

## CHAPTER 6

### UNSETTLING PLANNING IN PERTH: INDIGENOUS PLANNING IN A BOOM

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#### INTRODUCTION

Since English occupation of the Swan Coastal Plain in 1829, Aboriginal people in Western Australia have experienced a process of social, political, legal and spatial marginalisation (Bolton, 1981; Carter, 2005; Green, 1984; Haebich, 1992; Hunter, 2012). While the most oppressive policies of cultural extermination were in place from the start of the *Aborigines Act 1905* until the custodial powers of the state began to reduce in 1964,<sup>1</sup> the effects of marginalisation continue to have repercussions for Aboriginal people and Western Australians. However, both Aboriginal people's marginalisation and Perth's economic growth did not have uniform effects and have presented both possibilities and problems. The focus of planning policies and boom-time economic opportunities flowed to some locations and groups and not others. In this chapter we investigate Indigenous planning in the Perth metropolitan area (henceforth, Perth), in the context of Western Australia's most recent resources boom, through a critical appraisal of five key areas of Indigenous planning policy: land claims, Aboriginal heritage regulations, Aboriginal participation in urban planning processes, management of important Aboriginal places and interpretation of places. Since the demographics and history of planning for Perth are addressed in chapters 3 and 8, we do not revisit them in detail here.

Indigenous planning seeks to establish a planning paradigm through which Indigenous people's perspectives, rights and interests can be fully realised within intercultural societies that have imposed planning and management systems over Indigenous jurisdictions. Indigenous planner Ted Jojola writes:

What distinguishes indigenous planning from mainstream practice is its reformulation of planning approaches in a manner that incorporates 'traditional' knowledge and cultural identity. Key to the process is the acknowledgement of an indigenous world-view, which not only serves to unite it philosophically, but also to distinguish it from neighbouring, non land-based communities. (Jojola, 2008, p. 42)

This 'reformulation' can be contentious, involving protests and evictions, as well as being collaborative. Matunga (2013, p. 6) identifies that Indigenous planning needs to be contextualised with reference to the specific community, their territories and resources, their world view, values and knowledge and their practices, approaches and institutions. However, an urban intercultural context complicates Indigenous and community categories. The disruptions, impositions and processes of occupation result in multiple and disputed claims of connection to country and the inhabitation of Perth by Aboriginal and Torres Strait Islander people from other parts of Australia, in particular other areas of Western Australia, cannot be ignored. For the purposes of this chapter, the key questions are then the extent to which Aboriginal priorities, perspectives and interests have been responded to and accommodated within the postcolonial planning system for Perth in the context of a resources state. In particular, we seek to understand how a variety of Aboriginal interests in land in Perth are being addressed in the planning system and what they provide or could provide to Aboriginal people.

Globally, within the fields of sociology (Connell, 2006) and urban planning (Sandercock, 1998, 2003; Thompson, 2003), the importance of acknowledging other, often marginalised, ‘voices’ in the community is increasingly recognised. This is a characteristic of postmodernist planning (Hirt, 2002; Sandercock, 1998), which is more people-centred and acknowledges different ways of knowing. In the past, modernist planners as ‘experts’, assumed the city could be controlled, manipulated and perfected by applying rational and scientific principles (Beauregard, 1996). In the increasingly diverse ‘global’ city, there are calls to challenge this notion and introduce the idea that ‘knowledge and expertise are imperfect, shifting social constructs’ (Hirt, 2002, p. 123). Indeed, Sandercock (1998) highlights the need for postmodernist planning to focus on the new complex cultural needs of cities of difference reflecting ‘international migration, the discourse of postcolonialism, the resurgence of indigenous peoples, and the rise of organised civil society’ (Sandercock, 2003, p. 13).

While a useful concept for understanding contemporary urban issues, the intercultural city must include two principles if we are to recognise the uniqueness of Indigenous people’s experiences of urban spaces. First, research needs to acknowledge the diversity within the categories of Aboriginal people, non-Aboriginal people, the state and industry if the multiplicity of Aboriginal people’s experiences and perspectives is to be taken into account. Second, if Aboriginal people’s connections are consigned to a time before contact (or even before the present), then Aboriginal people can be represented as ‘just another stakeholder’ (Porter, 2013, p. 297) amongst many in the intercultural city, which denies the continuing ‘coexistence’ (Howitt & Lunkapis, 2010) of ancient jurisdictions and supports the unjust imposition of political processes and property laws.<sup>2</sup>

In her discussion of Melbourne, Porter was struck by the ‘total lack of engagement between everyday urban planning processes in Melbourne and Indigenous people’ (Porter, 2013, p. 284). This division was built on a powerful representation that Aboriginal

people with ongoing relationships with their country and culture live in remote places and that Aboriginal people in cities had lost their connections (Shaw, 2007).<sup>3</sup> Aboriginal people's engagement in urban planning processes has generally been limited to considerations of heritage conservation and management (James, 2012). The context of the postcolonial intercultural city can therefore be particularly limiting for Aboriginal people.

Researchers need to take a critical stance that critiques ongoing power relationships, but also encourages a search for the spaces where emancipatory projects that engage Indigenous ontologies emerge. Coombes, Johnson and Howitt (2013) advocate a post-colonial approach that balances retrospective (critical appraisal of the past and its continuities) and prospective (the creative and emancipatory practices that emerge from hybridity and engagement in the contact zone) approaches. In applying this approach in this chapter, we are both cognisant and critical of the colonial legacies that the planning system in Western Australia perpetuates, but also searching for the way that 'contradiction, messiness and the influence of the past' can generate emancipatory projects that, although enabling, are 'often compromised, fragile or contested' (Coombes, Johnson & Howitt, 2013, p. 692).

