

**ABORIGINAL CULTURAL HERITAGE
ASSESSMENT: 164 STATION STREET,
PENRITH, NSW
FOR
PARKVIEW PENRITH PTY LTD**



**Final Report
August 2012**

AHMS

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GLOSSARY

Aboriginal Cultural Heritage Assessment (ACHA)	A document developed to assess the archaeological and cultural values of an area, generally required as part of an Environmental Assessment (EA).
<i>Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010</i>	Guidelines developed by OEH to guide formal Aboriginal community consultation undertaken as part of an Aboriginal Cultural Heritage Assessment (ACHA).
Aboriginal Heritage Impact Permit (AHIP)	The statutory instrument that the Director General of the Office of Environment and Heritage (OEH) issues under Section 90 of the <i>National Parks and Wildlife Act 1974</i> to allow the investigation (when not in accordance with certain guidelines), impact and/or destruction of Aboriginal objects. AHIPs are not required for a project seeking approval under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> .
Aboriginal object	A statutory term defined under the <i>National Parks and Wildlife Act 1974</i> as, 'any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains'.
<i>Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales</i>	Guidelines developed by OEH to inform the structure, practice and content of any archaeological investigations undertaken as part of an Aboriginal Cultural Heritage Assessment (ACHA).
Department of Environment, Climate Change and Water (DECCW)	Now known as the Office of Environment and Heritage (OEH), Department of Premier and Cabinet.
Department of Planning and Infrastructure (DPI)	The Consent Authority for development applications made in accordance with Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> .
<i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</i>	Guidelines developed by OEH, outlining the first stage of a two stage process in determining whether Aboriginal objects and/or areas of archaeological interest are present within a subject area. The findings of a due diligence assessment may lead to the development of an Aboriginal Cultural Heritage Assessment.
Environmental Assessment (EA)	A document summarising the assessment of environmental impacts of a development which supports an application for

	approval under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> .
<i>Environmental Planning and Assessment Act 1979</i>	Statutory instrument that provides planning controls and requirements for environmental assessment in the development approval process. The Act is administered by the DPI.
<i>Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW</i>	Guidelines developed by OEH to inform the structure and content of an Aboriginal Cultural Heritage Assessment (ACHA).
Isolated Find	An isolated find is usually considered a single artefact or stone tool, but can relate to any product of prehistoric Aboriginal societies. The term “object” is used in the ACHA, to reflect the definitions of Aboriginal stone tools or other products in the <i>National Parks and Wildlife Act 1974</i> .
<i>National Parks and Wildlife Act 1974</i>	The primary piece of legislation for the protection of Aboriginal cultural heritage in NSW. Part 6 of this Act outlines the protection afforded to and offences relating to disturbance of Aboriginal objects. The Act is administered by OEH.
Office of Environment and Heritage (OEH)	The OEH is responsible for managing the Aboriginal Heritage (and other) provisions of the <i>National Parks and Wildlife Act 1974</i> .
Potential Archaeological Deposit (PAD)	An area assessed as having the potential to contain Aboriginal objects. PADs are commonly identified on the basis of landform types, surface expressions of Aboriginal objects, surrounding archaeological material, disturbance, and a range of other factors. While not defined in the <i>National Parks and Wildlife Act 1974</i> , PADs are generally considered to retain Aboriginal objects and are therefore protected and managed in accordance with that Act.
Proponent	A corporate entity, Government agency or an individual in the private sector which proposes to undertake a development project. The proponent for this project is Parkview Penrith Pty Ltd.

