

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 324F OF
THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION*
ACT 1999**

Dampier Archipelago (including the Burrup Peninsula)

I, Ian Gordon Campbell, Minister for the Environment and Heritage, provide the following statement of reasons for my decision, under section 324F of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), not to include the Dampier Archipelago (including the Burrup Peninsula) in the National Heritage List.

LEGISLATION

1. Section 324F of the EPBC Act provides:
 - (1) This section applies (despite subsection 324C(2)) if the Minister believes that:
 - (a) a place wholly in the Australian jurisdiction has or may have one or more National Heritage values; and
 - (b) any of those values is under threat.
 - (2) The Minister may, by instrument published in the Gazette, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
 - (3) Within 10 business days after including the place in the National Heritage List under this section, the Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
 - (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.
 - (5) If the Minister includes the place in the National Heritage List under this section, he or she must:
 - (a) within 10 business days, publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument published in the gazette; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List; and

- (c) within 10 business days, advise each person (if any) who nominated the place or requested the Minister in writing to include the place in the List under this section that the place has been included in the List.
- (6) If a person requests the Minister in writing to include a place in the National Heritage List under this section and the Minister has not done so within 10 business days after receiving the request, the Minister must:
- (a) publish on the Internet notice of those facts; and
 - (b) advise the person that the Minister has not included the place in the List; and
 - (c) give reasons why the Minister has not done so to the person and to anyone who requests them.
- This subsection has effect (despite subsection (1)) whether or not the Minister has the belief described in that subsection in relation to the place and its heritage values (if any).

[The “Australian jurisdiction” is defined to include land, waters, seabed and airspace in Australia (s. 5(5) EPBC Act).]

2. Subsection 324D (1) of the EPBC Act provides:

- (1) A place has a National Heritage value if and only if the place meets one of the criteria (the National Heritage criteria) prescribed by the regulations for the purposes of this section. The National Heritage value of the place is the place’s heritage value that causes the place to meet the criterion.

3. The regulations state as follows:

- (1) For section 324D of the Act, sub regulation (2) prescribes the National Heritage criteria for the following:
 - (a) natural heritage value of places;
 - (b) indigenous heritage values for places;
 - (c) historic heritage values of places.
- (2) The National Heritage criteria for a place are any or all of the following:
 - (a) the place has outstanding heritage value to the nation because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history;
 - (b) the place has outstanding heritage value to the nation because of the place’s possession of uncommon, rare or endangered aspects of Australia’s natural or cultural history;
 - (c) the place has outstanding heritage value to the nation because of the place’s potential to yield information that will contribute to an understanding of Australia’s natural or cultural history;
 - (d) the place has outstanding heritage value to the nation because of the place’s importance in demonstrating the principal characteristics of:
 - (i) a class of Australia’s natural or cultural places; or

- (ii) a class of Australia's natural or cultural environments;
- (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
- (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

(3) For sub regulation (2), the **cultural** aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect or both.

BACKGROUND

4. I received a fax, dated 5 December 2006, from the Hon Dr Carmen Lawrence MP, Mr Peter Andren MP and Senator Rachel Siewert (the applicants) for the Industrial area known as Site A on the Burrup Peninsula, to be included in the National Heritage List under the provisions of section 324F (Emergency Listing) of the EPBC Act.
5. The applicants claimed the proposed development by Woodside Energy Ltd, for its onshore facilities for their Pluto Natural Gas project, immediately threatens 165 Aboriginal rock engravings. The application also stated that work on the industrial area known as Site A will shortly commence to relocate and/or destroy rock art (petroglyphs) and that the National Heritage values of this place are under immediate and ongoing threat. While the application discussed a number of sites on the Burrup Peninsula, it did not provide information on the potential National Heritage values of the place or which National Heritage criteria may apply to the place.
6. On 5 and 6 December 2006 my Department forwarded the application for emergency listing to interested parties for comment. These comments were then provided to the applicants for their consideration.
7. On 12 December 2006 the applicants responded to the comments from interested parties, which noted that there was a misunderstanding as to the area of the original application. The applicants also provided additional information on the possible National Heritage values of the place and claimed that these values related to National Heritage criteria (a), (b), (c), (d), (e), (f), (g) and (i).

8. On 12 December 2006, the applicants provided a map indicating that the boundary of the application for emergency listing is the boundary the Australian Heritage Council assessed as having National Heritage values, being place ID 105727 in the Australian Heritage Database. As a result the place to be considered by this application for emergency listing will be referred to as the Dampier Archipelago.
9. As the clarification of the boundary, and the additional information provided on potential National Heritage values, significantly changed the nature of the application for emergency listing, on 12 December 2006 my Department sent the revised application to interested parties for further comment.
10. In two letters dated 7 and 14 December 2006, Woodside Energy Ltd (Woodside) advised that they strongly oppose the application for emergency National Heritage listing. The company stated that Site A and B, the proposed location for the construction of the onshore facilities for their Pluto Natural Gas project has been zoned for industrial use with the agreement of the Indigenous groups of the area under the Burrup and Maitland Industrial Estates Agreement. Woodside indicated that it proposes to construct and operate the Pluto LNG development on Site A and the adjacent Site B and has designed the disturbance footprint on Site A to minimise impact on the heritage landscape. This has been done with advice from representatives of the Traditional Owner groups. Woodside also indicated that except for the preliminary site works on Site A, there is no immediacy to Woodside's development plans on the Burrup to warrant a decision to place the entire Dampier Archipelago in the National Heritage List. They also noted that the application identifies a number of values not considered by the AHC and that there is insufficient evidence provided by the applicants to support the additional values identified. The company also stated that if listing occurs, it should occur under the proposed *Environment Protection and Biodiversity Conservation Act 1999* amendments, which will enable the opportunity for economic and cultural values to co-exist. Woodside also noted a number of factual errors in the Emergency Listing application, including the number of engravings within the disturbance footprint, and state that all of the sites discussed in the application are within a conservation zone and will not be disturbed.
11. In three letters dated 7, 8 and 15 December 2006, the Western Australian (WA) Department of the Premier and Cabinet provided a response on behalf of the WA Government. The WA Government advised that it is opposed to an emergency listing, as this would be detrimental to the best preservation of the significant heritage and economic values of the region. The submission indicated that Woodside has received approval under the *WA Aboriginal Heritage Act 1972* to use Site A subject to certain conditions, including the avoidance of culturally significant sites. The Government of WA is strongly of the view that the area within Site A containing significant heritage values is not under threat, either immediate or ongoing and that the application does not provide any evidence to suggest that they are. The submissions also indicate that the application distorts the State's position in relation to National Heritage

