

EPBC Referral Report No. 3

Boskalis Cambridge Gulf Marine Sand Proposal Western Australia

TRADITIONAL OWNER MATTERS



Prepared for Boskalis Australia Pty Ltd by EcoStrategic Consultants

In support of Project Referral under Part 7 of Commonwealth *Environment Protection & Biodiversity Conservation Act*

(a State-aligned version of this report was also submitted in referral under the WA EP Act)

OCTOBER 2024



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FURTHER INFORMATION

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REFERRAL REPORTS

This report is part of a larger set of documents submitted as part of Boskalis Australia's referral under Part 7 of the Commonwealth *Environment Protection & Biodiversity Conservation Act* (EPNC Act), as listed in the table below.

A similar set of reports was also submitted as part of referral of the same proposal under section 38 of the Western Australia (WA) *Environmental Protection Act* (EP Act), with some differences to specifically address State requirements.

Doc No.	Electronic File Names (PDFs) (except Doc No.s 9 & 10 which are Excel files). As required, these file names are how the reports are referenced in the online referral submitted via the EPBC Act Business Portal https://epbcbusinessportal.environment.gov.au
0	List of EPBC Referral Reports - Boskalis Cambridge Gulf
1	EPBC <u>Referral Report No. 1</u> - Boskalis Cambridge Gulf - <i>Description of Proposed Action & Regulatory Framework</i>
2	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <i>Setting & Existing Environment</i> Includes in same document: • Annex 3 - <i>Drop Camera Video Extracts</i> • Annex 4 - <i>Dry Season Sample Point Specs</i> • Annex 5 - <i>Wet Season Sample Point Specs</i> • Annex 6 - <i>Benthic Taxa per Sample Point - Dry Season Maps</i> • Annex 7 - <i>Benthic Taxa per Sample Point - Wet Season Maps</i> • Annex 8 - <i>Benthic Taxa per Sample Point - Dry Season Graphs</i> • Annex 9 - <i>Benthic Taxa per Sample Point - Wet Season Graphs</i> • Annex 11 - <i>Sediment Contamination Assessment</i> • Annexes 1, 2, 10, 12, 13 and 14 are submitted as separate documents as listed below.
3	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 1</u> - <i>Sand Assessment</i>
4	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 2</u> - <i>MScience BCH Methods</i>
5	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 10</u> - <i>Aerial Drone Lidar Report</i>
6	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 12</u> - <i>Cape Domett Turtle Data Report</i>
7	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 13</u> - <i>Marine eDNA Report</i>
8	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 14</u> - <i>Marine Mega-fauna Surveys Report</i> Includes in same document: • Appendix 1 - <i>MMF Sightings Master Data Tables</i> • Appendix 2 - <i>MMF Images</i> • Appendix 3 - <i>MMF Sighting Locations</i> • Appendices 4 and 5 are submitted as separate Excel files as listed below.
9	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 14</u> - <i>Appendix 4 - Species Obs Data - Dry Season</i> (Excel)
10	EPBC <u>Referral Report No. 2</u> - Boskalis Cambridge Gulf - <u>Annex 14</u> - <i>Appendix 5 - Species Obs Data - Wet Season</i> (Excel)

Doc No.	Electronic File Names (PDFs) (except Doc No.s 9 & 10 which are Excel files). As required, these file names are how the reports are referenced in the online referral submitted via the EPBC Act Business Portal https://epbcbusinessportal.environment.gov.au
11	[THIS REPORT] EPBC Referral Report No. 3 - Boskalis Cambridge Gulf - <i>Traditional Owner Matters</i> Includes in same document: • Annex 1 - <i>BAC Native Title Determination Map</i> • Annex 2 - <i>MG Native Title Determination Map</i> • Annex 3 - <i>Letter from BAC</i> • Annex 4 - <i>Letter from MG</i>
12	EPBC Referral Report No. 4 - Boskalis Cambridge Gulf - <i>Impact Assessments</i> Includes in same document: • Annex 1 - <i>Main Datasets Used to Inform Impact Assessments</i> • Annex 2 - <i>Shipping & Oil Spill Risk Assessment</i> • Annex 3 - <i>Plume Mitigation Capability Statement</i> • Annex 4 - <i>Marine Mega-fauna Capability Statement</i>
13	EPBC Referral Report No. 5 - Boskalis Cambridge Gulf - <i>Metocean & Sed Dynamics Initial Report</i> • Includes in same document Annex 1 - <i>Supplementary Technical Note</i>. • Annex 2 is submitted as a separate document as listed below.
14	EPBC Referral Report No. 5 - Boskalis Cambridge Gulf - Annex 2 - <i>Factual Data Report</i> (NOTE: Superseded by <i>Updated Factual Data Report</i> - see Doc No. 19, Referral Report No. 8 - Annex B below).
15	EPBC Referral Report No. 6 - Boskalis Cambridge Gulf - <i>Consultation</i> • Includes in same document Annex 1 - <i>List of Meeting Minutes</i>
16	EPBC Referral Report No. 7 - Boskalis Cambridge Gulf - <i>Commonwealth Matters</i> • Includes in same document Annex 1 - <i>PMST Report for POA & 10 Km Buffer</i>
17	EPBC Referral Report No. 8 - Boskalis Cambridge Gulf - <i>Metocean & Sed Dynamics Full Modelling Report</i> • Appendices and Annexes are submitted as a separate document each, as listed below.
18	EPBC Referral Report No. 8 - Boskalis Cambridge Gulf - <i>Appendices</i> Includes: • Appendix A - <i>Model Calibration and Validation Plots</i> • Appendix B - <i>Hydrodynamic and Wave Impact Plots</i> • Appendix C - <i>Sediment Transport Impact Plots</i> • Appendix D - <i>Sediment Plume Modelling Results</i>
19	EPBC Referral Report No. 8 - Boskalis Cambridge Gulf - <i>Annexes</i> Includes: • Annex A - <i>Independent Expert Review</i> • Annex B - <i>Updated Factual Data Report</i>

ACRONYMS

ACH	Aboriginal Cultural Heritage.
ACHIS	Aboriginal Cultural Heritage Inquiry System
BAC	Balanggarra Aboriginal Corporation
BAK	Boskalis Australia
CG	Cambridge Gulf
CGL	Cambridge Gulf Limited
DBCA	WA Department of Biodiversity, Conservation & Attractions
DCCEEW	Commonwealth Department of Climate Change, Energy, the Environment & Water
DMIRS	WA Department of Mines, Industry Regulation & Safety
DPLH	WA Department of Planning, Lands & Heritage
EPA	WA Environmental Protection Authority
EP Act	WA Environmental Protection Act
EPBC Act	Commonwealth <i>Environment Protection & Biodiversity Conservation Act</i>
IAG	Indigenous Advisory Group (proposed for the project)
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
MG Corporation	Yawoorroong Miriwung Gajerrong Yirrgab Noong Dawang Aboriginal Corporation
MoU	Memorandum of Understanding
OFA	Ord Final Agreement
POA	Proposed Operational Area
RNTBC	Registered Native Title Body Corporate
TO	Traditional Owner
WA	Western Australia (State of)

PROJECT LOCATION

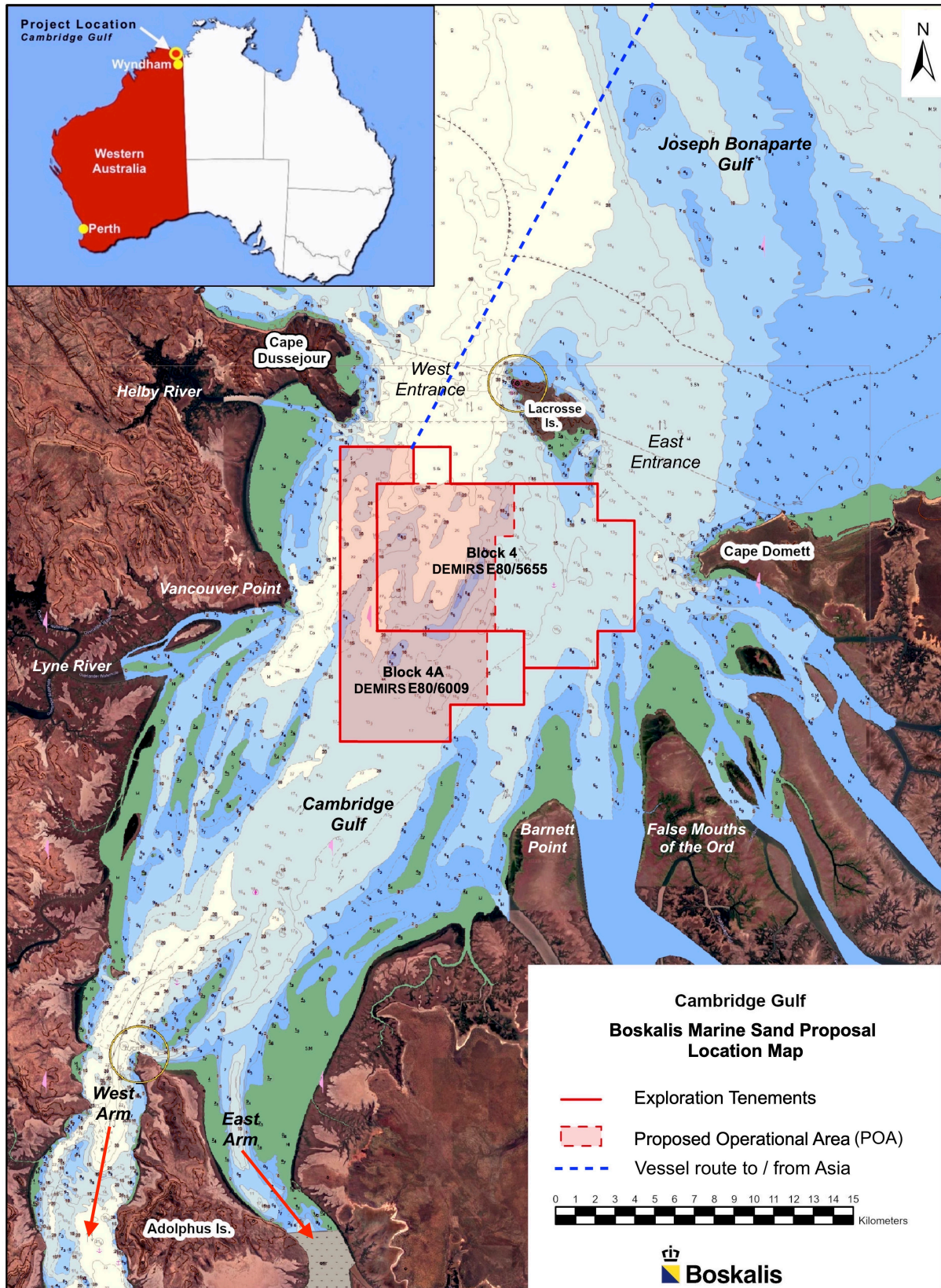


FIGURE 1: Location of the proposed action in Cambridge Gulf near Wyndham in the northeast of Western Australia.

EXECUTIVE SUMMARY

1. Boskalis Australia Pty Ltd (BKA) is currently assessing the feasibility of developing a marine sand-sourcing operation in Cambridge Gulf (CG) near the Port of Wyndham in the northeast of Western Australia (WA) (Figure 1). Despite the low likelihood of significant environmental impacts, as a responsible company with stringent environmental and social policies, BKA has committed to self-referring the proposal to the WA Environmental Protection Authority (WA EPA) under section 38 of the EP Act, and to the Commonwealth Department of Climate Change, Energy, the Environment & Water (DCCEW) under Part 7 of the EPBC Act, for their determination of what further environmental assessments might be required, if any.
2. As part of this process, BKA recognises the two indigenous Traditional Owner (TO) groups in the CG area – the Balanggarra people, as represented by the Balanggarra Aboriginal Corporation (BAC), and the Miriuwung-Gajerrong (MG) people, as represented by the MG Corporation. BKA is seeking to ensure that the proposed action not cause negative impacts on their interests and values, including but not limited to Native Title and Aboriginal cultural heritage.
3. BKA has engaged closely with the two TO groups in a variety of ways since October 2022. At the time of this report (October 2024) BKA is well advanced in developing mutually-binding Memorandums of Understanding (MoUs) including benefits packages with both groups. Both TO groups through their Chairs have expressed appreciation for the open, transparent and very engaging approach that BKA has followed.
4. Overall, the two TO groups through their Chairs have stated that they support the proposed action so long as they are fully and closely consulted and it does not impact negatively on their interests, including Native Title and Aboriginal cultural heritage. Both groups have expressed significant interest in being involved and gaining benefits from the proposed action should it be approved and go ahead, and are working with BKA to develop the mutually-binding MoUs. Letters of support from both groups are attached in Annexes 4 and 5.
5. The process to date (October 2024) is not seen by BKA as the end of engaging and working with the two TO groups – this process is ongoing and will continue throughout the life of the proposed project, should it be approved and proceed.
6. This report assesses potential impacts of the proposed action on indigenous interests and values as follows:
 - a) Native Title: The proposed operational area (POA) does not overlap with the determined Native Title areas of either BAC or MG Corporation, and there is no risk of direct or indirect impacts from the proposed action on Native Title areas. Despite the absence of Native Title over the POA, BKA recognizes the western side of CG as being Balanggarra country and the eastern side of CG as being MG country. On this basis BKA is seeking to engage both groups in the project equally, including offering equal benefits packages to both groups.
 - b) Indigenous conservation areas: The eastern boundary of the Balanggarra Indigenous Protected Area (IPA) to the west of CG is set back from the west coast of CG by around 10 km. The closest distance between the Mijing Conservation Park to the east of CG and the POA is over 20 km. The proposed action will therefore not cause any direct or indirect impacts on either conservation area, or on any coastal or land areas around CG. Should the proposed action be approved and go ahead, BKA is offering to support the TO groups in undertaking research and monitoring of marine biodiversity and key marine fauna species, which will enhance protection and management of marine areas.
 - c) Land-based Aboriginal cultural heritage: There are two Registered Sites in the CG area; Site 12737 (Burrungu) centred on Lacrosse Island and Site 12789 (Balu-Gunanjaar) centred on Cape Domett. The proposal does not involve the construction or operation of any land-based facilities or infrastructure, and land-based sites will not be disturbed or impacted in any way, either directly or indirectly. Despite the fact that the proposed action will not impact on land-based sites, should the proposed action be approved and go ahead, BKA is offering to assist the TO groups to enhance protection of these sites, by supporting the development and implementation of a joint Aboriginal Cultural Heritage Management Plan.
 - d) Potential underwater Aboriginal cultural heritage: BKA believes that it may have undertaken the most intensive and comprehensive survey for underwater Aboriginal cultural heritage ever undertaken anywhere in Australia to date. Based on the lack of findings of artefacts or other evidence in the marine areas of CG, it is assessed that the proposed action is highly unlikely to cause impacts on underwater Aboriginal cultural heritage.
 - e) Socioeconomics: Should the proposed action be approved and go ahead it will provide substantial positive economic, social and cultural benefits to both TO groups. BKA seeks to actively involve the TOs in the project, through business opportunities, training and employment, voluntary payment of royalties and community development, as outlined in section 8 and provided for in the MoUs currently being developed with each group.
7. Overall, the proposed action does not present a risk of negative impacts on indigenous interests and values, either directly or indirectly, and will directly provide substantial positive economic, social and cultural benefits.

