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# Aboriginal Heritage Due Diligence Assessment

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**Report for the proposed RAC Ningaloo Reef  
Resort Redevelopment, Coral Bay WA**

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Prepared for RAC





## ACKNOWLEDGEMENTS

JCHMC acknowledges Whadjuk People, Elders past, present, and emerging as traditional custodians of the land on which the JCHMC office resides and RAC Parks & Resorts, Manager Project Delivery, Jaco Lourens.

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## EXECUTIVE SUMMARY

JCHMC was engaged by RAC (**the proponent**) to conduct an Aboriginal heritage Due Diligence Assessment (**DDA**) of the proposed RAC Ningaloo Reef Resort redevelopment in Coral Bay (**the Project**). The DDA aims to assist the proponent in determining whether there may be risk of harm to Aboriginal heritage sites and values because of the Project and assist in fulfilling its obligations under the Aboriginal Cultural Heritage Act 2021 (**ACHA**).

The Project is in Coral Bay, 1,200 kilometres north of Perth, in Western Australia's Gascoyne region and comprises 3.8ha of land (Maps 1 and 2).

As a result of the DDA, the following conclusions and recommendations are made:

1. activities associated with the Project should be classified as “high” to “major” disturbance under AHA 1972 and under the ACHA 2021 will fall within the category of works consistent with “Tier 3” activities with a moderate to high level of impact;
2. the desktop assessment has not located any known sites within the Project;
3. the desktop assessment has not identified any relevant Aboriginal heritage survey reports and or consultation for the Project;
4. The results of the desktop and Tier assessment indicates that it is not yet certain whether Aboriginal Cultural Heritage (**ACH**) will be harmed by the Project or not;
5. The above can be resolved by engaging with the relevant Aboriginal people, in this case the Yinggarda, Baiyungu, and Thalanyji people represented by the Nganhurra Thanardi Garrbu Aboriginal Corporation (**NTGAC**). The proponent should notify NTGAC of the Project and seek their assistance in undertaking ethnographic and archaeological investigations to determine whether the Project will or will not harm Aboriginal heritage sites or values.



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## LIST OF ABBREVIATIONS

The following acronyms, terms and definitions are contained within this report.

*Table 1. List of abbreviations*

Abbreviation	Term
DPLH	Department of Planning, Lands and Heritage
AHIS	Aboriginal Heritage Inquiry System
The Project	RAC Ningaloo Reef Resort redevelopment in Coral Bay
NTGAC	The Nganhurra Thanardi Garrbu Aboriginal Corporation
The Proponent	RAC
AHA 1972	Aboriginal Heritage Act 1972
ACHA	Aboriginal Cultural Heritage Act 2021
ACH	Aboriginal Cultural Heritage
ACHMP	Aboriginal Cultural Heritage Management Plan
DDA	Due Diligence Assessment



