

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

THIRTY-SECOND REPORT:

*Shire of Augusta - Margaret River - Local Law Relating to Wallcliffe Reserve
(Reserve 41545)*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**32
June 1998**

Joint Standing Committee on Delegated Legislation

Members

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Barbara Scott MLC
Hon Jim Scott MLC
Mr Ted Cunningham MLA
Mr Norm Marlborough MLA
Mr Iain MacLean MLA

Advisory/Research Officer

Michael Smyth

Committee Clerk

Jan Paniperis

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Shire of Augusta - Margaret River - Local Law Relating to Wallcliffe Reserve (Reserve 41545)

1 Introduction

- 1.1 In the exercise of its scrutiny function the Committee reviewed the *Shire of Augusta - Margaret River - Local Law Relating to Wallcliffe Reserve (Reserve 41545)* ("**Local Law**") made under the *Local Government Act 1995* ("**Act**"). A copy of the Local Law is attached and marked "Annexure A". Under the Committee's Joint Rules if the Committee is of the opinion that a matter relating to any regulation or local law should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation or local law that appears not to be within power.
- 1.2 The broad purpose of the Local Law as advised by the Shire of Augusta - Margaret River ("**Shire**") is to provide for the management and control of access to the Wallcliffe Reserve (Reserve 41545) ("**Reserve**"). The effect of the Local Law is to effectively ban entry to the cliff and cave area. A draft copy of the Local Law was provided to the Western Australian Tourism Commission. Attached and marked "Annexure B" is a copy of a letter dated 1 September from the Tourist Development Manager for the South West. The WA Tourism Commission expressed its concern at the total ban on recreational activity relating to the Wallcliffe cliffs and suggests that the Management Plan which was drawn up by the Shire in 1993 (but not adopted) could form the basis for which a well managed permit system could be introduced. The Committee was also provided with copies of the Shire's Minutes of Ordinary Meeting dated 13 November 1997. Attached and marked "Annexure C" is an extract taken from the minutes of the Ordinary Meeting of the Shire dated 13 November 1997 at which the Local Law was approved. Under the heading, "Unusual or Controversial Provisions" is the following:

"This Local Law is probably exclusive of any other Local Law provisions. It seeks to ban access to the cave/cliff area. Should it be carried through it would effectively exclude:-

- (a) Climbers;
- (b) Cavers;
- (c) Eco-Tourism groups; and

(d) The general public,

because the exclusion zone includes the access track.”

The Rangers Department made the following comments:

"As the enforcement authority for the proposed Local Law we would like to offer our observations.

We believe a controlled permit system for eco-tourism groups and climbers defining restrictions, numbers, access points, parking, fees etc, and including indemnity against liability is infinitely preferable to a total ban on access. Far better to have controlled access than to attempt to control illegal activities. Permits would allow for control on numbers and therefore impact and if the situation arose a total ban could be imposed."

The minutes include the following recommendations:

- "1. That Council, whilst acknowledging the existence of extremes of opinion regarding use of the reserve, develop a Management Plan which encompasses the presentation and protection of historic interests and provides the ability to:-
 - (1) Protect and improve the present environment by means of elevated walkways, revegetation and exclusion zones.
 - (2) Provide for access by eco-tourism and climbing groups by a system of paid permits.
2. The permit proceeds be channelled into a reserve management plan for use in rehabilitation work and installation of physical constructions.
3. The Management Plan should also consider the fragile nature of the cave interior with an option to protect it by erecting suitable gates and fencing.
4. A consultative committee comprising of the Department of Sport and Recreation, WA Aboriginal Affairs Department, WA Tourism Commission, Climbers Association of WA, Shire Councillors and Shire Staff to be created to evolve a management plan which will ensure that the historic aspects of the site are protected yet still provide facilities for eco-tourism and specialist climbing groups in this unique environment.
5. That the enactment of this Local Law be suspended or deferred until a recommendation is received from the Consultative Committee. In the meantime the newly gazetted Parks, Reserves and Foreshores Local Law offers adequate protection for the Reserve."

Despite these recommendations and the views of the Rangers Department, the Council of

the Shire unanimously resolved on 13 November 1997 to adopt the Local Law which was subsequently published in the *Government Gazette* on 29 January 1998. On 18 November 1997 the Secretary of the Climbers Association of Western Australia Inc ("CAWA") wrote to the Committee to express the objection of CAWA to the Local Law. Attached and marked "Annexure D" is a copy of the facsimile transmission received from CAWA.

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The Committee's Concerns

- 2.1 The Advisory Research Officer contacted Mr Max Eastcott, the Chief Executive of the Shire and on 28 May 1998 the Committee heard evidence from Mr Terry Merchant, Councillor from the Shire and Mr Noel Mason, Director for Corporate Services. On the same day, the Committee heard evidence from representatives of CAWA; Dr Phaedra Upton, President, Mr Ross Weiter, Secretary and Mr Justin Bellanger, Access Officer of CAWA. The Advisory Research Officer was also contacted by Mr Mark Hohnen, the owner of the property adjoining the reserve. On 5 June 1998 at the invitation of the Shire representatives, three members of the Committee travelled to Margaret River to inspect the Reserve, view the cliffs and meet individuals with an interest in the Local Law. The Committee visited the Reserve and inspected the cliffs accompanied by Mr Terry Merchant and Mr Noel Mason from the Shire, Mr Justin Bellanger and Dr Gordon Watt from CAWA, Mr Peter Gleed, Town Planning Consultant representing Mr Hohnen, Ms Helen Lee O'Brien representing Bushtucker Tours and residents of Prevelly Park who use the reserve for recreational walking. The Committee then heard evidence from Mr Peter Gleed, Ms Helen Lee O'Brien and Mrs Ricky Coates, a resident of Prevelly Park, at the Shire's Council Chambers.
- 2.2 The Local Law was published in the *Government Gazette* on 29 January 1998 and tabled in the Parliament on 10 March 1998. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance for such subordinate legislation. This period ended on 30 April 1998. In the circumstances, the Committee resolved for the Deputy Chairman to table a Notice of Motion of Disallowance over the Local Law in order to protect the initial position of the Committee and to enable sufficient time for the Committee to handle the inquiry. Accordingly, a Notice of Motion was tabled in the Legislative Council on 30 April 1998 which, by virtue of the Legislative Council Standing Orders moved *pro forma* on 20 May 1998.
- 2.3 The Committee accepts the concerns that the Shire has about the degradation of the Reserve and the need for its preservation. The concerns of the Shire can be considered under three heading; the safety of the cliffs, the conservation issues and heritage values, including cultural aboriginal significance. The evidence presented to the Committee on each of these issues is as follows:

3

Safety of the Cliffs

- 3.1 On 27 September 1996 at Gracetown a tragic rockfall killed nine people who were

sheltering in a cave. Although the cause of the Gracetown rockfall was not part of the brief from the Shire, in 1997 the Shire engaged Gordon Geological Consultants (“**Gordon**”) to conduct a geotechnical inspection of the Wallcliffe cliffs. Gordon had provided the Coroner investigating the Gracetown disaster with a geological model which has been used to quantify the risk of collapse elsewhere. Attached and marked “Annexure E” is an extract from the report commissioned by the Shire and prepared by Gordon entitled, “Stability of Certain Cliffs and Caves in the Shire of Augusta-Margaret River, 1997”. Recommendations in relation to the Walcliffe cliffs include the following:

“People who abseil on the cliff or use it for rock climbing must be warned that the cliff contains unstable areas, and that they use the cliff at their own risk. Thus signs should be placed on any vantage points at the top of the cliff and at the climbing spots at the base.”