listing, noting that its support of any listing is conditional on the Commonwealth addressing a number of the State's concerns.

12. In a fax dated 6 December 2006, the Ngarluma Aboriginal Corporation (NAC) advised they are the native title Prescribed Body Corporate for an area that includes Site A. The NAC advised that its members are the descendants of the Ancestors who created the art on the Burrup, and that the sites on the Burrup make up one complex that must have no further destruction. The NAC advised that they fully endorse and support the emergency application for National Heritage listing and seek that no sites are removed from Site A. The NAC stated that they believe an alternative site for the development, which will not have an impact on sites, can be found.
13. In a letter (not dated) received on 8 December 2006, Australian Interaction Consultants (AIC) provided a response which noted the comments of a number of senior Elders from the area. AIC noted that representatives of Yaburarra and Coastal Mardudhunera and the Ngaluma and Injibandi groups have been involved in surveys relating to the proposed development on Sites A and B and appreciate the efforts of the Woodside management team to accommodate their wishes and concerns. AIC noted that the Elders believe that under an agreement with Woodside, the majority of petroglyphs on Site A will be protected while the relatively less important motifs will be preserved through relocation. AIC indicated that the number of engravings identified in the application that are under threat is incorrect. The AIC advised that the application for emergency listing of Site A should be declined and the Elders should be left the responsibility of managing their culture.
14. In a fax dated 10 December 2006, the Wong-Goo-Tt-Oo Group advised that the Burrup Peninsula has both a physical and spiritual presence and they do not see the Burrup Peninsula as a series of different Aboriginal sites, but as one Aboriginal site. Wong-Goo-Tt-Oo stated that in its entirety, the Burrup Peninsula is a place of importance and significance and should be preserved as such. The Wong-Goo-Tt-Oo group advised that they support the emergency application for heritage listing on the basis that the current process available under WA jurisdiction does not seem capable of providing protection to the cultural features. However, this support was provided on the basis that any listing should not impinge on their rights to protect cultural values and heritage as traditional custodians of the land.
15. In a letter dated 13 December 2006, the Water Corporation noted that they were part of a working group formed by the WA Government and that the submission made on behalf of the WA Government would reflect the views of the Corporation.
16. In two separate letters both dated 14 December 2006, Rio Tinto Iron Ore and Rio Tinto Minerals noted that they recognised the National Heritage values of the rock art and stone arrangements on the Burrup Peninsula but do not see any need for an emergency listing at this time. Both Rio Tinto Iron Ore and Rio Tinto Minerals noted that the development of bilateral management arrangement will deliver the heritage outcomes that are sought, and that they

will commit the necessary resources required to ensure these objectives are achieved.

17. In a letter dated 14 December 2006, North West Shelf Venture (NWSV) stated that while the rock art and other heritage in the area is of enormous importance and needs to be protected, it does not support National Heritage listing under the current regime. NWSV stated that once the imminent changes to the EPBC Act are proclaimed there will be a more effective legislative mechanism to manage a National Heritage listing covering parts of the Burrup Peninsula, and an emergency heritage listing would pre-empt and prevent the orderly progression towards a National Heritage listing that could be supported by all stakeholders. NWSV also noted that it is not currently conducting or proposing to conduct any activities that would threaten the values currently being considered for heritage listing and as such no area used by the NWSV should be considered for inclusion on the list under the emergency process.
18. In a letter dated 18 December 2006, Burrup Fertilisers Pty Ltd (Burrup Fertilisers) stated that they support and understand the need to protect the environmental and heritage values of the Burrup Peninsula but that they strongly believe that any accountable government must also recognise the economic values obtained from responsible development of the area. Burrup Fertilisers noted that inclusion of the Burrup Peninsula in the National Heritage List could have serious unintended consequences for all stakeholders involved and that they would not support National Heritage listing at this time. Burrup Fertilisers also noted concerns relating to the due process and information obtained in the application.
19. On 15 December 2006 the comments provided by interested parties, to that date, were forwarded to the applicants for comment. In a letter dated 18 December 2006, the applicants responded to a number of the issues raised by the interested parties.
20. In addition to this emergency application, in 2004, three separate nominations for the Dampier Archipelago to be included in the National Heritage List were received. In accordance with subsection 324E(2) of the EPBC Act, I requested the Australian Heritage Council (AHC) to assess the places nominated.
21. The AHC duly completed its assessments (place ID 105727) and provided it to me by letter dated 4 September 2006, in accordance with subsection 324G(2) of the EPBC Act. The AHC also provided me with written comments following the AHC's invitation to comment under subsections 324G(3A) and 324G(4) of the EPBC Act.
22. On 3 October 2006 I sought additional public comment under section 324H of the EPBC Act on the boundary issues, and/or management ramifications if the Dampier Archipelago (including the Burrup Peninsula) was included in the National Heritage List. This public comment period closed on 28 November 2006.