#### ABORIGINAL PEOPLE'S EXPULSION FROM AND RETURN TO PERTH

Perth is, for the most part, the country of the Whadjuk Noongar, one of fourteen language groups within the larger Noongar nation that covers the south west of Australia from a point north of Jurien Bay to a point between Bremer Bay and Esperance on the southern coast. Aboriginal, including Whadjuk Noongar, ontologies are rooted in the relationship between country, family and knowledge (Bird Rose, 1996). Hence, management of country was interwoven with family relations, spirituality (the Dreaming) and knowledge. Hallam (1975) describes the Noongar people who populated the south west of Western Australia as fire-stick farmers

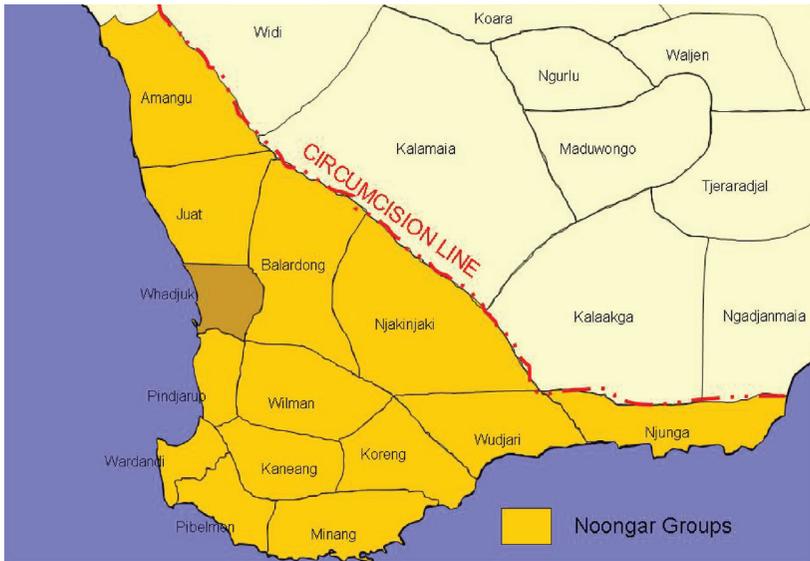


Figure 1: Noongar language groups in the south west of Western Australia ('Whadjuk1' by John D. Croft at English Wikipedia – Created and uploaded to the English Wikipedia by John D. Croft; transferred to Commons by User:Anrie using CommonsHelper. Licensed under CC BY-SA 3.0 via Wikimedia Commons – <https://commons.wikimedia.org/wiki/File:Whadjuk1.jpg#/media/File:Whadjuk1.jpg>).

and explains how Noongar land-management practices shaped a landscape attractive to settlers.<sup>4</sup> She also documents how colonisation had within a decade appropriated Whadjuk Noongar women and men's hereditary resources and created a reliance on European rations (Carter, 2005; Hallam, 1991). Much like the experiences of Indigenous people globally (Matunga, 2013), traditional planning and management practices quickly became practices of resistance after English colonisation. The cycle of *wedjela* (non-Aboriginal people) complaining about Aboriginal people being on Aboriginal lands (often when it is public space), then state and police targeting Aboriginal people, started in Perth in the summer of 1830 when Aboriginal people returned to their coastal camps (Carter, 2005; Green, 1984).<sup>5</sup> Aboriginal people in the 1830s asserted their ownership and rights over land, leading to conflicts with the settlers and the deaths of many Aboriginal people (Carter, 2005; Green, 1984; Hallam, 1983). Aboriginal people felt the full

force of colonial criminal law while receiving few of its protective benefits (Hunter, 2012).

The start of the twentieth century was when the state instigated the most oppressive and paternalistic period of Western Australian policies towards Aboriginal people. The Aborigines Protection Act of 1905 gave the Protector of Aborigines control over movement, jobs, pay, marriage and contact with children, which required state approval and oversight (Haebich, 1992). Families were routinely separated and mothers forced to live initially in poorly funded missions to remain with their children and then in poorly funded government facilities. A large Prohibited Area in the City of Perth, which made it an offence for Aboriginal people to enter unless they were in 'lawful employment', was enforced from 1927 until 1954.<sup>6</sup> Resistance also continued. This included writing letters to papers and, in 1928, a formal deputation of Aboriginal representatives that met with Premier Philip Collier to protest the injustice of the Aborigines Protection Act.<sup>7</sup> Aboriginal people's houses became hubs for information, interaction, assistance and resistance to paternalistic state control (Kinnane, 2003).

World War II presented greater work opportunities in Australia and Aboriginal men who fought abroad returned with expectations of respect and equality. For example, Helena Clarke, two returned servicemen, Yamatji brothers George and Jack Poland, and non-Aboriginal man Geoff Harcus began the Coolbaroo League in 1946 that ran dances, provided social services, and published its own paper in Perth (Kinnane, 2003). Other organisations soon followed. In the 1950s, 1960s and 1970s, the Aboriginal Advancement Council<sup>8</sup> was the key organisation for coordinating and providing services to Aboriginal people and from 1970 was run by Aboriginal people. Another organisation, the New Era Aboriginal Fellowship started in 1969<sup>9</sup> and was instrumental in establishing the Aboriginal Legal Service, the Aboriginal Medical Service and the Aboriginal Housing Board. Protests have also been important for drawing attention to Aboriginal issues. Street marches were held during the 1960s and 1970s and in the lead up