1. BACKGROUND & PURPOSE OF THIS REPORT

1. Boskalis Australia Pty Ltd (BKA) is currently assessing the feasibility of developing a marine sand-sourcing operation in Cambridge Gulf (CG) near the Port of Wyndham in the northeast of Western Australia (WA) (Figure 1). The sand in CG is derived from natural terrestrial sources in the catchment, supplied via river inputs. The sand would be exported to Asian markets for use in construction projects. A more detailed description of the proposed action is presented in [EPBC Referral Report No. 1 - Boskalis Cambridge Gulf - Description of Proposed Action & Regulatory Framework](#), and more detailed descriptions of the location, context and the environment of the area are presented in [EPBC Referral Report No. 2 - Boskalis Cambridge Gulf - Setting & Existing Environment](#).
2. The proposed action is subject to the WA *Mining Act*, including the comprehensive environmental assessment and management framework under that Act. BKA currently holds two sand exploration tenements in CG issued by the WA Department of Energy, Mines, Industry Regulation & Safety (DEMIRS) under the *Mining Act*, with tenement numbers E80/5655 and E80/6009. These are referred to by BKA as Block 4 and 4A respectively, as shown on Figure 1.
3. To support its feasibility assessment BKA has undertaken a wide range of environmental, engineering, economic and other studies since 2018, as well as a comprehensive stakeholder engagement and consultation process. These studies find that the proposed action is feasible and viable and unlikely to cause significant environmental impacts, as defined under the WA *Environmental Protection Act* (EP Act) and the Commonwealth *Environmental Protection & Biodiversity Conservation Act* (EPBC Act). The findings of these studies are presented in the set of reports listed under 'Referral Reports' above, including this report.
4. Despite the low likelihood of significant environmental impacts, as a responsible company with stringent environmental and social policies, BKA has self-referred the proposal to the WA Environmental Protection Authority (EPA) under section 38 of the EP Act, and to the Commonwealth under Part 7 of the EPBC Act, for their determination of what further environmental assessments might be required, if any. If it is determined that assessment is required under both Acts, BKA will seek a joint process under the WA environmental assessment system, which is accredited by the Commonwealth.
5. Subject to the outcomes of the State and Commonwealth referral processes, BKA plans to apply to DEMIRS to convert part of the two Exploration Tenements to a single Mining Tenement, shown as the proposed operation area (POA) on Figure 1. The eastern part of Block 4 is excluded from the POA, as exploration surveys did not find any sand resource in that area.
6. As part of this process, BKA recognises the two indigenous Traditional Owner (TO) groups in the CG area – the various clans of the Balanggarra people and the various clans of the Miriung-Gajerrong (MG) people. BKA is seeking to ensure that the proposal does not cause negative impacts on their interests and values, including but not limited to Native Title and Aboriginal cultural heritage (ACH). As the project developer, BKA is also bound to comply with the relevant regulatory requirements of the Commonwealth *Native Title Act*, the Commonwealth *Aboriginal & Torres Strait Islander Heritage Protection Act* and the WA *Aboriginal Heritage Act*.
7. It is important to BKA that the views, perspectives and positions of the TOs are identified, fully understood and taken into account. BKA also seeks to actively involve the TOs in the proposed action, through business opportunities, training and employment, voluntary payment of royalties and community development.
8. BKA has engaged closely with the two TO groups in a variety of ways since October 2022, and at the time of this report (October 2024) is well advanced in developing binding Memorandums of Understanding (MoUs) with both groups, including benefits packages for both groups.
9. The purpose of this report is to support BKA's self-referral under the EPBC Act, by identifying and describing:
 - the TO groups themselves,
 - Native Title, ACH and other TO values and interests in the CG area,
 - how BKA has engaged with the TO groups to date and proposes to continue to engage moving forward,
 - the proposed involvement of TOs in the proposed action should it be approved and go ahead, including benefits; and
 - the potential impacts of the proposed action on TO values and interests, including but not limited to Native Title and ACH.
10. A version of this report will also be submitted to the WA EPA in support of BKA's self-referral under the WA EP Act.
11. This report is not seen by BKA as the end of the process of engaging and working with the two TO groups in the CG area – this process is ongoing and will continue throughout the life of the proposed action, should it be approved and proceed.

2. TRADITIONAL OWNERS OF THE CAMBRIDGE GULF AREA

1. The coastal and inland areas of the Cambridge Gulf (CG) area have been inhabited by indigenous First Nations peoples – Traditional Owners (TOs) – for tens of thousands of years. Today there are two distinct TO groups in the area:
 - a) the various clans of the Balanggarra people, who's country extends from Wyndham and CG to the west; and
 - b) the various clans of the Miriuwung-Gajerrong (MG) people, who's country extends from CG to the east and into the Northern Territory.
2. The areas claimed by each group are shown on Figures 2 and 4 respectively, noting that these claimed areas do not equate exactly to the legally defined Native Title determinations for each group as described in section 3 below.

2.1 The Balanggarra People

1. Balanggarra is not a single group of people but comprises several clans. The word means 'one mob together for country' (gra = country). When claiming Native Title over their lands the various clans decided to work together and combine into one united claim, covering their respective gra in the north-east Kimberley region, and their elders agreed to use the unifying name Balanggarra.
2. Their combined gra covers about 2.6 million hectares (26,000 km²), including Wyndham and extending from CG, including Adolphus Island, Cape Dussejour and the entire west coast of CG, westward for over 180 km to Napier Broome Bay (Figure 2) (BAC 2011).
1. It is difficult to find reliable data on the total population that comprises the Balanggarra people, although membership is cited as 400 people at <https://www.icin.org.au/39>. Most Balanggarra people live in the following communities with the listed populations at the last census in 2021 (Figure 2) (<https://www.abs.gov.au/census/>).
 - a) Kalumburu and nearby coastal settlements (Pago etc) (population 343 indigenous),
 - b) Oombulgurri (population 27 indigenous),
 - c) Nulla Nulla (no population data found),
 - d) Wyndham (population 533 indigenous); and
 - e) Kununurra (population 1,306 indigenous, but mostly MG people).
2. The total indigenous population of the East Kimberley region comprising both Balanggarra and MG areas was 2,515 in the last census in 2021 (<https://www.abs.gov.au/census/>). Based on these figures the total population that comprises the Balanggarra people is not likely to be more than 1,000. It should also be noted that the community of circa 300 people at Kalumburu is located over 200 km north west of Wyndham and is starting to pursue a separate path from Balanggarra. The coast around CG where the project is proposed is not inhabited at all.
3. The Balanggarra people have established the Balanggarra Aboriginal Corporation (BAC) as a Registered Native Title Body Corporate (RNTBC) under the Commonwealth *Native Title Act* 1993, based in Kununurra, 70 km southeast of Wyndham, and with a branch office in Wyndham (www.balanggarra.com.au). The Balanggarra people won Native Title over most of their country in 2013, as described further in section 3 below.
4. The Balanggarra describe themselves as both 'land' and 'saltwater' people, with strong and enduring connections to coastal and marine environments and traditional sustainable use of coastal and marine resources. They distinguish two main marine zones within their area - 'blue water country' along the coast to the west of CG, which has clearer waters, and 'brown water country' around Wyndham and in CG itself, which is naturally highly turbid (Figure 4) (BAC 2011).
5. In 2011 the Balanggarra people, through BAC, adopted the *Balanggarra Healthy Country Plan 2012-2022* (BHCP), which sets out how they want to look after their country, so that their country stays healthy and the values are passed on to future generations (Figure 3) (BAC 2011). While dated to 2022, it is understood that the vision and targets in the plan still apply. The BHCP sets out the Balanggarra Vision with the following key elements:
 - a) Balanggarra will manage their own country by their own rules and others will engage properly with the Balanggarra Traditional Owners.
 - b) They will seek to keep their culture, language and law alive, protected and recognised.
 - c) They want to look after the native animals and plants on land and in the sea of Balanggarra Country, using both traditional knowledge and western scientific research.

- d) They want to speak for their country, decide for their country and control access to their country.
 - e) Balanggarra Traditional Owners will give permission for and decide on access to their country.
 - f) They want to bring their young people back to country to give them a future on country and to teach and educate future generations about Balanggarra Law and Culture.
 - g) They want to give their young people education, training and employment for business opportunities on country.
6. Importantly in terms of relevance to a marine project like this proposed action, the BHCP identifies saltwater fish and migratory saltwater animals (turtle, dugong, whales, and dolphins) as being two of nine most important values that they seek to protect, along with their traditional law and culture, their gra (land and sea country), their cultural sites, traditional fire practices (right way of fire), native land animals, traditional food and medicinal plants and freshwater places.
 7. The Balanggarra Indigenous Protected Area (IPA) was declared in 2013 and covers 10,000 sq km of country to the west of CG. The Balanggarra Indigenous Rangers actively manage the IPA as well as the adjacent State Marine Park out to 3 nm, in partnership with the WA Department of Biodiversity Conservation & Attractions (DBCA), as described further in section 5 below.
 8. Balanggarra people make up a significant proportion of the work force in Wyndham, including providing over 75% of the Wyndham-based staff of Cambridge Gulf Limited (CGL), which operates the Port of Wyndham (www.cgltd.com.au). Balanggarra people also own and operate the Wyndham-based company Dadaru, which provides a range of services including civil and marine contracting, surveying, stevedoring and shore to ship transfer services (www.dadaru.com.au). Balanggarra is also becoming active in eco-tourism in the region – including the Home Valley Station 40 km south-west of Wyndham (<https://home-valley.com.au/>).



FIGURE 2: Balanggarra area and the main communities where Balanggarra people live. Kalumburu with a population of circa 300 is located over 200 km north west of Wyndham and is starting to pursue a separate path from Balanggarra. Oombulgurri had a population of 27 in the last census in 2021. No data could be found for Nulla Nulla. Most Balanggarra people live in Wyndham and Kununurra. The coast of CG itself is uninhabited (map source: National Native Title Tribunal).



FIGURE 3: The cover of the Balanggarra Healthy Country Plan 2012-2022. The plan can be downloaded at the link below. While dated to 2022, it is understood that the plan's vision and targets still apply.

https://maps.northwestatlas.org/files/montara/links_to_plans/WA/7.%20IPA%2060%20balanggarra-healthy-country-plan-2012-2022.pdf

2.2 The Miriung-Gajerrong People

1. Similar to Balanggarra, Miriung-Gajerrong (MG) is not a single group of people but is a unifying name for the people of 16 separate groups that are each connected to distinct areas of country (dawangs) within the overall MG area (Figure 4). The 16 dawangs are listed on the MG web site (www.mgcorp.com.au).
2. The MG country extends from Cambridge Gulf (CG), including Lacrosse Island, Cape Domett and the entire east coast of the main body of CG, including the Ord River floodplain, the area around and south of Kununurra and around Lake Argyle, and eastwards into the Northern Territory (Figure 4). The Gajerrong grouping of dawangs covers Lacrosse Island in CG, Cape Domett and the east coast of CG. The Miriung grouping of dawangs covers more inland areas including south around Lake Argyle. The Gajerrong grouping is therefore of most relevance to the BKA proposal within CG.
3. It is difficult to find reliable data on the total population that comprises the MG people. Most live in Kununurra, which had an indigenous population of 1,306 at the last census in 2021 (<https://www.abs.gov.au/census/>). These are mostly MG people but also include Balanggarra and others. There are also numerous small MG communities around Kununurra, mostly to the south east as shown on Figure 5. The closest MG community to CG is Ningbingi but still well inland from the coast (>25 km), as shown on Figure 5. These communities usually comprise just a few houses with populations that fluctuate, and are usually not more than a few tens of people. For example, the Gulgagulaneng community fluctuates between 10 and 60 people. Based on these figures the total population that comprises the MG people is likely to be circa 1,500. The east coast around CG where the proposed action is located is not inhabited at all.
4. The MG people have established the Yawoorroong Miriung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation (MG Corporation) as a Registered Native Title Body Corporate (RNTBC) under the Commonwealth *Native Title Act* 1993, based in Kununurra (www.mgcorp.com.au). The MG people won Native Title over much of their land and sea country in 2003, as described further in section 3 below.
5. The MG people are both land and saltwater people with strong and enduring connections to coastal and marine environments and traditional, sustainable use of coastal and marine resources. The MG Indigenous Rangers actively manage the Mijing Conservation Area to the east of CG as well as other conservation areas, in partnership with DBCA, as described further in section 6 below.
6. The MG people have a strong history of working in partnership with the resources industry through the Argyle diamond mine when it was operational, and through the Ord Final Agreement (OFA), which was set up to transfer benefits to the MG people, in return for MG lands being allocated for agricultural development under the Ord River Irrigation Scheme.