ABBREVIATIONS

ACHA	Aboriginal Cultural Heritage Assessment
AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit
AHMS	Archaeological and Heritage Management Solutions
BP	Before present (AD 1950)
CHL	Commonwealth Heritage List
DCP	Development Control Plan
DECCW	Department of Environment, Climate Change and Water (now OEH)
DP	Deposited Plan
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
ERS	Eastern Regional Sequence
ka	Abbreviation for thousands of years ago (e.g. 1 ka equals 1,000 years ago)
LALC	Local Aboriginal Land Council
LEP	Local Environmental Plan
LGA	Local Government Area
LPI	Land and Property Information
LTO	Land Titles Office
NHL	National Heritage List
NPW Act	<i>National Parks and Wildlife Act 1974</i>
OEH	Office of Environment and Heritage (formerly DECCW)
PAD	Potential Archaeological Deposit
RAP	Registered Aboriginal party
REP	Regional Environmental Plan
RNE	Register of the National Estate
SHR	State Heritage Register
SHI	State Heritage Inventory
WHL	World Heritage List

SUMMARY

Background

- In 2006, Archaeological and Heritage Management Solutions (AHMS), was commissioned by Parkview Penrith Pty Ltd to undertake an Aboriginal Heritage Assessment of 164 Station Street, Penrith, NSW (also referred to as the 'Nepean Green Project'). The site condition has not had any significant changes; however, there have been changes to current Aboriginal heritage guidelines. Accordingly the 2006 report has been updated and this assessment presents a modified version of the 2006 report. This assessment was undertaken to: 1) provide information to inform a Concept Approval application made under the transitional Part 3A provisions of the Environmental Planning & Assessment Act 1979 for the proposed development; and 2) to provide the necessary documentation for future development of parts of the site under Part 4 of the Environmental Planning & Assessment Act 1979.
- This report is written in accordance with the *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*, (DEC, 2005), the *Code of Practice for Archaeological Investigations of Aboriginal Objects in New South Wales* (DECCW, 2010) and *Aboriginal Cultural Heritage Community Consultation Requirements for Proponents* (DECCW, 2010); these documents purportedly defining best practice standards and processes for Aboriginal heritage assessment in NSW.
- Aboriginal community consultation was informally undertaken with three of the known Aboriginal stakeholders in the region - Deerubbin LALC, Darug Tribal Aboriginal Corporation and Darug Custodian Aboriginal Corporation as part of the 2006 assessment. For the current assessment, AHMS has undertaken formal Aboriginal consultation in accordance with *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW, 2010).
- The 2006 assessment included an archaeological predictive model which was informed by detailed background analysis of previous archaeological investigations in the region and information from the AHMS database. A site survey was also undertaken in conjunction with the Aboriginal communities in 2006. The site remains unchanged since this time.
- The 2006 assessment identified the northern part of the subject site as heavily disturbed by existing industrial and commercial structures. The southern part of the site was considered to be relatively undisturbed, with only market gardening being evident since the 1940's. Geo-technical information for the site indicated that it is situated on the Cranebrook Formation - a geological deposit that has been shown to contain Aboriginal

objects at significant depths and of significant age. The Cranebrook Formation is composed of two stratigraphic units, the Richmond and Penrith Units. Only the Richmond Unit has potential to contain Aboriginal objects at depth, although both units have potential for Aboriginal objects to exist on the surface. It is unclear, which unit the subject site is situated on, although the distance from the Nepean River indicates that it is probably the Penrith Unit.

- Subsequently, it has been concluded that:
 - The entire subject area has potential to contain cultural deposits within the sandy clay unit that variously underlies natural topsoils and imported fills. The degree of potential is considered low, however the potential antiquity and significance of any cultural deposits within the sandy-clay unit indicates that the sandy-clay unit should be considered to have high sensitivity.
 - The area marked green on **Figure 7** has a moderate to high potential to contain more recent Holocene Aboriginal sites within remnant original A-horizon soils.
- The recommendations of this assessment are:

General Recommendations

- Consultation between Parkview Penrith Pty Ltd and the Registered Aboriginal Parties should be maintained as appropriate throughout the design and construction stages of the proposed development.
- If the boundaries of the proposed development are revised to include areas not investigated during this archaeological assessment and the overall ACHA, assessment of these additional areas should be undertaken in order to identify and appropriately manage Aboriginal objects, sites and/or places that may exist in these areas.
- Parkview Penrith Pty Ltd should ensure that the removal of any Aboriginal object or the disturbance or destruction of any Aboriginal site or place is undertaken professionally, in consultation with relevant Registered Aboriginal Parties, according to applicable heritage statutory requirements and is documented, as appropriate to the level of significance of the object, site or place.
- Parkview Penrith Pty Ltd should ensure that any project-related Aboriginal heritage reports or documents are prepared in accordance with and/or comply with applicable statutory requirements and best practice professional standards. Where appropriate, findings of this assessment are provided to OEH AHIMS Registrar and the relevant Registered Aboriginal Parties.