“The cliff is a truly magnificent, unique, natural asset that should be enjoyed by as many people as possible. The key to the use of the cliff is management, so it is seen and appreciated only by the genuine enthusiasts and travellers.”

The report concluded that there are two areas where recent (last 30 years) rock falls of small size have occurred from the cliff which was seen as a sign of a comparatively stable cliff face. The report identified three features or blocks on the face which show cracking, and which are unstable. Signage was seen as the appropriate way to manage this risk with a recommendation that signs should be erected to indicate that climbing and abseiling is entirely at the risk of participants.

4

Conservation Issues

- 4.1 The Reserve is a Class “A” reserve for the purposes of recreation. The Reserve abuts the Leeuwin-Naturaliste National Park (“**National Park**”) and extends as far east as the Wallcliffe House property, Sussex Location 97. The Reserve was vested in the Shire on 8 January 1991 as part of a rationalisation of Reserve Vestings in the area. The land was previously unvested Crown Land and was managed by Council, within the limits of its resources.

The Reserve is dedicated for public access because it is a Shire Reserve. The National Park which abuts the Reserve is administered by the Department of Conservation and Land Management (“**CALM**”). Access to the National Park is under the control of CALM Rangers and enabling legislation. Fees are charged for entry to the National Park and CALM operates a permit system for cave access whereby all organised users such as abseilers, cavers and climbers are required to book a particular site and pay an appropriate fee, which in turn assists CALM with the management of the National Park. There are no fees charged for entry to the Reserve and no permit system operates within the Reserve. One reason advanced for the increase in use of the Reserve and the decline in the condition of the Reserve is the lack of a permit system operating within the

Reserve for access to the cave or cliffs. The Committee saw evidence of environmental damage to the cliff face including graffiti, the destruction of vegetation at the base of the cliffs and the incursion of noxious plants including arum lilies, kilanji grass and couch grass. There is evidence of much pedestrian traffic at the foot of the cliffs and the Committee heard evidence of people sheltering under the cliffs.

- 4.2 Since the early 1990's the Shire has held concerns over the degradation of the Reserve which, together with concerns over heritage and safety issues, led the Shire to commission the preparation of a management plan for the area. The Wallcliffe Management Plan (“**Management Plan**”) was completed in August 1993. The Management Plan identified the growth of recreation pressures within the Reserve. The proximity of the Reserve to Surfer’s Point, the venue for the State’s largest surfing competition, to Margaret River and adjoining walk-trails and the increase in general tourist demand within the region have all placed additional pressures on the Reserve. The Management Plan details to pressures from recreational users, the erosion of the cliff face and tracks through such use and its effect on the flora and fauna of the Reserve.

5 **Heritage Values - Aboriginal Cultural Significance**

- 5.1 The Committee heard evidence from the Shire and other interested parties of the historical importance of the Reserve to white settlement of Western Australia. The Reserve is within walking distance from the historic “Wallcliffe House” which is located on Sussex Location 97, immediately adjoining the Reserve. The Wallcliffe cliffs continue for 40 metres onto Sussex Location 97. A conservation plan is currently being prepared on “Wallcliffe House” for submission to the Heritage Council.
- 5.2 “Wallcliffe House” was built in 1865 and was originally occupied by the Bussell Family and is of great significance to the early history of European settlement in the Busselton Margaret River area. The Wallcliffe area including the Reserve was used for recreation purposes by the Bussells and later inhabitants of the house and a close association between the two landmarks was progressed. The Committee heard evidence that the cliffs have significance in terms of the whole heritage precinct. The current owners of “Wallcliffe House” have expressed concerns at the uncontrolled access to the Reserve. The Committee heard evidence of people abseiling on that part of the cliffs located within Sussex Location 97. Many visitors to the area assume that the cliffs are entirely within the Reserve.
- 5.3 The First Schedule annexed to and forming part of the Local Law incorrectly shows the cliffs to be entirely within the Reserve and seeks to impose a 10 metre exclusion zone around the entire cliff structure (including that part of the cliff which encroaches 40 metres onto Sussex Location 97).
- 5.4 The difficulties of the Shire in clearly showing the location of Wallcliffe cliff face within the Local Law and failing to delineate the area of cliff on private land from that

within the Reserve illustrates the difficulty inherent in controlling access to the Reserve and preventing trespassing on Sussex Location 97. The Committee heard evidence of frequent occurrences of trespass on Sussex Location 97. It was put to the Committee that "Wallcliffe House" is seen as an attraction to many people who assume it is public property because of its historic nature. This has led to concerns over the security of "Wallcliffe House". The difficulty to define the boundary between the Reserve and Sussex Location 97 exacerbates the problem of the public traversing private property. The Committee saw signs erected by the owners of Sussex Location 97 in an attempt to delineate the boundary. However, in the longer term, and in light of the recreational pressures on the Reserve, the owners of Sussex Location 97 are concerned to ensure that the Reserve is appropriately managed and to protect and maintain the fragile areas of the Reserve to prevent further deterioration. A major tourist development is proposed on part of Sussex Location 97 which has received the approval of the Shire. The development will not affect "Wallcliffe House" which will remain in its current form.

- 5.5 The Committee heard evidence of the significance of the Reserve to Aborigines. Attached and marked "Annexure F" is a copy of a letter dated 26 May 1998 from Gil Hardwick, Consulting Anthropologist to the Chief Executive Officer of the Shire which was prepared at the request of the Shire. From the evidence heard by the Committee, no comprehensive archeological or ethnographic assessment has been made of the Reserve. However, evidence received by the Committee suggests that the area is of significance to Aborigines. The caves on the Reserve are considered to have potential as archeological sites however a preliminary dig at the mouth of one of the caves did not reveal a high degree of archeological artefacts. The Reserve is considered to have cultural significance to the descendants of the original inhabitants (who still live in or near the area). An innovative tour group located in the area explains the Aboriginal history of the area and is endeavouring to train local Aborigines as tour guides. The Committee accepts that the Reserve contains areas of cultural significance to Aborigines.

6 The response of the Shire

- 6.1 In the early 1990's the Shire commissioned the Management Plan. Following its completion in August 1993 public forums were held and the views of various interest groups were listened to. Following the holding of public forums in November 1993, the Shire came to the conclusion that the interests of recreational users (including climbers and abseilers), commercial interests and the conservation and heritage issues were not compatible. The Shire investigated the option of limiting entry to the reserve except for those persons who had a licence issued by the Shire. A draft local law to this effect was completed in 1996 and advertised in October 1996. This received considerable objection and was found by the Department of Local Government to be faulty in its drafting. Attached and marked "Annexure G" is a copy of a letter dated January 1997 from the Department of Local Government to the Chief Executive of the Shire stating the draft local law to be unworkable and suggesting that the Shire consider amending its existing Public Reserves Local Law.