7. The MG Corporation's stated mission is to leverage the economic opportunities that come with holding Native Title, to provide a strong economic and social base for the MG people that also protects and enhances MG culture and heritage.
8. The MG Corporation retains traditional frameworks in its corporate governance structure, including:
 - a) The Garralyel: This is a committee of MG elders recognised as holding traditional knowledge of country and which acts as the traditional decision-making authority for matters related to MG country, culture, law, language and heritage.
 - b) The Dawang Council: This is made up of 16 MG members representing each dawang (traditional land group). Each representative is chosen by the relevant dawang members in accordance with traditional decision-making processes within that group. The Dawang Council approves MG membership, approves the appointment of directors of the MG Board and its related entities, approves the appointment of the CEO, provides advice and guidance to the MG Board and MG entities and determines the priorities and vision of the MG Corporation, approving the MG strategic plan. The Dawang Council may refer matters to the Garralyel for guidance and advice in relation to country, culture, law, language and heritage.
9. The MG Corporation manages three subsidiary trustee companies; the Dawang Land Trust, the Developments Trust and the Community Foundation Trust. Further details can be found on the MG web site (www.mgcorp.com.au).

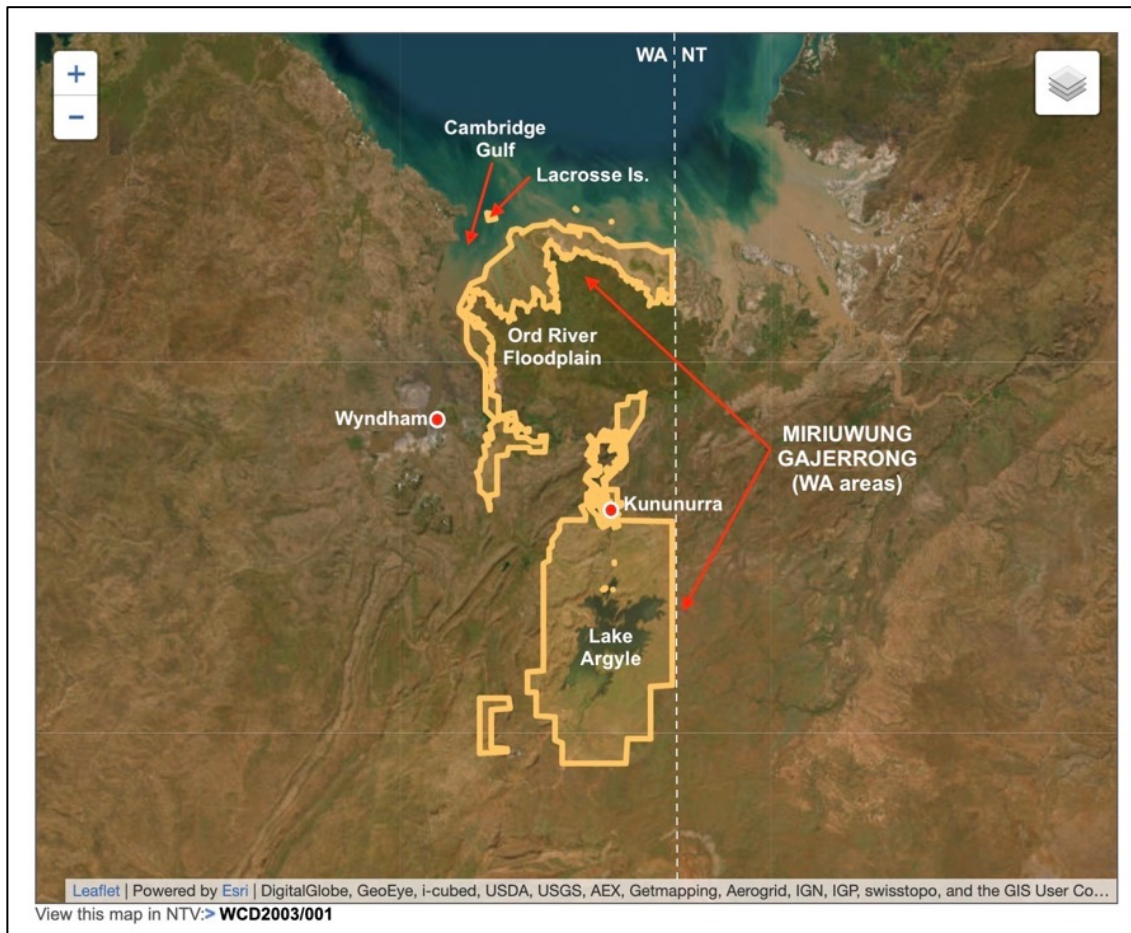


FIGURE 4: Areas claimed by Miriwung-Gajerrong in WA (their country also extends east into the Northern Territory – not shown on this map (source: National Native Title Tribunal).

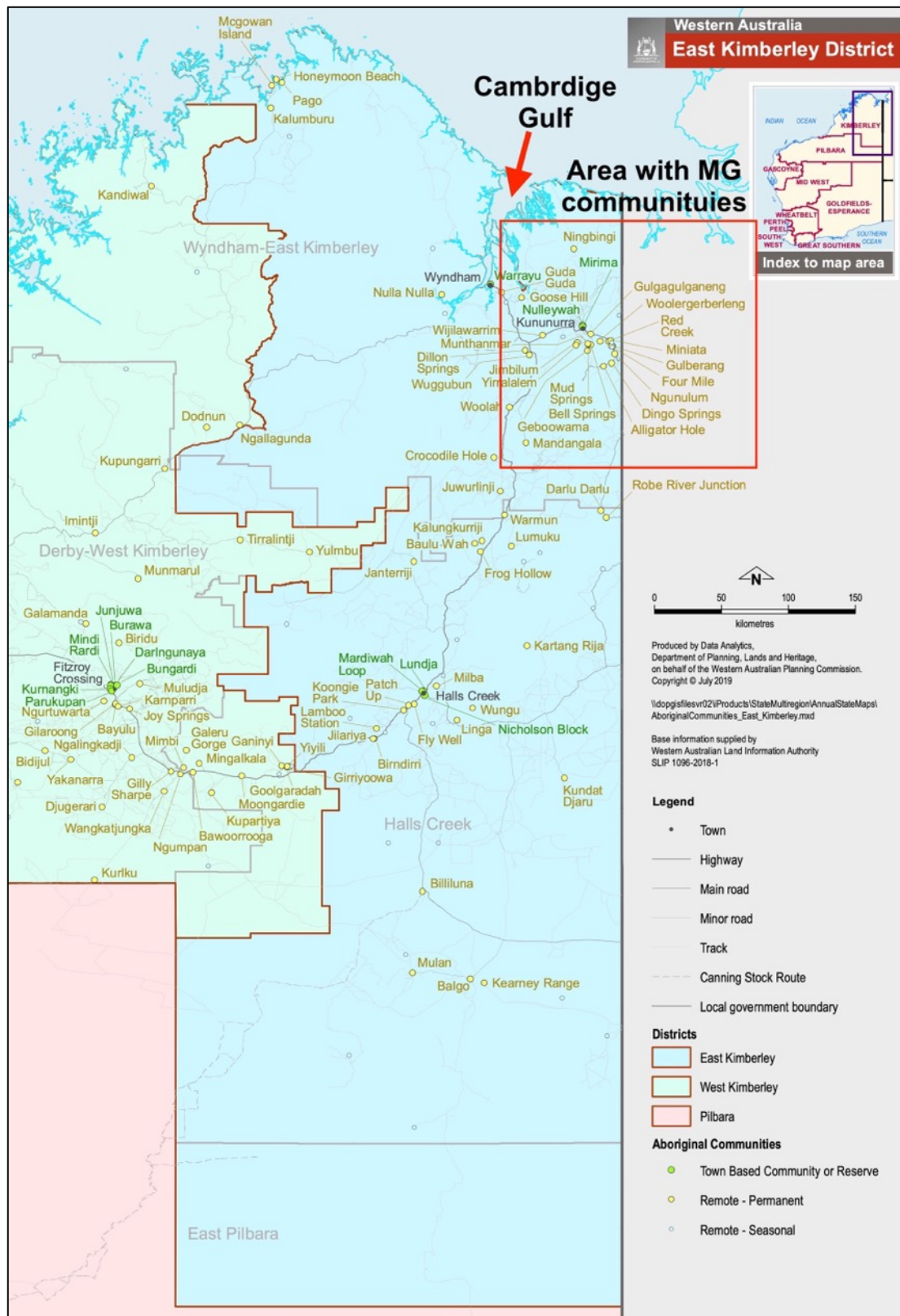


FIGURE 5: Area with Miriung-Gajerrong communities (source: WA DPLH).

3. NATIVE TITLE IN THE CAMBRIDGE GULF AREA

1. As outlined in section 2 the Balanggarra people won Native Title over most of their claimed country in 2013 and the MG people won Native Title over much of their claimed country in 2003. Figure 6 shows jurisdictions and land tenure in the CG area, including the determined Native Title areas of both TO groups around the coasts of CG. As can be seen from Figure 6 there is no Native Title over the main body of CG or over BKA's proposed operational area (POA). Official maps of the Native Title determinations can be found in Annexes 1 and 2, and for full details of the determinations go to www.nntf.gov.au.
2. Figure 6 shows that the Balanggarra Native Title determination includes marine areas outside of CG to the 3 nm State Waters limit, which is within the State North Kimberley Marine Park, and the MG determination includes marine and intertidal areas over the False Mouths of the Ord on the eastern side of CG, part of the Ord River Floodplain Ramsar wetland.
3. Despite the absence of formal Native Title over the main body of CG or the POA, BKA recognizes the western side of CG as being Balanggarra country and the eastern side of CG as being MG country. On this basis BKA is seeking to engage both groups in the proposed action equally, including offering employment and business development opportunities and equal benefits packages to both groups, as outlined in section 8.

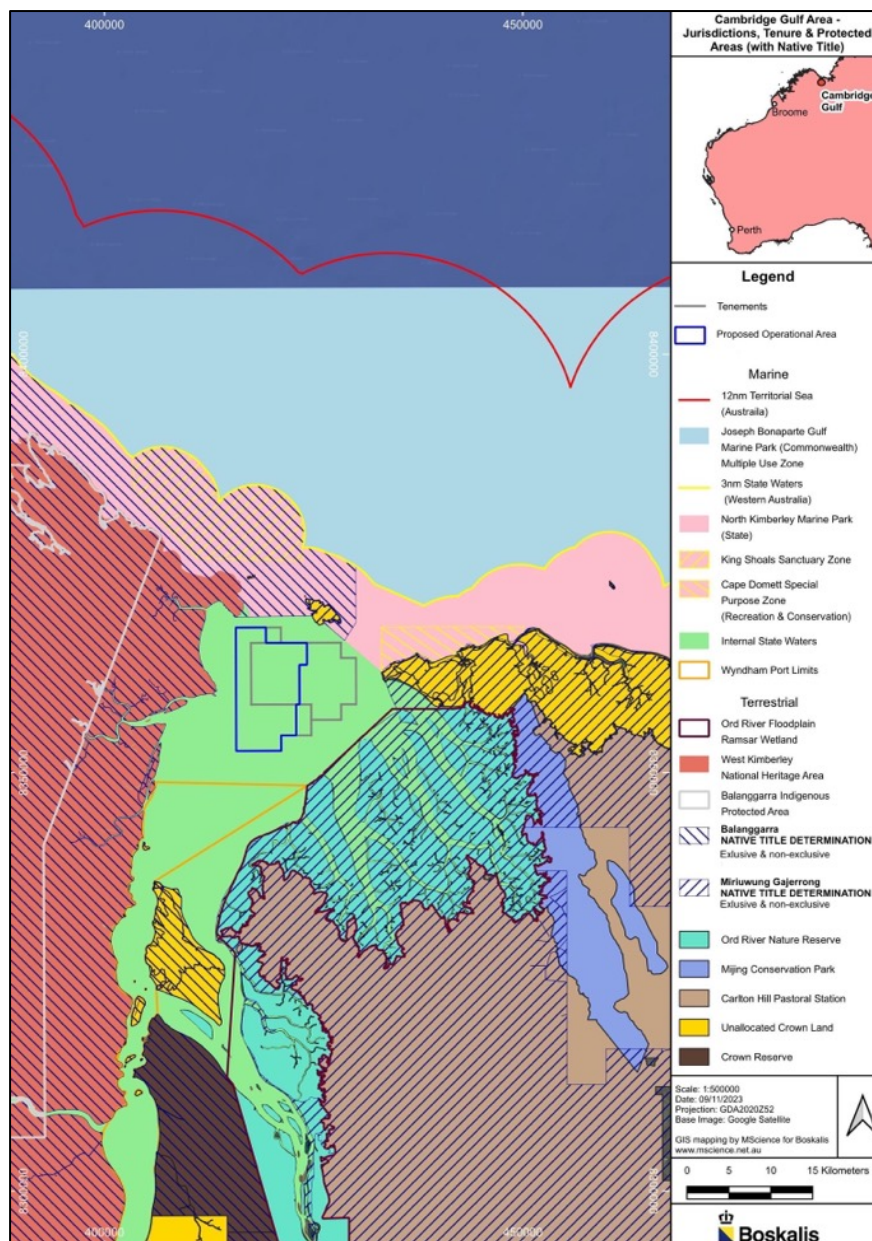


FIGURE 6: Land tenure in the Cambridge Gulf area, including the determined Native Title areas around the coasts.