- Parkview Penrith Pty Ltd should advise all relevant personnel and contractors involved in the design, construction and operation of the proposed development, of the relevant heritage issues, legislative requirements and recommendations identified in the present ACHA.
- In the event that previously undiscovered Aboriginal objects, sites or places (or potential Aboriginal objects, sites or places) are discovered during construction, all works in the vicinity of the find should cease and Parkview Penrith Pty Ltd should determine the subsequent course of action in consultation with a heritage professional, relevant Registered Aboriginal Parties and/or the relevant State government agency.
- Should any skeletal material be identified that may be Aboriginal, the *Coroner's Act 1980* requires that all works should cease and the NSW Police and the NSW Coroner's office should be contacted. Should the burial prove to contain Aboriginal ancestral remains, consultation with a heritage professional, relevant Registered Aboriginal Parties and/or the relevant State government agency, should be undertaken by Parkview Penrith Pty Ltd.

Specific Recommendations

- Should potential impacts be proposed to the Nepean Green PAD (Figure 7), further sub-surface investigation and characterisation of these deposits is required prior to any development. This assessment has been developed in accordance with relevant guidelines to allow any sub-surface excavations to be undertaken in accordance with methods outlined in *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010). However, please note that the potential depth of some of these deposits may require the use of alternative methods to those set out in the Code. This would necessitate the requirement for an application to be made for an Aboriginal Heritage Impact Permit (for archaeological testing) from the Office of Environment & Heritage prior to being implemented. Should Aboriginal objects be identified through this process, an AHIP for their destruction would need to be obtained from the Office of Environment and Heritage prior to development. Consideration of conservation and/or other mitigation measures, and the long term management of the recovered Aboriginal objects would also be required.
- Areas highlighted in blue in Figure 7 are considered to have low potential to contain Aboriginal objects in deposits >1.3 m below the surface. Where impacts below this level would ensue, further assessment to determine the presence/absence of Aboriginal objects would be required. Given the extent of disturbance to the soil profile caused by historical development and land use in this area, it is recommended that sub-surface investigations should be undertaken within the Nepean Green PAD and that the results of those investigations should then be used to extrapolate the extent of potential Aboriginal heritage constraints within the area highlighted in blue. Any management requirements and/or other approvals identified through works in

the Nepean Green PAD, should similarly be applied to the areas highlighted in blue in **Figure 7** (if below the upper fill layers).

- Three copies of this report should be forwarded to the *NSW Office of Environment and Heritage - Planning and Aboriginal Heritage Section, Metropolitan Branch, Environment Protection and Regulation Group* (PO Box 668, Parramatta, NSW 2124).
- One copy of the report should be forwarded to each of the following Aboriginal stakeholders: Deerubbin LALC, Darug Custodian Aboriginal Corporation, Darug Tribal Aboriginal Corporation, Darug Aboriginal Cultural Heritage Assessments, Darug Land Observations, Darug Aboriginal Landcare, and Tocomwall.