6.2 On 10 November 1997 the Shire Local Law - Relating to Parks, Reserves and Foreshores (“**Parks, Reserves and Foreshores Local Law**”) was published in the *Government Gazette* and tabled in Parliament on 18 November 1997. The Parks, Reserves and Foreshores Local Law provided in part that:

“7.0 On a reserve or foreshore a person shall not without the consent of the Council

(t) climb or abseil on any cliff.”

Provision is made in the Parks, Reserves and Foreshores Local Law for the application for and granting of permits to hold a function or activity. “Activity” is defined to include eco-tourism pursuits and would presumably include climbing and abseiling. The Committee considered the Parks, Reserves and Foreshores Local Law and in light of the Committee’s recommendations the following amendments were made (shown in italics):

“7.0 On a reserve or foreshore a person shall not without the consent of the Council (*such consent not to be unreasonably withheld*)

(t) climb or abseil on any cliff *which may be designated as dangerous.*

6.3 The Local Law considered in this report was ultimately *gazetted* on 29 January 1998 as shown at “Annexure A”. This imposes a complete ban on anyone entering within 10 metres of the Wallcliffe cliffs. The Local Law sets out the purported exclusion area on Form 2 of the First Schedule which is attached to the Local Law. This seeks to establish an exclusion zone around the entire Wallcliffe cliff face. This conflicts with evidence taken by the Committee and its visual inspection of the site which clearly demonstrated that the Wallcliffe cliffs extend for 40 metres into the adjoining private property, Sussex Location 97. There was no signage erected at the Reserve indicating the exclusion zone and the area was not fenced off from public access.

6.4 The unanimous adoption by the Shire of what amounts to a blanket prohibition of entry into an area effectively 10 metres surrounding the cliff face was taken after careful consideration by the Shire of the expert advice which it commissioned. The Shire’s assessment of the advice received from Gordon regarding the safety of the Wallcliffe cliffs (refer “Annexure E” attached), the Aboriginal heritage issues and concerns about vandalism and damage to the caves and in general the environmental degradation of the area led the Shire to adopt the 10 metre exclusion zone which still left open the ability for the public to view what the Gordon Report refers to as “a truly magnificent, unique, natural asset that should be enjoyed by as many people as possible”.

6.5 The Shire has expressed reluctance to revisit the Management Plan or to redraft the

Local Law to allow entry to the Reserve on a limited basis because of what it sees as incompatible uses of the Reserve. The Shire considers that only the taking of a time series of data of the geological make up will confirm the safety of the cliffs. The use of elevated walkways and decking to protect the fragile environment is seen by the Shire as an invitation for greater public access exposing even greater numbers of people to the public safety issue. The Shire also considers that Aboriginal heritage issues also require the total exclusion from the cliff area although this would appear to be contrary to the access requirements for Aboriginal persons contained in the *Aboriginal Heritage Act 1976*.

7 Potential Liability of Shire as a Public Authority

- 7.1 The Shire's concern over public safety in the Reserve in the wake of the Gracetown tragedy understandable. The Shire is also alive to the public liability issue which accompanies increased public access. It was put to the Committee by the Shire that prohibiting immediate access by the public to the Wallcliffe cliffs is the only way the safety of the public can be assured. The Shire is concerned that even with controlled access to the Wallcliffe cliffs through the introduction of a permit system, legally the Shire would still be required to manage the entry and activities on the Reserve to ensure that the conditions attaching to any permit issued are effectively complied with. The Committee understands that the Shire is investigating the possibility of fencing the 10 metre exclusion zone surrounding the Wallcliffe cliffs.
- 7.2 This area of the law has been recently revisited by the High Court. In *Romeo v Conservation Commission of the Northern Territory* (1998) 72 ALJR 208, the High Court considered the liability of the Commission as the managers of a public reserve for a woman who fell from a cliff located within the reserve. The foundation for the Commission's statutory duty of care to the woman was the statutory power of management and control of the reserve. The cliffs were part of a public reserve, which attracted up to half a million visitors a year. The cliffs, to the knowledge of the Commission, attracted a proportion of those visiting the reserve. The Commission did not create an upgraded road and car park as an allurements to people to visit the cliff area, but rather as a means of controlling traffic and limiting damage to the environment. However, these improvements certainly facilitated access to the cliffs by visitors. In finding the Commission not liable for the injury of the woman falling off the cliff, members of the High Court made the following comments.

Kirby J. said at 234:

"The entrant is only entitled to expect the measure of care appropriate to the nature of the land or premises entered and to the relationship which exists between the entrant and the occupier. While account must be taken of the possibility of inadvertence or negligent conduct on the part of the entrants, the occupier is generally entitled to assume that most entrants will take reasonable care for their own safety. For example, it would be neither reasonable nor just

to impose upon a body such as the Commission an obligation to erect secure climb-proof fencing along the entire elevated headland of the reserve against the risk of injury suffered by the occasional visitor bent on suicide. Where a risk is obvious to a person exercising reasonable care for his or her own safety, the notion that the occupier must warn the entrant is neither reasonable nor just. In considering whether the scope of the duty extends, in a case such as the present, to the provision of fencing or wire barrier, it is not sufficient to evaluate that claim by reference only to the area of the Dripstone Cliffs. An accident of the kind which occurred to the appellant might have occurred at any other elevated promontory in every similar reserve under the control of the Commission to which members of the public had access."

Kirby J. continued at 236:

"However, because the risk was obvious and because the natural condition of the cliffs was part of their attraction, the suggestion that the cliffs should have been enclosed by a barrier must be tested by the proposition that all equivalent sites for which the Commission was responsible would have to be so fenced."

Kirby J. at 236 made reference to the costs that would be incurred and the measures necessary to prevent all equivalent accidents of a like kind and risk and cited the comments of Cox J. at 569-570 from *South Australia v Wilmot* (1993) 62 SASR 562:

"In the reference to "other conflicting responsibilities" regard may be had to considerations such as the preservation of the aesthetics of a natural environment and the avoidance of measures which would significantly alter the character of a natural setting at substantial cost and for an improvement in safety of negligible utility."

Kirby J. concluded at 236:

"The perceived magnitude of risk, the remote possibility that an accident would occur, the expense, difficulty and inconvenience of alleviating conduct and the other proper priorities of the Commission confirm the conclusion that breach of the Commission's duty of care to the appellant was not established."

Toohey, Gummow JJ. in a joint judgement stated at 221:

"The respondent was under a general duty of care to take reasonable steps to prevent persons entering the Reserve from suffering injury. But the taking of such steps did not extend to fencing off an area of natural beauty where the presence of the cliff was obvious. In other words, there was no breach of the respondent's duty of care in failing to erect a barrier at the cliff edge."

Brennan CJ. stated at 215:

"To those who exercised reasonable care for their own safety, the cliff and its dangers were obvious. The Commission was under no duty to fence, light, erect warnings or take any other steps to protect the public from those obvious dangers."