4. THE BALANGGARRA INDIGENOUS PROTECTED AREA

1. After developing the Balanggarra Healthy Country Plan in 2011 and achieving Native Title in 2013, the Balanggarra people proceeded to declare an Indigenous Protected Area (IPA) over much of their country (Figure 7).
2. An IPA is a voluntary agreement between TOs and the Australian Commonwealth Government to manage areas of their land and/or sea country for environmental protection, biodiversity conservation and cultural heritage preservation, balanced with sustainable use of the area to deliver cultural, social and economic benefits for the local indigenous people. Some areas of IPAs with high conservation value are recognized as part for the National Reserve System for protection of Australia's biodiversity and cultural heritage, and IPAs currently make up over 50% of the National Reserve System (Figure 8).
3. Management of IPAs is undertaken by the TOs including Indigenous Rangers, often in partnership with either or both the Commonwealth Government and/or the relevant State Government. Management plans for IPAs are developed in accordance with the TOs objectives for their area, and often seek to blend traditional indigenous approaches to natural resource management with modern scientific methods.
4. Nationally, the IPA program is jointly administered by the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the National Indigenous Australians Agency (NIAA), a Commonwealth Government Agency which coordinates implementation of much of the Australian Government's indigenous affairs program.
5. The Balanggarra IPA was declared in May 2013 and covers over 10,000 km² of the Balanggarra Native Title determination area to the west of CG as shown on Figure 8. The IPA includes both significant biodiversity values and cultural heritage sites, including significant areas of rock art with elegant human-like images of *Girri-girro* (Bradshaw figures).
6. The Balanggarra IPA is managed as a Category VI protected area under the classification scheme of the International Union for Conservation of Nature (IUCN), which is a protected area that allows sustainable use of natural resources. It is managed by the Commonwealth-funded Balanggarra Indigenous Rangers in partnership with the WA Department of Biodiversity Conservation & Attractions (DBCA), in accordance with the vision, targets and principles outlined in the Balanggarra Healthy Country Plan as described in section 2.1. The BAC has also signed a Joint Management Agreement with DBCA for the joint management of the Balanggarra parts of the North Kimberley Marine Park, which are covered by Balanggarra's Native Title determination as outlined in section 3.1.
7. The eastern boundary of the Balanggarra IPA is set back from the west coast of CG by around 10 km (Figures 6 & 7), and the proposed action will therefore not cause any impacts on the IPA, or on any coastal or land areas around CG. Should the proposed action be approved and go ahead, BKA is offering to support the TO groups in undertaking research and monitoring of marine biodiversity and key marine fauna species, which will enhance protection and management of marine areas.



FIGURE 7: *The Balanggarra IPA (source: KLC)*

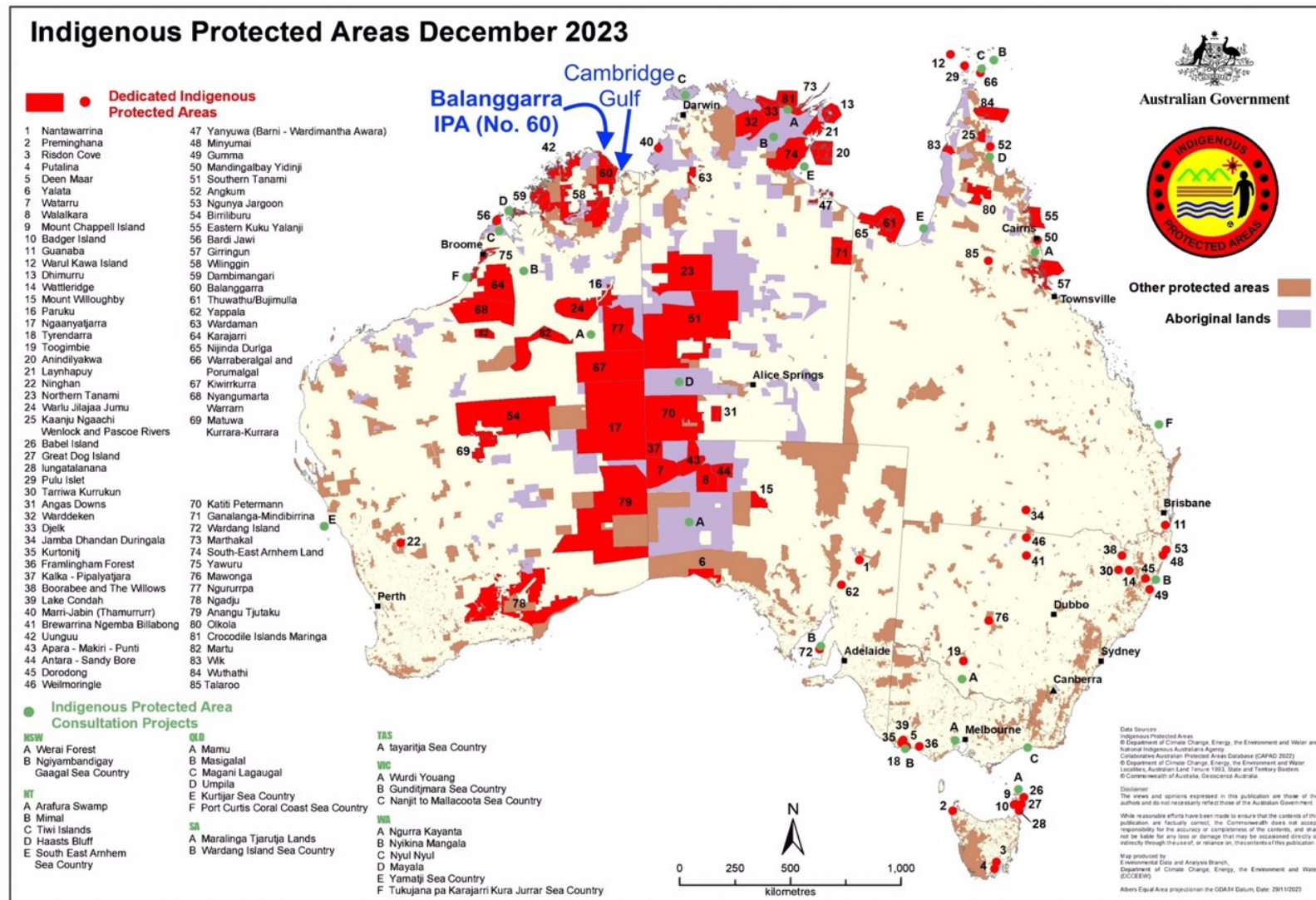


FIGURE 8: IPAs across Australia at December 2023 – this is just to show the location and context of the Balangarra IPA (source: DCCCEW).

5. MIRIUWUNG GAJERRONG CONSERVATION AREAS

1. On the eastern side of Cambridge Gulf (CG) the MG people co-manage a number of conservation areas jointly with DBCA, with their Indigenous Rangers being employed directly by DBCA. The land is owned by MG Corporation and leased to the State Government for conservation purposes, with agreed Joint Management Plans between the parties.
2. These areas are mainly clustered around Kununurra as shown on Figure 9. The closest of these to CG is the Mijing Conservation Park (MCP) just south of Cape Donnett, abutting the north-eastern boundary of the Ord River Floodplain Ramsar wetland, which is protected by the State-designated Ord River Nature Reserve (Figure 6 and Figure 9).
3. The MCP covers 25,529 ha and is managed to protect a number of key biodiversity values. The landscape is defined by the Ningbing Range, consisting of limestone that was formed as part of an ancient Devonian barrier reef system and contains large deposits of marine fossils. The limestone range and its karst outcrops are surrounded by dense, low deciduous vine thickets. These are uniquely diverse and species-rich in comparison to similar areas in the North and East Kimberley. The rugged topography of the range provides important refuge habitat for animals from fire. Freshwater creeks and waterbodies on the western side of the range towards CG provide important habitat for various waterbirds and other bird species (Graham & White 1999). There are also significant Aboriginal cultural heritage values throughout the MCP.
4. The closest distance between the MCP and the proposed action is over 20 km, and the proposed action will therefore not cause any direct or indirect impacts on the MCP, or on any coastal or land areas around CG.

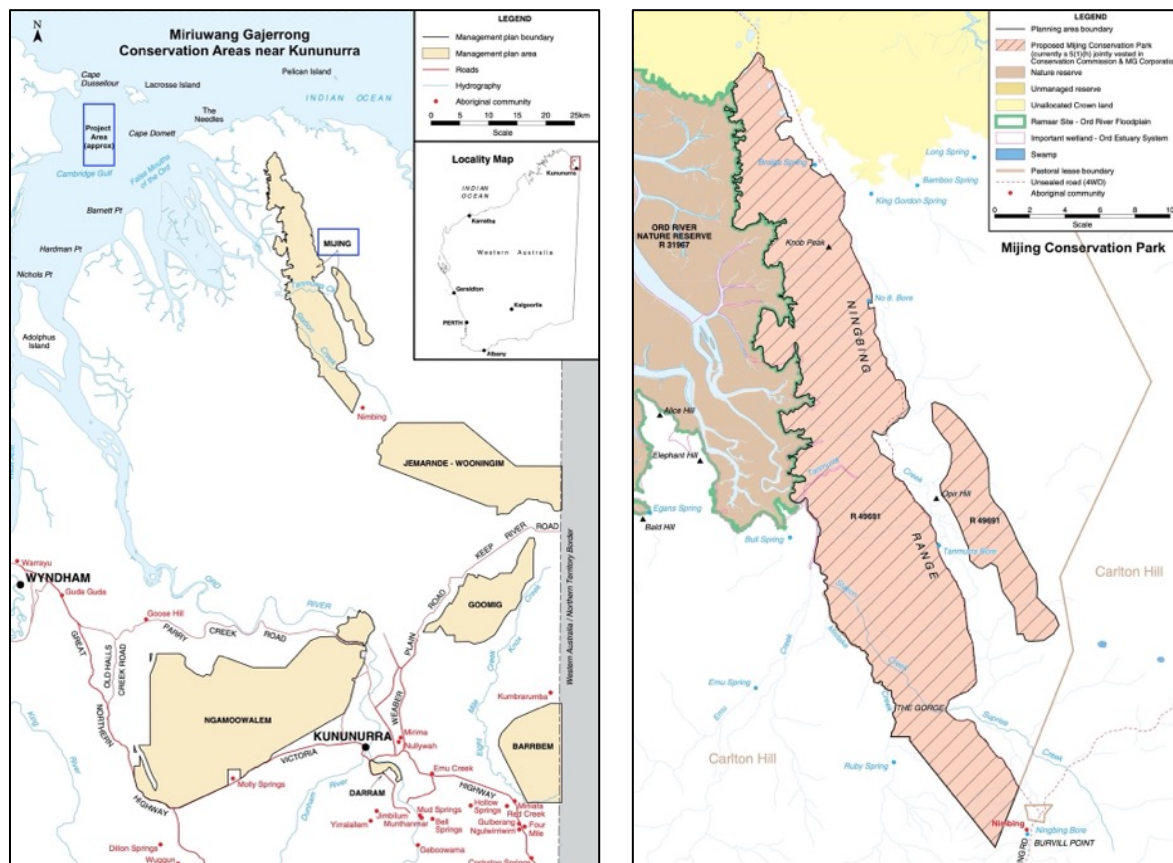


FIGURE 9: Left: MG conservation areas near Kununurra. Right: The closest to CG is the Mijing Conservation Park (source: MG Corporation)

6. ABORIGINAL CULTURAL HERITAGE IN THE CAMBRIDGE GULF AREA

6.1 Land-based Aboriginal Cultural Heritage

1. BKA undertook a search of the WA Aboriginal Cultural Heritage Inquiry System (ACHIS) and identified two Registered Sites as defined under Section 5 of the *WA Aboriginal Heritage Act*, as shown on Figure 10:
 - Site 12737 (Burrunungu) centred on Lacrosse Island; and
 - Site 12789 (Balu-Gunanjaar) centred on Cape Domett.
2. The knowledge holders for both sites are the Gajerrong people, who BKA is consulting with closely through the MG Corporation, as outlined in section 7.
3. Annex 3 contains the ACHIS extracts for the two sites. Both are land-based, containing multiple sub-sites with different cultural heritage types, as follows:
 - *Ceremonial,*
 - *Engraving,*
 - *Grinding Patches / Grooves,*
 - *Midden / Scatter,*
 - *Mythological,*
 - *Painting,*
 - *Repository / Cache,*
 - *Skeletal Material / Burial; and*
 - *Camp.*
4. Both sites are listed as 'Boundary Restricted', which means that in order to preserve confidentiality the exact location and extent of the sites are not displayed on the ACHIS map, and the boundaries include a 'buffer zone' generally with an area of at least 4 km². Because the sites are near the coast, the buffer zones extend over marine areas. As a result, the buffer zone for the Burrunungu site centred on Lacrosse Island overlaps slightly with the POA of the proposed action (Figure 10). However, this does not imply that there are cultural heritage sites within the POA (see section 6.2 below re. underwater cultural heritage).
5. The proposed action does not involve the construction or operation of any land-based facilities or infrastructure anywhere in CG, and land-based Aboriginal cultural heritage sites will not be disturbed or impacted in any way, either directly or indirectly.
6. Despite the fact that the proposed action will not impact on land-based sites, should it be approved and go ahead, BKA is offering to assist the TO groups to enhance protection of these sites, by supporting the development and implementation of a joint Aboriginal Cultural Heritage Management Plan (ACHMP), in accordance with their needs and requirements.