EVIDENCE AND MATERIAL BEFORE ME

23. The evidence or other material upon which my findings were based was provided in a brief from the Department of the Environment and Heritage, dated 20 December 2006 including references to the following:
- The original application for emergency listing.
 - Three submissions from the Department of the Premier and Cabinet on behalf of the Government of Western Australia dated 7, 8 and 15 December 2006.
 - Two submissions from Woodside Energy Ltd dated 7 and 14 December 2006.
 - A submission from Ngarluma Aboriginal Corporation dated 6 December 2006.
 - A submission from Australian Interaction Consultants received 8 December 2006, noting the comments of a number of senior Elders from the area.
 - A submission from Wong-Goo-Tt-Oo received 10 December 2006.
 - A letter from the Water Corporation dated 13 December 2006.
 - A submission from Rio Tinto Iron Ore dated 14 December 2006.
 - A submission from Rio Tinto Minerals dated 14 December 2006.
 - A submission from North West Shelf Venture dated 14 December 2006.
 - A letter from WA Department of Indigenous Affairs dated 14 December 2006.
 - A submission from Burrup Fertilisers Pty Ltd dated 18 December 2006.
 - Two responses by the applicants dated 11 and 18 December 2006.
 - The Dampier Archipelago (place ID 105727) assessment report of the Australian Heritage Council including submissions received under sections 324G(3A) and 324G(4) of the EPBC Act.
 - Bird, C. and Hallam, S. 2006. A review of archaeology and rock art in the Dampier Archipelago. Unpublished report prepared for the National Trust of Australia.
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- Morwood, M. Walsh, G. and Watchman, A. 1994. The dating potential of rock art in the Kimberley, N.W. Australia. *Rock Art Research* 11 (2):79-87.
- Stanbury, P. and Clegg, J. 1990. *A field guide to Aboriginal rock engravings with special reference to those around Sydney*. Sydney University Press, Sydney.
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- Vinnicombe, P. 1987b. Burrup Peninsula: notes towards a plan of management of the Aboriginal heritage. Western Australian. Museum, Perth.
- Vinnicombe, P. 2002. Petroglyphs of the Dampier Archipelago: Background to Development and Descriptive Analysis. *Rock Art Research* 19(1): 3-27.

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- Woodside Energy Ltd, 2006. Fact Sheet - Project Overview, www.woodside.com.au, viewed 15 December 2006.

FINDINGS ON MATERIAL QUESTIONS OF FACT

15. The place requested for inclusion in the National Heritage List, under section 324F of the EPBC Act, by the Hon Dr Carmen Lawrence MP, Mr Peter Andren MP and Senator Rachel Siewert is wholly within the “Australian jurisdiction”.
16. In considering the request for emergency listing under section 324F of the EPBC Act, I had to consider whether I believe that:
 1. the place has or may have one or more National Heritage values; and
 2. any of those values is under threat.

(a) Possession of National Heritage values

17. I began by considering all the evidence provided to me about the heritage values in the place. In order for me to form a belief that the place has or may have one or more National Heritage values, I needed to consider whether the place met one or more of the National Heritage criteria prescribed by the regulations.
18. In doing so, I noted that each criterion indicates that the place must have “outstanding heritage value to the nation”. This reflects the intention of the Act as explained in the Explanatory Memorandum for the Environment and Heritage Legislation Amendment Bill (No. 1) 2002 to distinguish between places that would properly be regarded as places of State or local significance compared with those that are of national significance. The Explanatory Memorandum goes on to quote the *Consultation Paper on the Reform of Commonwealth Environment Legislation* issued by the then Minister in 1998, which stated the need for “the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole”.
19. In contrast, the registration criterion for the Register of the National Estate required in the *Australian Heritage Council Act 2003* is that the place has a “significant heritage value”, a much lower threshold. Accordingly, the Register of the National Estate includes more than 13,000 places of national, State and local significance.
20. I concluded from this that the intent of the legislation was that a high threshold of heritage significance was required for a place to meet a National

Heritage criterion and that the requirement for the place to have outstanding heritage value to the nation implied a threshold higher than that which might be sufficient for a place to be of State, Territory or local significance.

21. I noted that the Hon Dr Carmen Lawrence MP, Mr Peter Andren MP and Senator Rachel Siewert believe that the Dampier Archipelago has National Heritage value under criteria (a), (b), (c), (d) (e), (f), (g) and (i).

Criterion (a): the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history

22. I began by considering the applicants claim that the Dampier Archipelago has outstanding heritage value to the nation under this criterion as it demonstrates the long term Aboriginal occupation of an arid landscape over as much as 30,000 years and adaptation to environmental transformation into an emerging coastal landscape over the last 9,000 years.
23. I noted that the AHC concluded that the majority of the rock engravings in the Dampier Archipelago appear to have been created after the sea level rises at the end of the last Ice Age. The AHC stated that the archipelago was formed approximately 6,000 to 8,000 years ago when rising sea levels flooded what were once coastal plains. Although there are no secure dates older than 8,000 years ago from the Dampier Archipelago, the deep weathering of some Aboriginal rock engravings, the varying degrees of re-weathering, the differential distribution of desert varnish, the presence of multiple superimpositions, and the evidence for general re-use of the boulders indicates that Aboriginal occupation of the Dampier Archipelago extended back into the Pleistocene (Lorblanchet 1985; Vinnicombe 2002; McDonald and Veth 2005; McDonald and Veth 2006). The AHC found that the presence of deeply weathered images of terrestrial fauna coupled with the less weathered appearance of images of marine fauna at single localities is evidence that the Dampier Archipelago was occupied before and possibly during, the rise of the sea levels at the end of the last Ice Age. The AHC determined that the different degrees of weathering of particular types of faunal engravings on the Dampier Archipelago provide an outstanding visual record of the course of Australia's cultural history through the Aboriginal responses to the rise of sea levels at the end of the last Ice Age.
24. I also noted that the AHC stated that there are a large number of deeply weathered, engraved 'Archaic Faces' in the Dampier Archipelago including some images that are unique to the area (McDonald and Veth 2005). The AHC advised that this motif occurs throughout the Pilbara and Western Desert with examples also known from the Victoria River District and into South Australia and Queensland (Dix 1977; McDonald and Veth 2005: 31). The AHC determined that the 'Archaic Faces' on the Dampier Archipelago demonstrate the long history of contact and shared visual narratives between Aboriginal societies in the Dampier Archipelago and inland arid Australia and are exceptional in the course of Australia's cultural history.