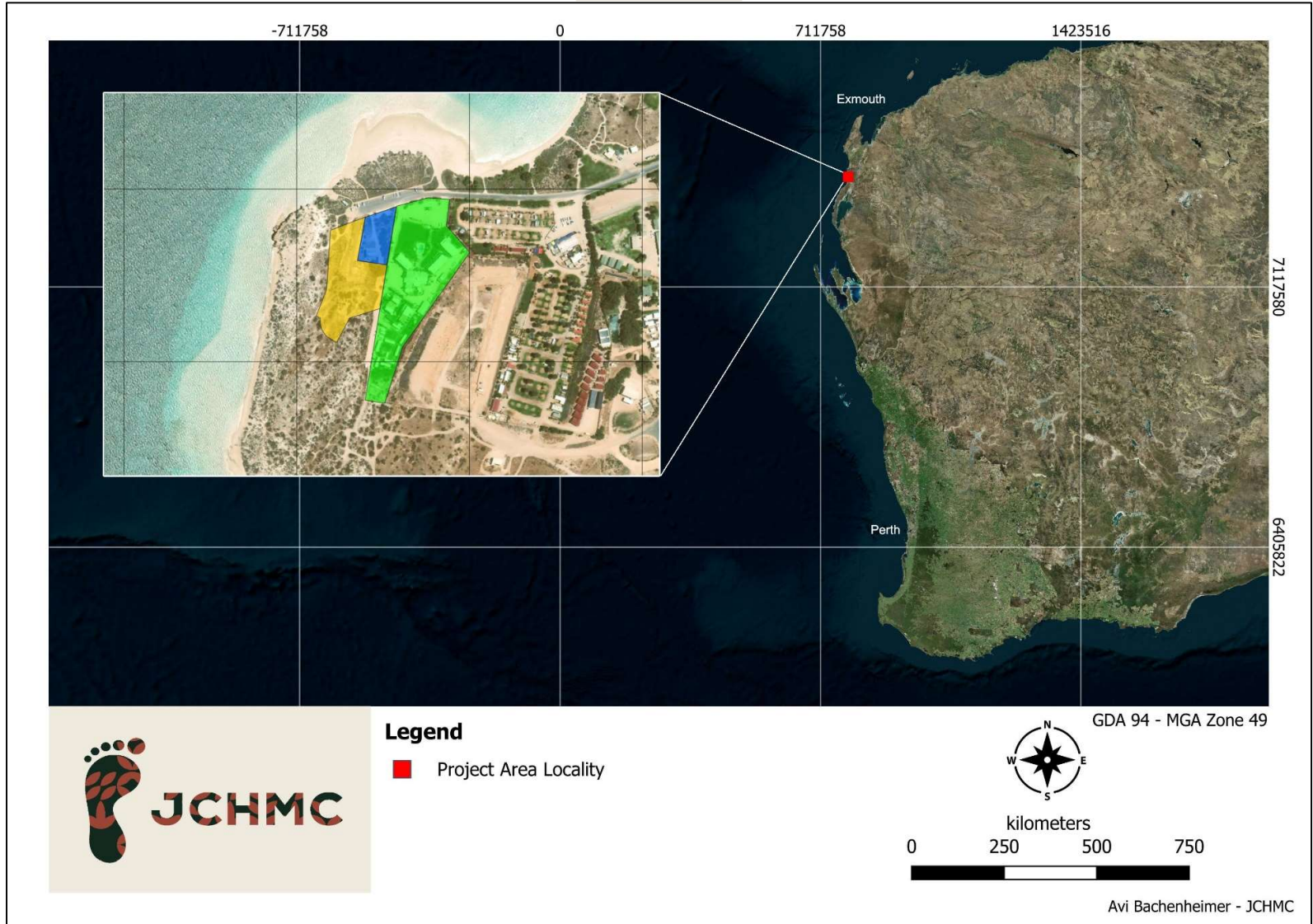
## **DUE DILIGENCE ASSESSMENT REPORT**

### **1. INTRODUCTION**

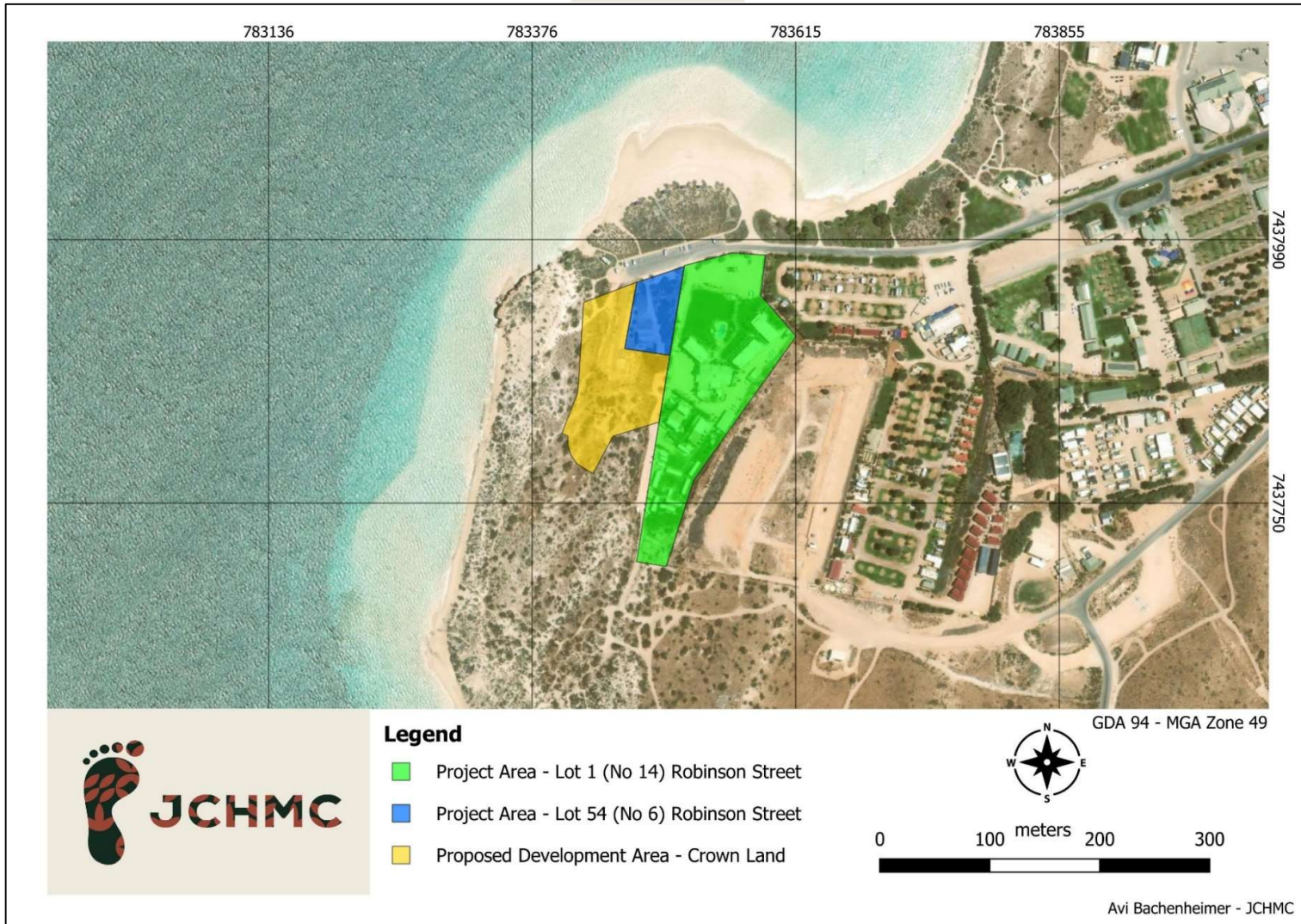
JCHMC was engaged by the Proponent to conduct a DDA of the proposed Project. The DDA aims to determine whether the Project has potential to cause harm to Aboriginal heritage values and sites, and if so, assist the proponent in fulfilling its obligations under the ACHA 2021 by undertaking the legislated authorisation pathway.

#### **1.1 DESCRIPTION OF THE PROJECT ACTIVITIES**

RAC proposes to redevelop and expand its existing Ningaloo Reef resort within lots 54 (no. 6) and lot 1 (no. 14) Robinson Street, Coral Bay, and undertake a potential redevelopment west of these lots in the adjoining Crown Land. The project will consist of demolition of existing structure, major earthworks, installation of new infrastructure, buildings, and landscaping.



Map 1. Project Area Locality.



Map 2. Overview of the Project Area.



## **2. PURPOSE OF THE DDA**

The ACH Management Code outlines the five key purposes of undertaking DDA, namely to determine whether:

- The Project is located in a “Protected Area” (as declared by the Minister of Aboriginal Affairs, upon recommendation of the Aboriginal Cultural Heritage Council (ACH Council));
- ACH is present, absent; or it is uncertain if ACH is present within the Project;
- The Project can be carried out in an alternative way, such as using an alternative location or alternative method, to avoid harming ACH, and therefore can be carried out without any authorisation;
- Authorisation is required for the Project, which may require an ACH Permit; or an ACH Management Plan. In addition, it should be clearly defined what type of engagement, with which relevant Aboriginal parties is required.

## **3. PROTECTED AREAS**

Part 4 of the ACHA 2021 provides special protection to an area of land with ACH of outstanding significance, by declaring that area as a ‘protected area’. ACH that is within a protected area is afforded the highest level of protection under the Act. A protected area declaration means that an ACH Permit or ACH management plan cannot be applied for over the protected area, thus protecting it from activities that may cause harm to the ACH.