1. INTRODUCTION

1.1 Proponent Details

This report has been prepared by Archaeological & Heritage Management Solutions Pty Ltd (AHMS) on behalf of the proponent, Parkview Penrith Pty Limited:

Proponent	Archaeological Advisor
<p>Parkview Penrith Pty Ltd PO Box R1779 Royal Exchange NSW 1225</p> <p>Contact Person: Amy Romero T. 02 9506 1544 F: 0 2 9506 1599 E: amy.romero@pvview.com.au</p>	<p>Archaeological & Heritage Management Solutions Pty Ltd 349 Annandale Street Annandale NSW 2038</p> <p>Contact Person: Alan Williams T. 02 9555 4000 F. 02 9555 7005 M. 0408 203 180 E: awilliams@ahms.com.au</p>

1.2 Background

In 2006, Archaeological and Heritage Management Solutions Pty Ltd (AHMS), was commissioned by Parkview Penrith Pty Ltd (JPG) (the proponent) to undertake an Aboriginal Cultural Heritage Assessment (ACHA) of 164 Station Street, Penrith (hereafter the 'subject area') in advance of proposed mixed commercial and residential development.

While there have not been any significant changes to the site condition, due the introduction of new Aboriginal heritage management guidelines by the Office of Environment & Heritage (OEH) in 2010, this assessment presents a modified version of the 2006 assessment. The assessment is based primarily on the 2006 assessment, but has been re-structured and (where relevant) supplemented, to meet the current standards and requirements.

The purpose of the ACHA is to investigate and assess the Aboriginal cultural heritage that may be affected by the proposed development. An *Archaeological Report* is attached as **Appendix 2**, which specifically addresses the Aboriginal archaeological heritage that may be affected by the proposed development. Much of the information contained in the ACHA is derived from the archaeological report. However, the ACHA provides the broader cultural context for the archaeological heritage.

This report was undertaken in accordance with Guidelines for *Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC 2005) as well as the *Guide to*

Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (OEH, April 2011), *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW, April 2010), and *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, September 2010).

1.3 Subject Area

The subject area comprises 164 Station Street, Penrith, NSW (Lot 12 in DP 234581). The subject area is located in the suburb of Penrith, between Jamison Road to the south, Woodruff Street to the east and Station Street to the west. The southern portion of the subject area is currently open space and the northern portion contains the former Panasonic assembly and distribution facilities, which is currently being used for light industrial activities. The subject land is 78,550sqm and currently zoned R4.

The general location of the subject area is shown on **Figure 1** overleaf.

1.4 Proposed Development & Project Framework

Approval for this proposed development was originally sought in 2008. At that time, Penrith City Council (PCC) approved a range of elements set out in the development application, including floor space, building heights, envelopes.

Parkview Penrith now proposes an alternative development on the subject area, and a Concept Approval application under the transitional Part 3A provisions of the Act been submitted to DPI. The current application proposes a mixed use development including bulky goods, residential apartments, a tavern, neighbourhood shops, offices and public domain improvements (**Figure 2**).

In tandem with the Concept Approval, Parkview Penrith Pty Ltd is also seeking Project Approval for the bulky goods use which comprises a Masters Hardware retail store (13,603 m² in size) with up to 380 car park spaces.

1.5 Report Objectives

The principal aims of the assessment are to:

- Outline the statutory requirements relevant to the subject area with regard to Aboriginal cultural heritage.

- Carry out background research to identify known Aboriginal objects, sites and places, and to identify the potential for any unknown objects and places of significance within the subject area.
- Undertake Aboriginal Community Consultation in accordance with the OEH's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*.
- Carry out a survey of the subject area to rediscover and assess known items, identify previously unrecorded items, and assess the Aboriginal archaeological potential of the subject area.
- Develop preliminary mapping of the known and potential Aboriginal cultural heritage sites in the subject area.
- Assess the archaeological (scientific) significance of any Aboriginal sites or objects that may be impacted by the proposed development.
- Identify any possible constraints to the proposed development.
- Assess the potential for direct and indirect impact to Aboriginal cultural heritage that would ensue as a result of undertaking the proposed development.
- Identify and recommend measures to mitigate any potential adverse heritage impacts.

1.6 Limitations

This report is based on existing and publically available environmental and archaeological information, reports about the subject area, and relevant site visits. It did not include any independent verification of the results or interpretations of externally sourced reports (except where the site inspection and field survey indicated inconsistencies). This report includes some predictions about the probability of subsurface archaeological materials to exist in certain landforms/landscapes of the subject area. The predictions were based on surface indications noted during the field investigation, and environmental context. It is acknowledged, however, that sub-surface materials may survive in landform/landscape contexts despite surface and environmental indicators that may suggest that they do not. The converse also applies.

