

Report of an
Ethnographic Survey
of Bunbury Outer
Ring Road Southern
Section, Gelorup,
Western Australia
(Ethnoscience 2020)

Ethnoscience

ABN 47 065 099 228

Ethnography, Heritage & Cultural Interpretation

Report of an Ethnographic Survey of Bunbury Outer Ring Road Southern Section, Gelorup, Western Australia

Prepared for Main Roads Western Australia on behalf of Brad
Goode & Associates

By Edward M. McDonald and Jan L. Turner

May 2020

This report contains culturally sensitive information

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Disclaimers

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

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Abbreviations

ACMC:	Aboriginal Cultural Material Committee
AHA:	Aboriginal Heritage Act 1972
AHIS:	Aboriginal Heritage Inquiry System
BGA:	Brad Goode & Associates
BORR:	Bunbury Outer Ring Road
BORR IPT	Bunbury Outer Ring Road, Integrated Planning Team
CAN;	Community Arts Network Ltd.
DIA:	Department of Indigenous Affairs (now DPLH)
DPLH:	Department of Planning, Lands & Heritage
EST:	Ethnographic Survey Team
GKB:	Gnaala Karla Booja
HISF:	Heritage Information Submission Form
JHA:	Job Hazzard Analysis
MHA:	McDonald, Hales and Associates
MRWA:	Main Roads Western Australia
NSHA:	Noongar Standard Heritage Agreement
OHP:	Other Heritage Place
PAR:	Port Access Route, Bunbury
SWALSC:	South West Aboriginal Land and Sea Council

Acknowledgements

Joseph Northover	Dennis Jetta
Murray Collard	Dean Wallam
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Joyce Dimer	Teresa Graham
Erica Anthony	Brad Goode
Fionnuala Hannon	Jacqueline Harris
Neil McCarthy	Ross Chadwick
Leah Mackie	Gelorup Residents

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Summary & Recommendations

Edward McDonald of Ethnoscience was commissioned by Brad Goode and Associates Pty Ltd (BGA) on behalf of the Bunbury Outer Ring Road Integrated Planning Team (BORR IPT) to undertake a site identification ethnographic survey in respect of the Bunbury Outer Ring Road (BORR) southern section. Ethnoscience commissioned Ms Jan Turner to undertake an ethnographic survey with female representatives of the community. Both have extensive experience in Aboriginal heritage assessments as well as in a range of other ethnographic research.

We note that our task, as constrained by the *Aboriginal Heritage Act 1972 (AHA)*, is to evaluate the reputed Aboriginal heritage places that have been reported along the alignment and that central to this evaluation are relevant Aboriginal customs and traditions (s39(2)) and primarily, sacred belief, and ritual and ceremonial usage (s39(3)). Though variations in customs and traditions both within and between groups are recognised and acknowledged, the AHA is not essentially concerned with the idiosyncratic Aboriginal beliefs or behaviour, or ritual or ceremonial practice nor those of non-Aboriginal people regardless of their beliefs or feelings.

Various iterations of the proposed BORR alignment of the southern section has been ethnographically and archaeologically surveyed numerous times since 1995 (Hammond and O'Reilly 1995, Murphy, McDonald. and Jarvis 1996, Goode 2002 and Goode, O'Reilly & Johnston 2012, O'Reilly 2019 and Goode and Harris 2019).

It is our view that MRWA has undertaken adequate steps since 1995 to ensure that their obligations in respect of the AHA have been met.

Since the completion of the BGA survey (Goode, O'Reilly & Johnston 2012) the BORR, especially in the Gelorup area, has become increasingly controversial and a community campaign to stop the development has grown. Parallel to that campaign a number of places and objects, including numerous reputedly human 'scarred trees', on and around the BORR alignment that ostensibly fall within the purview of the AHA

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have been reported and has resulted in the listing of two places with the Department of Planning, Lands & Heritage (DPLH), which appear on the online Aboriginal Heritage Inquiry System (AHIS): DPLH ID 37869, Paper Bark Wet Lands and DPLH ID 37870, the Gelorup Corridor. The former is listed as a women's only site and is currently 'lodged' in the system. In contrast, the latter is at the time of writing listed on the AHIS as not being an Aboriginal site within the meaning of s5 of the AHA and information relating to the place has been archived in 'Stored Data'.

McDonald and Turner undertook desktop research and in November 2019 conducted a survey and consultation with nominated GKB consultants, in accordance with the NSHA. McDonald and Turner returned in January 2020 to undertake a follow-up survey and consultation of the proposed Five Mile Brook crossing. Additionally, interviews were conducted with several local residents who have been involved with the recording and listing of DPLH ID 37869 and DPLH ID 37870 and, post-survey interviews were also conducted with a number of the GKB Aboriginal consultants.

Contrary to the assertions that have been made publicly both in the press and apparently on social media platforms such as Facebook, we are of the opinion that the Aboriginal consultants who have participated in the surveys for the proposed BORR development since 1995 were/are appropriate and are the relevant Aboriginal people. We are also of the view that none of these individuals has a greater right to speak for the country than others.

In November 2019 and again in January 202, the GKB Aboriginal consultants did not report any previously unrecorded ethnographic sites on the BORR southern section alignment.

Furthermore, the GKB Aboriginal consultants did not provide any substantive cultural evidence to support the listing of DPLH ID 37869 or DPLH ID 37870 and in fact voiced their opposition to the listings. It is our assessment that based on the data provided neither DPLH ID 37869 nor DPLH ID 37870 meet the evaluative criteria set out in s39(2) or s39(3) of the AHA.

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The GKB Aboriginal consultants on the whole expressed their support for the BORR project and the bridge design for the Five Mile Brook. However, as is typically the case with respect to such developments, they raised a number of issues with MRWA, such as monitoring ground disturbance, giving Nyungar names to bridges, etc., accessing the alignment prior to construction to forage for traditional resources, employment opportunities and so on.

We are also of the opinion that none of the series of 'scarred trees' reported by local residents are of human manufacture and that they have been professionally and appropriately assessed by the archaeological team (O'Reilly 2019 and Goode and Harris 2019).

Recommendations

Subject to receiving other necessary approvals, it is recommended that in the absence of substantial Aboriginal heritage impediments that BORR southern section proceed.

It is recommended that the ACMC determine that DPLH ID 37869 is not an Aboriginal site within the meaning of s5 of the AHA and that information about the place is archived in 'Stored Data'.

It is recommended that the bridge design provided to the GKB EST in January 2020 is adopted.

It is recommended that MRWA continue its consultation with the GKB claimants and that endeavours are made to ensure that all parties feel respected and included in the process.

It is recommended that material from DPLH ID 18884 is salvaged and appropriately stored when the site is impacted.

It is further recommended the areas along the BORR alignment identified by the GKB consultants and project archaeologists as having high archaeological potential are monitored during ground disturbance.

It is recommended that Mr Northover's concerns about propitiating the Waugal are attended to and that an appropriate ceremony is conducted at an appropriate time.

It is also recommended that the GKB consultants' request that aspects of the BORR development are given appropriate Nyungar names and that they are consulted in respect of public art works and such like.

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It is also recommended that the GKB consultants and other members of the local Nyungar community be permitted to collect timber and items of flora, such as seeds, prior to the clearing of the land.

It is further recommended that the GKB consultants' request that the BORR development provide employment and other economic opportunities is followed up by MRWA.

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Introduction

Edward McDonald of Ethnoscience was commissioned by Brad Goode and Associates Pty Ltd (BGA) on behalf of the Bunbury Outer Ring Road Integrated Planning Team (BORR IPT) to undertake a site identification ethnographic survey in respect of the Bunbury Outer Ring Road (BORR) southern section, that is the 'BORR alignment from South Western Highway (near Bunbury Airport) to Bussell Highway (Figure 1).

Ethnoscience commissioned anthropologist Ms Jan Turner to undertake an ethnographic survey with female representatives of the community. McDonald has a PhD in Anthropology from the University of Western Australia. His undergraduate courses included four years of archaeological studies. Ms Turner has an Honours degree in Archaeology, an MA in Anthropology also from the University of Western Australia and is currently enrolled in a PhD program in ethnographic film at Murdoch University. Both McDonald and Turner have extensive experience in ethnographic research in Aboriginal communities in the heritage, native title, and related fields with a combined career of more than 80 years. McDonald, who has been engaged fulltime in heritage assessments since late 1988, has participated in numerous archaeological surveys and the routine ethnographic assessment of the cultural significance of archaeological sites (McDonald & Coldrick, forthcoming; McDonald & Coldrick 2008, for example). Ms Turner, who started her career in 1981 as a Research Officer with the Department of Aboriginal Sites, Western Australian Museum, has over the years since been engaged both in private consultancy and as an anthropologist for a number of Western Australian Land Councils and Native Title Representative Bodies.

Various iterations of the proposed alignment of the BORR has been ethnographically and archaeologically surveyed numerous times. For example, by BGA in 2002 (Goode 2002) and again in 2012 (Goode, O'Reilly & Johnston 2012), these studies followed earlier assessments of the original alignment and modifications by Hammond and O'Reilly (1995) and Murphy, McDonald and Jarvis (1996) on behalf of McDonald, Hales and Associates (MHA) (Figures 2-4). Hence McDonald needs to declare an interest in that his former firm, McDonald, Hales and Associates, undertook the original surveys of the alignment and he personally participated in the survey work.

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Since the completion of the BGA survey (Goode, O'Reilly & Johnston 2012) the BORR, especially in the Gelorup area, has become increasingly controversial and a community campaign to stop the development has grown. Parallel to that campaign several local people, a number of whom self-identify as opponents to the BORR (see Hunter 2019(a) & (b) and Bunbury Mail 2019), in association with a couple of Aboriginal people, have reported a number of places and objects, including numerous 'scarred trees', on and around the BORR alignment that ostensibly fall within the purview of the *Aboriginal Heritage Act (1972)* (AHA). Indeed, two places have been listed with the Department of Planning, Lands & Heritage (DPLH) and appear on the DPLH's online Aboriginal Heritage Inquiry System (AHIS): DPLH ID 37869, Paper Bark Wet Lands, listed as a women's only site and DPLH 37870 the Gelorup Corridor, which is listed as a men's only site (see below for further comment).

Statutory Context

Our task at hand is to assess the Aboriginal heritage values of the BORR Southern section, and undertake a 'site identification survey' (see Survey methods Section for discussion) and to evaluate the reputed Aboriginal heritage places that have been reported along the alignment. The AHA is:

An Act to make provision for the preservation on behalf of the community of **places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants**, or associated therewith, and for other purposes incidental thereto (emphasis added).

A number of key concepts can be discerned from the title of the AHA: 'preservation'; 'places and objects'; 'customarily used by'; 'traditional to'; 'the original inhabitants of Australia or their descendants' (i.e., Aboriginal people). The AHA is therefore centrally concerned with the customs and traditions of relevant Aboriginal communities, whose places and objects have been reported and evaluated. Though variations in customs and traditions within and between groups are recognised and acknowledged, the AHA is not essentially concerned with idiosyncratic beliefs or behaviour, rather beliefs and behaviour, i.e., use of places and objects, religious belief or ritual or ceremonial practice, must be accountable for in terms of the relevant community's customs and traditions. Nor does the Act apply to non-Aboriginal people's customs, traditions, beliefs, interpretations or practices in respect of places and

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objects. Having said that, there is nothing to prevent a non-Aboriginal person from reporting an Aboriginal place or object. Indeed, s15 of the AHA requires anyone with knowledge of Aboriginal sites or objects to report their existence to the Registrar of Aboriginal sites or a police officer unless they have reason to believe that the place/object is already known. However, the evaluation of the significance of a place/object and therefore a determination whether it is to be declared to be an Aboriginal site (s5) or object (s6) within the provisions of the AHA is undertaken by the Aboriginal Cultural Material Committee (ACMC) with respect to the customs and traditions of the relevant Aboriginal community. In evaluating the importance of places and objects, the ACMC is directed to give primacy to “Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained” (s39(3)). Otherwise, the Committee is directed to have regard to the criteria set out in s39(2):

- (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; and
- (d) aesthetic values (emphasis added).

An Aboriginal Site is defined by s4 of the AHA as “a place to which this Act applies by the operation of section 5”:

5. Application to places

This Act applies to –

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

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Objects are defined by s6:

(1) Subject to subsection (2a), this Act applies to all objects, whether natural or artificial and irrespective of where found or situated in the State, which are or have been of sacred, ritual or ceremonial significance to persons of Aboriginal descent, or which are or were used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people past or present.¹

In the next section we outline the methods used and processes followed in undertaking our investigations. This is followed by a brief discussion of the ethnographic background to the study area, which has been reviewed several times in the previous survey reports cited above. We then discuss the previous survey reports and desktop and field results of our survey, as well as a brief discussion on the consultation undertaken in respect of the archaeological sites recorded on the BORR southern section alignment. We wish to stress that we have confidence in the professionalism of the archaeologists who have undertaken this work both recently and over the preceding decades. Importantly, we want to acknowledge that they have the skills to identify and evaluate humanly scarred or modified trees and that various ‘scarred trees’ identified by those self-identified as opposing the road development (e.g., Noonan 2018:2) in our view are clearly not human in origin.

¹ Subsection 2a of s6 exempts the WA Museum collection held under s9 of the Museum Act 1969 from the provisions of the AHA.

