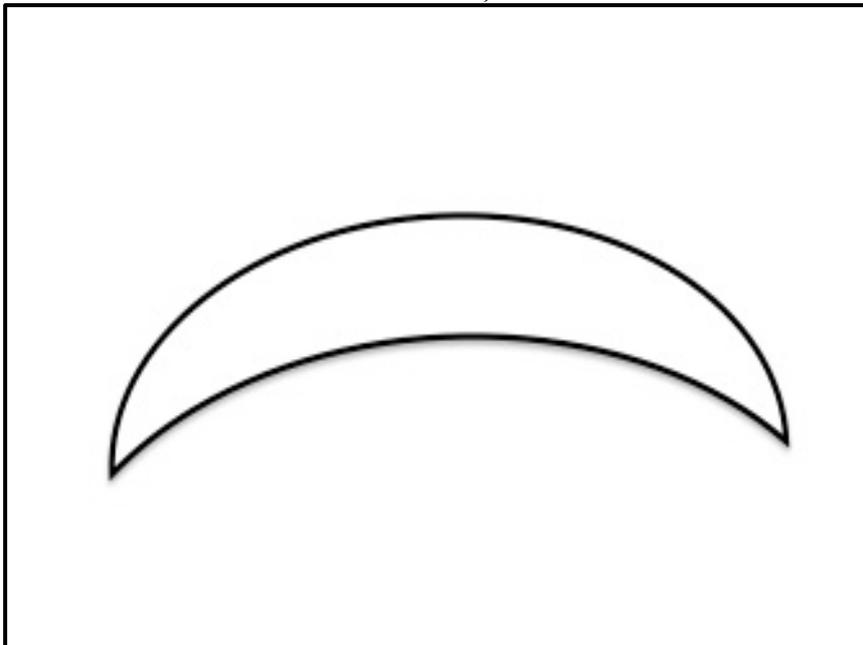
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Plate 5: Close up of the engraving within Aboriginal site LAN22-11-10 (scale = 10 cm)



Plate 6: Line drawing of the engraving within Aboriginal site LAN22-11-10 (not to scale)



Aboriginal Site ID LAN22-11-11 (ENGRAVING)

Grid Reference

50K 670285mE 7752962mN

670288mE 7752960mN

670290mE 7752962mN

670285mE 7752965mN

Location

Aboriginal site LAN22-11-11 is located in the centre of the Survey Area, 20 m east of LAN22-11-10 and 70 m north west of LAN22-11-12. The site is located to the north of Styles Road.

Site Environment

The site is located on a limestone outcrop south of mangroves and the associated creek line. Vegetation at the site includes Spinifex (*Triodia* spp.) and Buffel Grass (*Cenchrus ciliaris*). Ground surface visibility at the time of recording was approximately 95% (see Plate 7).

Archaeological Site Description

The site, which covers an area 5 m by 5 m, and 10 m², consists of two engraved motifs, both enigmatic (see Plate 8, Plate 9, Plate 10 and Plate 11). No other archaeological material was noted within the site.



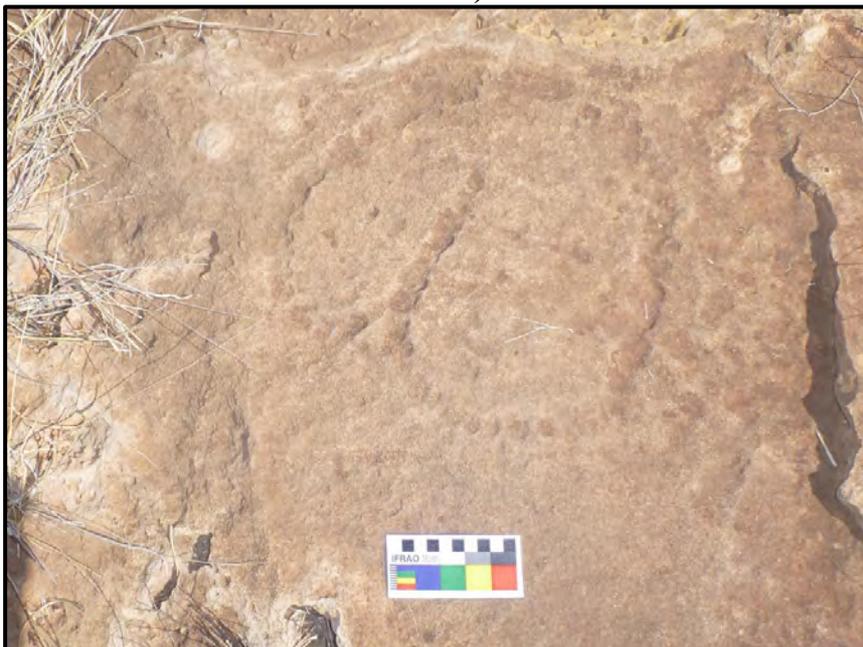
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Plate 7: View south of Aboriginal site LAN22-11-11 (scale = 2 m)