## **4. ACTIVITY CATEGORY**

A DDA is required to follow the authorisation pathway corresponding to the relevant Activity Tier. Phase 3 Guidelines of the ACHA 2021 specify that following activities would be classified as Tier 3, consisting of moderate to high level of ground disturbance:

- Removal of material greater than 20 kilograms;
- Ground excavation with the surface area greater than 0.25 metres square;
- Ground excavation with a depth greater than 1 metre;
- Clearing greater than 100 square metres;
- Moderate to high level ground disturbance with non-handheld mechanical equipment.

Based on the above the Project is assessed as a Tier 3 Activity.





## 5. DESKTOP ASSESMENT

As part of the DDA, JCHMC undertook a desktop review of the Project area and its adjacent localities. The aim of the desktop review was to address the following components of the Project:

- Identify any landscapes or other areas with ethnographic and archaeological potential or interest;
- Analyse the DPLH Aboriginal Heritage Inquiry System (**AHIS**) and review available Aboriginal Heritage Survey Reports held by the DPLH and JCHMC private library; and
- Propose a specific authorisation pathway for the Project with reference to the components identified through the review.

### 5.1 PREVIOUSLY RECORDED ABORIGINAL CULTURAL HERITAGE

A search of the DPLH AHIS and JCHMC private library identified nine Registered sites relevant to the Project area (Map 3). A summary of the information gathered is presented below.

#### 5.1.1 Registered Site ID 6616 'Coral Bay Access 02'

This is a shell midden and artefact scatter located atop a sandy rise approximately 400 meters to the northeast of the Project area near the Coral Bay Hill.

#### 5.1.2 Registered Site ID 159 'Coral Bay 02'

This place comprises an artefact scatter and a shell midden, located 1.5 kilometers to the east of the Project. The site extends over an area 180m x 200m, adjacent to the Mauds Landing – Warroora Road.

#### 5.1.3 Registered Site ID 6792 'Mulanda Bluff Midden'

Dating back to 7,140 BP the site consists of an artefact scatter and shell midden, the 5<sup>th</sup> oldest recorded of its kind in Western Australia. Mulanda This site is located northeast of the Project area and is situated on a sandy rise to the east of Coral Bay Airport.

#### 5.1.4 Registered Site ID 6827 'Coral Bay Skeleton'

This site is recorded as a burial place, containing skeletal remains of an Aboriginal individual, located 3 kilometers to the north of the Project area at Mauds Landing.



#### **5.1.5 Registered Site ID 7211 'Maud Landing'**

This site comprises a hunting place, water source, artefact scatter and midden scatter, located 3 kilometers to the north of the Project area near the end of Mauds Landing – Warroora Rd overlooking the Mauds Landing Beach.

#### **5.1.6 Registered Site ID 6769 'Mulanda 1'**

This place comprises an artefact scatter and shell midden located 3 kilometers to the north of the Project, near the end of Mauds Landing – Warroora Rd, over an area 300m x 300m.

#### **5.1.7 Registered Site ID 6723 'Mulanda 2'**

The site is recorded as a shell midden located 3.5 kilometers to the northeast of the Project in Lyndon.

#### **5.1.8 Registered Site ID 6724 'Mulanda 3'**

This place comprises an artefact scatter and shell midden located 3.5 kilometers to the northeast of the Project, on a sandy rise overlooking the Mauds Landing Beach.

#### **5.1.9 Registered Site ID 6725 'Mulanda 4'**

This is an artefact scatter and shell midden located 3.8km to the northeast of the Project, on the Mauds Landing Beach.

The following places have been listed as 'Other Cultural Heritage Places' on the DPLH AHIS.

#### **5.1.10 Stored Data ID 158 'Coral Bay 01'**

This is a shell midden and artefact scatter located atop a sandy rise approximately 1.4 kilometers to the east of the Project.

#### **5.1.11 Stored Data ID 6615 'Coral Bay Access 01'**

This place comprises an artefact scatter and shell midden located 1.6 kilometers to the east of the Project area.