7.3 The Committee believes that the Shire should reconsider the Local Law which provides a blanket prohibition on entry by anyone within 10 metres of the Wallcliffe cliffs within the Reserve.

8 Summary of Committee's Reasons in Support of Disallowance

8.1 The purported area of exclusion around the Wallcliffe cliffs as set out in Schedule One of the Local Law appears to the Committee to be misleading in that it shows the entire Wallcliffe cliffs to be within the Reserve. For this reason alone, the Local Law is considered flawed and should be disallowed.

8.2 The major competing factors surrounding the use of the Reserve appear to be:

- Public safety;
- Environmental preservation and conservation;
- Aboriginal cultural significance; and
- Heritage issues.

The draft 1993 Management Plan commissioned by the Shire addressed each of these issues. The Shire has subsequently commissioned the Gordon report in relation to the geological safety of the area. The Committee heard evidence that research into the Aboriginal significance of the area is only in its infancy. The Committee can see no reason why the Management Plan cannot be revisited involving all relevant stakeholders so that the Wallcliffe cliffs, described to the Committee as a magnificent, unique, natural asset, can be enjoyed by as many people as possible.

8.3 The Committee is concerned at the precedent this Local Law sets for the future management of public reserves throughout Western Australia. The Committee believes that a balance should be sought between the competing interests for use of the reserve. The Shire has acknowledged that it lacks the resources to adequately enforce the Local Law. The apparent degradation of the Reserve and particularly the Wallcliffe cliffs seems best addressed by a comprehensive and inclusive Management Plan of the area. The Committee believes that the existing Local Law will do little to arrest the decline in the Reserve area. The situation prevailing in the adjoining National Park administered by CALM suggests to the Committee that control over access to the Wallcliffe cliffs through the use of permits is a workable alternative which should be further examined by the Shire.

8.4 For the reasons given above the Committee seeks the disallowance of the Local Law.

"Annexure A"

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

**LOCAL LAW—RELATING TO WALLCLIFFE RESERVE
(RESERVE 41545)**

In pursuance of the powers conferred upon it by the Abovementioned Act, and of all other powers enabling it, the council of the abovementioned Local Government hereby records, having resolved on the 13 November, 1997 to make the following Local Law.

PART 1—PRELIMINARY**Citation**

1. This Local Law may be cited as the Wallcliffe Reserve (Reserve 41545) Local Law.

Arrangement and Definitions

2. This Local Law is divided into parts as follows—

- PART 1 PRELIMINARY
- PART 2 DELEGATED AUTHORITY
- PART 3 OFFENCES
- PART 4 ENFORCEMENT
- PART 5 SCHEDULES

3. In this Local Law, unless the context requires otherwise

- “Act” means the Local Government Act 1995 and includes any amendments to that Act;
- “authorised person” means a person exercising authority under the Act and includes a police officer;
- “cliff face” includes the sides, top and caves located in the cliff being the area defined in the survey maps shown in the First Schedule;
- “climbing” includes any manner of manoeuvring over the cliff face with or without assistance;
- “CEO” means the Chief Executive Officer of the Shire of Augusta-Margaret River;
- “defacing” includes any manner of spoiling or damaging the cliff face with or without implements;
- “reserve” means reserve 41545;
- “Schedule” means the Schedule to this Local Law;
- “Shire” means the Local Government of the Shire Augusta-Margaret River.

PART 2—DELEGATED AUTHORITY

4. Council may by resolution passed by an absolute majority delegate to the “CEO” as defined in this Local Law, the performance of any function of the Council in relation to this Local Law.

In this Local Law a reference to the Council having powers to do something in its discretion or a reference to the Council forming an opinion prior to the doing of anything shall be deemed to include a reference to any employee of the Local Government to whom the “CEO” has delegated the exercise of any of the “CEO”’s powers or the discharge of any of the “CEO”’s duties in relation to this Local Law.