Plate 8: Close up of an engraving within Aboriginal site LAN22-11-11 (scale = 10 cm)



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Plate 9: Line drawing of an engraving within Aboriginal site LAN22-11-11 (not to scale)

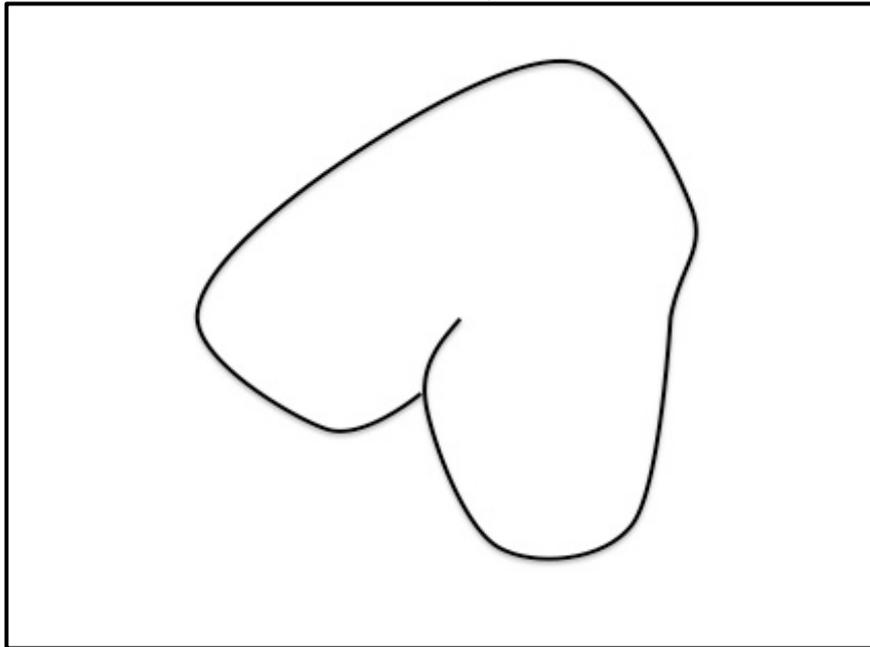


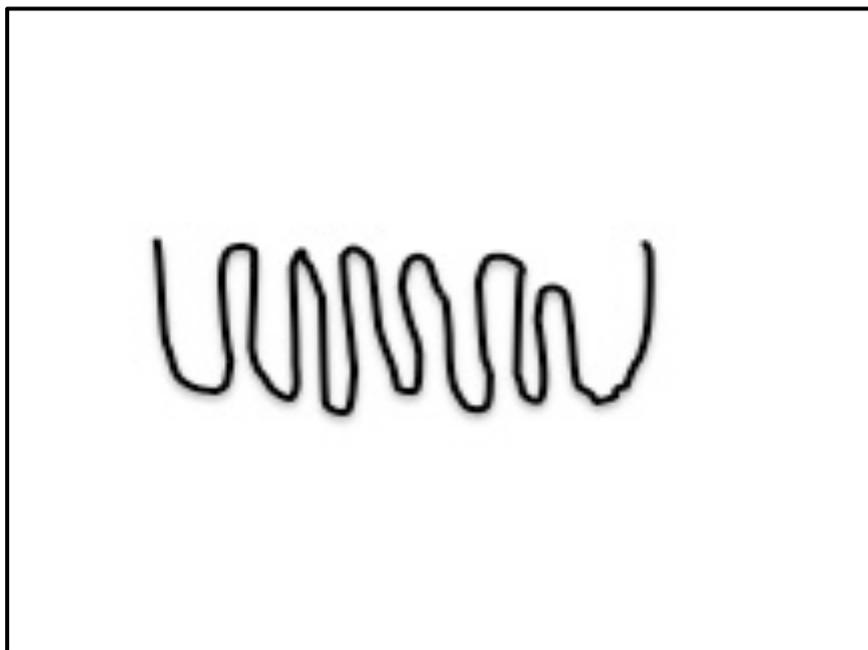
Plate 10: Close up of an engraving within Aboriginal site LAN22-11-11 (scale = 2 m)