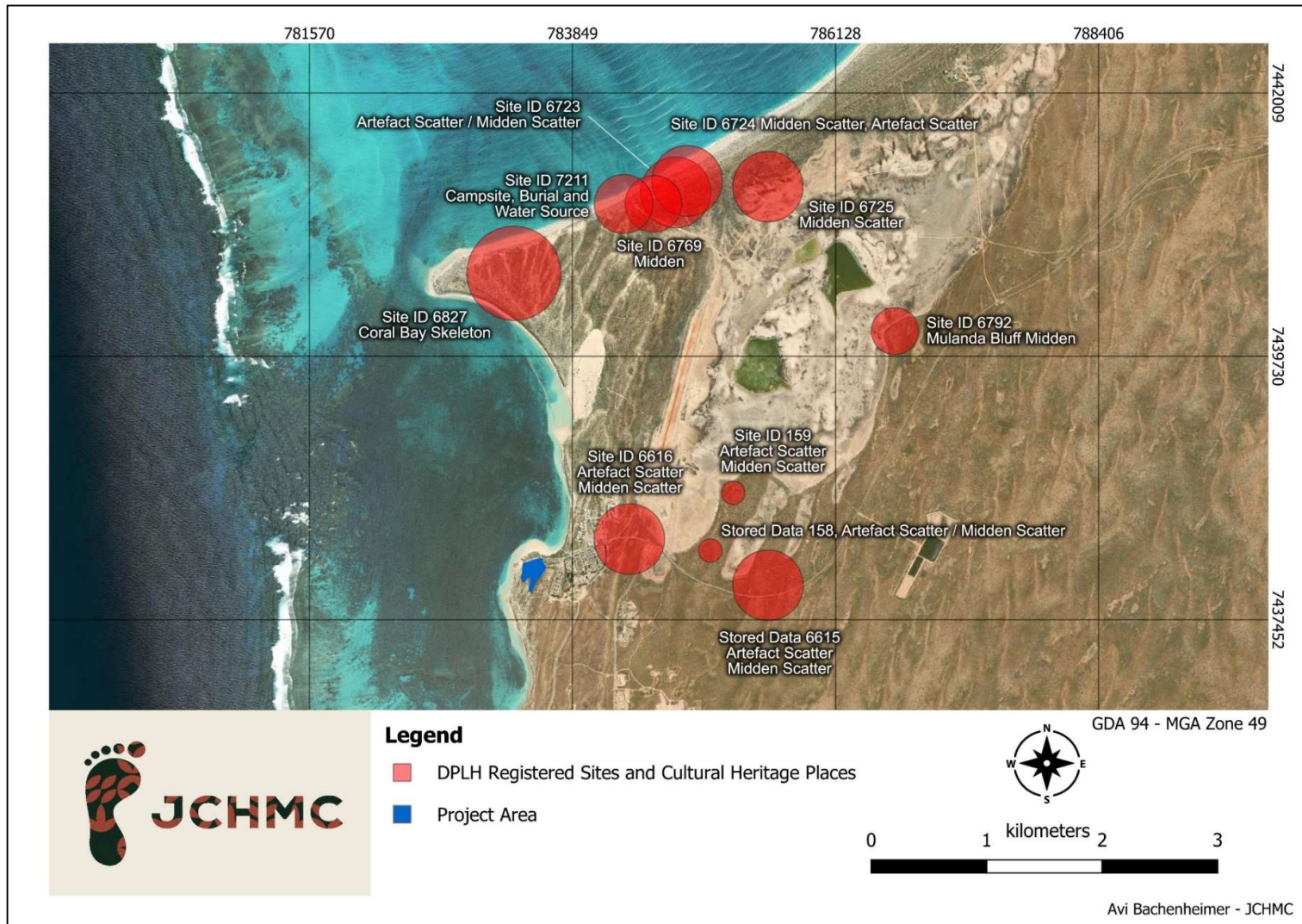
## **5.2 PREVIOUS HERITAGE SURVEY REPORTS**

The research did not identify any previous heritage surveys conducted in the proposed activity area.



### **5.3 DESKTOP CONCLUSIONS**

Several sites have been identified in the vicinity of the Project, comprising mainly artefacts scatters and shell middens situated atop sand dunes/hills. Given the lack of survey reports it is unclear who has reported on these sites and during which survey event. It is however telling of the potential for hitherto unknown sites to be located on the surface of, or within the subsurface of the Project, especially in yet to be developed areas. Given that no ethnographic or archaeological surveys have been undertaken at the Project it is concluded that based on the desktop assessment it is unclear whether ACH will be harmed as a result of the proposed Project.