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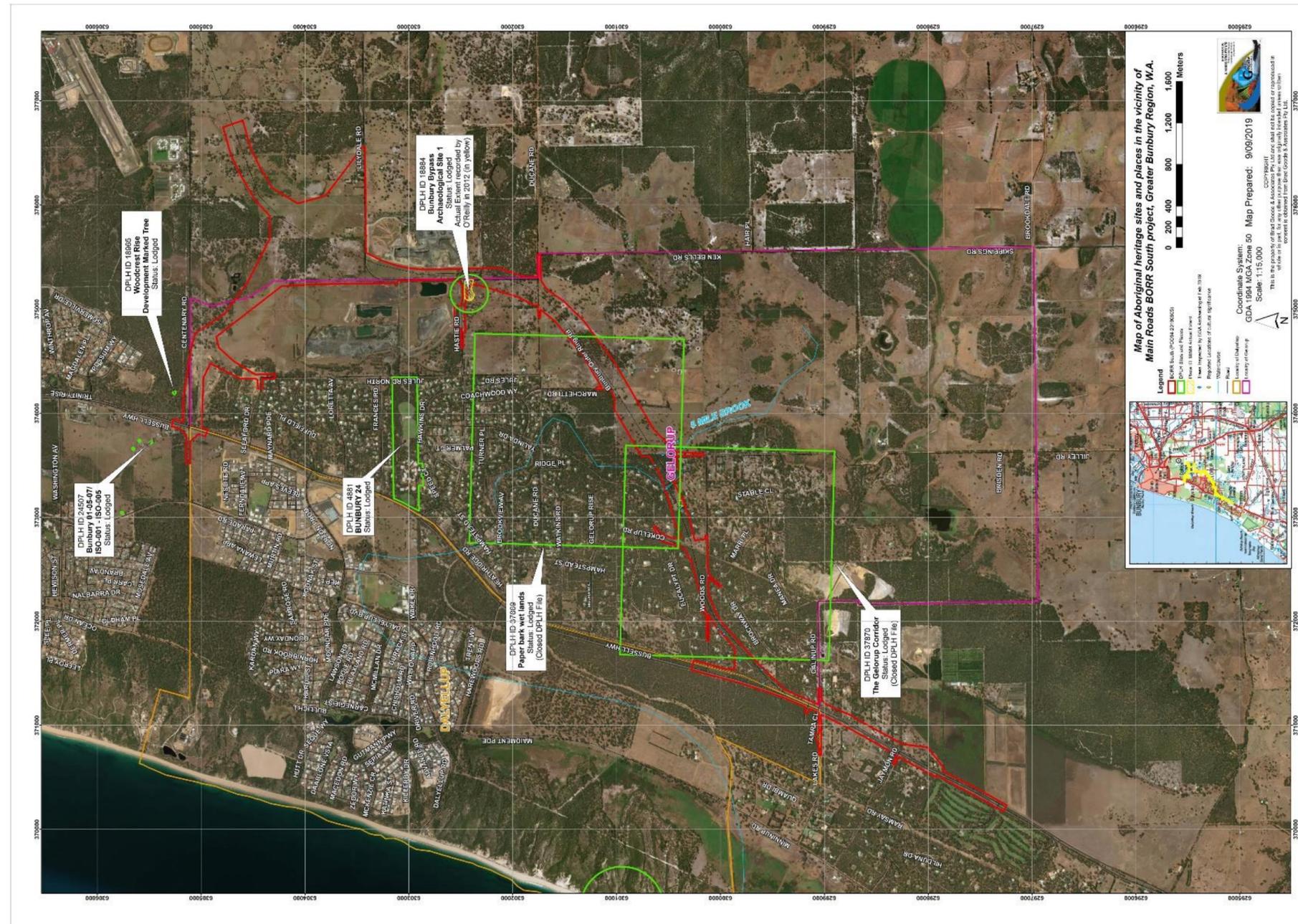


Figure 1: BORR South Gelorup & Aboriginal Sites & OHOs (Source; BGA)

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Survey Methods

The ethnographic survey involved two separate investigations, the first in November 2019 and the second in January 2020.

The ethnographic 'site identification survey' was undertaken in accordance with the Noongar Standard Heritage Agreement (NSHA) to which MRWA is a party. A 'site identification survey' involves the recording of Aboriginal sites in detail in order to allow a 'statement of significance' to be provided for each place identified. The statement of significance must meet the DPLH's and the ACMC's requirements in respect of s39(2) and 39(3) of the AHA for section 18 Notice purposes, that is, where Ministerial consent is required to use the land upon which a site is located. A 'site identification survey' also provides the proponent with sufficient information on the nature, extent and significance of any identified Aboriginal site in order to adequately plan their activities.

Essentially an ethnographic survey draws on the knowledge community members hold about the country in which a project, such as the BORR, is located. Baines (1988, for example) suggests that Nyungar connections to country are displayed in the telling of family-based stories, through what she refers to as the 'intimacy of stories'. Sansom (1983), drawing on Baines' work, notes that in these stories the familial heroes move across the country in "the site-and-track pattern" similar to that of the mythical ancestors of traditional Dreaming stories. In contrast an archaeological survey inspects the country, typically on foot, in order to discover places where objects, such as stone artefacts or modified trees, have been left by Aboriginal people. Ethnographic surveys tend to have a wider focus than archaeological ones, with Aboriginal consultants typically referring to places and events outside the immediate survey area in addition to observations on the specific study area. Such broader narratives were evident in the current surveys of the BORR.

The ethnographic survey involved the following processes:

- ❖ Desktop research – review of the AHIS, previous reports, site files and other pertinent documentary material.
- ❖ Pre-site inspection interviews with local residents

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- ❖ Pre-site inspection consultative meeting with the Aboriginal consultants nominated by the GKB native title group held at MRWA's Bunbury Office
- ❖ Inspection of the alignment and listed archaeological and 'ethnographic' sites with the GKB Aboriginal consultants.
- ❖ Post-site inspection debriefing session held at MRWA's Bunbury Office
- ❖ Post-survey phone interviews with several members of the GKB heritage team & local residents
- ❖ Post-survey emailing of site information, DPLD ID 37869, to female consultants, per instructions given at the post-site inspection debriefing session, held at MRWA's Bunbury Office and the recording of comments from several regarding those listings.

The survey area falls within the Gnaala Karla Booja (GKB) (WC98/58) Native Title Claim area. The South West Aboriginal Land and Sea Council (SWALSC) selected a 'heritage team' to undertake the proposed survey. The team selection gave rise to conflict within the local Nyungar community regarding the appropriateness of those selected and their right to speak for the country through which the BORR southern alignment traverses (see for example, Hunter 2019a). In the event, a new heritage team consisting of six (6) men and three (3) women was selected by SWALSC to undertake the ethnographic survey with McDonald and Turner. The essential difference between the original BORR South team and the final one was the addition of Mr Dennis Jetta:

- ❖ Joseph Northover
- ❖ Murray Collard
- ❖ James Khan
- ❖ Lera Bennell
- ❖ Les Wallam
- ❖ Dennis Jetta
- ❖ Annette Garlett
- ❖ Joyce Dimer
- ❖ Peter Michael

A number of those selected are members of the claim Working Party and four (4) (Messrs Northover, Khan, Wallam & Michael) had participated in the 2012 survey by BGA.

The survey was undertaken on November 7 and 8, 2019. Mr Neil McCarthy (MRWA) and Dr Fionnuala Hannon (BORR Environment and Heritage Approval Manager) also assisted with various aspects of the investigations.

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Ms Turner conducted several interviews with local non-Aboriginal people on November 7. Turner and McDonald met with the Aboriginal consultants on November 8. The survey commenced with a consultative meeting held in MRWA's Bunbury office. Mr McCarthy opened the consultative meetings by explaining to the ethnographic survey team (EST) the reasons for this additional survey of the BORR southern alignment. The BORR project and the proposed alignment, the survey process, and related matters, including the recent reporting by local residents of DPLH ID 37869 and DPLH ID 37870, and an apparent 'message stick' and several reputed scarred trees were then discussed. At this stage, the majority of the GKB Aboriginal consultants were adamant that there were no ethnographic sites on the alignment. They also expressed the view that the reporting of such places and presumed Aboriginal objects were an insult to them as traditional owners of the country.

It should be noted that stress and tensions between various members of the EST was evident from the commencement of the pre-survey meeting. One party in particular expressed the view to McDonald and Turner that they felt disrespected by other GKB consultants during discussions. At least in part because of the tension, one man left the field inspection early and another did not attend the post- field inspection debriefing session.

The ethnographic survey team (EST) then proceeded in convoy to inspect the alignment and in particular a number of places that were of concern to the EST. During the survey, DPLH ID 37869 was not inspected as a result of a decision by the women participants. However, DPLH ID 37870 was inspected. The heritage consultants also used travel to and from the survey area to discuss a range of issues with the GKB consultants. Ms Jacqueline Harris (BGA) also assisted with the survey and provided the EST with an archaeological assessments of archaeological sites DPLH ID 18884 and scarred tree BR1 (Goode and Harris 2019). A post-site inspection debriefing session held at MRWA's Bunbury Office at which all the members of the EST attended, with the exception of Messrs Wallam and Jetta. Post-survey interviews were also conducted by telephone with several of the GKB heritage team. In addition, several non-Nyungar people were also interviewed at after the inspection of the alignment.

The second survey, which focused specifically on the proposed Five Mile Brook crossing was requested by MRWA and this was undertaken on January 21, 2020. The same GKB consultants

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were selected for the survey. However, because of other commitments, three of the GKB consultants had to withdraw and their proxies were nominated by SWALSC. The GKB consultants for the Five Mile Brook crossing survey were:

- ❖ Joe Northover
- ❖ Murray Collard
- ❖ James Khan
- ❖ Lera Bennell
- ❖ Dean Wallam
- ❖ Dennis Jetta
- ❖ Yvonne Garlett
- ❖ Joyce Dimer
- ❖ Teresa Graham
- ❖ Erica Anthony

Dean Wallam was a proxy for his father Les Wallam; Teresa Graham replaced her father Peter Michael and Yvonne Garlett substituted for her sister Annette Garlett. Ms Erica Anthony was a late and opportunistic addition to the survey party.

As with the previous BORR South survey in November 2019, the Five Mile Brook crossing survey commenced with a consultative meeting at MRWA's Bunbury Offices. Also, in attendance were Neil McCarthy (MRWA), Fionnuala Hannon (BORR IPT) and Brad Goode (BGA), who attended as an observer. The meeting started with a minute's silence for the late Ted Hart, who passed away on January 2, 2020. Attendees recalled his contribution to Aboriginal heritage processes in the area over a number of years and his contributions to caring for country more generally.

Mr McCarthy (MRWA) then outlined the proposed Five Mile Brook crossing and the intent of the survey. Following this McDonald and Turner were asked by members of the EST to provide a summary of their ethnographic research findings on the BORR southern section to date. In particular, they wanted to know if the researchers thought that there was any cultural validity to the reporting and listing on the AHIS of DPLH ID 37869 and DPLH ID 37870. The majority were please when McDonald and Turner reported that they were of the view, following the earlier consultation and survey, interviews with Aboriginal and non-Aboriginal people and a review of the archival material, that there was no cultural validity to the listings. Again, several raised concerns about the provenance of the 'message stick' and expressed

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disappointment and irritation that local residents apparently continued to record 'scarred trees' in the face of advice to the contrary from the professional archaeologists and they themselves as experienced members of the community in heritage matters and site identification.

Following a discussion of issues arising from McDonald and Turner's presentation, the survey team then proceeded in convoy to the Five Mile Brook crossing location, where Neil McCarthy provided a description of the planned crossing in situ. Mr McCarthy addressed a range of questions from the GKB consultants and the heritage consultants regarding the design of the proposed bridge and its likely impacts on the brook, its banks and surrounds. Of particular importance was Mr McCarthy's confirmation that the design did not involve any piles in the waterway and that the flow of water would not be impeded in any way. He also discussed, in response to various questions, the likely impacts on wildlife and the management of these issues, which he said included both under and over roadway crossing points. Dr Hannon also contributed to the discussion at various points and specifically with regards to strategies to be used to ameliorate potential impacts of the development on native fauna. She referred to Aboriginal consultants to similar solutions that were used on the Forrest Highway and suggested that the Aboriginal consultants could inspect these to appraise themselves of the amelioration strategies.

McDonald and Turner questioned the GKB consultants about the heritage values of the area and the likely impacts of the proposed bridge. The heritage consultants also used travel to and from the survey area to discuss a range of issues with the GKB consultants. The Aboriginal consultants also used the Five Mile Brook site inspection to revisit ID 37870, the Gelorup Corridor. Further discussions about the BORR South project as a whole and the five Mile Brook Crossing took place over lunch which was taken at the MRWA Offices in Bunbury. McDonald and Turner used the January consultation and survey to confirm their findings from November 2019. Again, the majority of the GBK consultants were adamant that there were no ethnographic sites on the alignment and that DPLH ID 37869 and DPLH ID 37870 ought not have been listed on the AHIS. Following the debriefing meeting Turner and

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McDonald met with Neil McCarthy and Fionnuala Hannon to discuss various aspects of the survey to date.

As noted above, the selection of participants by SWALSC for the 2019 BORR South survey was the cause of substantial intra-community conflict regarding the appropriateness of those selected to speak for country, which was in part played out in public. It should be stressed that such conflict is neither unusual nor wholly unexpected in the Aboriginal heritage arena in WA (MHA 1990; McDonald and Locke 2002) or other parts of Australia (Creamer 1988; Martin, Sneddon and Trigger 2016). The intra-community conflict was in part resolved by selecting a new heritage team for the November 2019 survey, though as we have indicated tensions within the heritage team continued.

It is worth reviewing the Aboriginal consultants who were involved with the BORR studies since the original survey in 1995 (Table 1 below). In respect of the original 1995-96 surveys, the late Andy Nebro was a well-known man from the Collie-Bunbury area, with associations with Roelands, who was recognised as being knowledgeable about the heritage of the region. At the time of the 1995-96 surveys he was resident in Bunbury. The late Frank Nannup was living in Mandurah at the time of the surveys. He had associations with both the Murray region and the Southwest and undertook two field visits to the survey area. He referred the heritage consultants to the late George Webb and his wife, the late Vilma Webb, who participated in both the 1995 survey and the additional work in 1996, on the basis of their knowledge of the country through which the alignment ran. Mr Webb was known as being active in the recording of the Aboriginal history and heritage of the region and deeply knowledgeable. As was his wife, Vilma. Mr Webb's oral histories are a key source for historians working in the region (see, for example, Krantz & Chase 1995). They both had relatives who lived and worked around Capel, for example, the late Norman Harris (see below for further comment) and their kinswoman, 'Old Rosie Lowe' 'who lived near where the Iluka refinery is now located near Capel town' (MHA 1994: 154).

In addition to the four senior Nyungar consultants, the Goomburrup Aboriginal Corporation was consulted:

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Goombarrup [sic Goomburrup] Aboriginal Corporation was contacted on February 17, 1995. The chairperson, Mr Dennis Jetta, contacted the anthropologist on February 21, 1995 and [he] requested a detailed map of the PDA so the specificities of the route could be discussed with his management committee. This map was posted to Goombarrup the following day. No further feedback has been received from Goombarrup (Hammond & O'Reilly 1995: 17).

Table 1 also provides a list of those involved in BORR surveys since 2002. BGA's 2002 ethnographic survey participants, who were selected in consultation with SWALSC, involved Aboriginal consultants from Bunbury, Collie and Busselton (Goode 2002). These included the late Andy Nebro and the late Vilma Webb and Mr Joe Northover in an ex officio capacity as he worked for the Aboriginal Heritage authority. The survey team also included Peter Michael, who was also involved in the 2012 and the 2019 surveys, in addition to assisting with archaeological surveys. Key families in the region, e.g., Wallam, Bennell, Ugle and Khan, were also represented. BGA's 2012 survey involved Joe Northover as a team member and not as an ex officio participant, together with members of the Wallam, Bennell, Winmar, Khan and Hill families. Ms Violet Bennell participated in both the 2002 and 2012 surveys. Similar families were selected for the 2019/20 surveys. The majority were or are members of the GKB native title claim. In addition to those participating in the ethnographic surveys, the following people assisted with the archaeological surveys of the BORR: BGA 2012 Cameron Bennell, Dennis Hill and Peter Michael; BGA 2019 Joe Northover, James Khan and Peter Michael. These men walked the alignment with archaeologists and therefore have an intimate knowledge of the ground (see below for further comment).