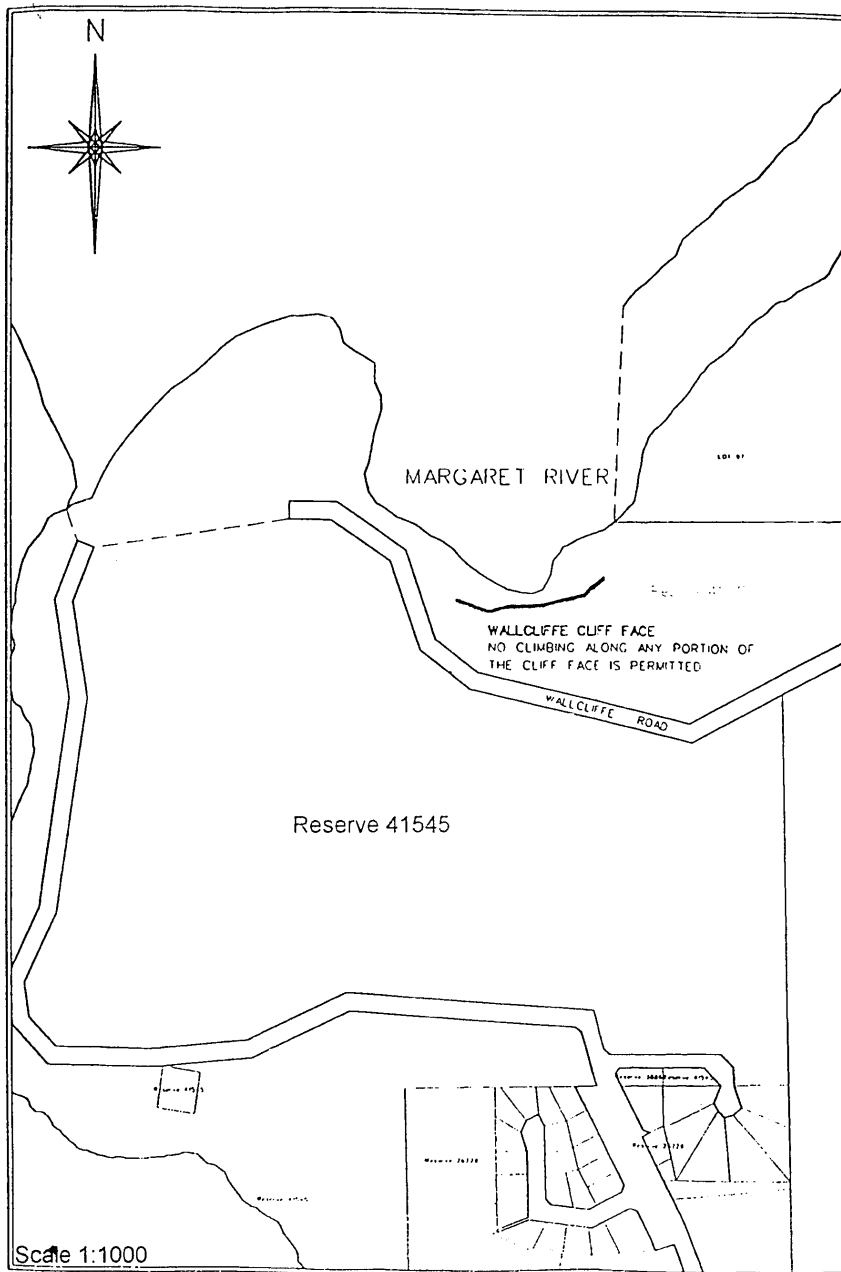
PART 3—OFFENCES

5. Any person who climbs on a cliff face commits an offence.
6. Any person who defaces a cliff face commits an offence.
7. An authorised person may request any person whom the authorised person may honestly believe has breached any provision of this local law, to give their name and place of residence to the authorised person who so requests it.
8. A person who fails to give their name and place of residence to an authorised person forthwith after being so requested by the authorised person commits an offence.
9. Any person who enters upon the area defined in the survey maps shown in the First Schedule Form 2 without authority commits an offence.
10. Any person who climbs on a cliff face or defaces a cliff face or both, may be requested to leave the reserve by an authorised person. Any person who fails to leave the reserve forthwith after being so requested by an authorised person commits an offence.
11. An authorised person may impound any climbing equipment found in the possession of a person whom the authorised person honestly believes has committed an offence under clause 5 or 6.

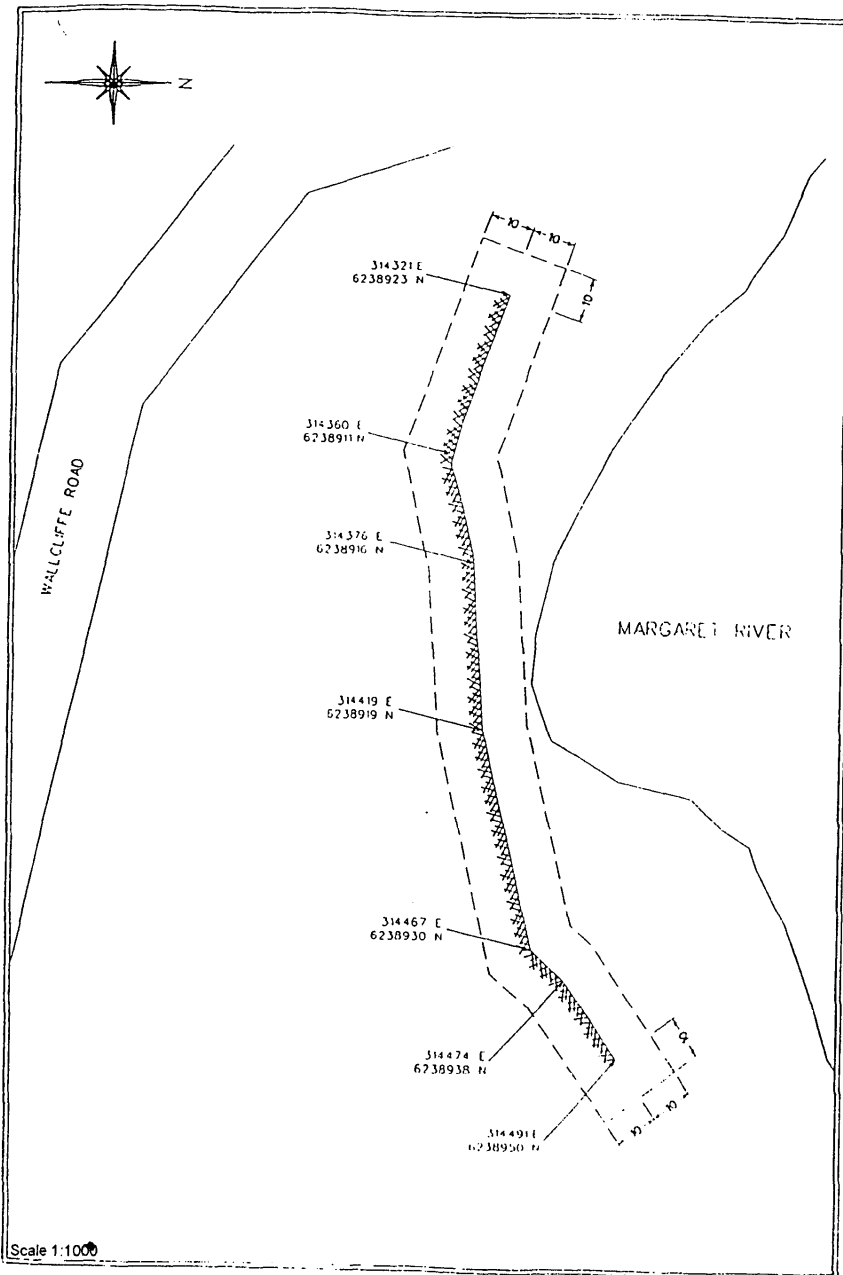
PART 4—ENFORCEMENT

12. Any person found to have committed an offence under clauses 5, 6, 8, 9 and 10 may be served with an Infringement Notice in the manner of Form 1 of the Second Schedule.
13. Where an Infringement Notice is withdrawn, a notice in the manner of Form 2 of the Second Schedule will be sent to the alleged offender.
14. Where an alleged offender is convicted, a court may, in addition to imposing any other penalty, order that the climbing equipment removed and impounded under clause 10 be confiscated.
15. Where climbing equipment has been impounded and the alleged offender is not convicted or if convicted, the court does not order that the goods be confiscated, the Local government will issue a notice to the alleged offender that the goods may be collected at a time and place to be specified.
16. With respect to the disposal of confiscated and uncollected goods, the provisions of Part 3, Division 3, Subdivision 4 of the Act applies.
17. Where applicable Part 9, Division 1 (Objections and Appeals), Division 2 (Enforcement and Legal Proceedings) and Division 3 (Documents) of the Act, applies to this Local Law.
18. A person who commits a breach of any provision of this Local Law commits an offence and shall, on conviction, be liable to a penalty not exceeding \$5000.00, or if dealt with by means of an Infringement Notice under Section 9.17 of the Act the modified penalty shall be as indicated in the Second Schedule.

FIRST SCHEDULE
FORM 1



FIRST SCHEDULE
FORM 2



SECOND SCHEDULE
FORM 1
Local Government Act 1995
SHIRE OF AUGUSTA-MARGARET RIVER
Local Law Relating to Wallcliffe Reserve (Reserve 41545)
INFRINGEMENT NOTICE

To:(i) Date...../...../.....
....of(ii)
It is alleged that at(iii).....am/pm, on the.....day of.....19.....
you committed the following offence—
(iv).....
contrary to Section (v).....of the Shire of Augusta-Margaret River Local Law Relating to
Wallcliffe Reserve (Reserve 41545).
The modified penalty for this offence is(vi)\$.....
If you do not wish to have a complaint of the alleged offence heard and determined by a Court, the
amount of the modified penalty may be paid to an authorised person at the Shire of Augusta-Margaret
River within a period of twenty eight (28) days after the issue of this notice.
Payment may be made by posting this form together with the amount indicated to the Chief Executive
Officer, Shire of Augusta-Margaret River, PO Box 61, Margaret River, WA 6285, or by paying the amount
indicated to the cashier at the Shire Offices, Town View Tce., Margaret River between the hours of 8am
to 4.30pm Mon to Fri.