The Aboriginal Heritage Information Management System (AHIMS) information was provided to AHMS by OEH. Information in the archaeological assessment report reflects the scope and the accuracy of the AHIMS site data, which in some instances is limited.

1.7 Authorship and Acknowledgements

The 2006 assessment was written by Jim Wheeler, now Manager Victoria AHMS. This report was re-structured and supplemented by Alan Williams. Alan Williams (BSc (Hons), MSc,

MAACAI) is a Senior Archaeologist with AHMS, and has 10+ years' experience in Aboriginal archaeology. The report was reviewed by Peter Douglas, Director, and Lisa Newell, Associate Director. Reporting assistance was provided by Oliver Brown, Senior Archaeologist.

AHMS thanks the following organisations for their involvement in the investigation and their contributions to this report:

- Parkview Penrith Pty Ltd.
- Urbis.
- Deerubbin Local Aboriginal Land Council (DLALC).
- Darug Custodian Aboriginal Corporation (DCAC).
- Darug Aboriginal Cultural Heritage Assessments (DACHA).
- Darug Tribal Aboriginal Corporation (DTAC).
- Darug Land Observations.
- Darug Aboriginal Landcare Inc.
- Tocomwall.

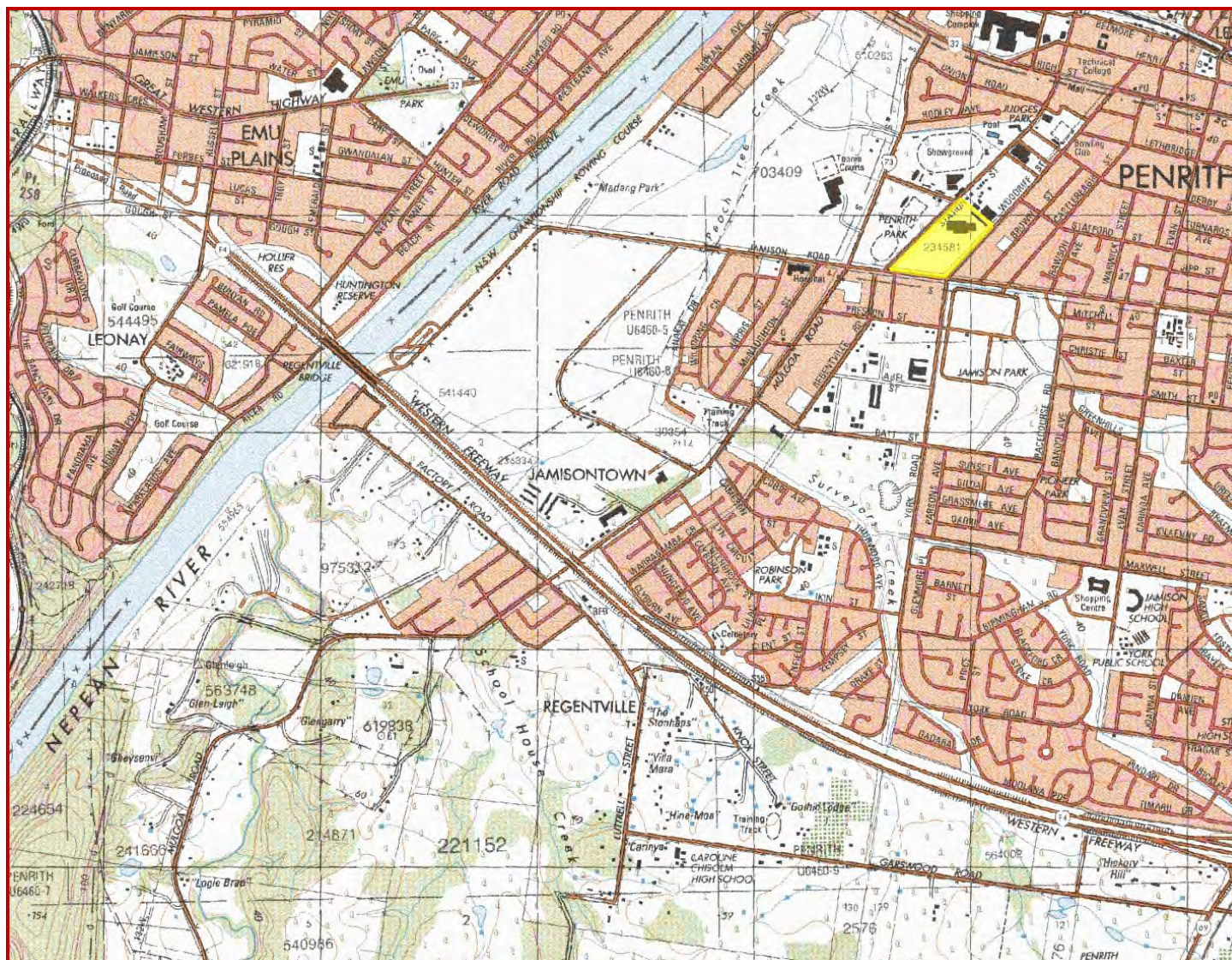


Figure 1. General location of the study area (shaded yellow) (source of map: LPI, TopoView).