In September 2019 Mr. Dennis Jetta, in his capacity as a spokesman for the Greater Bunbury Aboriginal Community Elders Group voiced his concerns that members of the group had not been consulted by MRWA about the BORR (Hunter 2019a). He noted that the members of the group had been elected in 2004 "to look after this sort of stuff". Mr Jetta and Gelorup residents Terri Sharp and Kieran Noonan, are quoted as saying that the "elders Main Roads consulted were not local to the Bunbury area and came from as far as Williams and Narrogin". This comment is somewhat ironic as Mr Jetta himself was apparently born in Kellerberrin and the Jetta family is connected to both the Northern and Central Wheatbelt areas. The former

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connections were formed through family associations with the mission at New Norcia (see Tilbrook 1983 and Green and Tilbrook 1989 for a discussion of some of these connections). Indeed, it is the case that many of the families in the Bunbury region have migrated from elsewhere in Nyungar country. For example, several prominent families are descendants of Charles Hill, who left Pingelly with his wife Rachel (née Abraham) and his children in the 1950s to seek a better life in the Bunbury area. The family lived for a time in a permanent camp at an old gravel pit on a farm property adjacent to the Collie River and Burekup school (CAN 2017). Several of Charles Hill's descendants participated in this and other investigations of the BORR. It is also the case that Nyungar families tend to be inter-connected through a complex network of kinship and marriage ties.

During the January 21, 2020 pre-site inspection consultative meeting, Mr Jetta introduced himself as the 'apical', by which we believe he meant that he is descended from one of the GKB claim group's apical ancestors. Subsequently, we are informed, he wrote to MRWA to highlight the connections and support his argument that he ought to be the key Aboriginal consultant in respect to the BORR and presumably other projects (Goode pers comm February 2020). As we have to presume that all members of the GKB claim group, as is required by Native Title Law, have demonstrated connections to the group's apical ancestors, we cannot accept the proposition that any particular member of the survey team(s) has a special status, which privileges them above other members. We can only conclude therefore that Mr Jetta's connections are no stronger than other members of the group and do not entitle him to any special status. Moreover, though the Greater Bunbury Aboriginal Community Elders Group had been elected in 2004 to look after heritage issues in the Bunbury region, MRWA, as a Government agency, is bound by the NSHA and therefore is obliged to accept heritage team selected by SWALSC. It is understood that Mr Jetta is also a member of the GKB Working Party and has participated in heritage surveys in other parts of the GKB claim area and other parts of Nyungar country on the basis of his network of connections.

The more recent selection of Aboriginal consultants for the BORR surveys, as noted, is tied to the native title process and the NSHA, which may come with the sorts of limitations and constraints identified by Martin, Sneddon and Trigger (2016:152), who note that "tying

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Indigenous heritage management to the native title process ignores the interests of Indigenous people with other kinds of attachments to areas". This may be particularly problematic, they highlight, when local people may lack native title connections despite living in locations for multiple generations. They conclude (2016: 152) that "the issue of just who holds customary interests in a heritage site can be complex, and necessarily has to be resolved at the local or regional level among the relevant Aboriginal people".

It is our conclusion, however, that given the range of people who have been involved with the BORR studies from 1995 to the present, including those from the Bunbury, Collie and Busselton communities, that an adequate sample of people with connection to, and knowledge of, the country through which the BORR passes, have been engaged in the heritage assessment process. As noted, a number of the Aboriginal consultants have participated in multiple surveys of the alignment and several have also been engaged in the archaeological surveys (see Figures 2-4 below).

Also, of importance to the assessment process has been the participation of women as well as men in surveys since 1995. Of particular interest here is the involvement in recent surveys of Ms Lera Bennell, and the sisters Ms Yvonne and Ms Annette Garlett who have been participants in the Bush Babies' project operated by the Community Arts Network of WA (CAN, 2014-2017) and are well qualified to address the issues of the standing and significance of the reputed women's place/birthing area (DPLH ID 37869, Paper Bark Wet Lands)(see below for further comment).

Also of interest here is the notion that the Gelorup residents, who self-identify as opposing the BORR (Bunbury Mail 2019; Hunter 2019a and b) and Mr Jetta, know the country better than others, including the other Aboriginal consultants, who have participated in the heritage assessments, because they have walked the country (see for example, 'Introduction' in Ingold and Vergunst (2008) for a discussion of the relationship between 'walking' and 'knowing' and see below for further comment). However, as noted, several of the Aboriginal consultants have also walked the country while participating in a number of the archaeological surveys of the alignment and so also could be said to know the country by walking it. Other

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consultants, we are informed, have accessed various parts of the area over the years for a variety of traditionally based purposes such as foraging.

Suffice it to say that this conflict about who has the right to speak is neither new nor unexpected. Locke (MHA 1990) discusses such issues in some detail. McDonald and Locke (2002) note that, as in other parts of Australia, knowledge of, and control over, heritage and the associated consultative processes are social, political and economic resources of major importance in Nyungar communities (see also Creamer 1988). These factors must be taken into account in distilling argument and counter argument about rights to speak for country (McDonald and Locke 2002 and Martin, Sneddon and Trigger 2016).

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SURVEY					
Hammond & O'Reilly (MHA) (1995)	Murphy, McDonald, & Jarvis (MHA). (1996)	Goode (BGA) (2002)	Goode, O'Reilly, & Johnston, (BGA) (2012)	McDonald & Turner (Ethnoscience) 2019 BORR South (HER.0114)	McDonald & Turner (Ethnoscience) Jan 2020
The late Andy Nebro	The late Andy Nebro	Dulcie Wallam	Joe Northover	Joseph Northover	Joe Northover
The late Frank Nannup	The late Frank Nannup	The late Len Wallam	James Khan	James Khan	James Khan
The late George Webb	The late George Webb	The late Gloria Khan	Les Wallam	Les Wallam	Dean Wallam
The late Vilma Webb	The late Vilma Webb	Dave Ugle	The late Dorothy Winmar	Murray Collard	Murray Collard
		The late Dougie Meares	Marie Khan	Lera Bennell	Lera Bennell
Goomburrup Aboriginal Corporation		Peter Michael	Peter Michael	Peter Michael	Teressa Graham
		The late Henry Bennell	The late Denis Hill	Dennis Jetta	Dennis Jetta
		Violet Bennell	Violet Bennell	Annette Garlett	Yvonne Garlett
		The late Andy Nebro	Ritchie Bennell	Joyce Dimer	Joyce Dimer
		The late Vilma Webb			Erica Anthony
		Barbra Councillor Stammer Corbett			
		Francis Gillespie			
		Joseph Northover (ex officio)			

Table 1: Aboriginal Consultants participating in BORR surveys 1995-2019

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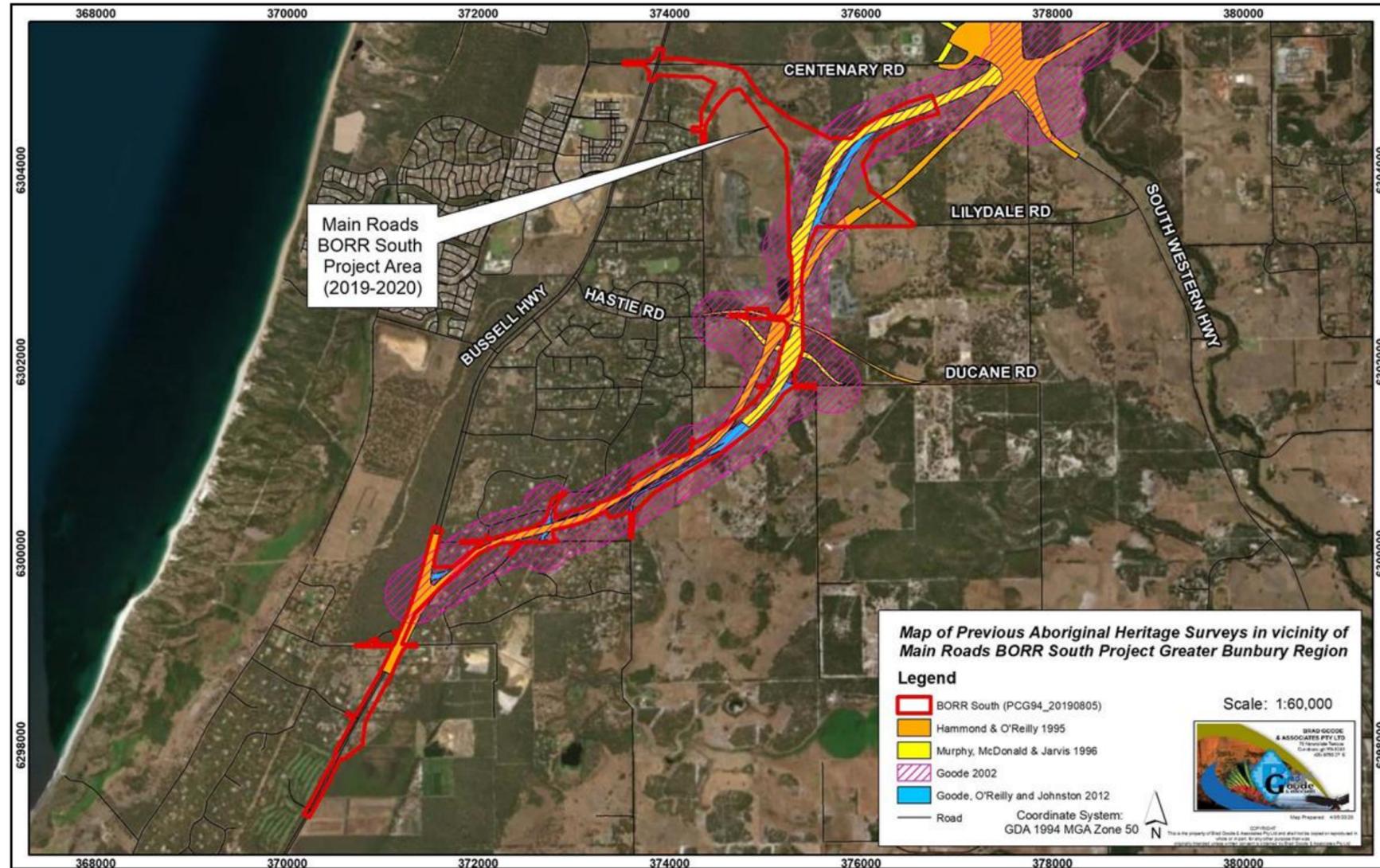


Figure 2: Map showing BORR survey areas 1995-2020 (Source MRWA/BGA)

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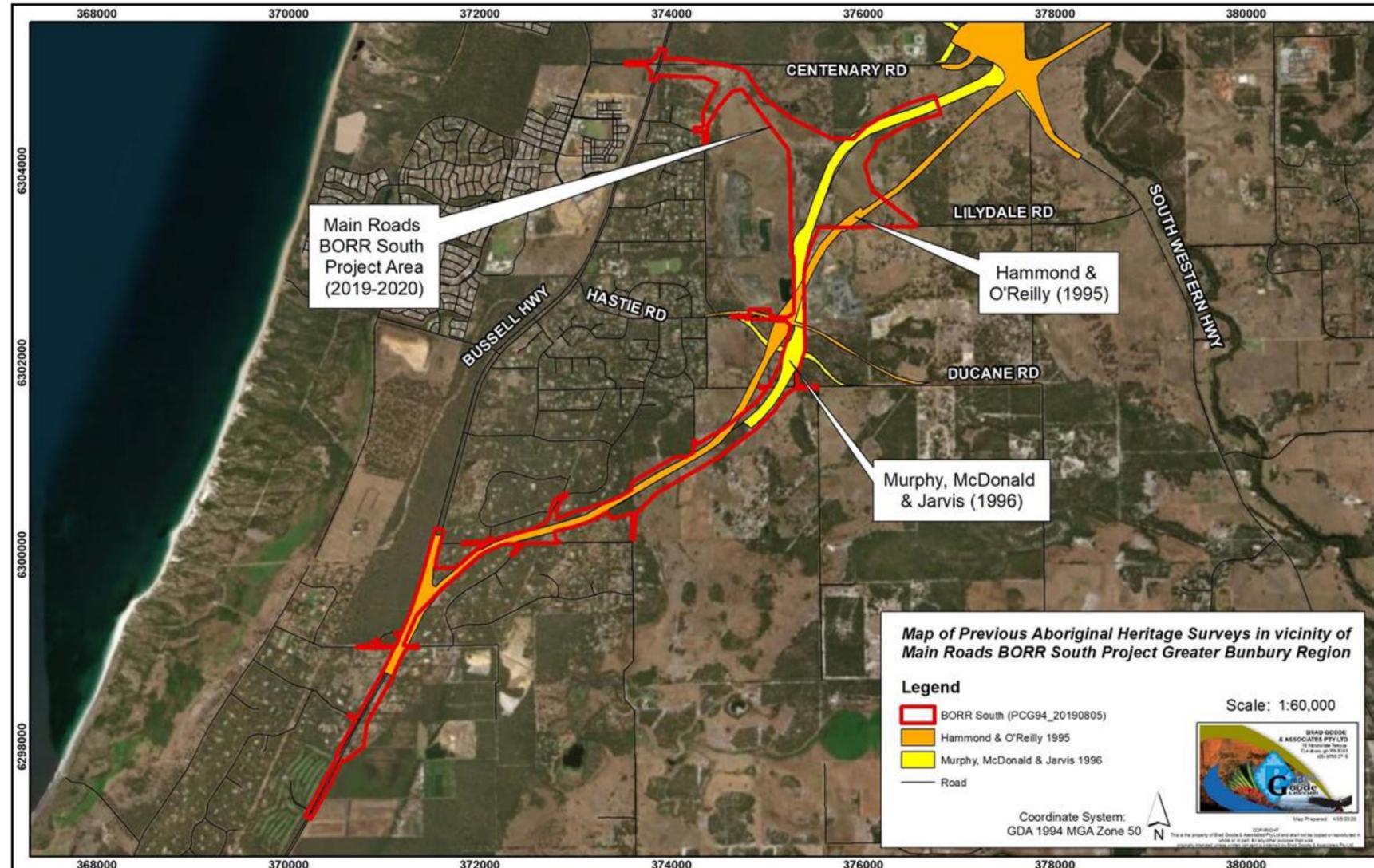


Figure 3: Map showing the current BORR alignment & the 1995-1996 survey areas (Source: MRWA/BGA)