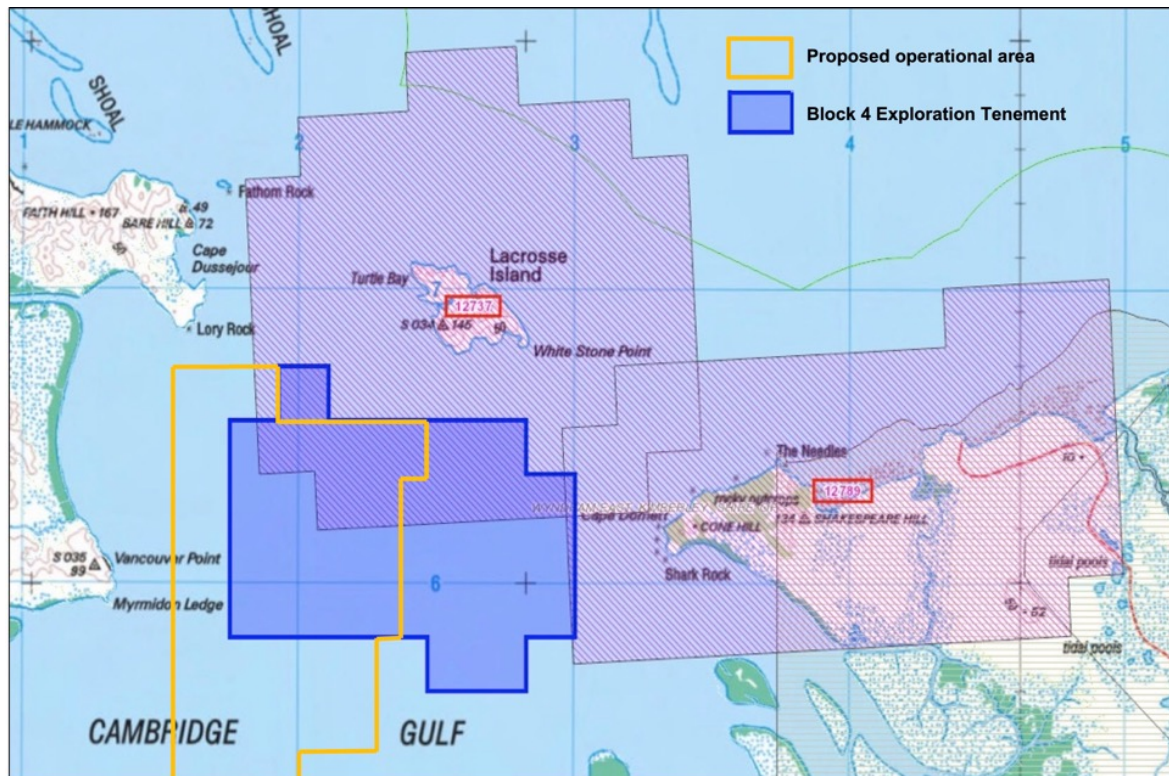


FIGURE 10: The two land-based Registered Aboriginal Cultural Heritage Sited adjacent to CG - Site 12737 (Burrungu) centred on Lacrosse Island; and Site 12789 (Balu-Gunanjaara) centred on Cape Domett (source: DPLH-ACHIS).

6.2 Potential Underwater Aboriginal Cultural Heritage

1. BKA recognizes that underwater Aboriginal cultural heritage is becoming an increasingly important consideration. This might include the potential presence of archaeological artifacts on the seabed and buried in seabed sediments, such as stone, glass and bone spear-heads, tools etc. The Kimberley region is renowned as an area of Australia where traditionally, Aboriginal use of stone, bone and glass spear-heads was well developed (Figure 11) (Australian Museum).
2. Because the proposed action is a wholly marine operation, BKA has undertaken an assessment of the potential presence of Aboriginal cultural heritage on the seabed in CG, and especially within the POA. This included:
 - a) **Consultation:** During consultation meetings BKA asked both TO groups if they are aware of or concerned about underwater Aboriginal cultural heritage in CG – neither group raised this as an issue.
 - b) **Invitation to join site surveys:** BKA invited representatives of both TO groups, including their respective Indigenous Ranger groups, to join BKA's site surveys in CG in March 2023 (sand exploration survey), July 2023 (dry season environmental survey) and February 2024 (wet season environmental survey). They were invited to provide the BKA field team with cultural induction to the area and to observe or even participate in the survey work, with training and knowledge and skills transfer, at BKA's cost, should they wish. Appreciation for the invitations was expressed but neither group joined the surveys.
 - c) **Seabed grab sampling:** The two environmental surveys (dry and wet season) included taking replicate benthic sediment grabs at multiple sites throughout CG, including in the POA, and sieving the grab contents to 500 microns, for identification of both benthic biota and any potential archaeological artifacts that might be of Aboriginal cultural heritage interest. Sieving to 500 microns (0.5 mm) would certainly retain and reveal any artifacts that might be present in the seabed sediments that were sampled.

A commitment was given to the TO groups that if any artifacts were found, they would be logged, labelled, photographed and packed for handing to the TO groups for further assessment by themselves and relevant experts.

The seabed grab sampling provided wide coverage of CG as shown in Figures 12 and 13, with 132 sites being sampled in July 2023 and 40 sites in February 2024, giving a total of 172 sites. Three replicate grabs were taken at most sites – giving a total of over 500 grab samples – which is extremely comprehensive.

An additional 74 grab samples were taken in February 2024 for physical analysis of sediment. These included multiple sites well upstream into the lower Ord River, past Wyndham and south into the Pentecost River, as shown on Figure 14. These were not sieved on-board however the bulk samples were still checked for the possible presence of archaeological artifacts. Processing of the samples in a laboratory in Perth involved sorting and sieving and would have identified any artefacts. None were found.

Every grab sample was photographed, including both pre- and post-sieving for the sieved samples, and the full set of photographs is archived and can be provided if required. Four examples are shown in Figure 15. No evidence of archaeological artifacts was found in any of the grab samples.

- d) Seabed vibrocore sampling: To assist in assessing the available sand resource in CG, in March 2023 BKA took 16 vibrocore samples from within Exploration Tenement E80/5655 (Figure 16), drilling down to up to 6 m below the seabed surface and extracting sediment cores. All core samples were visually inspected on board the survey vessel, including checking for the possible presence of archaeological artifacts (Figure 17). Because the cores drilled down several meters below the seabed surface, this assisted in identifying any archaeological artifacts that might be present in the sub-surface sedimentary layers. No evidence of archaeological artifacts was found in any of the 16 vibrocore samples.
 - e) High resolution hydrographic survey: In February and March 2024 BKA carried out high resolution hydrographic survey of the POA and a 1 km buffer around the area (Figure 18). The high resolution of this survey allows the identification of any seabed features that might be of interest, including potentially in relation to archaeology and underwater Aboriginal cultural heritage. As shown on Figure 18 the seabed throughout the area comprises dynamic seabed sand dunes, with no indications of seabed features that might be of interest in relation to archaeology and underwater Aboriginal cultural heritage.
3. BKA has also reviewed the Commonwealth *Underwater Cultural Heritage Act*, which includes provisions relating to underwater Aboriginal cultural heritage. These apply to Commonwealth waters only, which are well beyond the POA, which is fully within Internal State Waters.
 4. Overall, considering the points above and the supporting figures below, BKA believes that *it may have undertaken the most intensive and comprehensive survey for underwater Aboriginal cultural heritage ever undertaken anywhere in Australia to date*. Based on the lack of findings of artefacts or other evidence, it is assessed that the proposed action is highly unlikely to cause impacts on underwater Aboriginal cultural heritage.



FIGURE 11: The Kimberley region is renowned as an area where traditional use of stone, bone and glass spear heads was well developed. The BKA marine surveys assessed the possible presence of these and other artifacts. None were found.
(source: <https://australian.museum/learn/cultures/atsi-collection/cultural-objects/kimberley-spear-points/>)

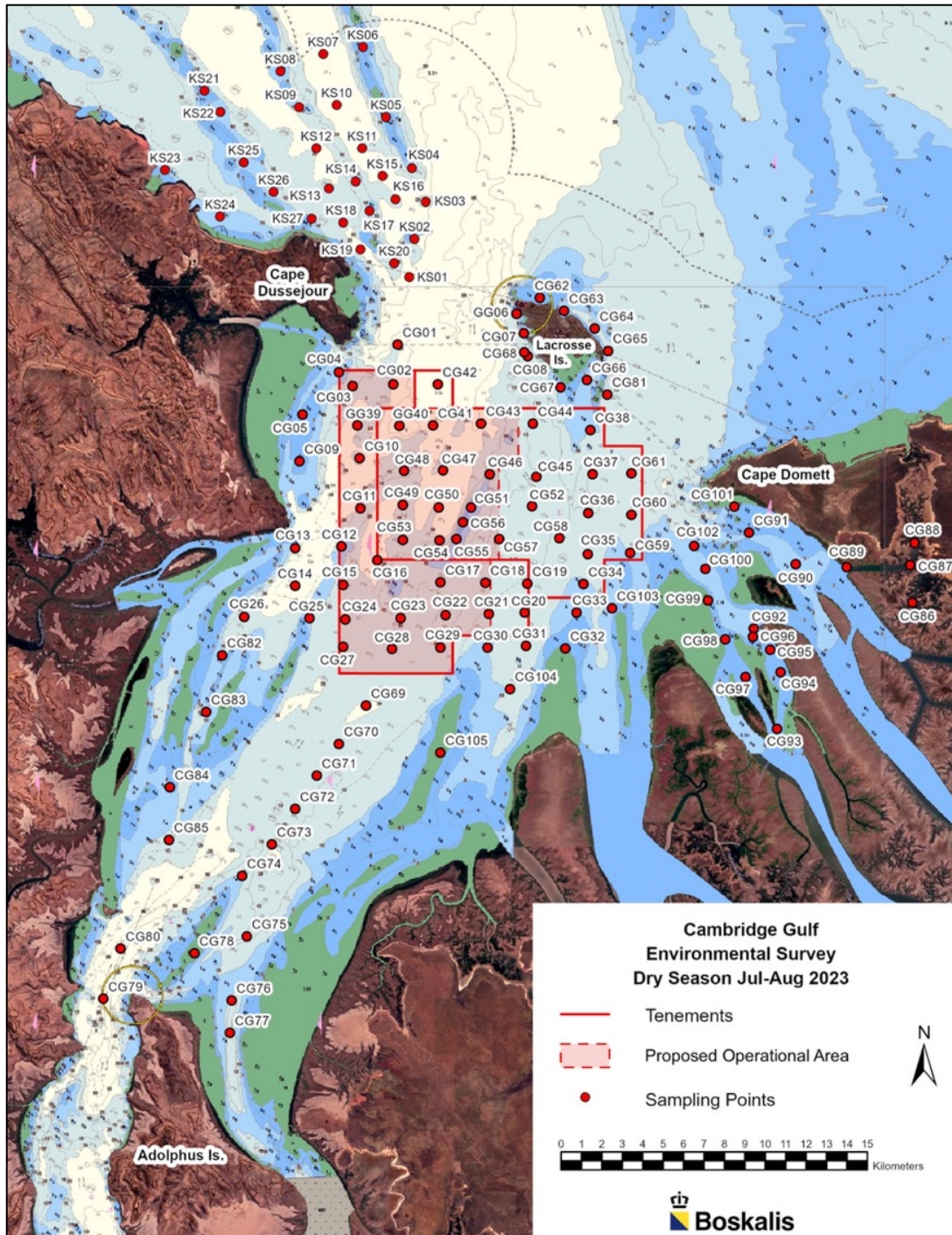


FIGURE 12: The 132 sites where seabed grab samples were collected in July 2023. Three replicate grabs were collected at most sites = nearly 400 grab samples. Samples were sieved to 500 microns and assessed for possible presence of archaeological artifacts. None were found.

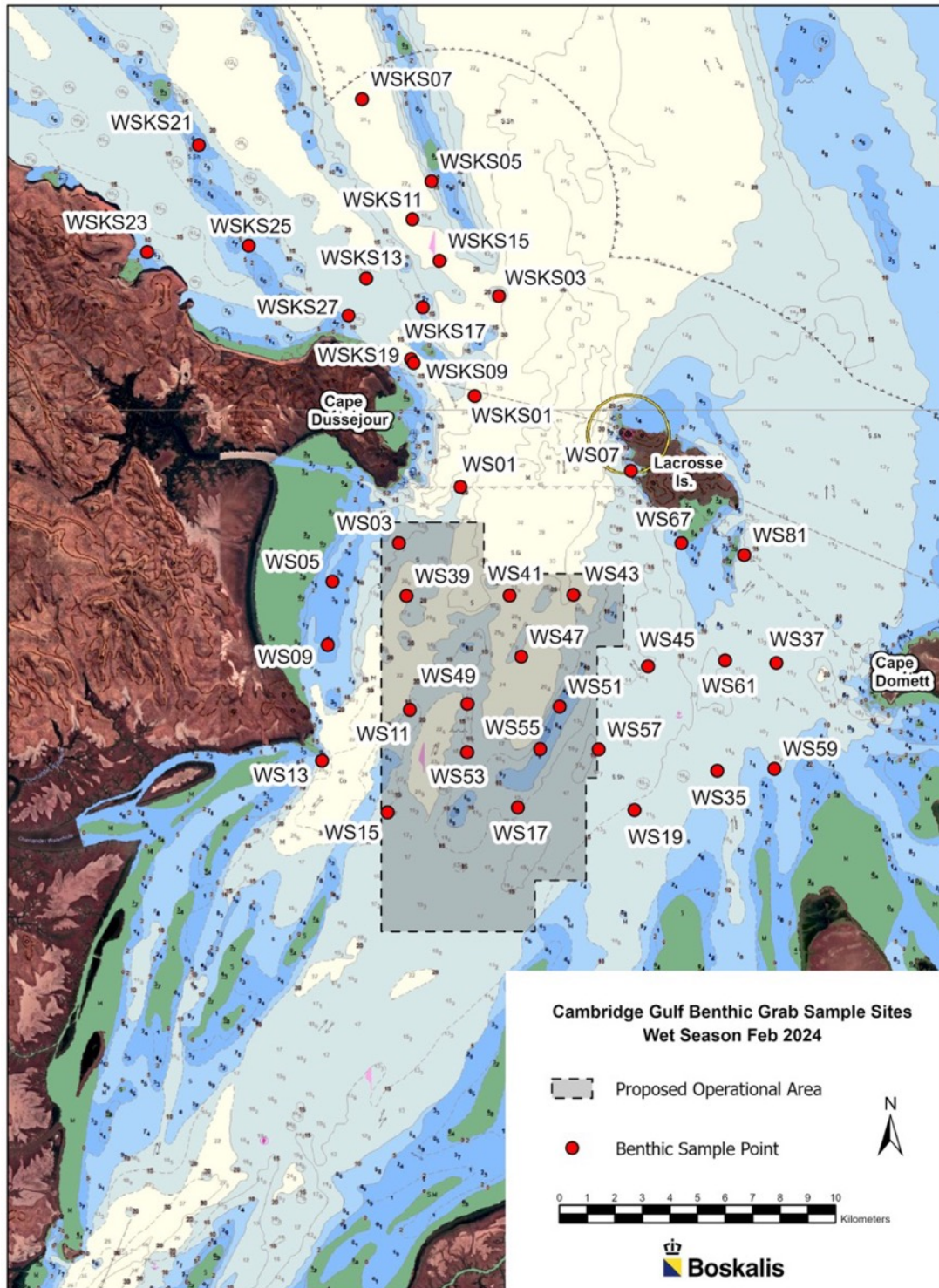


FIGURE 13: The 40 sites where seabed grab samples were collected in February 2024. Three replicate grabs were collected at most sites = nearly 120 grab samples. Samples were sieved to 500 microns and assessed for possible presence of archaeological artifacts. None were found.