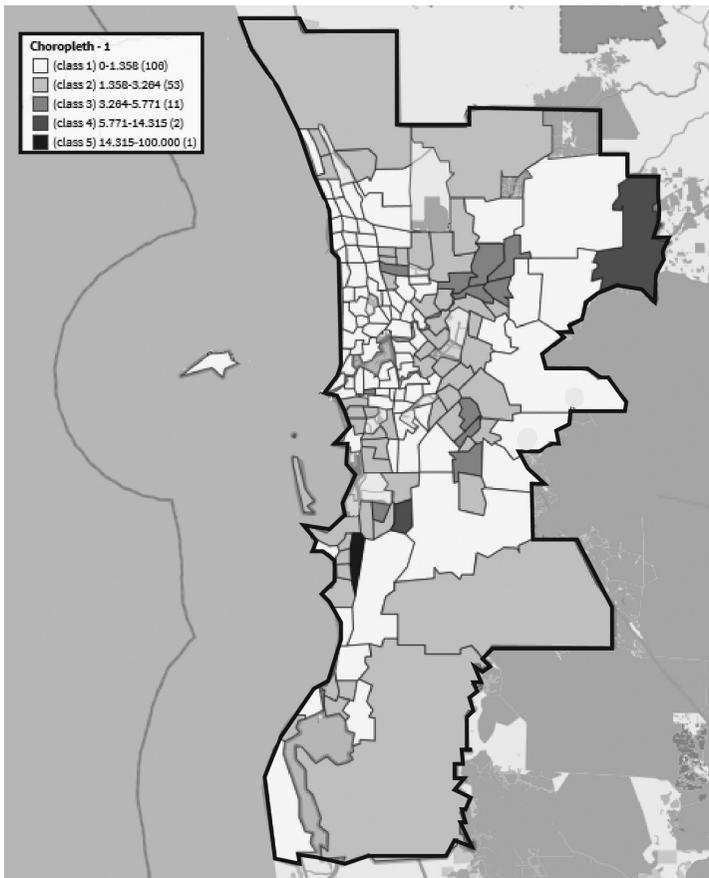


Figure 2: Map of Perth showing the percentage of Indigenous population by statistical area 2, 2011. (UA\_PHIDU. (2014). SA2 Indigenous Status 2011. Accessed 17/8/2016 from AURIN Portal), [aurin.org.au](http://aurin.org.au)

to and during the 1987–1991 Royal Commission into Aboriginal Deaths in Custody. The clash between increasing assertion and recognition of Indigenous rights (a locally specific global movement) in Western Australia, with the increasing articulation of Western Australian economic policy and practice into a global resources economy, is a theme of the sections that follow.

Australia's Aboriginal and Torres Strait Islander peoples are increasing their presence in Australian cities (Wensing & Porter, 2016) and Perth is no exception. The 2011 Census recorded that

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	<i>Households with Indigenous person(s)</i>	<i>%</i>	<i>Other households</i>	<i>%</i>	<i>Ratio (Indigenous: Non-indigenous)</i>
Negative/Nil income	136	1.3%	7958	1.3%	1.01
\$1–\$199	246	2.4%	7992	1.3%	1.83
\$200–\$299	430	4.1%	13,342	2.2%	1.91
\$300–\$399	492	4.7%	32,600	5.3%	0.90
\$400–\$599	914	8.8%	47,548	7.7%	1.14
\$600–\$799	865	8.3%	41,759	6.8%	1.23
\$800–\$999	699	6.7%	41,169	6.7%	1.01
\$1000–\$1249	691	6.7%	43,476	7.0%	0.94
\$1250–\$1499	670	6.5%	41,835	6.8%	0.95
\$1500–\$1999	1035	10.0%	69,794	11.3%	0.88
\$2000–\$2499	737	7.1%	52,244	8.5%	0.84
\$2500–\$2999	680	6.5%	63,062	10.2%	0.64
\$3000 or more	838	8.1%	80,746	13.1%	0.62
Partial income stated	1386	13.3%	60,129	9.7%	
All incomes not stated	565	5.4%	13,058	2.1%	
<b>Total</b>	<b>10,384</b>		<b>616,712</b>		

*Table 1: Comparison of Indigenous and non-Indigenous income in Australia according to 2011 Census. (Australian Bureau of Statistics, 2012)*

27,102 people identifying as Aboriginal or Torres Strait Islander lived in Perth, which is 39 per cent of the 69,664 who identified as such in Western Australia. The same census recorded the City of Swan as having the third-largest Aboriginal resident population in Western Australia (3,137) and four of the ten local government areas with the largest Aboriginal populations were in Perth (see Figure 2). While Kwinana was the eighth-largest local government in Perth in terms of Aboriginal population, it is the urban area with the highest percentage of Aboriginal people (4 per cent). While income in Perth increased between 2001 and 2011 (refer to chapter 3), Aboriginal people tend to have lower incomes (see Table 1) and are therefore a group that has disproportionately suffered from increases in basic living costs in Perth and a decreasing standard of living (WACOSS, 2013). They are therefore more likely to have been disadvantaged by the boom than other residents. Spatially, Aboriginal people tend to live in the outer urban areas of Perth (the inner Swan Valley around Midland, Kwinana and Armadale), with both total numbers and proportions falling to their lowest levels in the wealthier Western suburbs (see Figure 2).<sup>10</sup> A lack of presence, as noted

by Harris (2002), can lead to the assumption that these are not Aboriginal spaces, although families have enduring connections to prominent public and private places.

### THE NOONGAR SETTLEMENT

Native title is the recognition by Australian law that Indigenous people have rights and interests to their land that derive from their traditional laws and customs (National Native Title Tribunal, 2007). In 1992, through the decision in the court case *Mabo and Others v the State of Queensland (No 2)*, the High Court of Australia recognised the existence of Aboriginal land rights from their traditions and customs. While a weak right to land that was extinguished by most other property rights,<sup>11</sup> the recognition of native title forced political parties to act. The Keating government established the Native Title Tribunal in 1993 and, following the *Wik* case (*Wik Peoples v State of Queensland*, 1996), conservative Australian Prime Minister John Howard revised the legislation in 1997 to define and limit Aboriginal people's native title rights. Through the South West Aboriginal Land and Sea Council (SWALSC), the Noongar people consolidated diverse and, at times, competing claims (Barcham, 2008). In the court case *Bennell vs. State of Western Australia* (2006), the Noongar people's interests in land were acknowledged over the south west of Western Australia including Perth, the first such recognition of rights in a capital city in Australia, although claims over five small pockets of land in Perth were dismissed. However, the decision was appealed by the state and federal governments on methodological grounds. Rather than dismiss the case, the Full Federal Court referred it back to the Federal Court for a 'rehearing of the entire process' (South West Aboriginal Land and Sea Council, Host & Owens, 2009, p. xxv).<sup>12</sup>

SWALSC's position after the subsequent hearing was to recognise that, while a loss would be catastrophic, even a positive determination was likely to result in a ruling that native title

in 95 per cent of the claim areas had been extinguished due to changes in title and use. Recent research demonstrates that this is indeed the case in Australia, as only six of 100 urban native title claims were registered and the bulk of applications (57 per cent) have either been withdrawn, discontinued, dismissed or rejected (Wensing & Porter, 2016). Glen Kelly (SWALSC CEO) and Stuart Bradfield (2012) have written of the 'hollow and fragile' rights conferred by native title and the mismatch between a likely outcome and the loss of land the size of Victoria that includes the most productive and valuable locations in Western Australia. Their position was that the best course of action was a negotiated settlement, which itself was only possible due to the earlier rulings about the existence of the Noongar nation and preceding land-rights campaigners (Kelly & Bradfield, 2012).