Map 3. DPLH registered sites and other cultural heritage places relevant to the Project area.



## **6. RISK OF HARM BEING CAUSED TO ABORIGINAL CULTURAL HERITAGE BY THE PROPOSED ACTIVITY**

Section 294 of the *Aboriginal Cultural Heritage Act 2021* (Act) specifies that the proponent must determine whether the proposed activity falls under the scope of a Tier 3 assessment as defined in the Act and is required to carry out a due diligence assessment (DDA) prior to commencement of activities. Any activity that may cause harm to Aboriginal Cultural Heritage (ACH) will require approval and an authorised ACH Management Plan (Plan).

The proponent must

- conduct a search on the Aboriginal Cultural Heritage directory (Directory) for any previously identified ACH or previous ACH reports;
- assess whether a qualified heritage professional has carried out previous archaeological and/or anthropological surveys in collaboration with the appropriate native title holders;
- comply with the guidelines specified in the previous survey, which must include a robust methodology, evidence of and conclusive statements as to the presence or absence of any ACH.

The proponent must consult with the local Aboriginal Cultural Heritage service, Native Title parties or other Aboriginal knowledge holders regarding the proposed work. Information on Traditional Owner groups can be found in the Directory.

If the proponent has reviewed the Directory and can ensure that work activities will NOT result in harm of ACH, the activity may proceed without a Plan.

If the work activity is located within a known ACH and may result in harm to the ACH, then the activity must be altered to avoid harm or will require an approved or authorised Plan.

If ACH presence is unknown and the work activity would potentially harm any ACH, the proponent will be required to undertake investigations to assess whether ACH is present in the proposed work area.

If the investigations do not identify ACH, the activity may proceed without an approved or authorised plan.

Should ACH be identified during work activities, work will need to cease immediately and a DDA must be carried out. If the investigations identify ACH, the proposed activities must be altered to avoid harm to ACH or an application for a Plan must be submitted.



Based on the DDA above, there is no currently known ACH within the Project. Given the Tier 3 Activities planned and in view that no surveys or Aboriginal consultation have yet been undertaken, it is uncertain if ACH is present. To address this and provide further guidance, the relevant Aboriginal stakeholders must be consulted and through a Heritage Protection Agreement, archaeological and ethnographic surveys be carried out as part of the next step of the DDA.

## **7. RELEVANT ABORIGINAL STAKEHOLDER NOTIFICATION AND CONSULTATION**

The Project has historically been subject to several Aboriginal Native Title claims by the Thalanyji, Kulyamba, Woodgoomungooh, Yinggarda, Malgana, Nanda, and Baiyungu people.

In December 2019, the Federal Court of Australia granted consent to the Yinggarda, Baiyungu, and Thalanyji people, acknowledging their Native Title Determination claim over the northern Gascoyne region, which encompasses parts of Exmouth, Ningaloo, Coral Bay, and Minilya. These three claimant groups are represented by the Nganhurra Thanardi Garrbu Aboriginal Corporation (**NTGAC**), currently represented by Yamatji Marlpa Aboriginal Corporation.

To ensure the proposed activities on lots 54 and 1 align with the requirement of the ACHA 2021, archaeological and ethnographic investigations should be carried out in consultation with the representatives of NTGAC.

## **8. DISCUSSION**

JCHMC conducted the first steps of the DDA for the Project including an assessment of the Activity Tier and a Desktop Review of previously recorded sites in the region.

According to the ACHA 2021, RAC is required to follow an authorisation pathway corresponding to the relevant activity Tier of the project, which is classified as Tier 3. Tier 3 activities comprise various types of risks that may harm ACH. These include accidental destruction of ethnographic and archaeological ACH, concealment of sites, excavation, damage, alteration, removal, possession or custody of ACH objects, damage to relationship with stakeholders, time delays, the risk of prosecution and major cost overruns.

As the Project falls within the Native Title lands managed by NTGAC, this Corporation must be consulted regarding the proposed Project including its active participation in the following heritage investigations and if harm is envisaged for ACH, a suitable Cultural Heritage Management Plan.