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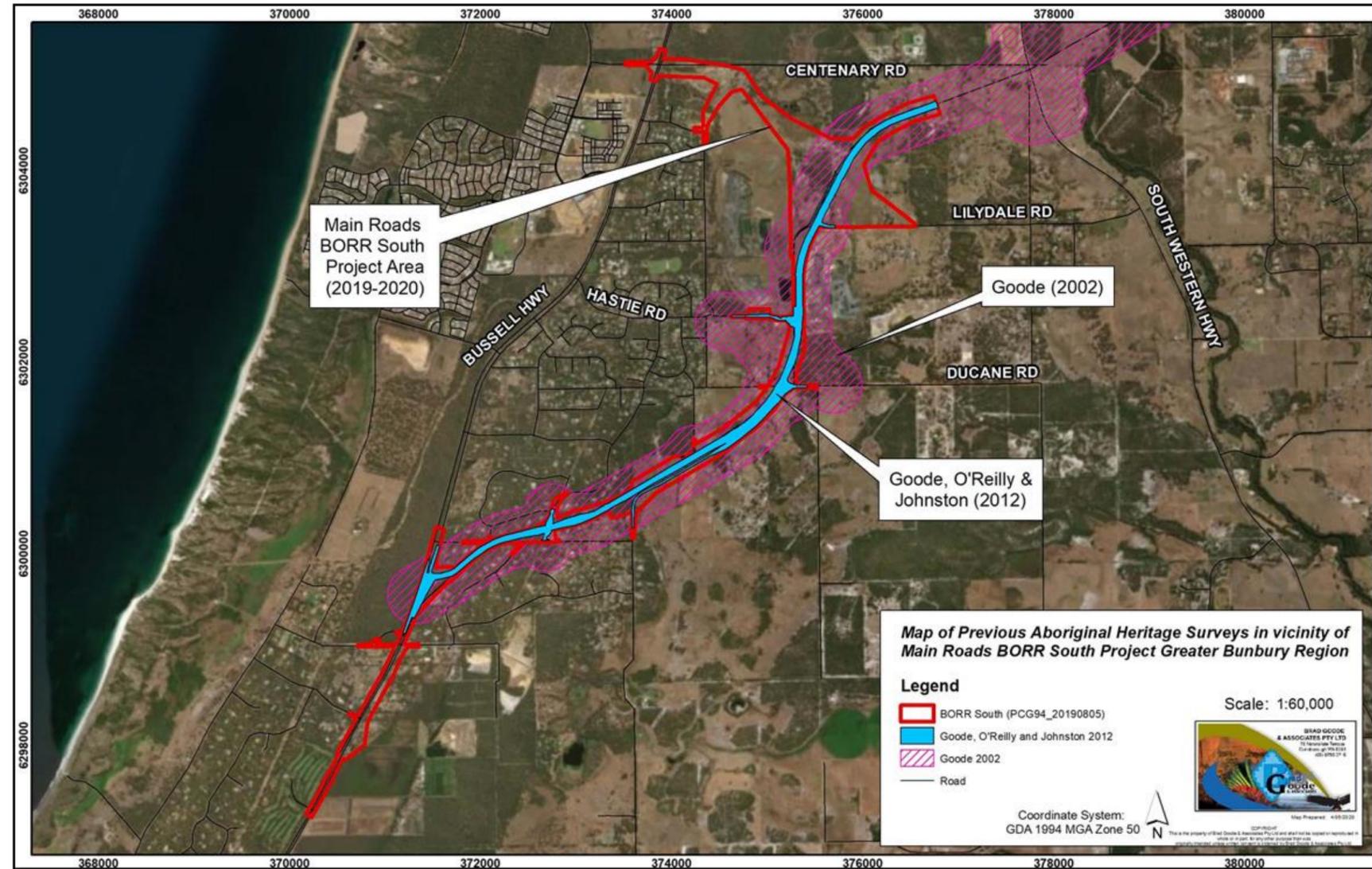


Figure 4: Map showing the current BORR alignment & the 2002 and 2009 survey areas (Source: MRWA/BGA)

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Plate 1: The EST consult on the significance of DPLH ID 18884 (Photo: McDonald, November 2019)

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Plate 2: Jacqueline Harris consults the EST on the significance of scarred tree BR1, November 2019

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Plate 3: Neil McCarthy discusses the BORR alignment in the vicinity of scarred tree BR1, November 2019

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Plate 4: Jacqueline Harris inspects the reported location of the of the 'message stick' find in the roots of a fallen tree in the vicinity of ID 37870, November 2019

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Plate 5: Neil McCarthy (pointing) describes the proposed Five Mile Bridge to the GKB consultants, January 2020

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Plate 6: Jan Turner addresses queries from members of the EST at a post survey consultative meeting, January 2020

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Ethnographic Background

Tindale (1974) describes the survey area as lying within 'Wardandi' country, which he (1974:259) describes as:

From Bunbury to Cape Leeuwin, chiefly along the coast; at Geographe Bay, the vicinity of Nannup and Busselton.

However, the survey area, as noted above, is located within the GKB (WC98/58) Native Title Claim. The claim area encompasses country that Tindale (1974) would describe as being Pinjarup, Kaneang and Wilman people's country.

Daisy Bates was the first researcher to systematically collect information regarding the social organisation, language and customs of the indigenous people of the Southwest region of Western Australia. Her studies involved both intensive ethnographic fieldwork and surveys. She worked with the Aboriginal communities in Bunbury, Collie, Busselton and Bridgetown and one of her key informants was Ngilgie [Ngilgi], a Capel woman, who she worked with at the Maamba Reserve in Cannington (Bates 1985, 2004). Writing in the early twentieth century, Bates referred to the Aboriginal people who inhabited the southwest between Jurien Bay and a point just east of Esperance as the 'Bibbulmun Nation' (Bates 1985:39). Although the Bibbulmun had similar customs and beliefs, Bates reported that regional differences, including dialects and forms of descent, applied to various local communities (Bates 1985:46-54).

According to Bates (1985: 48), the people of the Capel area were known as *Dunan wongi*. She reports that local groups were often called after points on the compass. For example, Bunbury Aborigines were called *Kunniung Bibbulmun* after the local term for 'west'. She further noted that groups were also called after the environment they inhabited, e.g., Waddarn-di/Wardandi or coastal people (Bates 1985:47).²

² The term Waddarn-di/Wardandi in this sense is an example of what Sutton (2003:74-75) would refer to as 'environmental identity names' and not a language group name. Bates (1985:47) also reports that people who lived along rivers in the Southwest were referred to as 'Bilgur'; estuary people as 'Darbulung'; and hill people as 'Buyun-gur'. Sutton (2003) discusses how 'tribal' names identified by Tindale (1974) whose provenance might be somewhat doubtful have now been adopted by Aboriginal

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Later researchers, however, provide a different perspective to that of Bates. Berndt (1979), for example, has suggested that at the time of British colonisation, the South West of Western Australia was occupied by thirteen 'tribes' or socio-dialectal groups that formed a discrete socio-cultural bloc. Aboriginal people within this bloc today refer to themselves as Nyungar, a term meaning "man", "person" or more generally "human". Following Tindale (1974), Berndt (1979) would suggest that the study area falls within the territory of the *Ganeang* (Kaneang) or *Bindjareb* (*Pinjarup*) (see **Error! Reference source not found.**).

Several possible explanations have been put forward for the differences between Bates, Tindale and Berndt (see McDonald and Christensen 1999). However, it seems that Bates had a far better understanding of the complexity of Aboriginal social organisation. Keen (1997:261), for example, has critiqued the notion that Australia was divided into a number of discrete 'cultures', 'societies' or 'tribes' which is the model upon which most Australian ethnography has been based. Tindale's (1974) and Berndt's (1979) mapping of tribal boundaries in the South West is based upon this model, whereas Bates' descriptions (although she too uses the term 'tribe') appear to be closer to the model proposed by Keen who calls for a more regional perspective (see Keen 1997:272-73):

A nexus of adjacencies, of chains of connection, and of a dynamic, open, and transforming systemic network, broken here and there by fissures and lesions. A 'local system' becomes defined in a relative way. It is possible that somewhat uniform and reproduced systems of interconnected practices might be detected, but on the other hand, what might be found is a pattern of continuous variations in one place, or a mosaic of overlapping differences in another. Whatever the pattern, any local system must be set in its wider context.

However, it is very difficult to establish clear-cut group boundaries at any time after contact with Europeans as the destruction of Aboriginal culture after that time blurred boundaries and attenuated connections with traditional lands. Furthermore, the knowledge of traditional associations with the land (mythological, ceremonial, spiritual) was seriously eroded by colonisation.

groups. McDonald and Christensen (1999) have questioned the basis of Tindale's, and particularly Berndt's, analyses.

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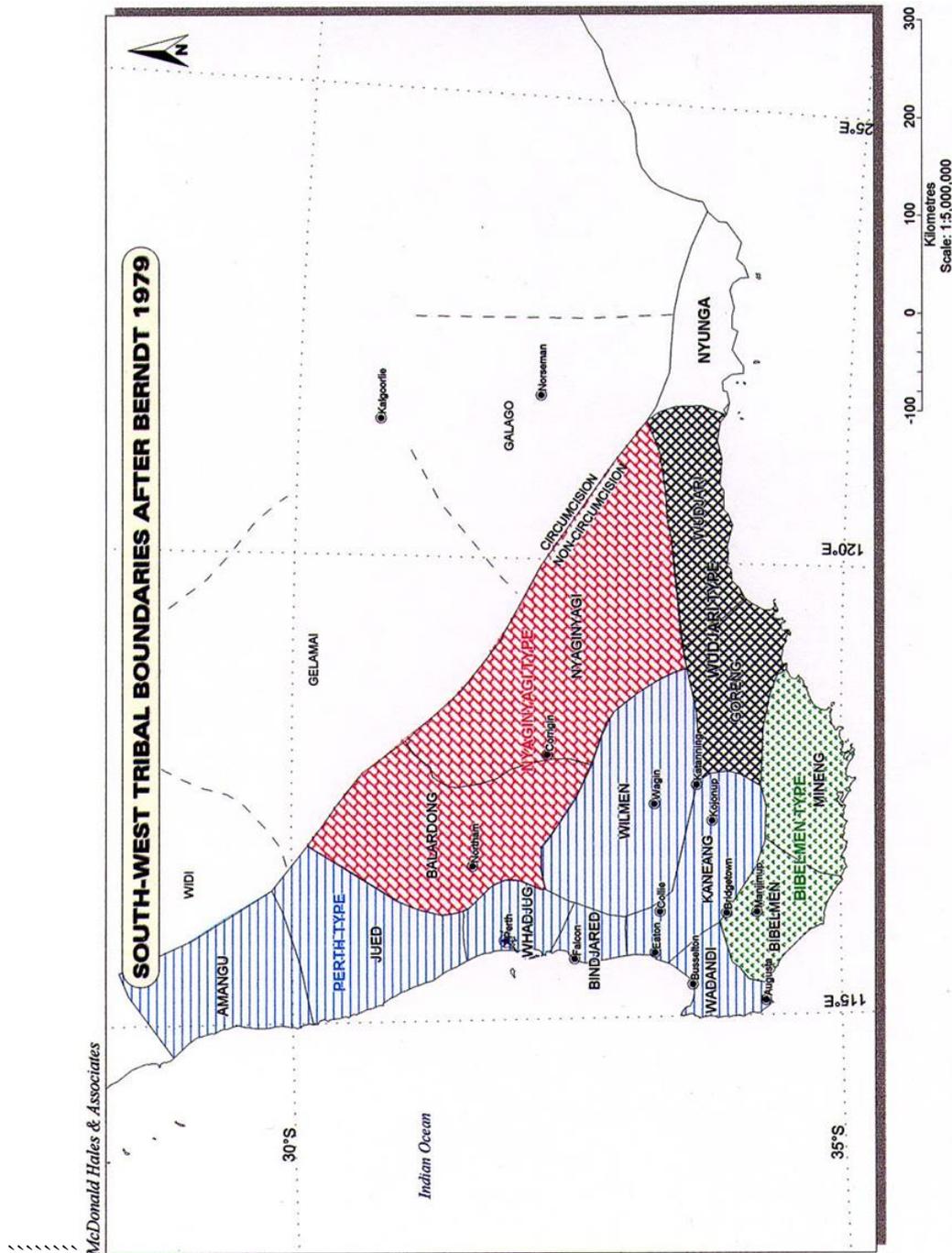


Figure 5: Social Organisation of Aboriginal People of the South West at the time of European Settlement (after Berndt 1979)

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Berndt (1979) categorised Southwest socio-dialectal groups in one of four types of social organisation: Perth, Bibelman, Wudjari and Nyaginyagi (the location of these social organisational types are shown on Figure 2). The Wardandi, Ganeang (Kaneang) and Bindjareb (Pinjarup), were of the 'Perth' type of social organisation, which included matrilineal moieties and clans (Figure 3). The moieties were named Manitjmat (white cockatoo) and Wardangmat (crow). Each moiety was divided into at least two exogamous clans.

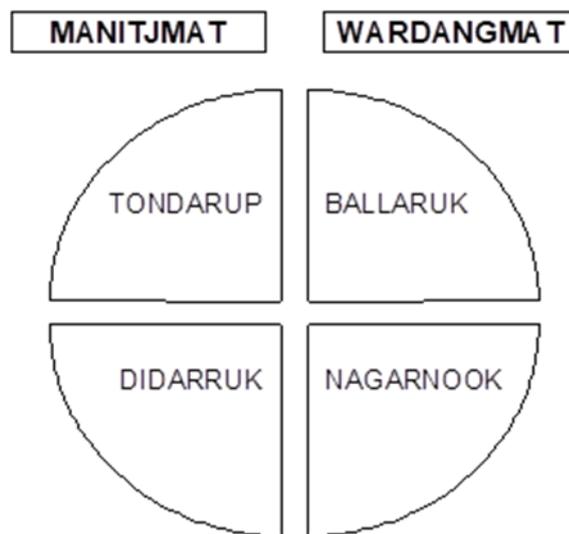


Figure 6: Matrilineal Moieties and Clans of Perth type Social Organization (Bates 1985)

At birth, each individual in Nyungar society was assigned a moiety and clan totem or borungur. The individual, family and district totems could also be assigned as indicators of status passages at various stages of later life. The moiety and clan names had totemic associations which placed Aboriginal people in special spiritual relationships with the natural environment (flora, fauna and geographical features). According to Bates (1985) the moieties were also associated with flora and especially tree totems (Figure 4).

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Manitjmat	Wardangmat
Red Gum	Jarra
Tuart	Jamwood
Paperbark	Peppermint
Spearwood	Whitegum
White-flowing acacia	Bluegum

Table 2: Some Totemic Associations of Wardandi Moieties (After Bates 1985)

In the Capel region, there were a number of important local, family and individual borungur or totems, including the Mullet *kalda* (mullet) and the *mammang* (whale totem) which Bates (1985:197-198) reports was found along the coast between Cape Leeuwin and Bunbury. The last known owner of the whale totem died, according to Bates (1985:198), circa. 1860.