Signature.....
Authorised Officer

- (i) Name of the alleged offender ["owner of (vehicle identification)" suffices if notice given with a
notice under Section 9.13 of the Act].
(ii) Address of alleged offender (not required if notice given with a notice under Section 9.13 of the
Act).
(iii) Time and date when offence allegedly committed.
(iv) Details of the alleged offence.
(v) Section of the Local Law.
(vi) Amount of Modified Penalty.

SECOND SCHEDULE
FORM 2
Local Government Act 1995
SHIRE OF AUGUSTA-MARGARET RIVER
Local Law Relating to Wallcliffe Reserve (Reserve 41545)
WITHDRAWAL OF INFRINGEMENT NOTICE

To:(i) Date...../...../.....
....of(ii)
Infringement Notice number.....dated...../...../.....for the alleged
offence of.....
has been withdrawn,

The modified penalty of \$.....
* has been paid and a refund is enclosed.
* has not been paid and should not be paid.
* delete as appropriate

Signature.....
Authorised Officer

- (i) Name of alleged offender to whom infringement was issued
(ii) Address of alleged offender

29 January 1998]

GOVERNMENT GAZETTE, WA

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SECOND SCHEDULE
Local Government Act 1995
SHIRE OF AUGUSTA-MARGARET RIVER
 Local Law Relating to Wallcliffe Reserve (Reserve 41545)

MODIFIED PENALTIES

Item No.	Clause	Nature of Offence	Modified Penalty \$
1	5	Climbing a cliff face	500.00
2	6	Defacing a cliff face	500.00
3	8	Failing to provide name and address when requested by Authorised Officer.	100.00
3	9	Entering the defined area without authority.	100.00
3	10	Refusing to leave Reserve 41545 when requested by Authorised Officer.	100.00

Dated the 13th day of November, 1997.

The common seal of the Shire of Augusta-Margaret River was hereto affixed by Authority of the Council
 in the presence of:—

B. F. GODLEY, Shire President.
 M. T. EASTCOTT, Chief Executive Officer.

"Annexure B"

WESTERN AUSTRALIAN
TOURISM COMMISSION

RE
2 SEP 1997
AUGUST

01 September 1997
Mr Max Easycott, CEO
Shire of Augusta/Margaret River
PO Box 61
MARGARET RIVER WA 6285

10th Floor, Bunbury Tower
61 Victoria Street
Bunbury WA 6230
Telephone 097 910 810
Facsimile 097 911 530
E-Mail watcbunb@gateway.net.au

SHIRE OF AUGUSTA-MARGARET RIVER	
Inter. Cor: <i>1147-5</i>	
Inward No: <i>5/7820</i>	
File No: <i>RE RE 14492</i>	
SHIRE CLERK	
ASSISTANT SHIRE CLERK	
SHIRE PLANNER	
HEALTH SURVEYOR	
BUILDING SURVEYOR	
ENGINEER	
ACCOUNTANT	
RANGER	
Outward No:	
Officer:	

Mr Max Easycott
Your ref



Dear Max

WALLCLIFFE RESERVE (Draft Local Law)

Thank you for the copy of the draft local law for the Wallcliffe Reserve.

Having read the document, the WA Tourism Commission is concerned at the total ban on recreational activity relating to the Wallcliffe Cliffs. Recreational climbing is seen as an important activity for the area and there appears to be little or no allowance made for those wishing to climb at this site.

Please note that the Tourism Commission is also sensitive to the environmental, as well as cultural impact that this use brings.

It is our opinion however, that the Management Plan that was drawn up by Council in 1993 (but not adopted) provides the basis for which a well managed permit system could be introduced.

This, we envisage, would be similar to CALM's adventure caves system of permits.

The plan also recommends prohibiting abseiling but allowing for climbing on a restricted basis. There are many other positive recommendations that should be considered by Council.

With regard to the Aboriginal significance of the site, the Tourism Commission has met with Mrs Pam Thorley of Aboriginal Affairs and is aware that the area is considered to be very important to the local Aboriginal people.

In order to resolve the situation there is a need for the Climbers' Association to meet with the Aboriginal community. The aim would be to find out if there is any middle ground that would allow limited recreational climbing that is acceptable to both parties while protecting the needs and beliefs of the Aboriginal community.

The Tourism Commission will be suggesting that the next step is for the Climbers' Association to approach the Aboriginal community.

Thank you for the opportunity to comment on this important issue.

Yours sincerely

Mark Exeler
Pr Mark Exeler
TOURISM DEVELOPMENT MANAGER
SOUTH WEST

"Annexure C"

9.3.2 Local Law - Wallcliffe Reserve 41545**PURPOSE**

To submit for adoption by Council a Local Law for the management of the Wallcliffe Reserve.

BACKGROUND

The original by-law draft received extensive criticism and upon examination was found to be legally flawed. This amended Local Law has been prepared to effectively exclude climbing and defacement of the cliff face and ban entry to the cave and cliff areas.

UNUSUAL OR CONTROVERSIAL PROVISIONS

This Local Law is probably exclusive of any other Local Law provisions. It seeks to ban access to the cave/cliff area. Should it be carried through it would effectively exclude -:

- (a) Climbers;
- (b) Cavers;
- (c) Eco-Tourism groups; and
- (d) The general public,

because the exclusion zone includes the access track

SUBMISSIONS AND OBJECTIONS

A list of the submissions and objections was attached to the report

SUMMARY

There is no doubt that there is in depth support for a Management Plan for the Reserve based on the 1993 draft. Problems of access and the resultant erosion could be resolved by the provisions of a suitable elevated walkway. Funding for such a structure might be obtained through a State Coastal Rehabilitation Grant. This proposal might be expanded to include a river jetty to cope with canoe access for eco-tourism groups.

Several have expressed concern at the specific discrimination against climbers, this could be subject to appeal under Anti-discrimination Legislation. Aboriginal concerns, eco-tourism needs and the Climbers Association submissions all stress the need for an overall management plan for the reserve.

"PLEASE NOTE: THESE MINUTES ARE UNCONFIRMED. COUNCIL WILL NOT BE HELD LIABLE FOR ANY ACTION TAKEN."

In this regard the existing Draft Management Plan (1993) would serve as a model for a broad based plan for the reserve.

COMMENT - RANGERS DEPARTMENT

As the enforcement authority for the proposed Local Law we would like to offer our observations.

We believe a controlled permit system for eco-tourism groups and climbers defining restrictions, numbers, access points, parking, fees etc., and including indemnity against liability is infinitely preferable to a total ban on access. Far better to have controlled access than to attempt to control illegal activities. Permits would allow for control on numbers and therefore impact and if the situation arose a total ban could be imposed.

Fencing at the eastern end of the reserve and at the cave entrance would control destructive elements. Appropriate signage should also be installed relative to directions/dangers/advice etc. We fully endorse the suggestion that the Draft Management Plan (1993) be reconstituted to address eco-tourism, climbing and aboriginal concerns.