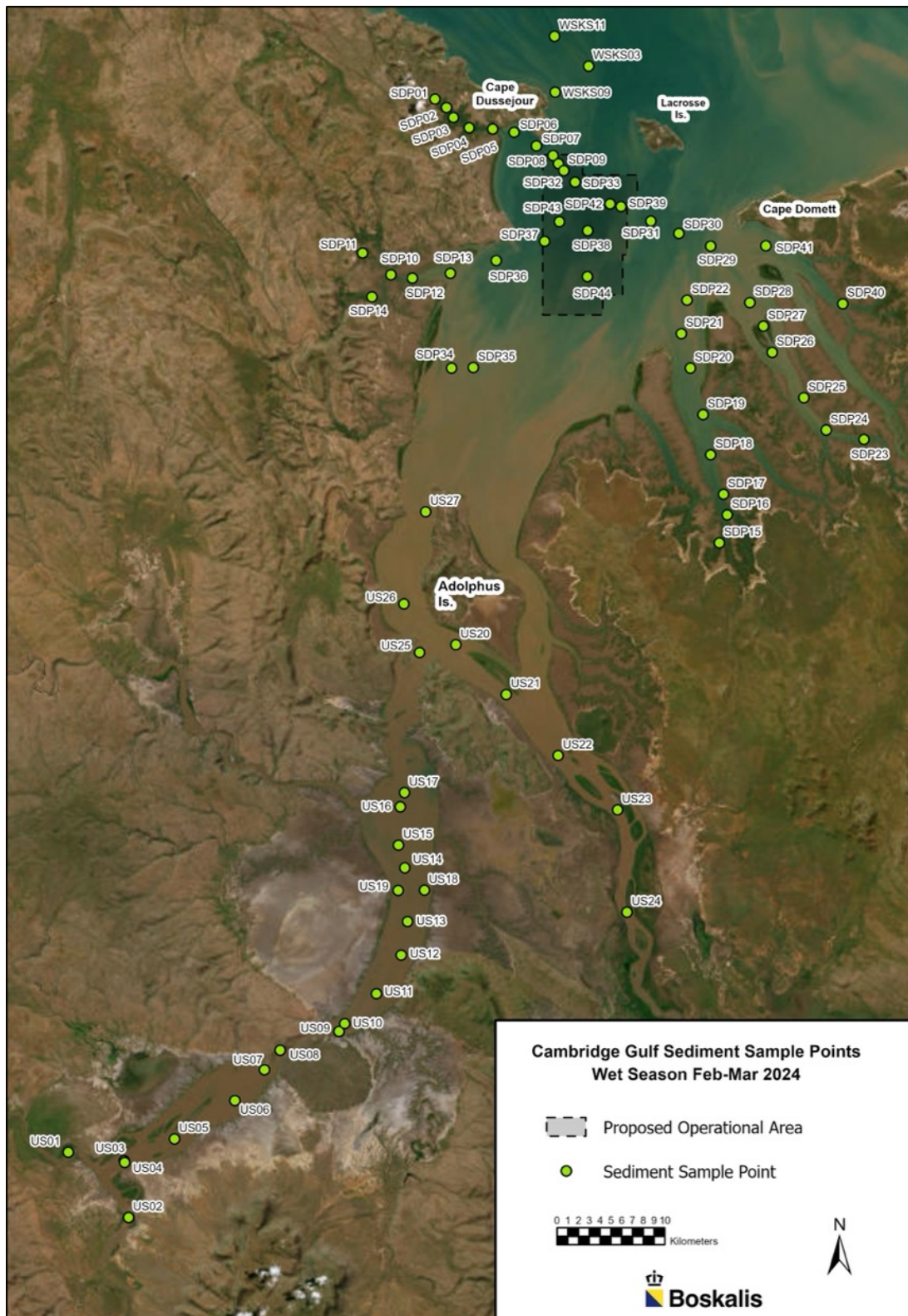


FIGURE 14: The additional 74 seabed grab samples taken in February 2024 for physical analysis of sediments. All samples were checked for the possible presence of archaeological artifacts. None were found.



FIGURE 15: All sieved grab samples were photographed both pre- and post-sieving. The full set of photographs is archived and can be provided if required. Four examples are shown here.

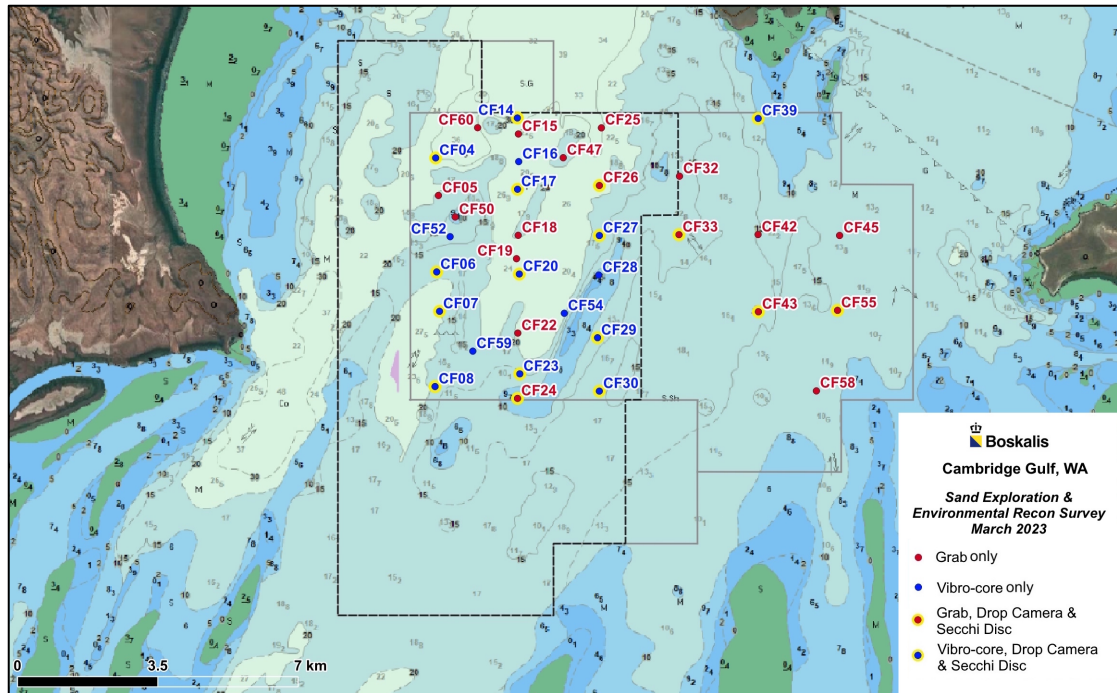


FIGURE 16: The locations of the 16 vibrocore samples taken in March 2023 (refer legend).

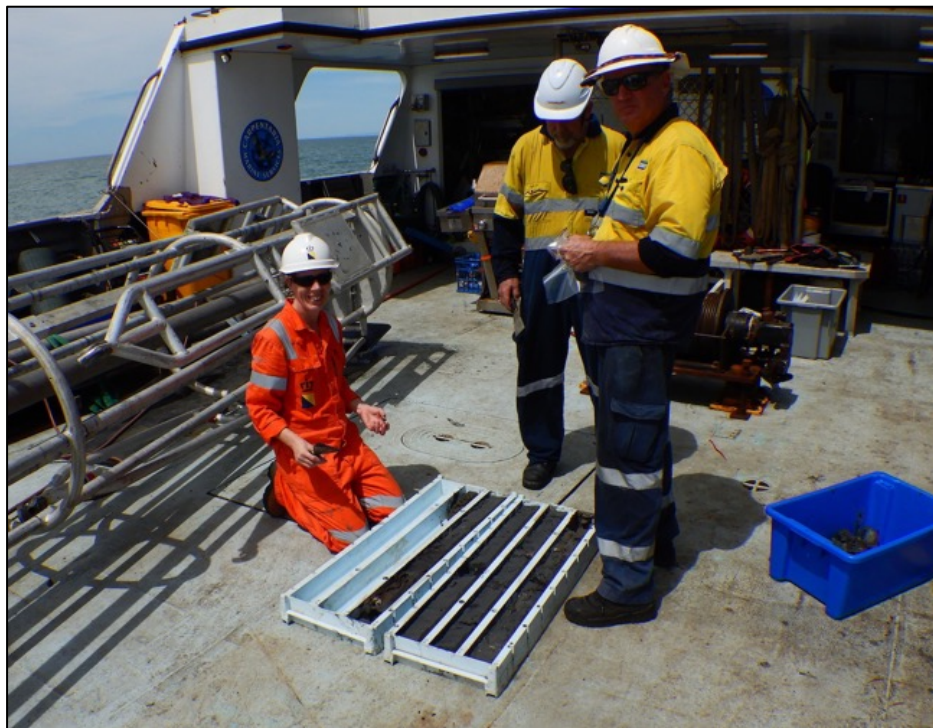


FIGURE 17: All vibrocore samples were visually inspected on board the survey vessel including for the possible presence of archaeological artifacts. Because the cores drilled down several meters below the seabed surface, this assisted in identifying any archaeological artifacts that might be present in the sub-surface sedimentary layers. None were found.

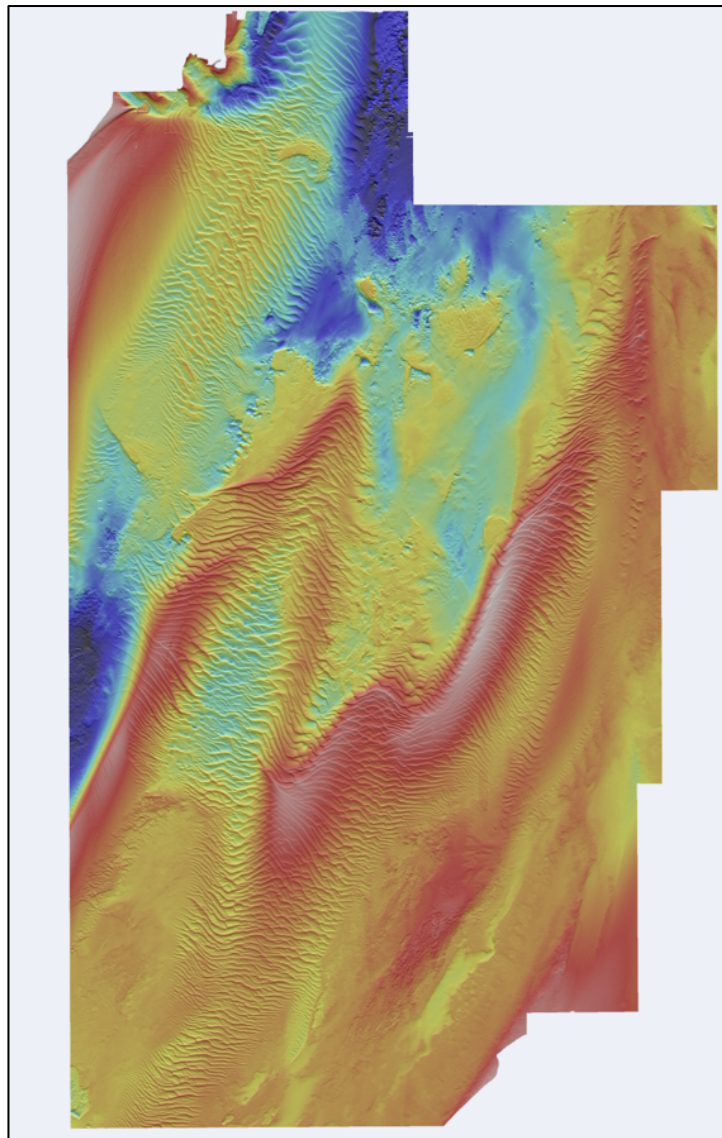
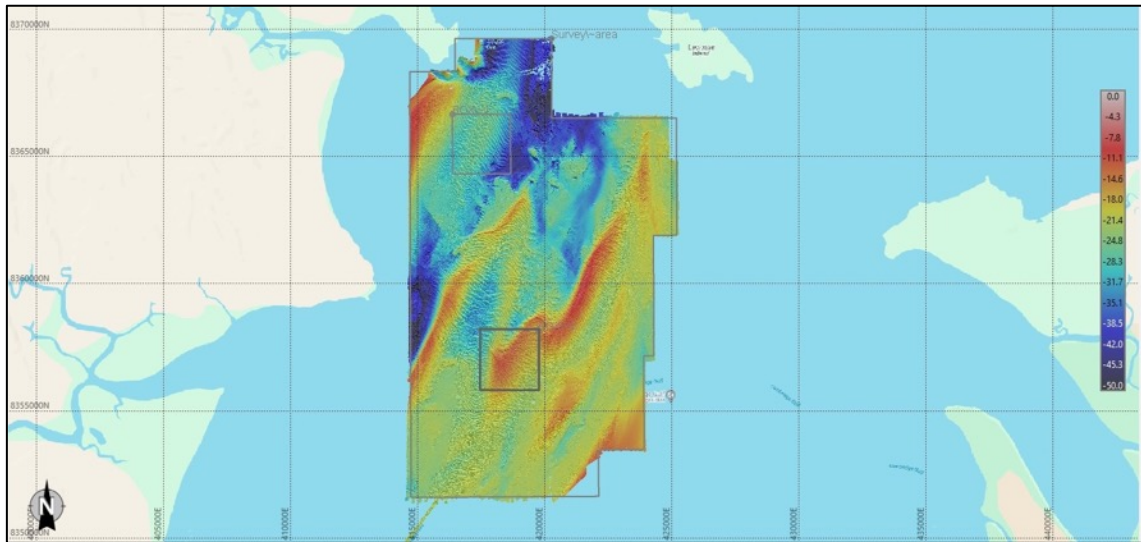