Negotiations for the South West Native Title Settlement (Noongar Settlement) started in 2009. SWALSC and the WA government reached an in-principle agreement in 2013 (Mccagh, 2015). In March 2015 the six native title groups that consolidated their claims behind SWALSC all agreed separately to accept the package offered by the state government (Diss, 2015). The substance of the agreement is in the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014 (WA)*. The *Noongar Recognition Bill* formally recognises the Noongar people as the traditional owners and has been valued at \$AU1.3 billion. It includes the deposit of \$50 million annually for twelve years into a Noongar Boodja Trust, \$10 million annually for twelve years to six regional bodies, a maximum of 300,000 hectares of reserve land and 20,000 hectares of freehold land to be transferred to the Trust (Land Approvals and Native Title Unit, 2015). A second bill, the *Land Administration (South West Native Title Settlement) Bill 2015*, will allocate and create access to land for the Noongar Boodja Trust. The negotiations also addressed housing, economic participation, joint management of the conservation estate, access to drinking-water catchment areas, community development, accommodation for Noongar corporations and Noongar management of lands and

assets amongst other initiatives. While it is too early to comprehensively judge these arrangements, SWALSC appears to have realised a substantial suite of entitlements for the Noongar people.

The Indigenous land-use agreements that are likely to result from this native title process are a remarkable achievement that required trust and good will from both SWALSC and the conservative Barnett government in order to resolve native title issues across the south west of Western Australia. The transfer of fragile native title rights into a suite of entitlements demonstrates the capacity of this educated and experienced group of Noongar people to build a future on uncertain legal findings and the concerted effort to realise and advocate for Noongar nationhood.<sup>13</sup> While this is a remarkable postcolonial achievement, it did not realise the aspirations of all Noongar people. Noongar opposition argued both that ancestors would not want land rights extinguished, that there would be nothing left when the money ran out (Weber, 2012) and that SWALSC had not secured enough or the right land (Perpitch, 2015). The settlement became the focus of an Aboriginal tent embassy gathering on Heirisson Island in 2012 (Perpitch, 2015). Glen Kelly characterised such groups as ‘defined by being dispossessed’ and therefore unable to cope with the settlement (Kennedy, 2015). Such differences point to the unevenness of the boom and issues of political representation. While the state has engaged with the claims and representations of SWALSC, other Noongar and Aboriginal groups have not had their claims heard.

### ABORIGINAL HERITAGE ACT

Aboriginal people’s engagement in urban planning processes has generally been limited to considerations of heritage conservation and management (Porter, 2013). Unfortunately, Aboriginal people’s control over their heritage since the passing of the *Aboriginal Heritage Act 1972* (AH Act) has declined twice already in the face of resources-industry priorities and we may be about to experience a

third. The first decline occurred when Charles Court established the primacy of resource extraction and the development rights of landowners over Aboriginal heritage and land rights through the conflict over Noonkanbah Station in the late 1970s and early 1980s (Hawke & Gallagher, 1989).<sup>14</sup> The next two declines are the focus of this section: the Barnett government's reinterpretation of the AH Act and the proposed amendments to the Aboriginal Heritage Amendment Bill before parliament at the time of writing (2016).

The key sections of the AH Act are sections 5, 17 and 18. Section 5 defines 'Aboriginal site' with reference to archaeological and anthropological criteria (Kwaymullina, Kwaymullina & Butterly, 2015).<sup>15</sup> Section 17 of the Act outlines practices constituting an offence to Aboriginal heritage sites. Section 18 specifies that consent to disturb and destroy a site can be obtained by application to the Minister for Aboriginal Affairs. Even then, Aboriginal groups wanting to influence the process of such applications are constrained as they cannot appeal ministerial decisions like developers, land owners or other government departments and only have recourse to judicial review (Butterly, 2015). While section 18 applications imply consultation with an appropriate Aboriginal community or family groups (Kwaymullina et al., 2015), it is difficult to assess with any certainty what influence consultations have on the overall outcome. Section 18 applications are assessed by the Aboriginal Cultural Materials Committee (ACMC), which provides advice to the minister who can choose to ignore it while acting with 'regard to the general interest of the community',<sup>16</sup> which, when investment is at stake, can overwhelm the interests of Aboriginal custodians. Consequently, issues surrounding protection, transparency and conflicts of interest plague the processes and procedures surrounding Aboriginal heritage in WA (Kerr & Cox, 2016). As pointed out by Kwaymullina et al. (2015), the legislation trails behind other Australian jurisdictions that contain provisions for repatriation,<sup>17</sup> take into account links between heritage and environmental protection and native title<sup>18</sup>

and mandate consultation with Aboriginal custodians.<sup>19</sup> Herriman (2013, p. 88) notes that in the period before the Barnett Liberal government took power in 2008, 484 of 488 applications reviewed by the APMC to disturb Aboriginal heritage sites were accepted by the minister, including eight that were rejected by the APMC.

Unlike the *Heritage of Western Australia Act 1990*, the AH Act does not bind the planning system and often falls into the chasm between local and state approval processes in urban settings. Aboriginal heritage is generally not listed on municipal inventories<sup>20</sup> and most local governments consider the protection of Aboriginal heritage a matter between a developer and the state government. Hence, local planning scheme provisions for heritage impact assessments or other heritage protection mechanisms that apply to local heritage often do not apply to Aboriginal heritage. Instead, the local government will refer the developer to the Department of Aboriginal Affairs and will generally not take compliance action if the Aboriginal Heritage Act is breached. Furthermore, unlike the *Heritage of Western Australia Act 1990* that provides for heritage agreements, the AH Act does not include provision for management plans, denying Aboriginal custodians an avenue for proactive and holistic management (Kwaymullina et al., 2015). Penalties are also significantly lower for disturbing Aboriginal heritage when compared to non-Aboriginal heritage.<sup>21</sup> While non-Aboriginal heritage is protected through a system that includes planners at the local level, Aboriginal heritage is, for the most part, protected by a small section in a small department with fewer carrots and smaller sticks at its disposal, in particular when dealing with urban Aboriginal heritage.