25. On the basis of the evidence before me, I could find no evidence to suggest that the Dampier Archipelago had been occupied for over 30,000 years, however, I concluded that the Dampier Archipelago may have National Heritage value under criterion (a) for: its outstanding visual record of the course of Australia's cultural history through the Aboriginal responses to the rise of sea levels at the end of the last Ice Age; and the presence of 'archaic faces' that demonstrate the long history of contact and shared visual narratives between Aboriginal societies in the Dampier Archipelago and inland arid Australia.

Criterion (b): the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history

26. The applicants claimed that the Dampier Archipelago has National Heritage value under this criterion for its density and complexity of the archaeological record. I noted the AHC had found that where systematic surveys have been conducted in the Dampier Archipelago, the density of Aboriginal archaeological sites is high compared with other parts of Australia (McDonald and Veth 2005: 75). The types of sites whose number or density is high include rock engravings, artefact scatters, grinding patches and stone arrangements (McDonald and Veth 2005). However the AHC found that while the density of artefact scatters and grinding patches are high, these site types are common throughout Australia and cannot be described as uncommon, rare or endangered. I also noted that under criterion (a) the AHC found that the absence of long archaeological sequences in the nominated area, the evidence for change in diet and technologies and the general archaeology (including grinding patches, artefacts scatters, shell middens, quarries, reduction areas and fish traps) reflects broader patterns found in the Pilbara region and northern Australia. Under that criterion that AHC found that the Dampier Archipelago does not have national heritage values for its general archaeology.
27. I then noted the applicants claim that rare motifs such as depictions of extinct species and 'archaic faces' in the Dampier Archipelago have National Heritage value under this criterion. My Department advised me that 'archaic faces' are generally found in areas thought to have functioned as arid zone refugia and that they have a widespread distribution between the Dampier Archipelago and Mount Isa in Queensland (McDonald and Veth 2006). My Department also advised me that while the Dampier Archipelago may contain images of extinct species, such as the Tasmanian tigers or thylacine, and an extinct species of a so-called 'fat-tailed macropods', images of extinct species are not considered rare in Australian rock art. For example, rock art in Arnhem Land is believed to contain images of extinct species such as *Zaglossus*, a type of long beaked-echidna that is thought to have become extinct around 15,000 years ago, as well as images of Tasmanian devils and Tasmanian tigers or thylacines, both of which became extinct on the mainland of Australia (Layton 1992; Lewis 1977). Images of thylacines are also found in a number of rock art sites in the Kimberly and Pilbara, while images of the 'fat-tailed macropods' are also found in the broader Pilbara region (Morwood, Walsh and Watchman 1994; McDonald and Veth 2006; Bird and Hallam 2006).

28. I agreed with the AHC finding regarding the Dampier Archipelago's general archaeology and my Department's advice in relation to rare motifs such as extinct species and 'archaic faces'. I was, therefore, unable to conclude the Dampier Archipelago may have National Heritage value under this criterion for its density and complexity of archaeological record, or the presence of rare motifs such as depictions of extinct species and 'archaic faces'.
29. The applicants also claimed that Site A contains a significant quarry site complex at Holden Point that is likely to be of considerable archaeological significance. No further information in relation to the potential National Heritage value of the quarry is provided and the application does not state under which criterion this site may have National Heritage value.
30. I noted that the AHC considered the National Heritage value of quarry sites in the Dampier Archipelago under this criterion. The AHC found that the quarries in the Dampier Archipelago conform to the general pattern for quarry sites in Australia described by Hiscock and Mitchell (1990) and they lack the evidence for long distance trade that is found at other quarries such as Lake Moondara and Mt Victoria. As such the AHC determined that quarry sites in the Dampier Archipelago do not contain National Heritage value. I agreed with the AHC finding. I was, therefore, unable to conclude the Dampier Archipelago may have National Heritage value under this criterion for significant quarry sites.
31. I then considered the applicants claim that the Dampier Archipelago has National Heritage value under this criterion for its high density and variety of petroglyphs, and the density of stone arrangements which are all uncommon at the national level.
32. I noted that the AHC advised that the Pilbara has been described as 'without doubt the richest and most exciting region of rock engravings in Australia' McCarthy (1968: vi). It is the diversity of representations of the human form (anthropomorphs), many of which are in dynamic attitudes, and the way in which they are sometimes arranged in complex scenes that makes the Aboriginal engravings in the Pilbara exceptional. Although there are a number of distinct regional engraving styles in the Pilbara (Wright 1968), the greatest diversity in depictions of the human form, which also include representatives of anthropomorphs characteristic of the other Pilbara style provinces, occurs in the Dampier Archipelago (McDonald and Veth 2005: section 4.6). The AHC noted that there are a number of complex panels in the Dampier Archipelago showing groups of people engaged in both mundane and sacred activities, including hunting scenes, ceremonial activity and images of anthropomorphs climbing or hanging from lines. The AHC determined that, at a national level, the Dampier Archipelago is outstanding for its diversity of engraved human forms and the antiquity of depictions of complex scenes showing human activity, which are rare at the national level.
33. The AHC also found that there is a very high density of rock engraving sites on the Dampier Archipelago. Although the majority of these sites contain