We observe that the voluminous S.E.S report failed to include a contingency plan for accidents at the reserve. Lastly our present Parks, Reserves and Foreshores Local Law allow for permit functions and enables action to be taken in the event of damage to the environment.

CORPORATE PLAN/POLICY IMPLICATIONS

NIL

FINANCIAL/BUDGET IMPLICATIONS

It is implicit that there would be a cost of the creation of a Management Plan.

RECOMMENDATION

- 1 That Council, whilst acknowledging the existence of extremes of opinion regarding use of the reserve, develop a Management Plan which encompasses the presentation and protection of historic interests and provides the ability to :-
 - (1) Protect and improve the present environment by means of elevated walkways, revegetation and exclusion zones.
 - (2) Provide for access by eco-tourism and climbing groups by a system of paid permits.
- 2 The permit proceeds be channelled into a reserve management plan for use in rehabilitation work and installation of physical constructions.
- 3 The Management Plan should also consider the fragile nature of the cave interior with an option to protect it by erecting suitable gates and fencing
- 4 A consultative committee comprising of the Department of Sport and Recreation, WA Aboriginal Affairs Department, WA Tourism Commission, Climbers Association of WA, Shire Councillors and Shire Staff to be created to evolve the management plan which will ensure that the historic aspects of the site are protected yet still provide facilities for eco-tourism and specialist climbing groups in this unique environment.
- 5 That the enactment of this Local Law be suspended or deferred until a recommendation is received from the Consultative Committee. In the meantime the newly gazetted Parks, Reserves and Foreshores Local Law offers adequate protection for the Reserve.

"PLEASE NOTE: THESE MINUTES ARE UNCONFIRMED. COUNCIL WILL NOT BE HELD LIABLE FOR ANY ACTION TAKEN."

COUNCIL COMMENT/RESOLUTION

MERCHANT/DOWN

O1915 In pursuance of the powers conferred upon it by the Local Government Act 1995 and of all other powers enabling it, the Council of the Shire of Augusta-Margaret River hereby records having resolved on 13 November, 1997 to make the following Local Law - Wallcliffe Reserve 41545.

"Annexure D"



FACSIMILE TRANSMISSION

**Climbers Association
of Western Australia Inc**
PO Box 623, SUBIACO WA 6008

FROM: Ross Weiter
DATE: 18 November 1997
NUMBER OF PAGES: 2
SENDER FAX NO. 08 9348 5084

	Attention	Company	Location	Fax Number
1.	JAN PANIPERIS	The Legislative Council	Perth	08 9222 7805
2.				
3.				

Dear Jan

Further to our conversation of 17 November 1997, I would like provide a brief, concerning the Local Law ("the Local Law") relating to the Walcliffe Reserve No. 41545 ("the Reserve"), made by the Shire of Augusta-Margaret River on 13 November 1997 ("the Shire").

1. The Law

The Law stipulates that any person found climbing at the Walcliffe Reserve cliffs commits an offence. Any person found to have committed this offence is liable for a penalty of \$5,000 and having any climbing equipment confiscated.

2. CAWA's Objection To The Law

The Climbers Association of Western Australia (Inc.) ("CAWA"), would like to express its strongest objections at the Local Law recently made by the Shire. Our objections are made on the following grounds:

- (a) In 1991, the Class "A" Reserve No. 41545 was vested in the Shire for the designated purpose of "Recreation". Climbing is a form of recreation, hence the Law is contrary to the vesting of the Reserve.
- (b) The Law provides for \$5,000 penalties to be imposed against rock climbers, for the offence of simply engaging in our sport. The Law does not regulate any other group of users. This leads us to believe that the Law is discriminatory.
- (c) CAWA can demonstrate that it has made many approaches to the Shire, to resolve the issue of climbing access in a constructive and mutually satisfactory manner. These approaches occurred with the support of the WA Tourism Commission and the Ministry of Sport and Recreation, who have also appealed on our behalf. Officers from both of these organisations have approached the Shire to facilitate a discussion. The Shire has failed to respond to any such approaches, opting instead for unnecessary and confrontational legislation.

(d) To the best of our knowledge, there is no equivalent Law in force in the State of Western Australia, mostly because of the co-operation between CAWA and Government Authorities. We believe that this Law could set a de-facto precedent for other Shire Councils, leading to a significant loss of a recreational opportunities to the WA public.

3. CAWA

CAWA was formed in 1968, and incorporated in 1979. Our constitutional mandate is to promote and protect the interests of rock climbers, especially in Western Australia. CAWA also formulates and publishes guidelines of desired conduct, organises the WA sportclimbing competition circuit and the Annual State Championships.

4. Background

In 1993, the Shire Rangers' Department prepared a comprehensive Management Plan for the Wallcliffe Reserve. The plan addressed all issues concerned, and recommended that climbing access is allowed under a permit system. This Plan was never adopted or implemented.

In November 1996, the Shire drafted a first version of this Law. At the time, it was proposed that any person wishing to enter the Reserve must have a licence and that authorised persons may charge others for admission to the Reserve. In response, CAWA launched a poster & leaflet campaign in the town of Margaret River. Two petitions were raised with 350 signatures each, one to the Shire and one to the Minister For Local Government. Following this campaign and the review of the draft Law by the Minister's Office, the Law was withdrawn.

In June 1997, the Shire re-drafted the Law, this time make it specifically aimed against the only organised group of users of the Reserve, this being rock climbers. Numerous appeals were made by CAWA and by other bodies and authorities on our behalf.

The Shire Ranger's office reviewed all submissions and advised the Council to pursue a consultative plan of action.

On 13 November 1997 the Shire voted against this advice and in favour of the Law. As of now, no implemented Management Plan exists for the Reserve, nor are there any plans for making one.

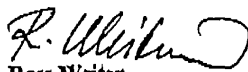
The Law was not yet gazetted.

5. Further Action

CAWA would like to respectfully request the Legislative Council to investigate the concerns raised in section 2 of this facsimile. We would like to provide more extensive written information to support our case. Finally, we would welcome any opportunity for direct consultation with yourself or your Committee.

I can be reached on (08) 9348 5394 with any queries.

Yours faithfully
CLIMBERS ASSOCIATION OF WESTERN AUSTRALIA


Ross Weiter
Secretary

"Annexure E"

*EXTRACT: Gordon Geological Consultants
Report 1997.*

7.5 WALLCLIFFE CLIFFS

The Wallcliffe cliffs are partly on Shire land and partly on privately owned land. The cliffs are used for rock climbing and abseiling and they are also on route for organized bush walks and canoe ventures.

The Wallcliffe cliffs are high and remarkably straight and are nearly vertical or overhanging (Figure 12b). The cliffs are located alongside a stretch of the Margaret River. The rock mass in the basal layers at least consists of coarse grained beachrock that has undergone some leaching leaving wide gaps between finer grained layers but this has been followed by cementation from flowstone moving down the cliff face and in the near surface holes and crevices. In places the flowstone has added ornamentation in the form of stalactites (Figure 13a) to overhangs and some of these have become cracked with excessive loads of calcite, or possibly have been disturbed during abseiling (Figure 13b).