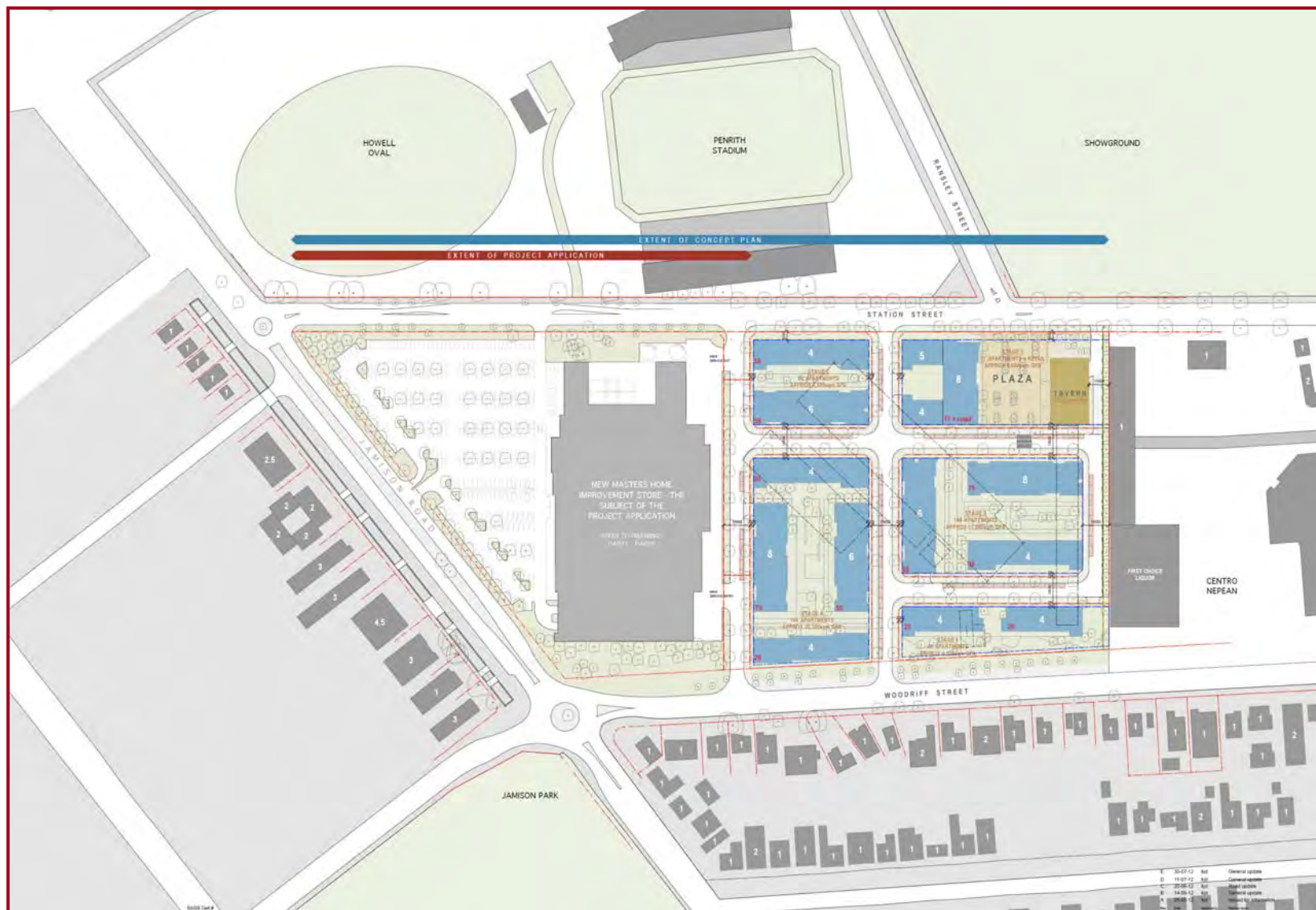


Figure 2. The proposed concept design for the subject area.

2. STATUTORY HERITAGE CONTEXT

2.1 Commonwealth Legislation

2.1.1 Environment Protection & Biodiversity Conservation Act 1999

The *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act) provides for the protection of natural and cultural heritage places. The Act establishes (amongst other things) a Commonwealth Heritage List (CHL) and a National Heritage List (NHL). Places on the NHL are of natural or cultural significance at a national level and can be in public or private ownership. The CHL is limited to places owned or occupied by the Commonwealth which are of heritage significance for certain specified reasons.

The project does not affect any site or place included on the NHL or CHL for its Aboriginal cultural heritage values.

2.1.2 Aboriginal and Torres Strait Islander Heritage Protection Act 1984

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* preserves and protects areas (particularly sacred sites) and objects of particular significance to Aboriginal Australians from damage or desecration. Steps necessary for the protection of a threatened place are outlined in a gazetted Ministerial Declaration (Sections 9 and 10 of the Act).

As well as providing protection to areas, the Act can also protect objects through a Declaration, which can also apply to Aboriginal skeletal remains (Section 12). While it is a Commonwealth act, it can be applied at a State level if the State is unwilling or unable to provide protection for sites or objects.

The project does not affect any site or place currently subject to a Declaration.

2.1.3 Native Title Act 1993

