

# DEVELOPMENTS IN WESTERN AUSTRALIA

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## Heritage Council

The Emu Brewery building recommended for preservation by the Council has now been demolished following the Minister for Heritage declining to adopt the Council's recommendation.

The Council has determined that the Old Swan Brewery building merits protection under the Heritage of Western Australia Act and any proposal for development by the current owner, the State of Western Australia, (or any demolition) must be approved by the Council pursuant to the Act.

## Aboriginal Heritage

As reported in the last edition, the Supreme Court held that Robert Bropho, a claimed Aboriginal custodian of the Aboriginal site upon which the Old Swan Brewery stands, did not have a sufficient special interest in the site to have standing or a legitimate expectation to be heard by the Minister for Aboriginal Affairs before she decided to consent to development proceeding on the Aboriginal site. An application has been filed seeking special leave to appeal to the High Court against that decision.

In Ngalia Heritage Research Council (Aboriginal Corporation) v Minister for Aboriginal Affairs and Dominion Mining, Anderson J held that a corporation cannot have the same special interest as its Aboriginal members and did not have standing to take legal action in relation to Aboriginal sites alleged to be within a mine site at Yakabindie Station in the Eastern Goldfields. Further proceedings were commenced by two Aboriginal residents of Yakabindie. In the face of applications by the Defendants to strike the proceedings out one Plaintiff was dismissed from the action because of an inability to swear an affidavit and the other discontinued due to lack of community support and an unwillingness to attend Court to be cross-examined.

The WA Parliament in its first sitting for 1992 passed the Aboriginal Heritage (Marandoo) Act 1992 which comprised three sections "intended to disapply the Aboriginal Heritage Act 1972 to relevant areas so as to facilitate commencement of

a mining project known as the Marandoo Iron Ore Project".

The Federal Minister for Aboriginal Affairs rejected an application for emergency protection of the Marandoo site under the Federal Aboriginal and Torres Strait Islander Heritage Protection Act. Karijini Aboriginal Corporation pledged to continue to fight to protect important sites in the ore body at Manganese Gorge and Grimace Gulch.

The Government is proceeding to prepare amendments to the Aboriginal Heritage Act after considering a report by Dr Clive Senior.

**Hepburn Heights Residents and Ratepayers** have commenced a second action to protect 74ha of bushland from residential development. They are seeking a prerogative writ to overturn the purported amendment of the Town Plan pursuant to a provision which allows "minor amendments" by executive act without parliamentary approval. They argue that such an amendment is not "minor". The land has recently been listed on the National Estate Register.

**Farmers' Veto on Mining** - A State Government decision to amend the Mining Act to remove the right of private landholders to veto mining has been strongly criticised by the WA National Party, the Pastoralists and Grazier's Association and the WA Farmers Federation.

**Coastal Dunes** at Becher Point South of Rockingham have been placed on the interim list of the National Estate Register by the Australian Heritage Commission. The zone had been earmarked by private developers for the Port Kennedy and Secret Harbour waterfront projects which included plans for two marinas, three golf courses, 2000 homes, tourist chalets and cottages, a 225 bed hotel, caravan park, camping grounds and a new town centre. The developers are objecting to the listing. The Rockingham Shire Council had approved the rezoning for the developments but that decision has now been reopened for debate.

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*1992 Calender - NELA (WA) Executive Committee Meetings will be held at the Law School Staff Common Room, Uni of WA at 5:30pm on Monday 6 April, 4 May, 18 May, 1 June, 15 June, 6 July, 20 July, 3 August, 17 August, 14 September, 5 October, 2 November and 7 December. The date for the AGM of the WA Division will shortly be announced. It is anticipated that it will be in mid-May or mid-June.*