relatively few engravings (Vinnicombe 1987a; Veth et al 1993) there are some sites with hundreds (Virili 1977; Vinnicombe 1987a: Fig 6; Veth et al 1993: Fig 7.1), thousands (Dix 1977; Virili 1977; Vinnicombe 1987a) or tens of thousands of engravings (Lorblanchet 1992; Veth et al 1993). The AHC stated that an analysis of site locations demonstrates that large concentrations of engravings in the Dampier Archipelago are found on inland plateaus, steep valley inclines bordering watercourses and on rock platforms next to the ocean (Vinnicombe 2002; McDonald and Veth 2005). As such the AHC determined that Dampier Archipelago contains concentrations of rock engravings, which when compared with other similar sites in Australia are rare (McNickel 1985; Wright 1968; Stanbury and Clegg 1990).

34. The AHC also considered the high density of standing stones, stone pits and circular stone arrangements on the Burrup Peninsula (Veth et al 1993). The AHC noted that the stone pits on the Burrup Peninsula have been interpreted as hunting hides and the standing stones may be either ceremonial sites (*thalu* sites), or markers for resources such as potable water. There is also a high diversity in the standing stones and stone arrangements across the Dampier Archipelago, including some with unusual components (Vinnicombe 1987a). The AHC determined that the densities of standing stones, stone pits and circular stone arrangements on the Burrup Peninsula, and the diversity of these stone features across the Dampier Archipelago are rare at the national level (Vinnicombe 1987a).
35. On the basis of the evidence before me, I concluded that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (b) for its outstanding diversity of engraved human forms, outstanding antiquity of depictions of complex scenes showing human activity, sites with rare concentrations of rock engravings as well as the Burrup Peninsula's rare concentration of standing stones, stone pits and circular stone arrangements, and the diversity of these features across the Dampier Archipelago.

Criterion (c): the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history

36. The applicants claimed that the Dampier Archipelago has outstanding heritage value to the nation under this criterion for its research potential including: the nature of early human adaptations to arid environments, how human populations have responded to climate change and rising sea levels; the sociocultural relationship between inhabitants of the Dampier Archipelago and the broader Pilbara region, establishing a chronological framework for the production of rock art, investigating the changing context of rock art and how it relates to the broader region; and the extent to which the environment has been transformed over time through both marking and rearrangement of the rocky landscape.
37. I noted that the AHC found that the Dampier Archipelago contains engravings of human figures characteristic of most of the major art provinces in the Pilbara as well as a number of forms unique to the area (McDonald and Veth

2005). The AHC determined that the different degrees of weathering and the large number of super-positioned engravings provide an outstanding opportunity to establish a relative chronology for motifs characteristic of the major style provinces in the Pilbara (Lorblanchet 1992; Vinnicombe 2002; McDonald and Veth 2005).

38. I also noted that the AHC found that previous work on the Dampier Archipelago provides an outstanding demonstration of the way in which a detailed analysis of archaeological remains (middens, grinding patches, quarries) and associated rock engravings can contribute to an understanding of the cultural and economic meaning of the rock engravings (Lorblanchet 1992). The AHC determined that on the Dampier Archipelago areas where archaeological remains are associated with large numbers of engravings have outstanding potential to yield information that will contribute to an understanding of the nation's cultural history.
39. I also noted that the AHC found that the distribution of 'archaic faces' on the Dampier Archipelago and in many parts of arid Australia indicates there were shared representations across the area in the deep past. There is evidence that at the time of European contact Western Desert peoples were actively moving towards the coast (Tindale 1987). The AHC determined that the Dampier Archipelago has outstanding potential to yield information contributing to an understanding of the long history of connections between the coast and the Western Desert.
40. On the basis of the evidence before me, I concluded that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (c) for its outstanding potential to develop an understanding of the relative chronology of different art styles in the Pilbara region, its outstanding potential to yield information that will contribute to an understanding of the history and cultural meanings of this important art style through the association of archaeological material with large numbers of engravings, and its outstanding ability to contribute to an understanding of the long history of connections between the coast and the Western Desert.

Criteria (d): the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: a class of Australia's natural or cultural places; or a class of Australia's natural or cultural environments

41. The applicants claimed that the place has National Heritage value under this criterion as it is effectively a continuous cultural landscape, with an extraordinary density and diversity of cultural components over a long time span.
42. I noted that both the NAC and Wong-Goo-Tt-Oo advised that the Burrup Peninsula should be considered as one large site complex rather than a series of different Aboriginal sites.