Because of their size and verticality, a detailed examination of the cliff faces would take about 6 hours, and then only the lower slopes would be inspected in any detail.

However some general impressions were made during a 1 hour inspection, which could form the basis of an action plan.

- * There are two areas where recent (last 30 years) rock falls of small size have occurred from the cliff. This is the sign of a comparatively stable cliff face.

- * There are three unstable features or blocks on the face which show cracking, and which are unstable. These are shown in Figures 13b, 14a & 14b. They constitute a danger to people on the cliff and underneath it, and should be removed or tested by professional abseilers using a short steel bar. If the object is removed, well and good, if it remains then it is more stable than it looks.
- * There will be other natural hazards on the cliff but a full detailed survey would be required to locate them.
- * People who abseil on the cliff or who use it for rock climbing must be warned that the cliff contains unstable areas, and that they use the cliff at their own risk. Thus signs should be placed on any vantage points at the top of the cliff and at the climbing spots at the base.
- * The cliff is a truly magnificent, unique, natural asset that should be enjoyed by as many people as possible. The key to the use of the cliff is management, so it is seen and appreciated only by the genuine enthusiasts and travellers. This means it should remain hard to get to.
- * A signboard could be placed on the main entry track leading from the river and land access track explaining the geology of the cliff and its uniqueness along with a warning about climbing or abseiling.

8.0 CONCLUSIONS

- 8.1 Of the four limestone areas inspected, none showed any large scale problems of instability. The area with the most potential problems, which is the 10m or so remaining of Huzza's cliff on Shire land adjacent to the CALM cliffs will be inspected and assessed during a visit to the CALM areas, and will be regarded as one cliff problem, not two.
- 8.2 There are minor instability problems in the form of loose limestone blocks lying on sandy slopes in the cliff faces east of the carpark steps. Signposting is indicated - keep off cliffs.
- 8.3 There are several potential problems at Gnarabup Point, none of a major size. Signposting is required to indicate No Go Areas, and a possible extension of the wooden trail to bypass a small unstable block.
- 8.4 Surfers Point and Beach has a few local problem areas, repairing the fence, and possibly extending it is required, along with several signs indicating hazardous areas. If the wooden boardwalk and viewing area is extended, some preventative work on an adjacent overhang is indicated.
- 8.5 The Wallcliffe Cliffs are quite spectacular, and have overhangs and caves in reasonable condition. There are three known cracked blocks on the face that should be barred or levered off.

Signs should be erected to indicate that climbing and abseiling is entirely at the risk of the participants. A trailhead sign should show the geology of the cliff, and its special features and problems.

The cliff should not be opened up to all comers, it should be reserved for those who appreciate it, and will not vandalise it or endanger themselves and others.

"Annexure F"

Gil Hardwick

Consulting Anthropologist

PO Box 1009
Margaret River 6285

Rec. 41545

26 May, 1998

Max Eastcott
Chief Executive Officer
Shire of Augusta-Margaret River
PO Box 61
MARGARET RIVER 6285

27 MAY 1998
AUGUSTA

(08) 9757 8124	
SHIRE OF	
AUGUSTA-MARGARET RIVER	
Inter. Con:	MAX E
Inward No.:	T/9142
MAG 92/MS.16	
COUNCIL CLERK	
ASSISTANT SHIRE CLERK	
SHIRE PLANNING	
HEALTH SURVEYOR	
BUILDING SURVEYOR	
ENGINEER	
ACCIDENTANT	
COUNSELLOR	
N. 018271	

Dear Max,

At your request, the Aboriginal significance of Wallcliffe, briefly, is as follows:

According to local Nyungar mythology, the Margaret River was created by the legendary magician Wooditch during his elopement with the girl Milyan, who had been betrothed to his older brother Norable. The river still bears the name Wooditchup.

The pair had eloped from the Scott River area, east of Augusta, and were chased north along the Leeuwin-Naturaliste Ridge by Milyan's father Ngungargoort. The river was created when Wooditch waved his magic wand to create a barrier between them and their pursuer, and Ngungargoort in a rage tore up the trees and the ground along the south bank of the river along the Wallcliffe area.

When Ngungargoort later died of old age, he was buried there in the cave under the cliff at Wallcliffe. Wooditch himself was later turned into a rock off the River Mouth, which is now known as Cow Rock.

Wallcliffe subsequently became one of the most significant men's sites in the lower South West, and women traditionally avoid the place. There is substantial indication that the site is one of the major "teaching camps" linked to the Mount Eliza foreshore in Perth via Wonnerup and the huge ceremonial site where the southern extremity of the Swan Coastal plain meets the Leeuwin-Naturaliste Ridge at Quendjinup, now Dunsborough, thus ritually linking the Indian and Southern Oceans.

There are further substantial indications that the site is also part of a vast traditional ritual complex including the River Mouth itself, Ellensbrook and Calgardup, and the women's sites at Kilcarnup and Prevelly, and I now believe including the Margaret River townsite as well. I understand that there are at least two other story lines passing through Wallcliffe, one involving the death of a girl who turned into a tree there, and the other a father and his son during the disruptions caused by the arrival of Europeans.

It is a priority that this extremely important National Heritage precinct be preserved and listed. My urgent concern is that Wallcliffe be protected from any further damage by climbers and other visitors, at least until it can be rehabilitated and if possible a boardwalk later constructed as at Ellensbrook.

Yours faithfully,

"Annexure G"



Chief Executive Officer
 Shire of Augusta Margaret River
 PO Box 61
 MARGARET RIVER WA 6285

COUR REF: AM7-32
 YOUR REF:
 ENQUIRIES: Oliver Crosthwaite
 DIRECT LINE: 222 0494

Dear Sir

I refer to the Shire of Augusta Margaret River's proposed local law to control access to Walleliffe Reserve 41545 which was faxed to the Department on 19 December 1996.

The proposal has been examined and comments made on the attached copy. It appears that, as it is, it would be largely unworkable and therefore in need of redrafting. Further, it has been noted that the public may not have been given the minimum statutory period in which to respond to an advertisement which appears on page 103 of the *West Australian* of 23 October 1996 (see s3.12(3)(a)(iii) LGA1995).

In addition to the above, the Department suggests that further consideration be given to:

- (1) the intent, or objective, of the legislation (this will assist in making the legislation clearer and more concise); and
- (2) the merits of amending the existing Public Reserves Local Laws (gazetted 14 October 1983) instead of adopting a discreet set such as has been proposed which may be in conflict or duplicate existing provisions.

Should you wish to discuss the matter or if you require any other assistance please contact Oliver Crosthwaite at the above address.

Yours sincerely

DIRECTOR POLICY AND PROGRAMS

January 1997 OC:L3

MAY HOLMAN CENTRE 32 ST GEORGE'S TERRACE PERTH WESTERN AUSTRALIA 6000
 GPO BOX 11210 PERTH WESTERN AUSTRALIA 6001 TELEPHONE (091) 222 0511 FAX (091) 222 0512