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Plate 11: Line drawing of an engraving within Aboriginal site LAN22-11-11 (not to scale)



Aboriginal Site LAN22-11-12 (ENGRAVING)

Grid Reference

50K 670349mE 7752925mN
 670353mE 7752926mN
 670350mE 7752923mN
 670349mE 7752924mN

Location

Aboriginal site LAN22-11-12 is located in the centre of the Survey Area, 70 m south east of LAN22-11-11. The site is located to the north of Styles Road.

Site Environment

The site is located on a limestone outcrop south of mangroves and the associated creek line. Vegetation within the site includes Spinifex (*Triodia* spp.) and Buffel Grass (*Cenchrus ciliaris*). Ground surface visibility at the time of recording was approximately 95% (see Plate 12).



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Archaeological Site Description

The site, which covers an area 5 m N/S by 5 m E/W, and 10 m², consists of a single enigmatic engraved motif (see Plate 13 and Plate 14). No other archaeological material was found at the site, however it is considered possible that additional engravings may occur further along the ridge, under the dense vegetation that grows there.

Plate 12: View south of Aboriginal site ID LAN22-11-12 (scale = 2 m)



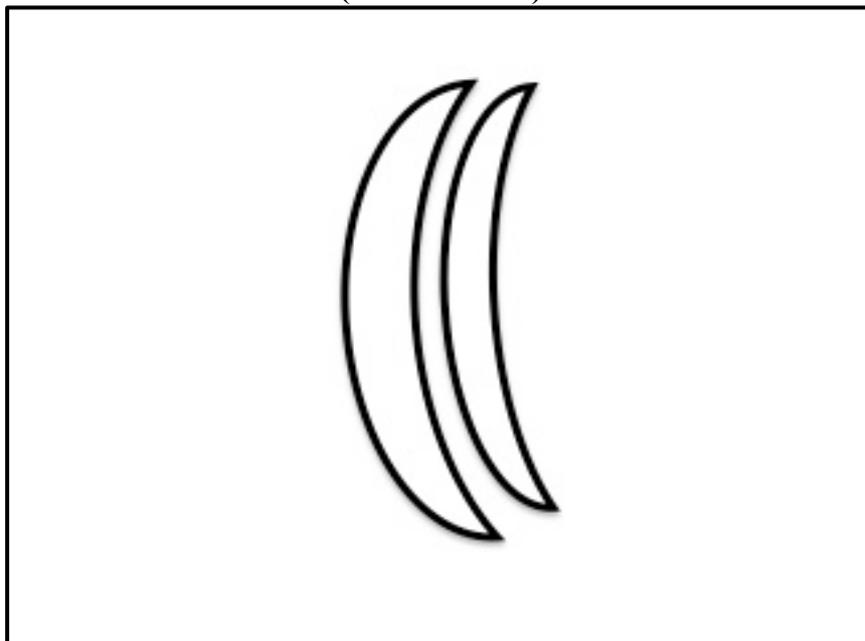
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Plate 13: Close up of the engraving within Aboriginal site LAN22-11-12 (scale = 10 cm)



Plate 14: Line drawing of the engraving within Aboriginal site LAN22-11-12 (scale = 10 cm)



ADDRESSING THE ABORIGINAL HERITAGE ISSUES / CONSTRAINTS AND ENSURING ONGOING ENGAGEMENT WITH *MARAPIKURRINYA*

In order to ensure that the four Aboriginal sites/Other Heritage Place within the Study Area as detailed in Concept Plans Option 1 and Option 2 are protected and potentially enhanced given their location in the proposed Public Open Space, it is important to benchmark any proposed cultural heritage management strategies against the agreed processes captured within the 2010 MoU between LandCorp and *Marapikurrinya* Pty Ltd.

First and foremost is the need to maintain the communication and engagement with the Aboriginal stakeholders concerned with the future development of the Study Area. There are two immediate Aboriginal stakeholders concerned with the future development of the Study Area. Consultation to date has included a properly constituted Aboriginal heritage survey of the Study Area, and going forward, engagement exercises with the Aboriginal stakeholders is required.