As with other Aboriginal groups what is referred to as the Dreaming, for Nyungars the *Nyitting*, or 'cold time' (Bates, 1985) is central to their conceptualisation of the world. The Dreaming refers to a complex set of beliefs and behaviours not only embracing the creative past and ordering of the world but having great relevance to present and future Aboriginal presence. In the creative period, the creative spirits or culture heroes brought form and natural and social order to the soft, featureless, empty world. Together, they created everything: the mountains, hills, valleys, rivers and waterholes, the plants, animals and humans. They left elements of their power in the places they visited and transformed themselves into landscape features where their spirits continue to live or went into the sky and became stars. The creative spirits laid down the Law, which sets out the rules of how people and animals should live and how the world should operate and humans' ritual and ceremonial responsibilities in that operation. Of great importance to Nyungar people is the Waugal who created all the major rivers in the Southwest and numerous sites (Bates 1985):

Those places where he camped in these travels were always sacred. All those places in the South where it rested were known by the presence of lime, which was its excreta,..."

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The notion that 'water is life' underpins Nyungar conceptualisations of water and its spiritual, cultural and physical value and is in part why the Waugal continues to be of central importance to Nyungar spirituality. Metaphors of blood and flow figure centrally in their conceptualisations of water and its flow and the travels of the Waugal. The surface and subsurface movement of water is frequently characterised as "water is like blood that is being pumped through the main veins in the body" (middle-aged Nyungar woman cited in McDonald, Coldrick and Villiers 2005: 55; see also McDonald, Coldrick. & Christensen 2008).

The basic unit of traditional Nyungar social organisation was the family. The band was the basic land using unit and typically comprised one or more families, characteristically numbering up to forty persons.³ The size of the band, however, varied as a result of social and seasonal factors, for example, to do with ceremonial occasions and the fishing season.

Hallam (1975), Ward (1981) and Gibbs (1987) provide detail of various aspects of the traditional economic and social life of Nyungars in the area. Ward (1981:18) has compiled ethnohistorical research which indicates that the Vasse, Wonnerup and Leschenault Inlets, for example, together with the numerous rivers and other waterways in the area, were particularly important places, both economically and socially, prolific in fish, waterfowl and other resources. A number of *mungah/mungar* (fish traps) were located in various rivers and estuaries throughout the Southwest. At least two were located in the environs of Busselton, one on the Vasse River and another on the Abba River (see Ward 1981; Gibbs 1987; McDonald, Hales & Associates 1994). The former was observed by John Bussell who wrote in 1833 of 'snares for fish' built by Nyungars in the shallows at the mouth of the Vasse River (cited in Ward 1981:30). Groups of more than 200 Nyungars were recorded at the fish trap at Wonnerup on the Abba River (Gibbs 1987). George Layman also noted that during the month of September Nyungars were numerous along the estuary "and have frequently been seen, in numbers of one hundred" (Layman Acc. No. 36, cited in Collard 1994). Thus, the research

³ In Aboriginal anthropology a distinction is typically made following Stanner (1965) between a range, which is the total area that a band or domestic kin group occupies and economically exploits and an estate, which is the area 'owned' by a local descent group or estate group. An estate in classical Aboriginal societies includes a number of sacred sites, with associated mythology, ceremonies and rituals, a number of important watercourses or waterholes and areas of exploitable resources.

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indicates that the rich habitat of the region allowed for large gatherings of Aborigines during seasonal availability of certain foods. When food resources became limited at various times of the year, there is some evidence to suggest that Nyungars dispersed in smaller family groups over their range (Ward 1981).

Bates' unpublished notes (for example, n.d. Section II Geographical Distribution, Bates (.n.d.) suggest that a number of important camping places associated with an initiates' (beedawong or moolyeet) trail, path or 'road' to use Bates' term (*bidi*) between *Karboordup*, where the Perth Town Hall is located and the Porongorups.⁴ She also lists a partially overlapping list of camps on an ochre (*wilige*) exchange route from Wininup (Busselton) to Perth based on information collected from her informant Baabur. Hammond (1933:19) also refers to a *bidi* linking Perth to the Southwest that probably would have encompassed these and other campsites.⁵ Both of Bates' lists refer to a camp at Del-ye-lup/Dayl-ye-lup among other places along the coast.

The earliest interaction between Europeans and Aboriginal people from the Capel area took the form of contact with French and British explorers and whalers. This became more lasting following the establishment of the town on Bunbury in December 1836.

In the first days of settlement in the area, Aboriginal people vastly outnumbered the pioneers and relations with the new settlers were a mixture of cooperation and suspicion (Barker and Laurie 1992:8). Although there are accounts of good relations between Aborigines and individual settler families, on the whole they proved to be "two incompatible cultures" (Jennings 1983, Barker and Laurie 1992).

⁴ However, it is not clear that in pre-colonial times the 'moolyeet trail' had the status of a single integrated route as is now is generally attributed to it (e.g. Vinnicombe 1989) as Bates (1985) herself seems to raise doubts about it. She notes (1985:51-52), for example, that one of her informants travelled from Busselton to Albany with initiates after colonisation but notes, "whether this was due to the facilities afforded by white settlement, and the greater ease with which long journeys could be accomplished under white protection cannot be definitely ascertained." McDonald and Venz (2002) provide a more detailed discussion of this issue.

⁵ Interestingly the Nyungar word to path or track - *bidi* - also means 'vein' (see Bindon and Chadwick 1992:13), thus metaphorically referring to the flowlike nature of human movement in addition to the flow of water (see, for example, McDonald, Coldrick and Christensen 2008 for a fuller discussion of the metaphors of flow and the human circulatory system in the Nyungar conceptualisation of water).

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For the Aboriginal people of the area, European settlement brought disease, a new and alien legal system, and restrictions to movement and traditional ways of life. The latter, which involved seasonal burnings and the killing of imported livestock as well as traditional native quarry, soon brought them into conflict with the new arrivals (Krantz & Chase 1995:23–27). By the 1840s, a cycle of punishment and reprisal had taken hold in which blood was being shed on both sides during what Barker and Laurie refer to as “a decade ... of persisting and escalating conflict” (Barker and Laurie 1992:43).

One of the most significant events of this period was the infamous ‘Minninup Massacre’ which took place in February 1841 (Kimberly 1995 [1897], Shann 1926, Battye, (1924), Jennings 1983, Krantz and Chase 1995, Barker and Laurie 1992, Collard 1994, Austen 1998 and Goode and Huxtable 2019). We do not intend here to discuss this event in detail, as it has been well documented, suffice it to say that a series of preceding events had increased tension between the colonists and the local Aboriginal people, and this culminated in the killing of the Wonnerup settler George Layman by Gayware a local Aboriginal man, who apparently had been assaulted and insulted by Layman when the latter pulled Gayware’s beard. In response, a party of colonists and soldiers, led by Captain Molloy, went in pursuit of Gayware from Wonnerup. The party apparently came upon a corroboree re-enacting the killing of Layman was being performed at the Minninup Sandpatch. In the gunfire that followed, a number of innocent Aboriginal people were killed and although Gayware initially escaped, he was later found dead. Tradition has it that the skeletons of the dead were left in the dunes and the site became “a place of horror and hauntings to the Nyungar” (Krantz & Chase 1995:27–28). Battye (1924: 161) provides the following account of the massacre:

An avenging party under Captain Molloy set out and, it is said, ultimately succeeded in surrounding the whole body of natives on an open sandpatch, whereupon they proceeded to shoot the unfortunate aborigines in cold blood, not stopping till the adult males had all been accounted for. Colour is lent to the story by the fact that there is a sandpatch near Minninup where skulls and bones are still to be seen.

As with many such events, details of the massacre continue to be contested, not the least being the role of Captain Molloy, location or locations of the killings and extent of the killings (White

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2017, cf. Barry). Though Kimberley's (1995 [1897] : 115) account suggests that the killings took place over an extended period and area:

Into the remote places this party went, bent on killing without mercy. Through the woods, among rocky hills and shaded valleys, they searched for the black men. When they saw them they shouldered their muskets, and shot them down. Isolated natives were killed during the first few days. They rode from district to district, from hill to hill, and searched the bush and thickets. At last they traced the terrified fugitives to Lake Mininup

Most commentators suggest that the killings took place at Minninup (the AHIS listing DPLH ID 5812 Capel: Minninup reflects the event) and though they may have extended into adjacent areas along the coast, such as Dalyellup, Barker and Laurie (1992:44) suggest that the event "did not directly affect the situation in Bunbury". As far as we can see there is no substantial evidence that there were killings in Gelorup.⁶

Following the period of conflict, Aboriginal people adapted to the colonial conditions. Local Nyungars were employed in the pastoral, farming, and forest industries. Gibbs also found that a small number of Aborigines were employed in whaling stations located in the Southwest (pers comm. 1995). Aboriginal women were also extensively employed as domestic servants. With the increased availability of European labour, and the fencing of properties in the nineteenth century, Aboriginal people were increasingly marginalised and restricted to seasonal employment on farms and other rural industries, especially after the 1905 Aborigines Act (Haebich 1988). However, they adapted socially to the cyclical demand for rural labour. For a period this lifestyle was further supplemented by trade in furs, especially possum (Haebich 1988). Of particular importance in Capel and its environs up until recent years was potato picking and other seasonal farm work. Many Nyungar families followed the potato harvest though the Southwest. The late Robert Bropho writes about Perth families traveling

⁶ A number of informants in the 1998 MHA survey at Dalleyellup (Dalyellup) thought that the massacre might have extended into the area. Two female GKB consultants in the present study referred to the 'Dalyellup Massacre', commenting that unusual and discomfoting spiritual presences had been observed and that although local people frequent the Dalyellup shops and some may even live in the suburb, many Nyungar people take special precautions after dark. Interestingly, Bates on her 'moolyeet' trail list refers to a place called 'Kooroo banup', which apparently is north of the Ludlow River and south of Capel and annotates the listing with the comment in parentheses "natives shot here by white men in revenge for Layman's death".

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south to work on potato picking in the 1950s and 60s (Brophy 1980). Many established special relationships with particular farming families. As we note below, Norman Harris worked for 'Old Moriarty', for instance. Charles Hill is reported to "work the farms between Burekup and the coast, carting hay, planting and picking potatoes ('spuds') and doing general farm work (CAN 2017: 4). Family members also recall working on the potato harvest:

We used to pick potatoes, we'd go from school, down the river down there, in the paddocks. We'd help our parents picking the potatoes, if we didn't we'd be sent home...on your way, they'd say, if you're not going to work, go home! (CAN 2017: 27).

The paths taken linking regular places of employment came to be referred to as 'runs' (Baines 1988; Birdsall 1988). Fringe camps on the outskirts of towns such as Capel and on certain farming properties served this mobile population. The listing on the AHIS for DPLH ID 17351 Harris Camp Higgins Crossing, reflects the later sort of camp. Camps on the fringes of towns typically had a core of more or less permanent residents (Sansom 1980). As noted below Joe Northover, one of the GKB consultants, recalls that his father camped on the fringes of the town of Capel.

Ethnographic Survey Results

Results of the Desktop Research

Previous BORR Surveys

1. MHA BORR Surveys 1995-1996

MHA was commissioned in 1995 by Halpern Glick Maunsell (HGM) in behalf of MRWA to undertake an archaeological and ethnographic survey of the proposed BORR (Hammond & O'Reilly 1995 and Murphy, McDonald, & Jarvis 1996) (Figure 3) and subsequently the proposed Bunbury Port Access Route (PAR) was added to the brief (Edwards, McDonald and Murphy 1997). The MHA surveys of the original alignment and subsequent realignments (Hammond & O'Reilly 1995 and Murphy, McDonald, & Jarvis 1996) engaged four Aboriginal consultants regionally recognised as being knowledgeable about the heritage values of the area: the late Andy Nebro, the late Frank Nannup, the late George Webb and the late Vilma

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Webb. The last two mentioned were known to be particularly knowledgeable about the southern portion of the alignment (i.e., south of the Preston River).

The late Mr Nebro inspected portions of the proposed alignment in February 1995 and was further consulted using detailed aerial photography of the entire alignment. He was consulted again on April 12, 1995 regarding the future of the archaeological material that had been discovered during the survey and about wetland areas within the proposed development area.

The late Mr Nannup undertook a windscreen survey of the BORR and was also consulted using aerial photography in early March 1995. Later in March he was taken back to the area to examine the wetland areas close to the Preston River. Mr and Mrs Webb undertook an inspection of the alignment south of the Preston River. As noted, the Goomburrup Aboriginal Corporation was also consulted, however, no feedback was received from the organisation.

Four previously recorded archaeological sites and five newly recorded archaeological sites were identified on the entire alignment. With the exception of DPLH ID 18884, Bunbury Bypass Archaeological Site 1, none were recorded in the BORR southern section of the alignment. With the exception of the Collie and Preston Rivers no ethnographic sites were reported and certainly none were in the Gelorup area.

Murphy, McDonald, & Jarvis (1996) used the same four Aboriginal consultants and similar research processes. No ethnographic sites were reported by any of the Aboriginal consultants along the proposed realignments of the BORR.

Subsequently, MHA was commissioned by HGM to conduct archaeological and ethnographically surveys of the proposed Bunbury Port Access Route (PAR) which intersects with the BORR (Edwards, McDonald and Murphy 1997).

2. Brad Goode & Associates Survey 2002

Brad Goode of BGA was commissioned by HGM on behalf of MRWA to undertake a survey of the BORR and PAR (Figure 4). This commissioning was the result of advice received by HGM from the then Department of Indigenous Affairs (DIA, now DPLH) that s18 Notices

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could not be processed due to the MHA reports being more than five (5) years old, it was Department policy, HGM was informed, that reports only had a currency of five (5) years.

The Aboriginal consultants who participated in the survey are listed in Table 1. These were selected from the communities resident in Bunbury, Collie and Busselton and involved two of the original MHA Aboriginal consultants from 1995/96, i.e., the late Andy Nebro and the late Vilma Webb. Goode (2002) reports that the major concerns of the Aboriginal consultants were the proposed bridging of the Ferguson (ID 19796) and Preston Rivers (ID 19795) and the Boyanup Picton Road Camps (ID 17782) in addition to a number of archaeological sites (artefact scatters), including Bunbury Bypass Archaeological Site 1 (ID 18884). With the exception of artefact scatter ID 18884, there were no archaeological or ethnographic sites recorded in the Gelorup area.