FIGURE 18: *High resolution hydrographic survey was carried out for the POA and a 1 km buffer around the area. This shows that the seabed throughout the area comprises dynamic seabed sand dunes.*

7. BOSKALIS ENGAGEMENT & CONSULTATIONS WITH TOs

1. In developing the CG marine sand proposal, it is important to BKA that the views, perspectives and positions of the TOs of the CG area are identified, fully understood and taken into account. BKA also seeks to actively involve the TOs in the proposed action, though business opportunities, training and employment, voluntary payment of royalties and community development, as outlined in section 8.
2. BKA has engaged closely with the two TO groups (BAC and MG Corporation) in a variety of ways since October 2022. At the time of this report (October 2024) BKA is well advanced in developing mutually-binding Memorandums of Understanding (MoUs) with both groups, including benefits packages for both groups.
3. In framing its approach to engaging with the TOs, BKA has referenced relevant aspects of best-practice guidelines, including:
 - Commonwealth DCCEE 2023, *Interim Engaging with First Nations People and Communities on Assessments and Approvals Under the Environment Protection and Biodiversity Conservation Act 1999*.
 - WA EPA 2023, *Interim Technical Guidance, Environmental impact assessment of Social Surroundings – Aboriginal cultural heritage*.
 - WA DIA 2005, *Consulting Citizens: Engaging with Aboriginal Western Australians*.
 - WA DMIRS 2004, *Guidelines for Consultation with Indigenous People for Mineral Explorers*.
4. In particular, BKA is dealing with both TO groups on a totally equal bases, recognizing them both as the TOs of their respective sides of CG (BAC on the west and MG on the east). BKA has been guided by the TOs themselves on how they wish to be engaged and consulted, and has remained flexible, adaptable and open at all times. Both TO groups through their Chairs have expressed appreciation for the open, transparent and very engaging approach that BKA has followed. Both groups have provided letters of support as contained in Annexes 4 and 5.
5. A list of meetings held with the TOs since October 2022 is presented in Table 1 and the main interests and issues raised by each of the two groups are presented in Table 2. Minutes of the meetings held with the two TO groups to date are presented in [EPBC Referral Report No. 6 - Consultation](#), and are not repeated in this report for reasons of economy.
6. In addition to the in-person and on-line meetings listed in Tables 1 and 2, BKA has kept both groups fully informed of progress with planning, studies and site surveys through regular emails and phone calls to their Chairs and relevant staff. As outlined in section 6 above, BKA invited representatives of both TO groups, including their respective Indigenous Ranger groups, to join BKA's three site surveys in CG, including to provide the BKA team with cultural induction to the area and to observe or even participate in the survey work, at BKA's cost. Appreciation for the invitations was expressed but neither group joined the surveys.
7. Overall, the two TO groups through their Chairs have stated that they support the proposed action so long as they are fully and closely consulted and it does not impact negatively on their interests, including Native Title and Aboriginal cultural heritage. As outlined in this report, BKA's studies address potential risks to indigenous values and interests thoroughly – and no negative impacts are predicted (refer section 9 below).
8. Both groups have expressed significant interest in being involved and gaining benefits from the proposed action should it be approved and go ahead, and are working with BKA to develop mutually binding MoUs. The MoUs include benefits sharing packages as described in section 8 below, as well as support from BKA to develop a joint Aboriginal Cultural Heritage Management Plan for the CG area.
9. BKA and MG Corporation have signed a Negotiating Protocol which provides a framework for both parties to work together in finalizing their MoU. This includes provision of funding by BKA to support MG Corporation's costs of engaging in the negotiations. It is intended to develop a similar protocol with BAC.
10. The process to date (October 2024) is not seen by BKA as the end of engaging and working with the two TO groups in the CG area – this process is ongoing and will continue throughout the life of the proposed action, should it be approved and proceed.
11. BKA also consulted with the WA Department of Planning, Lands & Heritage (DPLH) in a multi-agency pre-referral meeting held at the BKA office in Perth in April 2023, and took advice from DPLH on assessing and addressing Aboriginal cultural heritage matters.

TABLE 1: List of TO Consultation Meetings Undertaken between beginning of October 2022 to October 2024

Only in-person and online meetings are listed – there were also email and phone consultations throughout this period.
In reverse chronological order from latest meeting date.

No.	Meeting With	Location	Participants	Date
1	BAC	KAS Accounting office, Kununurra	- Josh Lewis, Chair, BAC - Toby Lewis, BAC - David, BAC - Peter Boere, BKA - Steve Raaymakers, for BKA	2 May 2024 (also met Jan 23 & Dec 22, and tried to meet May 23 – see below)
2	MG Corp	MG Corp office, Kununurra	- Lawford Benning, Chair MG Corp - Andre Maynard, for MG Corp - Peter Boere, BKA - Steve Raaymakers, for BKA - BKA reps waited at MG office but MG reps did not attend due to other commitments – phone call with Andre Maynard - meeting postponed	1 May 2024 (also met May 23 & Jan 23– see below)
3	BAC	BAC office, Kununurra	- Peter Boere, BKA - Steve Raaymakers, for BKA - BKA reps waited at BAC office but BAC reps did not attend due to other commitments – phone call with BAC Chair - meeting postponed	19 May 2023 (met 24 Jan 2023 & 20 Oct 2022 – see below)
4	MG Corp	MG Corp office, Kununurra	- Lawford Benning, Chair MG Corp - Matthew Smith, CEO MG Corp - Andre Maynard, for MG Corp 2 unnamed reps, MG Corp - Peter Boere, BKA - Steve Raaymakers, for BKA	19 May 2023 (also met 24 Jan 2023 – see below)
5	BAC	Remote online meeting (BKA reps travelled to Kununurra for in-person meeting but BAC reps were caught out of town due to flooding etc so shifted to on-line)	- Cissy Gore-Birch, Chair BAC - Trisha Birch, BAC - Kevin Forrest, BAC - Peter Boere, BKA - Steve Raaymakers, for BKA	24 Jan 2023
6	MG Corp	MG Corp office, Kununurra	- Lawford Benning, Chair MG Corp - Andre Maynard, for MG Corp (remote) 4 unnamed reps, MG Corp - Peter Boere, BKA - Steve Raaymakers, for BKA	24 Jan 2023
7	BAC	Boskalis office, Perth	- Joe Hefferman, CEO BAC - Peter Boere, BKA	20 Oct 2022

TABLE 2: Main interests and issues raised by each of the two TO groups & consultation status @ October 2024

Organization	Main Issues Raised	Consultation Status @ October 2024
Balanggarra Aboriginal Corporation (BAC) www.balanggarra.com.au Offices in Wyndham & Kununurra. - BAC is the registered Native Title group for the areas from Cambridge Gulf to the <u>west</u>. - Native Title determination covers land areas around Wyndham and western coast of Cambridge Gulf, but not marine areas. - The Balanggarra Indigenous Rangers manage the Balanggarra Indigenous Protected Area west of Cambridge Gulf, and are active in co-managing the State Marine Park out to 3nm with DBCA.	- Interested to ensure that the proposed action does not impact negatively on their interests, including Native Title, cultural heritage, Balanggarra Indigenous Protected Area, marine species with indigenous cultural significance such as turtles, crocodiles and marine mammals. - Interested to receive benefits from the proposed action should it go ahead, including employment, business opportunities and community development. - Chairman of BAC has offered to arrange 'Welcome to Country' and cultural heritage induction for BKA for future site visits to CG. - Chairman of BAC has issued a letter of support for the proposal – refer Annex 4. - BAC is working with BKA to develop and agree mutually binding Project MoU which includes benefits arrangements for BAC.	<u>20 Oct 2022</u>: In person meeting between BKA GM and BAC CEO in Perth. <u>24 Jan 2023</u>: Remote online meeting between BKA GM and consultant and BAC Chair and executive team. <u>19 May 2023</u>: Attempted in-person meeting between BKA GM and consultant and BAC Chair and team in Kununurra. BAC reps did not attend due to other commitments. <u>28 Mar 2024</u>: Phone comms between BKA GM and BAC setting in-person meeting for early April. <u>2 May 2024</u>: In person meeting between BKA GM and consultant and BAC Chairman and colleagues in Kununurra. <u>On-going</u>: Email comms from BKA keeping BAC informed of progress and working to develop Project MoU with BAC which includes benefits arrangements for MG Corp. <u>Other</u>: BAC reps including Indigenous Rangers invited to join BKA's environmental surveys in CG – not taken up to date.
Yawoorroong Miriwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation (MG Corporation). www.mgcorp.com.au Office in Kununurra. - MG Corp is the registered Native Title group for the areas from Cambridge Gulf to the <u>east</u>. - Native Title determination covers the coastline and lands to the east of Cambridge Gulf, and also Lacrosse Island within Cambridge Gulf, but not marine areas.	- Interested to ensure that the proposed action does not impact negatively on their interests, including Native Title, cultural heritage and marine species with indigenous cultural significance such as turtles, crocodiles and marine mammals. - Interested to receive benefits from the proposed action should it go ahead, including employment, business opportunities and community development. - BKA and MG Corp have signed a joint Negotiating Protocol for developing a Project MoU which includes benefits arrangements for MG Corp - refer Annex 5.	<u>24 Jan 2023</u>: In-person meeting between BKA GM and consultant and MG Chair and team Kununurra. <u>19 May 2023</u>: In-person meeting between BKA GM and consultant and MG Chair and team Kununurra. <u>1 May 2024</u>: Attempted in-person meeting between BKA GM and consultant and MG Corp Chair and team in Kununurra. MG Corp reps did not attend due to other commitments – meeting postponed. <u>Ongoing</u>: Draft MoU and benefits sharing agreement progressed. <u>Ongoing</u>: Email and phone comms from BKA to MG Corp seeking further consultations. <u>On-going</u>: Email comms from BKA keeping MG informed of progress. <u>Other</u>: MG Corp reps including Indigenous Rangers invited on BKA's environmental surveys in CG – not taken up to date.

8. PROPOSED INVOLVEMENT OF TOs IN THE PROJECT

1. BKA has offered both TO groups an equal benefits package for consideration and negotiation, to be included in separate mutually-binding MoUs with each group, should the proposed action be approved and go ahead, including:
 - a) Payment of royalties per m³ of sand exported to each TO group (in addition to payment of State royalties and not legally required, but offered by BKA in recognition of their status as TOs of the area).
 - b) Establishment of trust-fund type mechanisms for the paid royalties, to support TO community development initiatives.
 - c) Up to forty jobs for Australian crew on the Sand Production Vessel (SPV) (alternating two-week swings of 20 crew each), with first priority given to local TOs, including training and career development.
 - d) Offer of marine crew cadetships and training to local TOs on the Boskalis global fleet (>600 vessels).
 - e) Support to TOs to establish a small marine services business in Wyndham to support the operation in CG, for example transferring people, equipment and supplies when needed (bulk provisioning and refuelling of the SPV will be done at Asian sand delivery port as it will be too large to enter the Port of Wyndham).
 - f) Environmental monitoring contract for the 15-year life of the proposal, ideally with the TO indigenous ranger groups, including training, vessel and equipment.
 - g) Funding for scientific research on key marine biodiversity issues and species in the CG area, in consultation and cooperation with relevant partners.
 - h) Assisting the TO groups to enhance protection of land-based cultural heritage sites around CG, by supporting the development and implementation of a joint Aboriginal Cultural Heritage Management Plan (ACHMP), in accordance with their needs and requirements.
2. Regarding points b), c) and d) it should be noted that there is already a company based in Wyndham owned by TOs that has significant experience with marine operations and recruiting and training TO personnel for marine work across northern Australia – www.dadaru.com.au. In addition, Cambridge Gulf Limited (CGL) which runs the Port of Wyndham has 75% indigenous staff, mainly port workers, and is therefore also well placed to develop marine-related job opportunities further. BKA would seek to build on these existing capabilities in developing project-related training and career pathways.

9. POTENTIAL IMPACTS ON INDIGENOUS INTERESTS & VALUES

1. Based on the information presented in the sections above, potential impacts of the proposed action on indigenous interests and values are assessed as follows:
 - f) Native Title: The proposed operational area (POA) does not overlap with the determined Native Title areas of either BAC or MG Corporation, and there is no risk of direct or indirect impacts from the proposed action on Native Title areas. Despite the absence of Native Title over the POA, BKA recognizes the western side of CG as being Balanggarra country and the eastern side of CG as being MG country. On this basis BKA is seeking to engage both groups in the project equally, including offering employment and business development opportunities and equal benefits packages to both groups.
 - g) Indigenous conservation areas: The eastern boundary of the Balanggarra IPA is set back from the west coast of CG by around 10 km. The closest distance between the Mijing Conservation Park and the POA is over 20 km. The proposed action will therefore not cause any direct or indirect impacts on either conservation area, or on any coastal or land areas around CG. Should the proposed action be approved and go ahead, BKA is offering to support the TO groups in undertaking research and monitoring of marine biodiversity and key marine fauna species, which will enhance protection and management of marine areas.
 - h) Land-based Aboriginal cultural heritage: There are two Registered Sites in the CG area; Site 12737 (Burrnunngu) centred on Lacrosse Island and Site 12789 (Balu-Gunanjaar) centred on Cape Domett. The proposed action does not involve the construction or operation of any land-based facilities or infrastructure anywhere in CG, and land-based Aboriginal cultural heritage sites will not be disturbed or impacted in any way, either directly or indirectly. Despite the fact that the proposed action will not impact on land-based sites, should it be approved and go ahead, BKA is offering to assist the TO groups to enhance protection of these sites, by supporting the development and implementation of a joint Aboriginal Cultural Heritage Management Plan (ACHMP), in accordance with their needs and requirements.