In relation to Aboriginal heritage, the Aboriginal stakeholders are:

- The *Marapikurrinya* people or family group, represented by *Marapikurrinya* Pty Ltd; and
- The *Kariyarra* native title claimant group, of which the *Marapikurrinya* family group forms a sub-set.

The people who comprise *Marapikurrinya* Pty Ltd are *Kariyarra*, and they are the clan estate for the Port Hedland area and are accepted as such by the broader *Kariyarra* native title claimant group and the broader public and private sectors.

The *Kariyarra* people that form *Marapikurrinya* Pty Ltd, want to ensure that the cultural heritage values of Port Hedland, including the Port Hedland Harbour, are recognised, accepted and preferably preserved in perpetuity. This desire of theirs has often met with conflict where land users, particularly mining companies wishing to construct on shore storage and loading and port facilities, have had to impact Aboriginal sites against the wishes of and without the informed consent of the *Marapikurrinya* people.

There may well be suggestions from people that other Aboriginal entities should be consulted about Aboriginal heritage in regard to the Study Area, which can be the case in certain situations.

Historically, and certainly before the *Native Title Act* 1993 (Commonwealth) was promulgated, some Aboriginal people asserted “custodianship “ of sites and of country by historical occupancy. This has been the case in Port Hedland, largely due to the closeness of the relationship between the *Kariyarra*, *Nyamal* and *Ngarla*



people, all being linguistic neighbours who have lived historically in Port Hedland and its surrounds pre and post the pastoral era.

There are historical Aboriginal sites in Port Hedland, some in close proximity to the Study Area including *Puriyakannya* (4 Mile Well) to the immediate south, which has a significant place in Western Australia's pastoral history as the strike camp when the Aboriginal stockmen initially planned and held the first Aboriginal labour strike in Australia (see Anthropos Australis (WA) Pty Ltd: 2014a). Aboriginal people throughout the Pilbara consider this location to be highly significant as one of the outcomes for them was the 1967 referendum, which resulted in equal wages for Aboriginal people in Australia. In this example, the location or place is significant to the broader Aboriginal community, however the actual responsibility for the protection of the location rests with the *Marapikurrinya* people as the Traditional Owners of the land.

The relationship between the *Marapikurrinya* people and the *Kariyarra* native title claimant group can be tense due to the conflicting interests over who speaks for what country, particularly as the broader *Kariyarra* group is still in the process of determining their native title claim with the State of Western Australia. The bottom line is that the *Marapikurrinya* people consider themselves to be a part of the broader *Kariyarra* linguistic group and they participate in native title claimant group meetings because they are *Kariyarra*.

For some years now, the *Marapikurrinya* people, through their entity *Marapikurrinya* Pty Ltd and by agreement with the broader *Kariyarra* native title claimant group have managed the cultural heritage values of the Port Hedland area. The native title claim process will run its course and will result in an outcome that should be inclusive of the *Marapikurrinya* people.

The proposed development of the Study Area by a future land developer has all of the elements of a mutually agreeable outcome, which in this instance is the development of much needed land with no adverse impact on the Aboriginal sites/Other Heritage Place and their associated cultural heritage values. To achieve this outcome, a number of steps will need to be carefully considered and ascribed with the full support of LandCorp, which should be enforced as a caveat on any future land development. These steps, which can and should be part of a substantial Cultural Heritage Management Plan include:

- Establishing set of work procedures within the Study Area, which are consistent with the requirements for the protection of Aboriginal sites as set out in the Guidelines issued by the DAA, pursuant to the *Aboriginal Heritage Act 1972* (Western Australia) and the aspirations of the *Marapikurrinya* people;
- Ensuring that construction is undertaken in a manner that protects the Aboriginal sites in the Public Open Space;



- Liaising with *Marapikurrinya* Pty Ltd regarding Aboriginal heritage management during the pre-construction, construction and post-construction and post-development stages of the Project;
- Ensuring that discoveries of previously unidentified Aboriginal sites or objects are culturally and legally dealt with in the appropriate manner including the implementation of a Stop Work Procedure; and
- Creating opportunities for the enhancement of the four Aboriginal sites and Other Heritage Place in the Study Area with the active engagement and participation of the *Marapikurrinya* people at all times.



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