The Barnett government has sought to further reduce the level of protection in two ways. First, without any change to the legislation, it has reinterpreted the definitions (in section 5) of the Aboriginal Heritage Act to severely curtail the number of new sites and made extensive changes to the status of existing sites.<sup>22</sup> After the definition of 'sacred' was reinterpreted to only

include sites with ongoing religious significance (since found to be a ‘misconstruction’ by Chaney J in the Supreme Court of Western Australia (*Robinson v ACMC & Others*, 2015)), thirty-five sites were deregistered and 1,262 sites were blocked from registration (Butterly, 2015).<sup>23</sup> However, a recent report by UWA archaeologists indicates that there have been large changes in classifications in the Aboriginal Heritage Registry with over 3,000 sites changing status (Dortch & Sapienza, 2015). At no stage have Aboriginal custodians been notified about the changing status of their heritage.

Second, the Aboriginal Heritage Amendment Bill 2014 (currently before parliament) seeks to decrease transparency in decision making and democratic oversight. The key provisions are that the department CEO rather than the minister would be given the powers to deal with section 18 applications while choosing to refer some matters to the ACMC, reducing the role of independent experts in the decision-making process. There are increased penalties, although they are still substantially lower than those applied to non-Aboriginal heritage in the *Heritage of Western Australia Act 1990*. Another notable inclusion in the proposed amendment to the *Aboriginal Heritage Act 1972* includes the establishment of a right of appeal for a developer if a section 18 application is rejected, while no complementary right of appeal is proposed for Aboriginal groups. The media release from the Department of Aboriginal Affairs website states that ‘the Aboriginal Heritage Amendment Bill 2014 proposed modest changes to ensure Western Australia’s Aboriginal heritage could be properly protected more effectively and efficiently’ (Ministerial Office for Education, Aboriginal Affairs and Electoral Affairs, 2014). There is a strong feeling of frustration for many Aboriginal groups, scholars and legal experts, whose submissions have been simply ignored (Kerr & Cox, 2014; Kwaymullina et al., 2015).

On the day the draft amendments were introduced into parliament, the front page of *The West Australian* diverted

attention away from such concerns instead announcing a ‘rort’ of the system by ‘predominant white consultants’, including archaeologists and anthropologists who were being paid disproportionate amounts of money for sometimes ‘cut-and-paste duplications’ and causing ‘significant delays to resources projects’ (Egan, 2014). While this was a diversion from the protection of Aboriginal heritage, it raises another important issue. A 2013 report released by Ernst & Young was the basis of the claimed rort which ‘found the average cost of a section 18 heritage application was about \$382,900’ while on average just ‘\$42,000 was spent on consultation with Aboriginal elders’ (Egan, 2014). With so few section 18 applications actually refused and such little consultation occurring with Aboriginal groups, serious questions must be raised regarding the purpose of the reforms. In particular, there is an inability to move beyond the notion that the value of the heritage is located in the sites and objects and they can be protected without reference to the custodians who hold the knowledge about that heritage. If heritage, as Porter (2013) and James (2012) claim, is the primary point of engagement for Aboriginal groups in planning, the evidence suggests the opportunity for real consultation is significantly constrained. Western Australia has a two tiered system for cultural heritage protection that is widening further. If, following Kwaymullina et al. (2015, p. 24), Western Australia can frame significance as the ‘living knowledge of Aboriginal peoples’ rather than ‘in terms of anthropological and archaeological expertise’ and better integrate Aboriginal heritage management into the planning system, then we might reach a point where Aboriginal heritage becomes a focus for both maintaining culture and empowering the groups involved where possible to pursue strategic, sustainable and equitable development.

### ABORIGINAL PARTICIPATION IN THE PLANNING PROCESS

In an urban context, the concerns of Aboriginal people in planning processes have also tended to be addressed through the small window of heritage rather than as a distinct group with specific concerns that extend well beyond heritage protection (Porter, 2013). Previous controversies, like the redevelopment of the Swan Brewery, demonstrate a template where Aboriginal involvement in planning and land management was pigeonholed into heritage, then set aside (Jacobs 1996; Jones, 1997; Mickler, 1991). While further research is required to evaluate Aboriginal participation in urban planning processes, insights are possible through case studies. Here we focus on Heirisson Island due to the presence of two parallel planning processes: a local City of Perth masterplan designed to transform the island into a sculptural park; and as a site of action and occupation by the Nyoongar Tent Embassy which presents a provocation for planning processes in Western Australia.

Heirisson Island is located at the eastern end of the Perth Central Business District. It is known as Matagarup in Noongar culture, meaning 'leg deep', which indicates its significance as a crossing point over the Swan River, a function maintained to this day as a vehicle traffic way albeit within different governance systems. In 2008, a consultancy report was launched presenting an ambitious plan to transform the island into a sculptural park (Urbis, 2008). Citing the island's inertia and relative obscurity, the plan recommended a number of initiatives. The report states clearly its status as a preliminary study and that further consultation with Aboriginal groups would take place, reflecting a flawed participatory process through which Aboriginal people are presented with fully formed plans. The masterplan provides important background work on the historical Aboriginal significance and physical transformations to the island(s), and while the plan seeks Aboriginal input, the majority of the text associated with Aboriginal cultural context is written in past tense. In 2013, a revised masterplan was published with a significantly toned

down aesthetic. While the 2008 version set the island in bright colours of a theme park map, the 2013 plan substituted more earthy colours reflecting the island's natural landscape (City of Perth, 2013). There was a significant reduction in scope and scale. A section on consultations and approvals indicated that consultation had been undertaken as part of a successful section 18 application for a footbridge across the island and that there was ongoing consultation. It was noted that the scaled back approach was adopted on the advice of Aboriginal groups. While this case demonstrates how Aboriginal groups' advice can influence a design process, there was no consideration of the broader issues of ongoing management of what is a historically important space that Aboriginal people still actively use. The potential for participation and co-management of spaces seems a long way off in light of the treatment directed at the Noongar Tent Embassy based on the island across February and March in 2012.

