

11 April 2012

Registrar for Aboriginal Sites
Department of Indigenous Affairs
PO Box 7770, Cloisters Square
Perth Western Australia 6850

And by email: registrar@dia.wa.gov.au

Dear Registrar,

Further information regarding the area of DIA 30274

We refer to your letter to us of 3 April 2012, and to your statement that:

Mr Roe is encouraged to provide all of the information he considers relevant without delay and to articulate the conclusions that he believes the Aboriginal Cultural Material Committee (ACMC) and the Minister for Indigenous Affairs should draw from the information he provides. In doing so, it would be helpful if the Mr Roe could identify the primary sources of the information on which he would rely and provide any further information he believes may assist the ACMC and the Minister in this matter.

Based on your lack of response to our requests for clarification of the matters which the ACMC and the Minister will be considering, we have assumed that this request is limited to the subject matter of your 13 March 2012 letter, namely "any further information your client may have about places of sacred, ceremonial or ritual significance within the area of DIA 30274 (LSC11)."

Additional material

The following relevant additional material is available for consideration by the ACMC:

- (a) Mr Green's 10 April 2012 report in relation to sites of significance, including the Song Cycle path, in the James Price Point area.
- (b) an August 2011 video recording of Mr Roe, identifying and discussing places and matters of sacred, ceremonial or ritual significance in the area between Walmadan and Inballal to the east of Manari Road, and more generally in the area of the Song Cycle path. An outline of the content of the recording, and a

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series of maps showing the locations at which filming occurred, has also been prepared.

- (c) two large scale maps prepared in collaboration with Paddy Roe and others showing the Song Cycle path, sites of significance and numerous other areas of sacred, ceremonial and ritual significance in the area of DIA 30274 and beyond. The exact date of their preparation is not known at present, but they are believed to date from before Mr Green's 1991 report.

This material contains matters of a secret and sacred nature, and should not be read or viewed by women or Aboriginal men who are not initiated into the Northern Tradition, or otherwise be disseminated to them.

These materials can be provided to DIA and the ACMC electronically upon written confirmation that this condition will be abided by in the course of their use by DIA and the ACMC. Mr Roe will also provide these materials directly to Dr Cane for his use in Broome, and in advising the ACMC and the Minister, upon Dr Cane's confirmation that he will also treat them in this manner.

Set out below is a statement of the conclusions that the ACMC and Minister should draw from the relevant materials (including those identified in paragraph 2 of our 31 March 2012 letter, the additional materials (and highlighted below), and the published reasons of Courts and tribunals). The dot-pointed references to the materials should be self-explanatory.

Conclusions

1. There is an Aboriginal song cycle path that travels down the west coast of the Dampier Peninsula through to Wapunu in Karajarri country, including all of the area of DIA 30274. This song cycle path is related to the second stage of the body of men's law known as the Northern Tradition.
 - Green 1991
 - **Green 2012**
 - **Roe video 2011**
 - **Song Cycle Map**
 - Bradshaw and Fry 1989
 - Registrar to Premier of Western Australia 4 January 1991
 - ACMC 11 July 1991
 - Green evidence to Mining Warden
 - ACMC 8 August 1991
 - Mining Warden's 20 August 1991 reasons
 - *Rubibi v State of Western Australia (No.5)* [2005] FCA 1025 at [59].

2. The Song Cycle path is the path taken by the ancestor as he travelled southwards down the western side of the Dampier Peninsula and beyond. The path in its entirety, including named sites along it, certain trees and other features, are sacred. The ancestor placed an essence in the ground along the path. The essence is dangerous and should not be disturbed.
 - Green 1991
 - **Green 2012**
 - **Roe video 2011**
 - **Song Cycle Map**
 - Bradshaw and Fry 1989
 - ACMC 11 July 1991
 - Green evidence to Mining Warden
 - ACMC 8 August 1991
3. The dimensions of this path are defined by the occurrence of particular geographic and vegetation features and places, which are known to men initiated into the Northern Tradition.
 - Green 1991
 - **Green 2012**
 - **Roe video 2011**
 - **Song Cycle Map**
 - ACMC 11 July 1991
 - Green evidence to Mining Warden's Court
 - ACMC 8 August 1991
4. The relationship between the Song Cycle path in its entirety and the law is such that damage to the Song Cycle path will have a serious and detrimental effect upon the integrity of that law, and may result in sickness and death.
 - Green 1991
 - **Green 2012**
 - Green evidence to Mining Warden's Court
 - Bradshaw and Fry 1989
5. The area of DIA 30274 also contains places and objects that are related to the historical and contemporary practice of men's law, and other mythological paths.

- Green 1991
 - **Green 2012**
 - **Roe video 2012**
 - **Song Cycle Map**
 - Bradshaw and Fry 1989
6. The ACMC has already recognised certain sections of the Song Cycle path as sites for the purposes of the *Aboriginal Heritage Act* 1972, and has assessed the importance and significance of the sites against the requirements of section 39 of that Act. The ACMC regarded those sections as “having importance and significance because of the interconnected nature of this network of totemic significances.”
- ACMC 11 July 1991
 - ACMC 8 August 1991
 - Mining Warden’s 20 August 1991 reasons
7. In 1991, when the ACMC assessed those sections of the Song Cycle path against the requirements of the Act, the man with principal authority to speak for area, and who was primarily responsible for its protection, was Paddy Roe.
- Green 1991
 - **Green 2012**
 - Bradshaw and Fry 1989
 - Green evidence to Mining Warden’s Court
8. As recognised by Federal and State Courts and tribunals, the men today with principal authority to speak for the Song Cycle path within the area of DIA 30274 (including the proposed development area), and who are primarily responsible for its protection, are Joseph Roe, Phillip Roe and Richard Hunter (the grandsons of Paddy Roe).
- **Green 2012**
 - **Roe video 2011**
 - *Rubibi v State of Western Australia (No.5)* [2005] FCA 1025 at [47] and [55].
 - *Underwood v Gayfer* [1999] WASCA 56 at [21]-[22] and [31] (of the online version published on austlii.edu.au)
 - *Joseph Roe and Cyril Shaw on behalf of the Goolarabooloo Jabir Jabirr Peoples / Western Australia / Kimberley Quarry Pty Ltd* [2008]


NNTTA 118 at [17]-[18]

9. Joseph Roe has authority under the relevant traditional laws and customs to speak for, and identify, the significance of the area of land and waters subject to DIA 30274, and has done so.
10. DIA 30274 is a site within the meaning of section 5 of the Act. To the extent that it has not already done so, the ACMC should conclude, for the purposes of section 39 of the Act, that the balance of the site is of importance and significance.

If any explanation or elaboration is required, please contact us.

If there are further issues that Mr Roe should address, please identify them.

Yours faithfully,
CHALK & FITZGERALD


James Walkley
Senior Lawyer