43. I noted that while the AHC had considered the density and diversity of sites within the Dampier Archipelago, it did not assess the place as a cultural landscape. The applicants, or other submissions, did not provide evidence to support their claim that the place, as a cultural landscape, is of outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of a cultural place or environment.
44. I also noted the argument of the WA Government that at present there is inadequate information to confirm the claim that the Dampier Archipelago forms one large continuous cultural landscape. The WA Government noted that the distribution, extent, significance and interrelationship of Aboriginal heritage sites on the Dampier Archipelago is yet to be demonstrated.
45. The Dampier Archipelago is frequently described as a cultural landscape (Veth et al 1993; McDonald and Veth 2005; Bird and Hallam 2006). My Department advised me, however, that to demonstrate that the place as a cultural landscape has outstanding heritage value to the nation under this criterion, a comprehensive study of cultural landscapes comparable to the Dampier Archipelago is first required. My Department also advised me that no suitable comparative studies had been identified. I accepted my Department's advice. On the basis of the evidence before me, I was unable to conclude that the Dampier Archipelago, as a cultural landscape, may have outstanding heritage value to the nation under this criterion.
46. I also noted that the AHC found that the rock engravings on the Dampier Archipelago include an extraordinarily diverse range of animal and human figures characteristic of regional styles that occur elsewhere in the Pilbara. The AHC determined that the Dampier Archipelago is outstanding as a place where engravings of human forms representative of all of the style provinces in the Pilbara, the richest and most exciting region of rock engravings in Australia, are found (McDonald and Veth 2005: Section 4; McCarthy 1968: vi).
47. I also noted that the AHC determine that the standing stones on the Dampier Archipelago range from single monoliths through to extensive alignments comprising at least three or four hundred standing stones (Vinnicombe 2002). The AHC determined that they are outstanding in a national context because they are known to have served a number of purposes including association with increase ceremonies, *thalu*, markers of particular places with scarce resources, and markers of sites of traditional significance.
48. On the basis of the evidence before me, I concluded that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (d) for its outstanding ability to demonstrate the principal characteristics of the range of rock engravings in the Pilbara, and its outstanding ability to demonstrate the principal characteristics of the diverse functions of stone arrangements and standing stones

Criteria (e): the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group

49. The applicants claimed that the place has National Heritage values under this criterion because the extraordinary aesthetic values of the rock art are recognised nationally and internationally, by both specialists and the general community. The applicants also noted that Aboriginal custodians see much of the art as a production or embodiment of Ancestral Creative Beings and attribute ceremonial or mythological meanings to particular motifs.
50. I noted that in its assessment of the Dampier Archipelago the AHC stated that the Dampier Archipelago was not included in a comprehensive list of inspirational landscapes developed in a report on identifying nationally significant inspirational landscapes (Crocker 2005). The AHC also noted that against a methodology to establish a threshold for aesthetic values developed by Crocker and Davies (2005), the Dampier Archipelago is not considered a powerful or uncommon landscape nor has it defined images, which have shaped national perceptions.
51. I also noted that the AHC advised that a number of individuals have commented positively about the aesthetic value of the rock engravings on the Dampier Archipelago. They include rock art specialists, developers, parliamentarians, and even a member of the English Royal Family. The AHC stated that these groups do not constitute a community or cultural group. The AHC found that while Ngarda-Ngarli people have strong feelings about the rock engravings as part of their traditions, it is unclear whether they value them for their beauty or the sense of awe they inspire. The AHC determined that while the place is of undoubted significance to local communities, there is no evidence that it is of outstanding significance at the national level.
52. On the basis of the evidence before me, I was unable to conclude that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (e).

Criteria (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period

53. The applicants claimed that the Dampier Archipelago has outstanding heritage value to the nation under this criterion as the rock art shows an extraordinary diversity of style, subject matter and technique which spans a time period of about 30,000 years and demonstrates both continuity and change through time.
54. I then considered that the AHC found that the rock engravings in the Dampier Archipelago show exceptional creative diversity when compared with the other art provinces in the Pilbara or rock engravings elsewhere in Australia (McDonald and Veth 2005: Section 4.6). They include examples of the types of human figures characteristic of the other art provinces in the Pilbara as well as having unique human forms. The engravings on the Dampier Archipelago

include detailed and finely executed examples of water birds, crabs, crayfish, kangaroos, turtles and fish, some of which, because of their detail, can be identified to species level. The diversity of human representations and panels of engravings showing scenes of human activity exhibit a high degree of creativity, particularly during the Holocene, that is unusual in Australian rock engravings.

55. On the basis of the evidence before me, I concluded that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (f) for the exceptional diversity of engraved images, including finely executed depictions of animals that can be identified to species level and complex and dynamic panels of engravings, that demonstrate a high degree of creative achievement.

Criteria (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons

56. The applicants claimed that the place has outstanding heritage value to the nation under this criterion as the strong and spiritual associations of Aboriginal people of the Western Pilbara, particularly the three Native Title claimant groups, with the Dampier Archipelago have been documented and widely recognised.
57. I noted that the AIC advised that the islands comprising the Burrup area are of special significance to the Mardudhunera/Yaburarra, the Ngarluma and the Injibandi groups.
58. I also noted that the Wong-Goo-Tt-Oo people stated that the engravings on the Burrup Peninsula are a spiritual source of energy, that they can hear and sense this energy when among them and that this ties the Wong-Goo-Tt-Oo people to the land and the land to them. The Wong-Goo-Tt-Oo and NAC's submissions also stated that the Burrup Peninsula in its entirety is a place of importance and significance to them and should be preserved as such.
59. I noted that the AHC found that while Ngarda-Ngarli people have a strong or special association with the Damper Archipelago through their traditions and Aboriginal law, this strong or special association through tradition is common throughout Indigenous communities in Australia. The AHC determined that there was insufficient evidence to show that this strong or special association was of outstanding heritage value at the national level.
60. My Department advised me that the material provided by interested parties in relation to this application did not provide any further evidence to demonstrate that this strong or special association was of outstanding heritage value at the national level.
61. I accepted the AHC finding, and my Department's advice that no further evidence was provided by interested parties to demonstrate that the Ngarda-Ngarli people's strong or special association with the Dampier Archipelago is

of outstanding heritage value at the national level. I was, therefore, unable to conclude that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (g).

Criteria (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history

62. I noted the AHC found that the Dampier Archipelago does not have National Heritage value under criterion (h).
63. I noted that the applicants made no claims against this criterion. On the basis of the evidence before me, I was unable to conclude the Dampier Archipelago may have National Heritage value under criterion (h).