3. Brad Goode & Associates Survey 2012

Since 2002 there were further changes to the alignments of both the BORR and PAR which necessitated further studies. In 2009 BGA was commissioned to undertake a desktop report on the realignments (Goode 2009). The desktop study found that there were two ethnographic Aboriginal sites that would be directly affected by the BORR: ID 19795 Preston River and ID 19796 Ferguson River, in addition to the six (6) archaeological sites. BGA recommended further consultation regarding the bridging of Preston (ID 19795) and Ferguson Rivers (ID 19796) and updated archaeological surveys.

In 2012, following further changes to the proposed BORR Stage 2 alignment, BGA was commissioned by GHD on behalf of MRWA, to conduct a 'Site Identification Aboriginal Heritage survey' to Section 18 standards, of Stage 2 of the BORR (Goode, O'Reilly & Johnston 2012) (Figure 4). Stage 1 of the BORR and Stage 2 of the PAR previously had been undertaken in 2010 (Goode, Harris and Johnston 2010). The ethnographic survey of BORR Stage 2 involved the participation of nine (9) Aboriginal consultants who were selected based on advice from SWALSC, as being appropriate for the area and knowledgeable of the area's heritage values (Table 1).

As result of the survey no new ethnographic sites were reported on the alignment and in particular, nothing was reported in the Gelorup area.

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In respect of the archaeological survey, artefact scatter Bunbury Bypass Archaeological Site 1 (ID 18884) was re-recorded, as it was determined that the place would be impacted by the proposed ramp connecting Hastie Road with the BORR. The site was assessed as having low archaeological significance (Goode, O'Reilly & Johnston 2012: 50). With regard to the Nyungar assessment of cultural significance (Goode, O'Reilly & Johnston 2012: 23-24), the Aboriginal consultants reported that the place was of 'little contemporary cultural significance' because of the level of disturbance as a result of sand quarrying and the small quantity of material present. While they would prefer avoidance they did not object to MRWA obtaining Ministerial consent to use the land on which the site is located on condition that material is salvaged and appropriately stored.

Goode, O'Reilly & Johnston (2012) recommended that Stage 2 of the BORR project should proceed as planned.

Since the completion of Goode, O'Reilly & Johnston's (2012) study the proposed BORR Stage 2, as noted above, has become increasingly controversial and local people have reported a number of places, including numerous scarred or humanly modified trees on the alignment in addition to two 'ethnographic' sites: DPLH ID 37869, Paper Bark Wet Lands and DPLH ID 37870, the Gelorup Corridor. An assessment of the reported modified trees was conducted in February 2019 by O'Reilly (2019), who reported "no culturally scarred trees or any other Aboriginal archaeological material as defined by Sections 5(a) or 5(c) of the AHA where identified" within the BORR survey area. A further archaeological investigation was undertaken between October 28 and November 1, 2019 by Harris and Winton with the assistance of Messrs James Khan and Joe Northover of GKB (Goode & Harris 2019). The survey was necessitated, according to Goode & Harris (2019: 8) by further amendments to the alignment particularly road intersections, extensions to the width of the BORR in order to avoid environmentally sensitive areas and to accommodate other possible variations. In addition to pedestrian transects, individual trees were inspected to ascertain if any were humanly modified.

As a result of the survey, Bunbury Bypass Archaeological Site 1 (ID 18884) was relocated and inspected twice. On the first occasion six (6) artefacts were located in the eastern end of the

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site, a week later 11 artefacts were observed and measured. The 1995 survey had located 14 artefacts (Hammond and O'Reilly 1995) and when it was reappraised in 2012, 20 artefacts were located (Goode & O'Reilly). These differences are not surprising as archaeological material is constantly subject to taphonomic processes of burial and exposure. Goode & Harris (2019: 23) conclude that there is "no stratigraphic integrity remaining in the unstable highly disturbed sandy mound and therefore no research potential present" or as the AHA would phrase it, it lacks "potential archaeological interest" (s39(2)(c)).

One archaeological new site, BR1, a modified tree was recorded approximately outside the area of the proposed BORR disturbance (Goode & Harris 2019: 22-23). The site is considered as being humanly modified as it fits five of the official criteria and is assessed as having moderate archaeological significance. When inspected in the course of the Ethnoscience's 2019 ethnographic survey, there was no consensus among the Aboriginal consultants as to whether the tree was modified by Aborigines. However, the fact that it would be avoided and not directly impacted by the proposed BORR construction was appreciated by the GKB consultants.

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Other Surveys

Bunbury-Wellington Study 1990

In 1990, the late Ralph Locke conducted on behalf of MHA an Aboriginal regional heritage and planning survey of the Bunbury-Wellington Region for the Department of Planning and Urban Development. The study area included the City of Bunbury as well as the Shires of Capel, Collie, Dardanup, Donnybrook-Balingup and Harvey. One of the objectives of the survey was to assist the Department in managing the area's "natural and human resources" and to help develop "a regional plan that provides a framework for land use and social and economic development consistent with responsible environmental management" (MHA 1990:2).

An annotation on the AHIS regarding the study notes: "This study did not constitute a comprehensive 'site identification', 'site avoidance' or 'work area/programme clearance' survey of the area ... , although some fieldwork was involved". While the study did not claim to be a comprehensive 'site identification' or 'site avoidance' survey the aforementioned annotation gives the wrong impression of the extent and nature of the desktop research, fieldwork and consultation that was undertaken. The research in fact was much more extensive than the average heritage ethnographic investigation that is currently undertaken. The study involved consultation with the Bunbury Aboriginal Progress Association, Gnuraren (Busselton), the Harvey-Waroona Aboriginal Corporation, the Collie Aboriginal Advancement Association, the Southern Aboriginal Corporation and ATSIC. Interviews and fieldwork were conducted with 40 Nyungars from Brunswick, Harvey, Waroona, Collie, Bunbury, Donnybrook, Balingup and Busselton (MHA 1990). The senior Nyungars consulted included Joe Northover's late father, the late George Webb and the late Norman Harris. The late Mr Northover, though originally from the Northwest, was widely recognised as having been knowledgeable in heritage matters in the region. According to Joe Northover, his late father and other family members camped around Capel for a period in the 1960s. As noted above, the late George Webb was recognised as knowledgeable about the history and heritage of the region and his oral histories are often quoted as a key source in historic texts. The late Norman Harris, was reputed to have found the skeletal material associated with the massacre

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when constructing fences at Minninup. His father, who had worked in Perth and the Wheatbelt, 'moved back to Capel' when Norman was a boy and 'worked for Higgins'. Norman later worked for 'Old Moriarty' and it was during this time that he reportedly discovered the skeletal material (MHA 1994).⁷ In addition to the senior Nyungars, 25 students in post-secondary educational institutions in Bunbury were also consulted in the course of the Bunbury-Wellington study (MHA 1990).

The Shire of Capel and hence the BORR alignment was thus encompassed by the study area, which identified a number of key areas and landscapes. Among the key areas of cultural interest identified in the Bunbury-Wellington report (referred to as "site complexes" or "site clusters") included:

- ❖ Waterways and wetlands associated with Waugal myths;
- ❖ "Burial sites ... especially in the area stretching ... [Minninup] along the coast and through the Bunbury suburban and CBD areas, continuing along the coast just North of Bunbury to Australind"; and,
- ❖ "Trails or pads where population movement has occurred and through which campsites are linked. This also includes areas which were used for hunting and gathering as well as sighting points [trees, rocks, etc.]" (MHA 1990:15).⁸

In respect of burials, the key area identified by the study was the coastal strip between Minninup and Australind. The report states (MHA 1990:17-18) that the "principal foci of this coastal strip are both discovered and hypothesised burial sites and campsites". Noting that Aboriginal skeletal material has been located throughout the coastal dunes both north and south of Bunbury and "there is the potential for this to continue occur along the coast as development proceeds". The report also states that "Aboriginal people have expressed concern that not enough effort has been committed to burial site discovery or to the ethnohistory of the area, especially where atrocities [i.e. massacres] are alleged to have occurred".

Though the study identified a series of burials five kilometres east of Capel, in addition to the sites (e.g., massacre & burials) along the coast from Minninup northwards, no sites were

⁷ On the Higgins and Moriarty families and their role in Capel society see Krantz and Chase (1995).

⁸ The report (MHA 1990: also identified "distinctive physical features such as Gibraltar Rock" as key areas of cultural interest.

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identified in the Gelorup area and most importantly certainly no ceremonial or mythological sites were reported in the area. Nor was Gelorup reported as being associated with the Minninup massacre.

Other Local Surveys

Several other heritage investigations have been undertaken over the last few decades in areas in close proximity to the BORR and Gelorup. These include: Murphy, McDonald and Locke's (1990) archaeological and ethnographic study of the Bussell Highway; Edwards, Murphy and McDonald's (1997) archaeological and ethnographic survey for the Water Corporation at Peppermint Grove, Capel; MHA (1998) survey of the proposed Dalleyellup subdivision; Parker and Lantzke (2001) survey of the proposed Woodcrest Rise Development at College Grove; McDonald and Coldrick (2007) survey of Lots 500 & 501, Washington Avenue, Bunbury. While these surveys focused on the specific target areas it is nevertheless frequently the case that Aboriginal consultants will refer to places of significance in the general area, with comments such as the following for example: "there's not much here but we're concerned about the massacre site at Minninup." It is the case that in not one of the surveys listed was any reference made to any significant place in the Gelorup area. Though the absence of such references cannot be taken as definitive, they nevertheless indicate a pattern. During the Dalleyellup survey, which included two Aboriginal consultants from Busselton/ Gumburup Aboriginal Corporation Bunbury, the latter, apparently included Mr Dennis Jetta, ⁹ concern was expressed that skeletal material associated with the Minninup massacre might be found in the Dalleyellup survey area. No mention was made of places of significance associated with Gelorup immediately across the Bussell Highway to the east.

A clear pattern emerges from the previous studies of the BORR specifically and the area more generally, nothing of significance was reported in the Gelorup area through which the BORR passes.

⁹ Other Aboriginal consultants included the late George and Vilma Webb, the Harris sisters, the late Rosie Pell and her sister Ellen Hill.

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AHIS & File Review

Two OHPs are located within the BORR southern section: DPLH ID 37869, Paper Bark Wet Lands and DPLH ID 37870, the Gelorup Corridor (Figure1). The former reputedly a 'women's place' and the latter reputedly a 'men's place'. The former has a 'Lodged' Departmental status. The latter has, since the original November 2019 survey, been determined not to be an Aboriginal site within the meaning of s5 of the AHA and information about the place archived in 'Stored Data'. Access to both site files was obtained upon instruction from the November 2019 Aboriginal survey participants. Additionally, information about both listings was obtained from the non-Nyungar people who had completed the two Heritage Information Submission Forms (HISFs). The corridor also includes DPLH ID 18884 Bunbury Bypass Archaeological Site 1, an artefact scatter that has a 'Lodged' status (see Goode and Harris 2019).

DPLH ID 37869, Paper Bark Wet Lands is listed as a Modified Tree, Birth Place, Hunting Place, Water Source. The HISF for ID 37869 indicates that the listing among other elements is in respect of s5(c): "any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State."

The HISF states that the place is a "woman's area all indications that birthing trees are in the area having been seen by a nonaboriginal and a local aboriginal woman", with respect to how the place is associated with Aboriginal people. A statement, the meaning of which is difficult to discern, however, the author(s) would seem to be asserting that that the status of the place as a "woman's area" is known because the "birthing trees" were seen and thus identified as such by "a nonaboriginal and a local aboriginal woman". And, in respect of 'interest' notes 'historical interest' and states that "we **believe** aboriginal women gave birth here (emphasis added)." Other than a statement of belief, no evidence is presented that any Aboriginal women, at any time, gave birth in this location. Nor is any evidence presented as to why this particular place, even if the proposition were true is of particular historical interest in contrast to any other 'birthing area' and ought to be preserved as part of the State's cultural heritage.

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We discuss below, the problems associated with reports such as these which are based on what has been referred to as 'reading the country', without knowledge of actual events.

The 'knowledge holders' are listed as Ms Tina Dann and Ms Annette Garlett. The former is listed as 'a local aboriginal woman'. In an interview Ms Dann, a Gelorup resident, described herself as a Yamatji woman who has lived in the Gelorup area for 12 years. However, Ms Dann does have kinship connections through her Nyungar mother, a resident of Alice Springs (NT), to the Walley Family. In contrast, Ms Garlett is Nyungar and resides in the Bunbury area not too far distant from Gelorup. Ms Garlett, as noted above participated in the November 2019 ethnographic survey and she reported to Turner in a telephone call, that since the November 2019 survey, she has met with the DPLH and demanded that they remove her name from all documentation associated with this listing. Overall, the completed HISF application shows a lack of understanding of the AHA and the Act's evaluative criteria. For this reason considerable attention was given by the authors in clearly articulating their professional responsibilities and limitations during interviews with the non GKB authorised participants, all of whom had been integral to lodging the HISF.

As noted above, both the surveys undertaken by Hammond and O'Reilly (1995) and Murphy, McDonald. and Jarvis (1996) included the senior Wardandi woman, the late Vilma Webb, and no 'women's places' were reported on or near the alignment. Similarly, the Goode, O'Reilly & Johnston (2012) survey included three Nyungar women selected by the GKB: Ms Marie Khan, the late Ms Dorothy Winmar and Ms Violet Bennell, again no 'women's places' were reported on or near the alignment. It should be noted that Ms Dorothy Winmar had previously given detailed information relating to women's birthing places and birthing practices at an unrelated and distant location to the current survey area (Hohnen and Bergin 2008: 12). It is thus likely that if she had known of the existence of a women's birthing site she would have felt comfortable to mention its existence, even in the most general way to a male researcher. Indeed, the relevant report stated: "men did not visit such sites [birthing sites] except briefly to leave a supply of wood for the women" (Hohnen and Bergin 2008: 12).

Three of the women, who participated in the current ethnographic investigation, as noted above, Ms Lera Bennell, and the sisters Yvonne and Annette Garlett, have extensive

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knowledge of local bush birthing places demonstrated in their contribution to the Bush Babies' project operated by the CAN 2014-2017. The methodological rigour of this project is discussed in Quayle et. al. (2019). In one of the publications produced during the Bush Babies Project these women demonstrate both their local knowledge and willingness to share stories of bush births (CAN 2017). However, none of the women were able to articulate knowledge of any specific births in the survey area or more specifically at the location of DPLH ID 37869. Also as noted, Ms Annette Garlett reports that she has repudiated any association with the place's listing.

It is also the case that it would generally be impossible for a special women's place to exist and that men would not know about it and its location, otherwise they might inadvertently stumble into it and expose themselves to danger. Conversely the same is true for 'men's places'. The existence of this place was also not reported by any men involved in the 1995/96 surveys or the BGA surveys in 2002 and 2012.