The Noongar Tent Embassy, which formed as a celebration of the 40th anniversary of the Canberra Tent Embassy in 1972, soon emerged as an important and alternative Aboriginal voice to the SWALSC and WA state government native title settlement deal. The choice of location was influenced by the island's centrality (and yet unobtrusiveness), its significance as a site of previous gatherings in 1978 and 1984 (Baines, 1988; Bropho, 1980) and its status as a state-registered Aboriginal Heritage site (Site 3,589).<sup>24</sup> Despite the significance of the site, the Noongar Tent Embassy participants were subjected to repeated police raids, arrests and confiscation of camping equipment. Kerr and Cox (2013) found in an analysis of over 100 media texts across February and March 2012 that the framing of the Heirisson Island/Noongar Tent Embassy news story worked to justify the treatment relying on a number of key omissions. These silences included no recognition in the media reporting of the island's listing as a registered Aboriginal Heritage site, no acknowledgement of the successful 2006 Noongar Native Title claim over Perth and the south west which pertained to rights over unallocated Crown land of which

Heirisson Island could be considered, and no mention of Australia's obligations as a signatory to United Nations Declaration on the Rights of Indigenous Peoples.<sup>25</sup> Instead, governance of the space was framed around a local City of Perth bylaw that prohibited camping on the island. This claim was reproduced uncritically by media outlets and served to reduce the complexity of Heirisson Island's legal status while framing embassy participants as illegally camping (Kerr & Cox, 2013). It is here that lays one of the inherent tensions surrounding Indigenous participation in planning. Aboriginal heritage is celebrated, particularly in masterplan reports seeking to activate city spaces adjacent to large scale inner-city apartment development sites (which is the case across the river from Heirisson Island). Yet in terms of lived space, there is seemingly no corresponding recognition of Aboriginal determinations of how a space might be utilised.

### THE MANAGEMENT OF SPACE

Much like Aboriginal people's involvement in planning processes, Aboriginal people's participation in management of space has increased, but is still limited in the extent it can incorporate their knowledge and cultural identity. A widespread model for engaging Aboriginal people in the management of space is the Aboriginal Reference Group often tied to a Reconciliation Action Plan. Based largely on a program introduced by Reconciliation Australia in 2006, Reconciliation Action Plans (RAPs) strengthen relationships and improve respect between Indigenous and non-Indigenous Australians, as well as create opportunities for Indigenous Australians (Fort, 2013). While undertaken by individual organisations, these organisations include state departments and large organisations.<sup>26</sup> An organisation with a strong RAP and a track record of consultation with Aboriginal people is the Botanic Gardens and Parks Authority. The Botanic Gardens and Parks Authority manages Kings Park, a large area of urban gardens and bushland on the edge of the Perth CBD. While it had

an Indigenous Reference Group, it now consults with SWALSC's Whadjuk Reference Group. This includes a commitment to delivering: Noongar educational materials and events; cultural awareness training for staff; recruitment of Aboriginal staff; contracting Aboriginal businesses; using Noongar names; and the consultative management of Aboriginal cultural heritage (Botanic Gardens and Parks Authority (WA), 2013). Together, these initiatives contribute to ensuring that Kings Park is a welcoming space for Aboriginal people. However, this is not joint management.

In 2012, the Department of Parks and Wildlife (DPAW) amended the *Conservation and Land Management Act 1984* (the CALM Act) to allow Aboriginal people greater access to protected areas and open up opportunities for joint management. This was a significant step towards opening up large areas of land, previously locked away, for access and cultural use by Aboriginal people. Joint management of the south west conservation estate is also an outcome of the Noongar Settlement (National Native Title Tribunal, 2007). There are still a number of unknowns. It is unclear the extent to which the Perth area will be included in the joint management stemming from the Noongar Settlement, and joint management arrangements are yet to be assessed in peer-reviewed research. A danger is, following Howitt et al. (2013), that the priorities of the conservation agency will be insufficiently flexible to allow Noongar agency and ontologies to be expressed. The DPAW policy for joint management explicitly states that it will be consistent with guiding legislation, the department's and government objectives, and, in the case of formal joint management, the CALM Act.<sup>27</sup>

The influx of residents into the inner city is also causing space management issues as new residents struggle to come to terms with established residents. Wellington Square is an example with implications for Aboriginal people. Wellington Square is located in East Perth, a short walk north east from Royal Perth Hospital. Often a number of family members accompany senior Aboriginal people when they come to Perth for medical treatment.

Due to issues with the provision of accommodation, Wellington Square has long been used as a place to stay by Aboriginal people from the Kimberley and Pilbara while travelling with family to Perth for treatment. With the increase in residential apartments around Wellington Square, news reports indicate there have been increasing numbers of complaints and the City of Perth has closed lanes and pressured organisations to try to move these groups out of the Square (Emery, 2015; Perpetch, 2014; Thomson, 2015).<sup>28</sup> Here a public space with a strong pattern of use by Aboriginal people is under threat.

### INTERPRETATION

Perth, like many cities (Matunga, 2013, pp. 8–9), was the site of intensive and deliberate erasure of the materiality and markers of memory of Whadjuk Noongar inhabitation. This erasure was not successful as many practices and memories survived within the Noongar community and are now reasserting themselves. This is occurring through three types of initiatives connected to different groups.