Criteria (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition

64. The applicants claimed that the Dampier Archipelago has outstanding heritage value to the nation under this criterion as it demonstrates the long-term continuities in artistic expression that testify to the time-depth of Indigenous traditional connections to the Dampier Archipelago. The applicants stated that standing stones and mythological sites testify to Aboriginal traditional associations. The applicants also noted that the importance of the association with place is well established with respect to traditional significance for Indigenous people.
65. I also considered the NAC's advice that Site A and B have major heritage values for Ngarluma people. They noted that they are the descendents of the Ancestors who created the rock art on the Burrup and that the sites on the Burrup make up one complex. The NAC also advises that they have a duty to protect the area.
66. I then noted that the AIC stated that Indigenous Elders from the area include the Mardudhunera people (including those identified as the Yaburarra), and the nearby Ngarluma and the Injibandi people who have been relocated from the plateau country around Millstream to Roebourne. The AIC stated that the latter two groups are still active in the continuance of the Law as it has been passed down from the times of the Creation Beings. Being active in the Law, the Ngarluma and the Injibandi people do not make any primary claim to the lands of the Dampier Archipelago, however, they do meet their responsibility under the Law to preserve, protect and perpetuate the Law in their neighbouring lands of the Burrup where the local people have, to some extent, been removed from the formalities of their specific customs. The AIC also noted that the surveys for the Pluto project have identified aspects of petroglyphic depictions of moiety, sectional and totemic symbols.
67. I also noted that the Wong-Goo-Tt-Oo group stated that as the Traditional Owners of the lands between the George and Maitland Rivers, they also have a special duty for the country as the holders of its spiritual energies. The Wong-

Goo-Tt-Oo people indicated that on the Burrup the spiritual force is alive in the thousands of rock engravings and that they received from earlier generations the duty to protect them and must pass that duty on to their successors. They indicated that engravings are a spiritual source of energy, and that they can hear and sense this energy when they are among them.

68. I then considered that the AHC found that the Ngarda-Ngarli people state that they have a living Aboriginal culture, which can be shown through Aboriginal land management (Mardudhunera Yaburarra et al 2004). The Indigenous traditions about creative beings and ceremonies provide an interpretive framework without which it is difficult to understand the rock engravings, ceremonial sites and *thalu* on the Dampier Archipelago. However the AHC found that there are numerous groups across Australia with strong traditional associations with places, including rock engravings, ceremonial sites including standing stones, sites associated with the travels of ancestral creation beings and a landscape populated by spirits. The AHC determined that while there is evidence that the Ngarda-Ngarli people have an active traditional life, there was insufficient evidence to show that the importance of the Dampier Archipelago, as part of Ngarda-Ngarli traditions, is of outstanding heritage value at a national scale.
69. My Department advised me that the material provided by interested parties in relation to this application did not provide any further evidence to demonstrate that the Dampier Archipelago, as part of Ngardi-Ngarli traditions, was of outstanding heritage value at the national level.
70. I accepted the AHC finding and my Department's advice that no further information was provided to demonstrate that the Dampier Archipelago, as part of Ngardi-Ngarli traditions, is of outstanding heritage value at the national level. I was, therefore, unable to conclude that the Dampier Archipelago may have outstanding heritage value to the nation under criterion (i).

Conclusions on possession of National Heritage values

71. In conclusion, on the basis of the findings above, I was able to form the belief that the Dampier Archipelago may have National Heritage values under criteria (a), (b), (c), (d) and (f).

(b) Threat to National Heritage values

72. I then considered whether the potential National Heritage values identified above were under threat. The application for emergency National Heritage listing was made on the basis of the threat posed to the values by Woodside's construction of onshore facilities for their Pluto Liquefied Natural Gas (LNG) project in the industrial estate areas referred to as Site A and B. The applicants stated that no information on the material found on Sites A or B has ever been placed in the public domain, no testable scientific evaluation of the material found on Sites A or B has been carried out and no testable evaluation is available of the values of the material on Sites A or B areas. The applicants also stated that the threats to the heritage values of Site A are simply the most

proximate of a range of ongoing threats to the values of the rock art province as a whole. The applicants did not substantiate the nature of these ongoing threats.

73. The applicants also claimed that as the Dampier Archipelago should be considered as a cultural landscape, a threat to any part of it impacts on the values of the whole province. As I was unable to conclude that the Dampier Archipelago, as a cultural landscape, has outstanding heritage value to the nation, I did not consider this issue.
74. I considered the threat posed by the proposed development to the potential National Heritage values on Site A and B. I noted that Woodside does not consider that heritage values (to the extent they are established) are under threat by its proposed development plans on Site A and B. Woodside stated that except for the proposed preliminary site works on Site A, there is no immediacy to Woodside's development plans on the Burrup to warrant a decision to place the entire Dampier Archipelago in the National Heritage List under section 324F of the EPBC Act.
75. I then considered the status of the proposed development on Site A. In relation to the site preparation works to be conducted on Site A, I noted that the WA Government Minister of Indigenous Affairs granted conditional consent to Woodside under section 18 of the *Aboriginal Heritage Act 1972* (AH Act) to disturb part of Site A on 15 September 2006. I also noted that on 29 November 2006 the WA Minister for the Environment approved the same activities under section 45 of the *Environment Protection Act 1986*.
76. I then considered whether potential National Heritage values occur on Site A. The applicant referred to a number of sites within Site A or in its vicinity. Apart from DIA 9810, the applicants did not provide any detail on the potential National Heritage values of these sites. After considering information on these sites from McDonald and Veth (2005; 2006) my Department advised me that:
 - DIA 9810 may have National Heritage value under criteria (a) and (c) relating to the presence of an archaic face.
 - DIA 9276 may contain National Heritage value under criteria (b) and (f) relating to engravings showing complex scenes of human activity.
 - DIA 9277 may contain National Heritage value under criterion (b) relating to sites with high concentration of engravings.
77. While other sites are referred to in the application (including DIA 10623, 9861, 9255, 9240), on the basis of the evidence before me, I was not able to conclude that these sites may have National Heritage value.
78. I noted that the WA Government stated that the conditions applied to the section 18 AH Act approval included the establishment of a number of conservation zones on Site A to protect culturally significant areas and that these zones are not to be disturbed by the proposed development. Woodside also stated that in accordance with the conditions of the section 18 approval, portions of Site A, have been declared conservation zones. Woodside noted

that all of the sites referred to in the emergency National Heritage List application are located within these conservation zones and will not be disturbed.