DPLH ID 37870, the Gelorup Corridor is listed as Artefacts/Scatter, Ceremonial, Skeletal Material/Burial and the HISF notes that the listing occurs on the basis of s5(a), 5(b) and 5(c). Mr Jetta is reported to have identified the tree and its significance during a walk. However, surprisingly Ms Tina Dann and Ms Terri Sharp are listed as the 'knowledge holders' for the place. The HISF was completed by Ms Glenys Melatesta.

The listing in respect of s5(a) is based on the findings of a 'ceremonial' or 'message stick' reportedly found by a non-Indigenous Gelorup resident at the base of an uprooted tree in the vicinity of a large Tuart tree. The Tuart tree has been labelled a 'Ceremonial tree'. While the 'message stick' would seem to be of Aboriginal origin possibly from Goldfields region (pers comm Dr Ross Chadwick WAM). However, its provenance has not been verified and the object itself was not examined in situ forensically. We understand the 'message stick' is safely stored in a facility in the Goomburrup Aboriginal Corporation in Bunbury. As noted, DPLH ID 37870, has since been listed as not to be an Aboriginal site within the meaning of s5 of the AHA.

The giant Tuart tree, which is listed on the non-statutory national 'Register of Big Trees', as the 'National Champion Tuart', is listed as a 'ceremonial' (s5(b)) place on the basis that a local

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Nyungar elder (i.e., Mr Jettta) “that Aboriginal ceremonies **would have** taken place beneath the giant tuart”. As with DPLH ID 37869 there is no evidence presented that any rituals or ceremonies actually took place. None of the Aboriginal consultants participating in the 1995/1966, 2002 or 2012 surveys had previously identified the place.

It is also suggested that the area is possibly a ‘burial ground’. In highlighting the possibility of burials, the person who completed the HISF made a specific reference to concerns raised by the Aboriginal consultants in the 2012 BGA survey about potential burials being located in sand dunes along the BORR alignment and the need to monitor these areas during ground disturbance (Goode, O’Reilly & Johnston 2012: 26-27). Again there is no evidence presented that there are actually burials located in this area. We find the use of the term ‘burial ground’ problematic as it would seem to be a rhetorical device to highlight the alleged significance of the place. The term ‘burial ground’, according to the Collins Dictionary is defined as “a place where bodies are buried, especially an ancient place. ...an ancient burial ground”.¹⁰ Its usage implies a place intentionally set aside for burials, a cemetery, where there may be multiple burials. However, this is not the concern that the Aboriginal consultants in the BGA (2012) survey were expressing. Rather they were suggesting that there was a potential in certain locations along the alignment (i.e., sandy ridges) that a burial or skeletal material might be found. In conversations with Gelorup residents involved in this specific site recording an association was made between bones, burials and an historical Minninup or Wardandi massacre referenced in a paper by White (2017) (see also Hunter 2019a and Noonan 2019; see below for further comment). It would seem that these perceived connections also may have influenced their reading of the 2012 BGA report.

As is the case with DPLH ID 37869, it is suggested that DPLH ID 37870, the Gelorup Corridor should be “preserved because of its importance and significance to the cultural heritage of the State”. In this case, however, ‘historical’, ‘anthropological’ and ‘archaeological’ interests are noted, though again as with DPLH ID 37869, the accompanying information does not provide ‘historical’, ‘anthropological’ and ‘archaeological’ evidence as to why the place ought to be protected as part of the State’s heritage. As noted, since November 2019, the place is listed on

¹⁰ @ <https://www.collinsdictionary.com/dictionary/english/burial-ground>

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the AHIs as 'not a site'. Regardless, it is our understanding that the giant tuart at DPLH ID 37870 will be avoided and that the BORR has been realigned in this area (N. McCarthy pers comm November 2019) (See Figure 7 below).

McDonald has, for 30 years, highlighted issues associated with reporting places as 'heritage sites' and identified three genres of reporting which are labelled: 'knowing the country', 'reading the country' and 'feeling the country'. He and his colleague, the late R.G. Locke, note the difficulties in evaluating the importance and significance of places based on 'reading the country' and 'feeling the country' (McDonald and Locke 2002). Clearly, reports based on 'reading the country' where people are extemporising in agnostic contexts and reporting this is a place where Aboriginal people: 'could have', 'would have' or 'might have' done such and such have to be treated with caution in the absence of other evidence. Such extemporising is evident, for example, in some of the newspaper reports. Mr Jetta is reported by Hunter (2019a) as saying: "the Five Mile Brook, a waterway Mr Jetta said **would have been used** as a birthing area for Aboriginal women" (Hunter 2019a, emphasis added), no evidence is presented, however, to show that it was so used.

Reported 'feelings' about places are also difficult to evaluate, especially when different Aboriginal consultants' report contradictory feelings: 'I feel such and such here' / 'I don't feel anything here' (McDonald, Smith and Locke 1990, McDonald and Locke 2002). Dealing with reports of 'feelings' associated with places in the context of Aboriginal heritage surveys is even more problematic when the people concerned are not Nyungar).

Both the HISF's for DPLH ID 37869, and DPLH ID 37870 are by all accounts based on 'reading the country' where something, i.e., birthing and ceremonies, reportedly **would** have occurred. As Merlan (1998) indicates the meaning of country cannot simply be read from it:

In many cases, the character of the Dreaming event is complex and opaque, relative to those sensible properties. Though the meanings of place may be suggestively linked to them, they cannot simply be read off from them. Overtly traditional Aboriginal mythopoeia works from Dreaming event to physical form, not the other way around.

In other words, it is not the case that because an object has a particular form or feature or because it looks significance that it actually is. Though Bates (1985: 193) lists tuart trees as

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being one of the *borungur* or totems associated with the Manijmat moiety, there is no specific evidence that the giant tuart at DPLH ID 37870 is or was of particular significance.

Certainly it is not the case that either DPLH ID 37869 or DPLH ID 37870 are ‘**storied places**’ in either a traditional Dreaming sense (Merlan 1998) or in a more contemporary Nyungar tradition such as that described by Samson (1983).

Reference has also been made to numerous reputed scarred or humanly modified trees along the alignment generally (see Noonan 2019) and around either DPLH ID 37869 or DPLH ID 37870 specifically. It is certainly not the case that Nyungar people would typically manufacture a scar “the length of a canoe” (Noonan 2019) as there is no archaeological or ethnographic evidence that Nyungar people possessed any sort of water craft. These features have been assessed by professional archaeologists and determined not to be intentionally of human manufacture but rather the result of natural or accidental processes (O’Reilly 2019 and Goode and Harris 2019; see below for further comment).¹¹

Reference has also been made to the BORR alignment being associated with the 1841 Wardandi/Minninup massacre. For example, Mr Jetta is reported as saying that “he believed the area to be linked to the 1841 Wardandi Massacre, when John Molloy ruthlessly hunted down and killed Aboriginal men **throughout the area**” (Hunter 2019a, emphasis added). Similarly Noonan (2019) states that settlers pursued the Wardandi people, “relentlessly for weeks **throughout the region**”, with the final massacre occurring “15km downstream from Gelorup”. If it is the case that the Gelorup area is associated with the 1841 massacre and that Aboriginal men were “ruthlessly hunted down and killed” throughout the area/region, there is in fact nothing to distinguish the BORR alignment in particular from the surrounding parts of Gelorup or to attribute it special significance. If the BORR alignment is significant because of an association with the 1841 massacre so too is the rest of Gelorup including, it would seem to us, where the self-identified opponents of the BORR reside.

¹¹ Bates (1985: 275–276) provides a description of the scarring of a tree to make a spear thrower by a Nyungar man.

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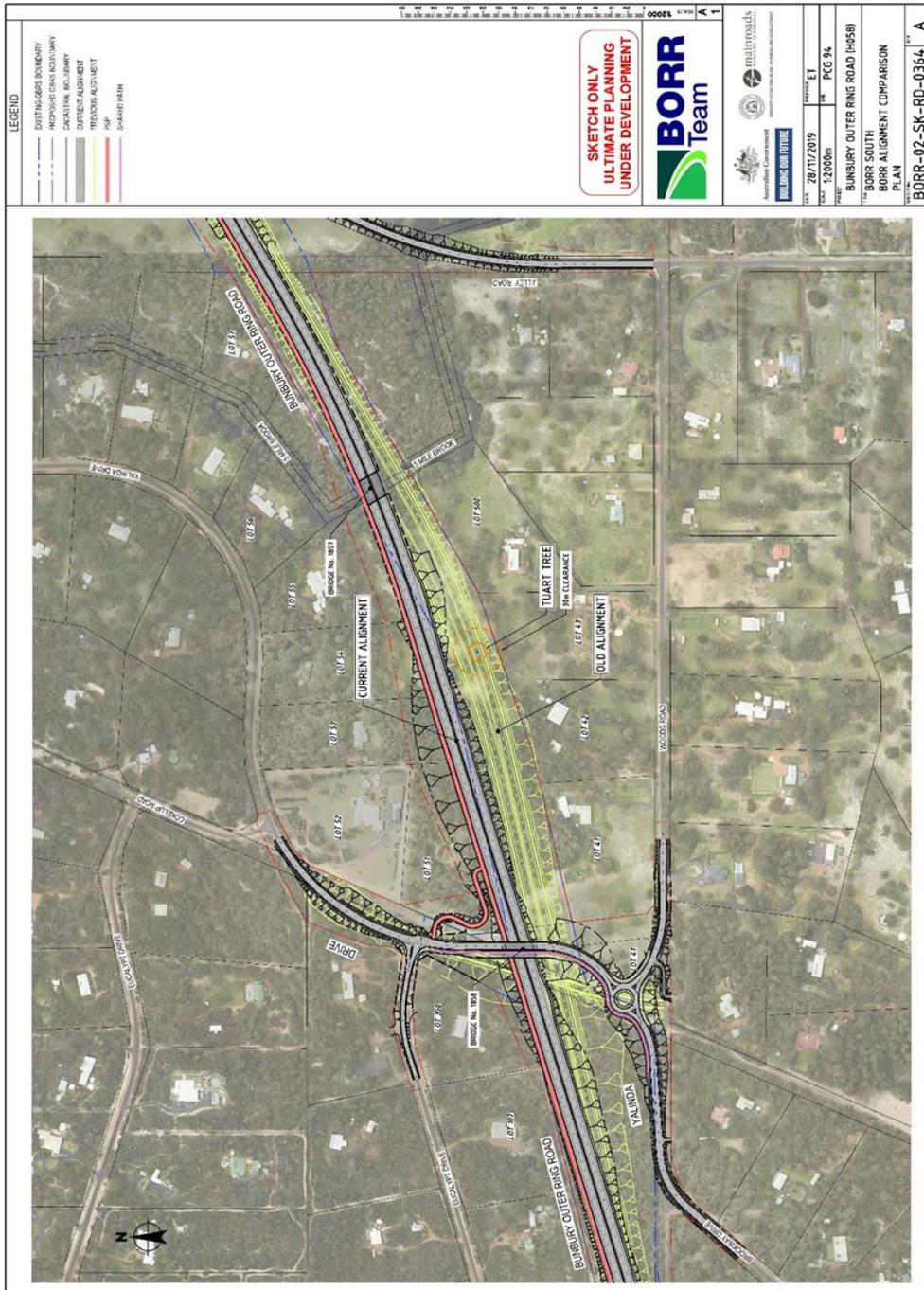


Figure 7 Plan showing the realignment of BORR in the vicinity of DPLH ID 37870 (Source: MRWA):

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Results of the Field Survey

November 2019 Survey

The GKB Aboriginal consultants did not report any previously unrecorded ethnographic sites on the BORR southern section alignment. This result is consistent with the results of the previous ethnographic surveys of the BORR (Hammond and O'Reilly 1995 and Murphy, McDonald and Jarvis 1996 and BGA 002 and 2012).

Furthermore, the majority GKB Aboriginal consultants did not provide any substantive cultural evidence to support the listing of DPLH ID 37869 or DPLH ID 37870. In fact, the majority were quite vocal in their disapproval of the listing of these places on the AHIS and expressed the view that the listings were, on the one hand, not in keeping with their knowledge of the cultural heritage of the area and, on the other, a mark of disregard for their rights as traditional owners of the country.

The GKB Aboriginal consultants expressed their support for the BORR project, however, as is typically the case with respect to such developments made a number of requests of MRWA. These are discussed below.

As noted above, DPLH ID 37869 was not inspected as the women involved with the survey decided that this was not necessary as they reported that they had no specific cultural or historical knowledge relating to this location. Importantly, however, Ms Garlett, whose name appears on the HISEF, reported that she never expressed the view that the place had particular cultural significance or indeed that it was a 'birthing' area. She reported rather that she had sought to save the paperbarks because of their environmental and aesthetic values after she had walked the area with a Gelorup resident. It should be noted that the women's site inspection was to occur after the inspection by all consultants of DPLH ID 37870, where women chose not to enter into discussions about the 'message stick' in case the object should not be seen or spoken of by women under customary Law. This became a turning point in the survey after which women wished to cease further inspections.

DPLH ID 37870 was, as noted, inspected and for the majority of the GKB consultants the place holds no cultural significance and they report that to their knowledge neither the place nor the large Tuart tree, were associated with any Nyungar ceremony or ritual. Some are also

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sceptical about the provenance of the 'message stick' and a number expressed the view that it had been planted in the location by people, who they assert oppose the BORR. Notwithstanding these views, others did not doubt the authenticity of the object or the integrity of the discoverer of the object. Considerable discussion centred upon the difficulties and responsibilities that this find now poses for Nyungar elders and there are disagreements as to how it ought to be curated.

On the other hand, Mr Jetta still articulates the view that the area is of significance. However, when interviewed by Ms Turner, he expressed surprise that it had been listed as a 'men's only place'. His reports about the place would seem to be based on 'reading the country' rather than on specific knowledge. However, the notion of 'walking the country', as a way of 'knowing the country' was a term used by both Gelorup residents and Mr Jetta. Those who 'walked' being contrasted to those others who were either unable physically to walk or unwilling to walk and thus are considered destined to remain ignorant (see for example, Ingold and Vergunst (2008) for a discussion of the relationship between 'walking' and 'knowing'). However, as noted above several of the EST have participated in various archaeological investigations of the alignment and as a result have walked all or substantial portions of it with the archaeologists. Others have used various portions of it for various purposes.

At Mr Jetta's request, Ms Harris inspected several scarred trees in the vicinity of DPLH ID 37870 and along Woods Road in McDonald's company. In her opinion, and McDonald concurred, none of the scars were of human origin and she outlined her reasoning against the commonly accepted criteria for assessing such features to him (see below for further comment on the interpretation of 'scarred trees').