First, custodians are interpreting their country and their past experiences through their own cultural enterprises and efforts at cultural maintenance and renewal.<sup>29</sup> Non-Noongar Aboriginal people are also involved in representing their own perspectives, culture and country through the presence of their art and performance in cultural institutions and spaces.<sup>30</sup> Second, non-government organisations have developed the infrastructure and skills to work with Aboriginal people to include their interpretation of important places. Some of the interpretation flows from the management of space and organisational arrangements discussed in the previous section. Organisations like the Botanic Gardens and Parks Authority and the National Trust of Australia (NTA WA) have extensive Noongar interpretation of important sites on the back of their administrative structure, and long term engagement with Aboriginal people. An example of what is possible is how

the NTA WA worked with Aboriginal people to interpret and hold a smoking ceremony in the old Aboriginal Protector's Office in Murray Street, Perth. As the control centre for the oppression of Aboriginal people for over half the twentieth century, these actions constitute an important step towards recognition and healing. Third, government at all levels is including Aboriginal place names and interpretation in their public art, multimedia and new developments. While the most high-profile example is the creation of Yagan Square near the train station in the CBD, a number of local governments, including the City of Cockburn and the City of Perth<sup>32</sup>, have produced multimedia, and public art by Aboriginal artists can be found throughout the CBD and some other suburbs.<sup>33</sup>

The importance of Aboriginal interpretation lies in its acknowledgement of the multiplicity of space (Massey, 2005), which is crucial for the emergence of practices and identities that acknowledge and grow with Aboriginal ontologies. This benefits both Aboriginal and non-Aboriginal people, which raises the issue of who benefits most. An example can be found in Claisebrook, East Perth. As Kinnane (2003) documents, Claisebrook is an important Aboriginal camp that was used into the 1950s, and East Perth, as a mixed industrial-residential area, had a thriving Aboriginal community into the 1970s (O'Neill, 2001). Some Aboriginal institutions survived until the 1990s, when the gentrification of Claisebrook displaced this community (Hillyer, 2001), leaving behind it a series of public artworks done by and with Aboriginal people (Byrne & Houston, 2005). Byrne and Houston (2005, pp. 340–2) argue that this public art places Aboriginal people in deep time, relegating their presence to the past and thereby explaining and naturalising their absence. Jacobs calls this a “façade of inclusiveness” (1998, p. 267). While preferable to complete erasure, the main beneficiaries of this interpretation are middle class non-Aboriginal people who live, work and recreate in Claisebrook. If these contradictions are to be avoided, Aboriginal people need to be more than artists and consultants. They need

housing and services in the area. Furthermore, they need to be involved in the planning and management of these spaces so they feel comfortable returning to them.

## CONCLUSION

A trend that runs across our discussion is the resolution of Aboriginal people's interests in land, whether through native title settlement, heritage legislation, or as the users of places. This can both support and undermine Indigenous planning, leading to the diverse and diverging experiences of Aboriginal people in Perth. SWALSC utilised a fragile opening to generate concrete outcomes through which Noongar people have opportunities to realise their aspirations, while other groups such as the Noongar Tent Embassy have been marginalised and represented as trespassers and outsiders. Despite concerted attempts to undermine the protection of Aboriginal heritage, its interpretation has spread rapidly and is now prominent. The outcomes of these trends can be explained through reference to Henri Lefebvre's (1991 [1974]) statement that 'Socio-political contradictions are realised spatially.' Resources from the mining boom have been used to increase the presence of Aboriginal themes and issues in representations of space, or the conceptualisation of space by planners, technocrats, politicians and power holders. Aboriginal heritage and history in particular is a popular theme in interpretation at developments like the new Elizabeth Quay and Yagan Square. However, there is not the same proliferation of Aboriginal urban 'lived space', which refers to the use of space by Aboriginal people in everyday life. There are some benefits in the proliferation of Aboriginal representations of space. It generates deeper understanding of space, and the multiplicity could lead to transformations into lived space. However, without planning and governance structures that provide Aboriginal people with genuine and ongoing input into spatial management, the full possibilities of the fragile rapprochements we now see will never be realised.

While the Barnett government's orientation (with the chief exception of the Noongar Settlement) makes urban reform difficult, steps can still be taken now. Many involve fixing the current problems in heritage management. The most obvious is a reorientation of the Barnett government to raise the protection of Aboriginal heritage to the level of non-Aboriginal heritage and a process to rebuild trust between the Department of Aboriginal Affairs and the primary constituency, the Aboriginal people of Western Australia. This requires the abandonment of the Aboriginal Heritage Amendment Bill 2014 and a holistic assessment of Western Australia's cultural heritage management system that binds the planning system to provide an adequate level of protection to Aboriginal heritage. At the very least, the Aboriginal Heritage Amendment Bill 2014 should not pass into law. Progressive local governments should list Aboriginal heritage on their municipal heritage inventories. Another possibility is legal action by Aboriginal organisations to see if the current system of heritage management contravenes the Federal *Racial Discrimination Act 1975*.

Other steps beyond heritage are to increase the cultural competencies of planners through professional education (Agyeman & Erickson, 2012; Thompson, 2003), to embrace postmodernist planning (Sandercock, 2003) and to facilitate urban spaces that are managed by and appropriate for Aboriginal people. A further planning option is to produce a social plan or community strategic plan<sup>34</sup> which explores the demographics of the community and assesses specific needs of targeted groups including children, youth, women, the elderly, people with disabilities, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds (CALD). The state government and City of Perth should change their approach to the Noongar Tent Embassy from criminalisation to negotiation with the aim of coexistence of different, and even conflicting, claims about Perth (Porter, 2013). While the best chances for the emergence of new Aboriginal lived spaces in Perth is through the Noongar

Settlement, responsibility for creating these spaces and ensuring equity extends beyond native title settlements to civil society and the state. As Perth increases in size and sophistication, the fallout from these inadequacies will affect us all.