- i) Potential underwater Aboriginal cultural heritage: BKA believes that it may have undertaken the most intensive and comprehensive survey for underwater Aboriginal cultural heritage ever undertaken anywhere in Australia to date. Based on the lack of findings of artefacts or other evidence in the marine areas of CG, it is assessed that the proposed action is highly unlikely to cause any impacts on underwater Aboriginal cultural heritage.
 - j) Socioeconomics: Should the proposed action be approved and go ahead it will provide substantial positive economic, social and cultural benefits to both TO groups, as BKA seeks to actively involve the TOs in the project, through business opportunities, training and employment, voluntary payment of royalties and community development, as outlined in section 8 and provided for in the MoUs currently being developed with each group.
2. Overall, the proposed action does not present a risk of negative impacts on indigenous interests and values, either directly or indirectly, and will directly provide substantial positive economic, social and cultural benefits.

**NATIVE TITLE DETERMINATION
WESTERN AUSTRALIAN
PORTION OF
WAD6001 OF 1995
MAP 1**

Legend:

- CLAIM AREA** (West of the J7 line - exhibit A8)
- DETERMINATION AREA**
- PORTION OF LAKE ARGYLE MAXIMUM FLOOD AREA**
- AREAS WHERE NO NATIVE TITLE EXISTS**
- AREAS WHERE NATIVE TITLE EXISTS AND TO WHICH PARAGRAPH 9.2 APPLIES**
SUBJECT TO THE WORKS DESCRIBED IN PARAGRAPHS (2) AND (3) OF SCHEDULE 3 TO THE DETERMINATION, WHERE NATIVE TITLE DOES NOT EXIST
- AREAS WHERE NATIVE TITLE EXISTS AND TO WHICH PARAGRAPH 9.1 APPLIES**
- AREA NUMBER**

Scale: 0 5 10 15 20 25 KILOMETRES

Locality Map: Shows the location of the determination area within Western Australia, with labels for Wyalapa, Wyalapa, and Turkey Creek.

ANNEX 3: ACHIS EXTRACTS

Site 12737 – Burrunungu (centred on Lacrosse Island)



Department of Planning,
Lands and Heritage

Aboriginal Heritage Inquiry System

List of Registered Aboriginal Sites

For further important information on using this information please see the Department of Planning, Lands and Heritage's Disclaimer statement at <https://www.dph.wa.gov.au/about-this-website>

Search Criteria

Registered Aboriginal Site ID 12737

Disclaimer

The *Aboriginal Heritage Act 1972* preserves all Aboriginal sites in Western Australia whether or not they are registered. Aboriginal sites exist that are not recorded on the Register of Aboriginal Sites, and some registered sites may no longer exist.

The information provided is made available in good faith and is predominately based on the information provided to the Department of Planning, Lands and Heritage by third parties. The information is provided solely on the basis that readers will be responsible for making their own assessment as to the accuracy of the information. If you find any errors or omissions in our records, including our maps, it would be appreciated if you email the details to the Department at AboriginalHeritage@dph.wa.gov.au and we will make every effort to rectify it as soon as possible.

Copyright

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Coordinate Accuracy

Coordinates (Easting/Northing metres) are based on the GDA 94 Datum. Accuracy is shown as a code in brackets following the coordinates.

Terminology (NB that some terminology has varied over the life of the legislation)

Place ID/Site ID: This is a unique ID assigned by the Department of Planning, Lands and Heritage to the place.

Status:

- **Registered Site:** The place has been assessed as meeting Section 5 of the *Aboriginal Heritage Act 1972*.
- **Other Heritage Place which includes:**
 - **Stored Data / Not a Site:** The place has been assessed as not meeting Section 5 of the *Aboriginal Heritage Act 1972*.
 - **Lodged:** Information has been received in relation to the place, but an assessment has not been completed at this stage to determine if it meets Section 5 of the *Aboriginal Heritage Act 1972*.

Access and Restrictions:

- **File Restricted = No:** Availability of information that the Department of Planning, Lands and Heritage holds in relation to the place is not restricted in any way.
- **File Restricted = Yes:** Some of the information that the Department of Planning, Lands and Heritage holds in relation to the place is restricted if it is considered culturally sensitive. This information will only be made available if the Department of Planning, Lands and Heritage receives written approval from the informants who provided the information. To request access please contact AboriginalHeritage@dph.wa.gov.au.
- **Boundary Restricted = No:** Place location is shown as accurately as the information lodged with the Registrar allows.
- **Boundary Restricted = Yes:** To preserve confidentiality the exact location and extent of the place is not displayed on the map. However, the shaded region (generally with an area of at least 4km²) provides a general indication of where the place is located. If you are a landowner and wish to find out more about the exact location of the place, please contact the Department of Planning, Lands and Heritage.
- **Restrictions:**
 - **No Restrictions:** Anyone can view the information.
 - **Male Access Only:** Only males can view restricted information.
 - **Female Access Only:** Only females can view restricted information.

Legacy ID: This is the former unique number that the former Department of Aboriginal Sites assigned to the place. This has been replaced by the Place ID / Site ID.

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Identifier: 587180

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ID	Name	File Restricted	Boundary Restricted	Restrictions	Status	Type	Knowledge Holders	Coordinate	Legacy ID
12737	BURRUNUNGU.	Yes	Yes	No Gender Restrictions	Registered Site	Ceremonial, Engraving, Grinding Patches / Grooves, Midden / Scatter, Mythological, Painting, Repository / Cache, Skeletal Material / Burial, Camp	*Registered Knowledge Holder names available from DAA	Not available when location is restricted	K02466



Aboriginal Heritage Inquiry System

Map of Registered Aboriginal Sites

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Identifier: 587180

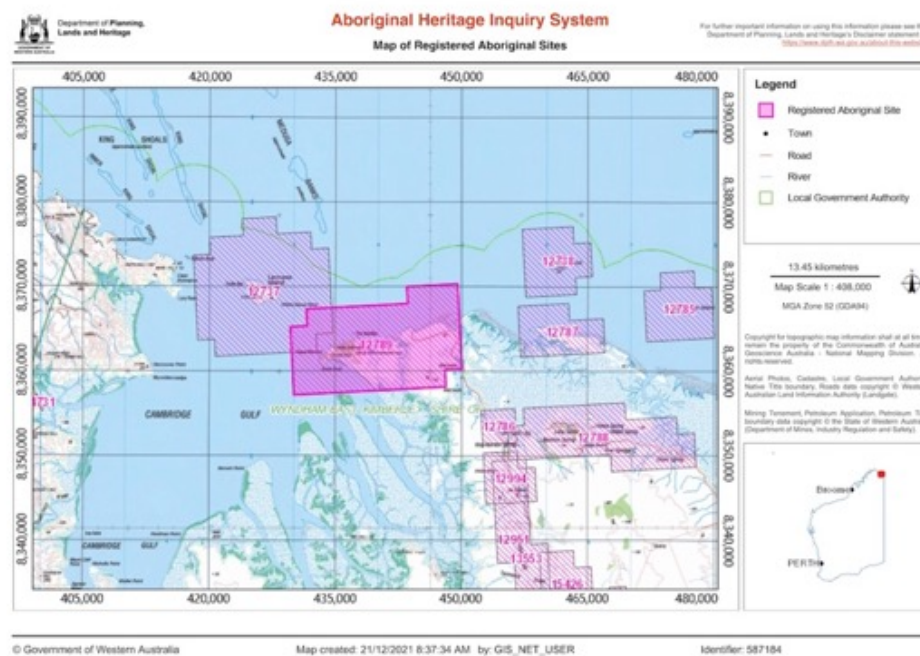
Site 12789 - Balu-Gunanjaar (centred on Cape Domett)

 Department of Planning, Lands and Heritage	Aboriginal Heritage Inquiry System List of Registered Aboriginal Sites	For further important information on using this information please see the Department of Planning, Lands and Heritage's Disclaimer statement at https://www.dph.wa.gov.au/about-this-website
Search Criteria		
Registered Aboriginal Site ID 12789		
Disclaimer		
The <i>Aboriginal Heritage Act 1972</i> preserves all Aboriginal sites in Western Australia whether or not they are registered. Aboriginal sites exist that are not recorded on the Register of Aboriginal Sites, and some registered sites may no longer exist.		
The information provided is made available in good faith and is predominately based on the information provided to the Department of Planning, Lands and Heritage by third parties. The information is provided solely on the basis that readers will be responsible for making their own assessment as to the accuracy of the information. If you find any errors or omissions in our records, including our maps, it would be appreciated if you email the details to the Department at AboriginalHeritage@dph.wa.gov.au and we will make every effort to rectify it as soon as possible.		
Copyright		
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Coordinate Accuracy		
Coordinates (Easting/Northing metres) are based on the GDA 94 Datum. Accuracy is shown as a code in brackets following the coordinates.		
Terminology (NB that some terminology has varied over the life of the legislation)		
Place ID/Site ID: This is a unique ID assigned by the Department of Planning, Lands and Heritage to the place.		
Status:		
• Registered Site: The place has been assessed as meeting Section 5 of the <i>Aboriginal Heritage Act 1972</i>. • Other Heritage Place which includes: - Stored Data / Not a Site: The place has been assessed as not meeting Section 5 of the <i>Aboriginal Heritage Act 1972</i>. - Lodged: Information has been received in relation to the place, but an assessment has not been completed at this stage to determine if it meets Section 5 of the <i>Aboriginal Heritage Act 1972</i>.		
Access and Restrictions:		
• File Restricted = No: Availability of information that the Department of Planning, Lands and Heritage holds in relation to the place is not restricted in any way. • File Restricted = Yes: Some of the information that the Department of Planning, Lands and Heritage holds in relation to the place is restricted if it is considered culturally sensitive. This information will only be made available if the Department of Planning, Lands and Heritage receives written approval from the informants who provided the information. To request access please contact AboriginalHeritage@dph.wa.gov.au.		
• Boundary Restricted = No: Place location is shown as accurately as the information lodged with the Registrar allows.		
• Boundary Restricted = Yes: To preserve confidentiality the exact location and extent of the place is not displayed on the map. However, the shaded region (generally with an area of at least 4km²) provides a general indication of where the place is located. If you are a landowner and wish to find out more about the exact location of the place, please contact the Department of Planning, Lands and Heritage.		
• Restrictions:		
- No Restrictions: Anyone can view the information. - Male Access Only: Only males can view restricted information. - Female Access Only: Only females can view restricted information.		
Legacy ID: This is the former unique number that the former Department of Aboriginal Sites assigned to the place. This has been replaced by the Place ID / Site ID.		
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ID	Name	File Restricted	Boundary Restricted	Restrictions	Status	Type	Knowledge Holders	Coordinate	Legacy ID
12789	BALU-GUNANJARR COMPLEX.	Yes	Yes	No Gender Restrictions	Registered Site	Ceremonial, Engraving, Grinding Patches / Grooves, Midden / Scatter, Mythological, Painting, Repository / Cache, Skeletal Material / Burial, Hunting Place	*Registered Knowledge Holder names available from DAA	Not available when location is restricted	K02465



ANNEX 4: LETTER FROM BAC



To whom it may concern.

Boskalis Cambridge Gulf Marine Sand Proposal.

The Balanggarra Aboriginal Corporation (BAC), a registered Native Title holder in the East Kimberley region, is pleased to have close and ongoing consultations with Boskalis Australia Pty Ltd (BKA) regarding the above proposal. We are appreciative of the way BKA has approached its engagement with us as Traditional Owners.

BAC supports the proposal so long as we continue to be fully and closely consulted and it does not impact negatively on our interests, including Native Title, Aboriginal cultural heritage and the Balanggarra Indigenous Protected Area. BAC is interested to receive benefits from the proposal should it go ahead, including employment, business opportunities and community development - and we continue to work closely with BKA to develop a Memorandum of Agreement (MoA), which includes a benefits and community development package for the BAC people.

We look forward to continuing to work closely with BKA on this proposal.

Yours sincerely

Joshua Lewis

Chairperson

Balanggarra Aboriginal Corporation

0402 440 067

ICN 2923

ANNEX 5: LETTER FROM MG CORP

Achieving a healthy, wealthy and
culturally strong MG community



Yawoorroong Miriwung Gajerrong Yirrgeb
Noong Dawang Aboriginal Corporation
(MG Corporation)

ABN 79 270 210 553
ICN 4597

PO BOX 2110
KUNUNURRA WA 6743
Office: (08) 9166 4800
www.mgcorp.com.au

10 July 2024

To whom it may concern,

Proposed Boskalis Marine Sand Project – Cambridge Gulf

Boskalis Australia has been consulting with MG Corporation and Miriwung and Gajerrong #1 and #4 (Native Title Prescribed Body Corporate) Aboriginal Corporations ('MG PBCs') about their proposal to develop a marine sand export operation in Cambridge Gulf.

This project is of interest to the MG Corporation in terms of potential socio-economic benefits for our Miriwung-Gajerrong people. We are pleased that Boskalis had been engaging with us closely to develop a Negotiation Protocol, for developing a Memorandum of Understanding for our possible involvement in the project, including agreed benefits.

We are also pleased with the open way that Boskalis has kept us fully informed of progress with their feasibility and environmental studies, including inviting MG Corporation to be involved, and their offer to support development of a joint Aboriginal Cultural Heritage Management Plan for the area.

We look forward to continuing to work with Boskalis and to ensure that there are both benefits to MG Traditional Owners and no significant negative impacts from the project.

Please do not hesitate to contact the undersigned for further details on our views on the proposed project.

Yours sincerely

Carol Hapke

Director
MG PBC

This is stony country – when I walk across this country where the creeks and the floodwaters have been there are lots of rocks and little stones.
Lots of those stones are beautiful coloured ones. We call them gerany. Gerany is also the word for money.