In a post-survey telephone interview with McDonald he also reported that there was a stand of *moojarr* or native 'Christmas tree' (*Nuytsia floribunda*) on the alignment on Woods Road. Though it is not possible at this stage to identify their location with any certainty. According to Mr Jetta *moojarr* trees (*Nuytsia floribunda*) were spiritually significant, as Nyungar, he reports, used to bury their deceased at these trees. This view would seem to be a variation of the traditional notion recorded by Bates (1985; 1992), that traditionally Nyungars believed that

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the souls (*kaanya*) of the dead inhabited the *moojarr* tree' for some time after death before departing for *Kurannup* the land of the dead. However, it is unlikely that without a specific narrative, that is, information about a particular burial event, that the ACMC would determine that the stand of trees reported by Mr Jetta is an Aboriginal site within the s5 of the AHA. Turner noted that two Gelorup residents involved in site recording also referenced Mr Jetta's version of this 'custom'.

The Aboriginal consultants did raise a number of issues with respect to the proposed development of the southern section of BORR. These include the need to monitor areas of sandy ridges and near waterways for artefactual material and possible burials. Mr Northover, in particular, noted that the Waugal was present in all the surface and subsurface waters that flowed through the country encompassing the BORR and that the Waugal ought to be propitiated by a smoking or other ceremony. The GKB consultants also expressed the view that various parts of the proposed development, bridges, roads and so on should be given Nyungar names, citing specific instances where they have been involved in this process elsewhere. They were also of the opinion that the development ought to provide employment opportunities for local Nyungar people.

January 2020 Consultation & Inspection of the 5 Mile Crossing

As noted above in the Survey Methods Section, McDonald and Turner were asked to provide a summary of their ethnographic findings to date in the course of the pre-inspection meeting. In particular, they were asked by several Aboriginal consultants if it was their conclusion that there was any cultural validity to the listing on the AHIS of DPLH ID 37869 and DPLH ID 37870. McDonald and Turner both responded that it was their opinion that there was no cultural validity to the listings. Several of the Aboriginal consultants responded approvingly and again voiced their opinion that there was nothing of cultural significance, apart from the archaeological sites, on the alignment. Several also again expressed the view that the provenance of the object identified as a 'message stick' was questionable.

Mr McCarthy (MRWA) outlined the proposed Five Mile Brook crossing and the intent of the survey. The EST proceeded in convoy to the Five Mile Brook crossing survey area, where Neil McCarthy provided a description of the planned crossing in situ. Mr McCarthy addressed a

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range of questions from the GKB consultants and the heritage consultants regarding the design of the proposed bridge and its likely impacts on the brook, its banks and surrounds. Of particular importance was Mr McCarthy's confirmation that the design did not involve any piles in the waterway and that the flow of water would not be impeded in any way. It had previously been suggested that the Brook would be crossed using culverts (Goode, O'Reilly and Johnston 2012:26). However, no objection was raised by the GKB consultants to the proposed bridge design. Various Aboriginal consultants, however, did request that there should be minimal vegetation clearing and that wherever possible large mature trees should be avoided. Several Aboriginal consultants noted that the Brook seemed to have been humanly modified in a number of places: 'manmade' was a term used by some.

Importantly, none of the GKB consultants identified the Five Mile Brook as an Aboriginal site. In contrast, during BGA's (2012) consultation when Mr James Khan expressed the opinion that the creek was in a 'natural' state and said that he believed the creek should be registered as an Aboriginal heritage site as with all the other waterways in the region. However, Mr Khan was, according to Goode, O'Reilly and Johnston (2012: 27), unable to articulate the basis on which the place might be considered of 'importance and special significance' as required by s5(b) of the AHA. Mr Khan did not reiterate these views during the January 2020 site inspection that he had expressed in 2012 that the Five Mile Brook ought to be registered as an Aboriginal site.

Mr McCarthy also discussed, in response to various questions, the likely impacts on wildlife and management of these issues, which he and Dr Hannon indicated included both under and over roadway crossing points. The women GKB consultants, in particular, requested that Nyungar people are given first option to collect and use timber, seeds and other items of the area's flora along the alignment before the area is cleared for construction and the material mulched. They felt that, as Traditional Owners, they should be given dispensation to take these natural products without applying through a paperwork process. Again the issue of employment and Nyungar participation in the construction process was raised, as was the need to monitor the development process. The GBK consultants also reiterated that bridges and so on should have Nyungar names and that further consultation is required in this regard

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and in respect to related matters such as Nyungar participation in the production of public artwork.

ID 37870 was revisited, as it is in close proximity to the Five Mile Brook. Several GKB consultants again expressed the view that there was nothing culturally significant about the tree with regard to Nyungar values and there is no cultural reason why the tuart tree ought to be labelled a 'Ceremonial tree' and that they were not aware of any ceremonies having been held in the vicinity.

Since the inspection McDonald has consulted several senior archaeologists regarding the finding of the 'message stick' and all agree that though it is not impossible for a wooden object to be preserved in the roots of a tree, it is highly improbable as organic material does not survive well for any length of time (Dr Caroline Bird pers comm March 2020 and Dr Joe Dortch pers comm March 2020), even if the risk of Acid Sulphate Soils in the area where it was found is low (Fionnuala Hannon pers comm March 2020). Dr Dortch, who has undertaken extensive archaeological excavations in various parts of the South West, reports that he has never found organic material, with the exception of charcoal, in any of his excavations (Dr Joe Dortch pers comm March 2020). Hence it is most improbable that the 'message stick' as Noonan (2019: 2) asserts that it had "remained hidden for many decades" either in the branches of the tree or "among the roots" of another tree, only to reveal itself in 2018. Moreover, Dr Chadwick of the WA Museum reports that when he examined the stick, which seems to be of Eastern Goldfields' origin, did not show any evidence of any soil on it (pers comm February 2020). The provenance of the 'message stick' clearly continues to be uncertain.

A recent review of the AHIS (March 5, 2020) shows that place DPLH ID 37870, which was formerly Lodged on the AHIS, has been determined not to be an Aboriginal site and information about the place is now archived in 'Stored Data'.

The women on the survey discussed DPLH ID 37869 in detail with Ms Turner. As we have outlined above, DPLH ID 37869, is listed as a Modified Tree, Birth Place, Hunting Place, Water Source. Moreover, the HISF for ID 37869 indicates that the listing is in respect of s5(c): "any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and

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should be preserved because of its importance and significance to the cultural heritage of the State." As we point out above, no evidence was produced to support such an assertion and indeed, the people completing the HISF are, as far as we can ascertain, are not qualified to determine what might be of 'historical, anthropological, archaeological or ethnographical interest'.

From our research it appears that it was two women, Gelorup residents, who 'felt' that this was 'Women's Land'. This has been fitted into a putative land use pattern that involves a perceived corridor that includes the paperbark wetlands to the sea and includes the location of a historical massacre at Lake Minninup beach where, according to the residents. "skulls appear each winter with a bullet hole". From the paperbark to the sea is perceived as "a corridor of great and timeless cultural significance". This view was allegedly reinforced by the presence of two women staff from SWALSC who were shown the paperbarks by both Gelorup residents, together with Ms Annette Garlett [Interview with Gelorup resident # 1, November 7, 2019]. It was said by one of the two Gelorup residents that Ms Garlett was very quiet and cried when she heard how much was to be taken by the proposed Main Roads BORR development. [Interview with Gelorup resident #2, November 8, 2019]. This statement is in keeping with Ms Garlett's comment to the EST that she never expressed the view that the place had particular cultural significance or indeed that it was a 'birthing' area. Rather she had sought to save the paperbarks, she reports, because of their environmental and aesthetic values after she had walked the area with a Gelorup resident. As stated, above, Ms Garlett reported to Turner on the January 31, 2020 that she had gone into the Perth office of DPLH to personally request that her name be taken off the HISF and the site file for DPLH ID 37869.

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Figure 8: Plan showing BORR Five Mile Bk Bridge Layouts (Source: MRWA)

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Consultation regarding Archaeological Finds

During the inspection of DPLH ID 18884 the GKB consultants expressed the opinion that the archaeological material on the site ought to be salvaged and appropriately stored in a still to be determined place prior to the site being impacted.

Scarred or modified tree BR1 was also inspected by the EST and Ms Harris provided her assessment of the origin of the scar and outlined her reasoning against the criteria accepted by the DPLH for evaluating such scars as being of human origin (see Goode and Harris 2019: 11-14 for a review of the criteria and factors effecting scarring). Several members of the EST remained ambiguous when pressed on their opinion as to the natural or man-made origin of the specific scar. The archaeological opinion was respectfully listened to but not necessarily agreed with. The scar was believed to have the potential to be humanly made but those on the survey party were unable to say that in their opinion this was definitively the case. In the event Ms Harris has reported the scar as being a human modification to the tree as the scar would seem to fit five DPLH criteria (Goode and Harris 2019: 22). Regardless, the tree is located some 63m outside the area of disturbance by the proposed BORR alignment and therefore is unlikely to be either directly or indirectly impacted by the road development.

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Conclusions

Notwithstanding the publicly aired opposition to the southern section of the BORR, particularly through Gelorup, and the conflict within the Aboriginal community regarding who has the right and authority to speak for country, the majority of the GBK consultants **do not object** to the proposal to develop the BORR. Specifically, they support the design of the proposed Five Mile Brook bridge. They not only **have not reported the presence of any ethnographic sites along the alignment**, they also question the cultural validity of the listing on the AHIS of both DPLH ID 37869 and DPLH ID 37870 that local residents have been involved with reporting. Specifically, they report that there is no known 'women's site'/'birthing area' or ritual or ceremonial sites on the alignment. Mr Jetta is the only GKB consultant who has voiced a contrary opinion. However, apparently even he was surprised to hear that DPLH ID 37870 had been listed by its reporter as a 'men's only site'. Additionally, Ms Garlett, whose name was used in the listing of the so-called 'women's site', reports that she has demanded that her name is removed from the HISF as she has not at any time stated that the place is a 'birthing area'.

We noted that in contrast to an archaeological survey, which searches for objects and places in the survey area that might constitute an Aboriginal site in terms s5 of the AHA, an ethnographic survey draws on the knowledge of the Aboriginal consultants about the country through which the proposed alignment runs and typically has a wider focus. The views of the majority of the GKB consultants is consistent with those expressed in previous heritage assessments of the BORR, various iterations of which have been surveyed several times since 1995. That is there are no ethnographic sites along the alignment. Contrary to the assertions that have been made publicly both in the press, and apparently on social media platforms such as Facebook by self-identified opponents to the development, we are of the opinion that the Aboriginal consultants who have participated in the surveys for the proposed BORR development since 1995 were/are appropriate and were/are the relevant Aboriginal people, who were/are knowledgeable of the Aboriginal cultural landscape of the study area. We are also of the view that there is no one individual who has a greater right to speak for the country

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than others. It is our view that MRWA has undertaken adequate steps since 1995 to ensure that their obligations in respect of the AHA have been met.

In reviewing the archival information and ethnographic data from the November 2019 and January 2020 surveys and consultations, we find that there are no substantial Aboriginal cultural reasons why the BORR development should not proceed. In particular, we are of the view that both DPLH ID 37869 and DPLH ID 37870, lack any substantial Aboriginal cultural information underpinning their listings. At the time of writing, DPLH ID 37870, the Gelorup Corridor, has in fact been listed for an undisclosed reason not to be an Aboriginal site within the meaning of s5 of the AHA and information about the place archived in 'Stored Data'. We are of the view that the same should happen in relation to DPLH ID 37869 Paper Bark Wet Lands, as there are no culturally relevant data to support an evaluation of its importance with respect to s39(2) or s39(3). Not only has Ms Garlett disassociated herself from the documentation and listing but the other women on the surveys, some of whom have published information on 'Bush Babies', do not acknowledge that the place is a woman's site. Nor do the majority of the men.

As we have suggested, the provenance of what has been identified as a 'message stick' remains in question. Even if it is authentic, its presence cannot be taken to support the notion that the giant Tuart tree (DPLH ID 37870) is a 'ceremonial tree' as a link between the two, though assumed by the self-identified BORR opponents, has not been established. Indeed, the conceptualisation of the giant Tuart tree as a 'ceremonial tree' is totally misconceived as it assumes that its Nyungar cultural significance can simply be read off its appearance, given its size. This is not how traditional Aboriginal cultures work as Merlan (1998), Martin, Sneddon and Trigger (2016), among others have demonstrated. However, we understand that modifications have been made to the alignment in order to avoid the Tuart tree. As we noted in the Introduction, the AHA is centrally concerned with the customs and traditions of relevant Aboriginal communities whose places and objects are described and evaluated and in particular their sacred beliefs and ritual and ceremonial use of places. Though variations in customs and traditions both within and between groups are recognised and acknowledged, the AHA is not essentially interested in idiosyncratic Aboriginal beliefs or behaviour, or ritual

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or ceremonial practice nor those of non-Aboriginal people regardless of their beliefs or feelings. Evaluations of the importance and significance of places and objects must be accountable in terms of the relevant community's customs and traditions. It is our conclusion, therefore, that there is nothing to support the registration of either DPLH ID 37869 and DPLH ID 37870, with respect to the provisions set out in s39(2) and in particular s39(3) of the AHA. We are also of the opinion that none of the series of 'scarred trees' reported by local residents are of human manufacture and that they have been professionally and appropriately assessed by the archaeological team (O'Reilly 2019 and Goode and Harris 2019).

The GBK consultants did, however, raise a number of concerns about the development, such as monitoring ground disturbance, ameliorating impacts on native fauna, bestowing Nyungar names on bridges and other highway features, employment opportunities and so on. These concerns are quite typical with respect to such developments. It is recommended that MRWA where possible accommodate these concerns.

Recommendations

Subject to receiving other necessary approvals, it is recommended that in the absence of substantial Aboriginal heritage impediments that BORR southern section proceed.

It is recommended that the APMC determine that DPLH ID 37869 is not an Aboriginal site within the meaning of s5 of the AHA and that information about the place is archived in 'Stored Data'.

It is recommended that the bridge design provided to the GKB EST in January 2020 is adopted.

It is recommended that MRWA continue its consultation with the GKB claimants and that endeavours are made to ensure that all parties feel respected and included in the process.

It is recommended that material from DPLH ID 18884 is salvaged and appropriately stored when the site is impacted.

It is further recommended the areas along the BORR alignment identified by the GKB consultants and project archaeologists as having high archaeological potential are monitored during ground disturbance.

It is recommended that Mr Northover's concerns about propitiating the Waugal are attended to and that an appropriate ceremony is conducted at an appropriate time.

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It is also recommended that the GKB consultants' request that aspects of the BORR development are given appropriate Nyungar names and that they are consulted in respect of public art works and such like.

It is also recommended that the GKB consultants and other members of the local Nyungar community be permitted to collect timber and items of flora, such as seeds, prior to the clearing of the land.

It is further recommended that the GKB consultants' request that the BORR development provide employment and other economic opportunities is followed up by MRWA.

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