79. I also noted that Woodside advised that the disturbance footprint for the construction of LNG and condensate storage tanks on Site A has been designed, with the advice of representatives of the Ngarluma and Injibandi, Wong-Goo-Tt-Oo and Yaburarra and Mardudhunera groups, to ensure that no engravings of high archaeological significance are located within the disturbance footprint of Site A.
80. I then considered the information provided by DIA in relation to the sites to be disturbed by the proposed development on Site A. DIA advised that fifteen engraving sites are within the disturbance footprint and that the fifteen sites include images of several circles and lines, eight boomerangs, two turtles, two fish, one pair of bird tracks and one kangaroo. On the basis of the evidence before me, I was not able to conclude that these images may have National Heritage value.
81. The DIA information also indicated that fifteen anthropomorphs are within the disturbance footprint. I have determined that some anthropomorphs on the Dampier Archipelago may have National Heritage values under criteria (a), (b), (c), (d) and (f). However, my Department advised that no archaic faces are present within the disturbance footprint and the fifteen anthropomorphs located within this zone are stick or solid figures, that are not complex scenes, do not demonstrate varying degrees of weathering, are not super-positioned and do not represent other Pilbara style provinces. While two different styles of anthropomorphs (solid and stick figures) may be disturbed, these sites do not represent the diversity of engraved human forms demonstrated elsewhere in the Dampier Archipelago. On the basis of the evidence before me, I was not able to conclude that the anthropomorphs within the disturbance footprint may have National Heritage value.
82. My Department also advised me of the presence of a single standing stone (DIA 23123) within the disturbance footprint of Site A that may have National Heritage value under criterion (b) in relation to the density of standing stones on the Burrup Peninsula and the diversity of these stones across the Dampier Archipelago. As no information on the function of this standing stone was available for me to consider, on the basis of the evidence before me, I was not able to conclude that this site may have National Heritage value under criterion (d).
83. I noted that Woodside advised that it intends to relocate the motifs and other archaeological material that lie within the disturbance footprint in accordance with a Cultural Heritage Management Plan (CHMP) and that this relocation will be monitored by the members of the Indigenous groups in the area. I understand that the CHMP is currently being developed and will include mechanisms for the ongoing management of salvaged materials. However, the WA Government noted that standing stones located within the development

footprint will be destroyed *in situ* as requested during consultation with the Aboriginal groups.

84. I then considered the status of the proposed development on Site B. My Department advised me that while Woodside has applied for approval under section 18 of the *Aboriginal Heritage Act 1972* to disturb Site B, the WA Aboriginal Cultural Material Committee has not considered this application. I also noted that on 11 December 2006 Woodside released its Draft Public Environment Report/Public Environmental Review Pluto LNG Development.
85. As no approvals have been granted for the proposed development on Site B, the final nature of any disturbance to Site B is unknown. On the basis of the evidence before me I was unable to conclude that the proposed development on Site B poses a present threat to any potential National Heritage values.
86. On the basis of the findings above, I formed the view that one site (DIA 23123) within the disturbance footprint may have National Heritage value and that this site will be disturbed by the proposed development on Site A.

Consideration of other relevant matters

87. I formed the view that while National Heritage values on the Dampier Archipelago need to be protected for future generations, additional considerations specific to the ongoing benefits that industry provides to WA and the whole country also need to be taken into account.
88. I found that the Pluto LNG Development will bring significant direct economic and social benefits to Australia as a whole, and in particular to WA and the Pilbara region. Woodside advised my Department that an Insight Economics study has indicated that over the life of the proposed Pluto development, it will contribute an estimated \$17.6 billion to the national economy and \$28.6 billion to WA's economy in addition to providing direct employment for up to 3,000 people during the peak construction period and 200 long-term jobs during operations.
89. I considered that the total area of Site A of the Pluto LNG Development is 61 hectares of which 17.9 hectares is the disturbance footprint. This represents 0.02% of the total land area recommended for National Heritage listing by the AHC. Within the disturbance footprint for this development is one standing stone that may have National Heritage values. In considering the impact of disturbing this site, I have taken into account a range of factors that include the economic matters noted above and advice I have received from my Department that the National Heritage value that the standing stone represents are found in a number of sites both on the Burrup Peninsula and some Islands of the Dampier Archipelago. My Department also advised me that any disturbance to this standing stone (DIA 23123) would be a minor threat to the possible National Heritage value of the Dampier Archipelago in relation to the density of standing stones on the Burrup Peninsula and the diversity of these sites across the Dampier Archipelago.

Reasons for decision

90. In light of my findings I decided that National Heritage values may be present across the Dampier Archipelago and that any threat posed to the possible National Heritage values of the Dampier Archipelago by the proposed development are minor. I also determined that the economic and social benefits of the proposed development outweighed the retention of the single site that may have National Heritage value. Consequently I decided, pursuant to section 324F of the EPBC Act, not to include the place in the National Heritage List.

[Signed by the Minister]

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MINISTER FOR THE ENVIRONMENT AND HERITAGE

21 December 2006