## NOTES

- 1 The State of Western Australia retained custodial powers over Aboriginal children in Western Australia until the implementation of the *Aboriginal Affairs Planning Authority Act 1972*.
- 2 Following Howitt et al.'s (2013) approach to Indigenous participation in natural resources management, we argue that considerations of ontological difference need to be incorporated into planning processes if Indigenous people's priorities, concerns and welfare are to be effectively addressed.
- 3 This representation was also the case in other countries (Walker & Barcham, 2010).
- 4 Hallam (1975) notes that early settler diaries commented on similarities to farmlands in Europe.
- 5 This cycle, where the presence of Aboriginal people was constructed as a policing issue rather than a matter of the creative sharing of space or understanding Aboriginal use of space, was repeated many times (Haebich, 2000; Kerr & Cox, 2013).
- 6 The prohibited area stretched 1.3 kilometres from the Swan River to Newcastle Street in Northbridge and 2 kilometres from Bennett Street in East Perth to Milligan Street in West Perth.
- 7 The members of the deputation were William Harris, Wilfred Morrison, Norman Harris, Edward Jacobs, A. Kickett, William Bodney and Edward Harris.
- 8 The Aboriginal Advancement Council was formed originally in 1952 as the Native Welfare League and was renamed in the mid-1960s.
- 9 Originally a coalition of Quakers and Noongar people, the New Era Aboriginal Fellowship successfully became an Aboriginal-run organisation. The Fellowship's original mission was to achieve equality for Aboriginal and European people, particularly in the areas of justice, housing, education, employment, health and participation in government (What NEAF is About, 1970).
- 10 The lowest proportion was Cottesloe.
- 11 The 1996 Wik decision (*Wik Peoples v State of Queensland*, 1996) established that native title was not automatically extinguished over pastoral lands and that the two sets of rights could coexist, depending on the conditions of the lease.
- 12 In *Bodney v Bennell*, it was found that the Perth Metropolitan Region required separate consideration, the Noongar people had not yet proven continuous observance of customs and laws since settlement (a condition of native title since *Mabo*) and the decision on native title over land outside of Perth was left open. For a succinct summary, see Mccagh (2015).
- 13 See Cornell (2013, p. 45) for a brief analysis of SWALSC's central role in the emergence of a new political identity with a governance structure.
- 14 This included Court going to incredible lengths to break Aboriginal and non-Aboriginal protests and a union green ban (a ban due to concerns over the destruction of heritage) with non-union labour and police protection.
- 15 For instance: places where objects were left or stored by Aboriginal people; sacred, ritual or ceremonial sites important to Aboriginal people; or places of 'historical, anthropological, archaeological or ethnographical interest' (AHA Act, s5).
- 16 AH Act s 18 (3).

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- 17 See, for example, Aboriginal Heritage Act 2006 (VIC) ss 12–23; Aboriginal Cultural Heritage Act 2003 (QLD) ss 15–19.
- 18 Compare, for example, Aboriginal Cultural Heritage Act 2003 (QLD) ss 34, 35, 86, 87.
- 19 Compare, for example, Aboriginal Heritage Act 1988 (SA) s 13.
- 20 Municipal Inventories will be renamed Local Heritage Surveys if amendments to the Heritage of Western Australia Act 1990 are successful.
- 21 Should the Aboriginal Heritage Amendment Bill that is currently before parliament be passed, the maximum penalty for an individual illegally disturbing a non-Aboriginal heritage site will be A\$1 million and two years' imprisonment, but for an Aboriginal site it will be A\$100,000 and 12 months' imprisonment, doubled on a second offence (it is currently A\$20,000 and imprisonment for nine months, increasing to A\$40,000 and two years for a second offence).
- 22 According to a recent report by University of Western Australia archaeologists Joe Dortch and Tom Sapienza (2015), the number of new registrations fell from 65 per cent of submissions in 2010 to 8 per cent in 2012.
- 23 See Butterly (2015) for a review of *Robinson v Fielding* [2015]WASC108. Butterly's assessment of Chaney J's judgement draws attention to the weak protection provided for Aboriginal heritage, including the existence of only an implied requirement to talk to Aboriginal custodians about disturbing the heritage they maintain.
- 24 Aboriginal Heritage Inquiry System. (2012). Site 3589. Perth, WA: Government of Western Australia, Department of Aboriginal Affairs. Retrieved from <http://www.daa.wa.gov.au/globalassets/pdf-files/heritage-pdfs/ahisgettingstarted.pdf>.
- 25 For a summary of the United Nations Declaration on the Rights of Indigenous Peoples, see <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>.
- 26 Planning organisations have RAPs, including the Department of Planning and the Planning Institute of Australia.
- 27 This is the outcome of a historical process whereby conservation priorities preceded and have set the boundaries for Aboriginal people's co-management of protected areas.
- 28 This is linked to a broader campaign by the City of Perth to remove homeless people. Another instance was the installation of sprinklers in King Street, after which 15,000 people signed a petition advocating their removal (Pickles, 2015).
- 29 This includes the growing practice of welcome to country (where a custodian receives a fee to open an event or gathering); tours of locations like Kings Park or Rottnest Island; Aboriginal-owned galleries like Maalinup and Yonga Boodjah (both in the Swan Valley); theatre like the productions of Yirra Yaakin; and the creation of films (like Glen Stasiuk's documentaries, including *The Forgotten* (Stasiuk, 2003)) and multimedia (such as SWALSC's Kaartdijin Noongar—Noongar Knowledge web page, <http://www.noongarculture.org.au/>).
- 30 This includes the presence of Aboriginal people's art and performances in the Art Gallery of Western Australia, WA Museum and Battye Library, which all have dedicated Aboriginal programs.
- 31 The City of Cockburn has an Aboriginal heritage trail as part of its Friendship Way and, with Coastwest and Curtin University, was involved in creating the Nyungar Wardan Katitjin Bidi—Derbal Nara website (<http://www.derbalnara.org.au/>).
- 32 The City of Perth with Curtin University and Lotterywest produced the Karla Yarning maps (<http://www.perth.wa.gov.au/our-capital-city/things-see-and-do/karla-yarning-stories-home-fires>).
- 33 This includes the City of Cockburn and the City of Fremantle.
- 34 For instance, Kyogle Council in New South Wales has used a social plan in the past which has been superseded by a Strategic Community Plan ([http://www.kyogle.nsw.gov.au/cp\\_themes/default/page.asp?p=DOC-COH-58-43-24](http://www.kyogle.nsw.gov.au/cp_themes/default/page.asp?p=DOC-COH-58-43-24)).

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