The *Native Title Act, 1993* (Commonwealth) provides recognition and protection for native title. The Act established the National Native Title Tribunal to administer land claims by Aboriginal people. The Act also provides for Indigenous Land Use Agreements, which allow native title claimants and/or holders control over the use and management of affected land and waters.

A search of the National Native Title Tribunal Registers was undertaken on 22 May 2012, and returned the following results in the subject area:

Register Type	NNTT Reference Numbers
National Native Title Register	Nil
Register of Native Title Claims	NC97/7
Unregistered Claimant Applications	Nil
Register of Indigenous Land Use Agreements	Nil

NC 97/7 is one of six active native title claims that the Gundungurra Tribal Council Aboriginal Corporation have over large parts of the Blue Mountains and Penrith LGA. The proposed claim area does not encompass the subject area.

2.2 NSW Legislation

2.2.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) requires that environmental and heritage impacts are considered by consent authorities prior to granting development approvals. The relevant sections of the EP&A Act are:

- Part 3A: A single assessment and approval system for major development and infrastructure projects [note that Part 3A has now been repealed and replaced with Part 4 (Division 4.1)].
- Part 4: Development that requires consent under consideration of environmental planning instruments.
- Part 5: An assessment process for activities undertaken by Public Authorities and for developments that do not require development consent but an approval under another mechanism.

While Concept Plan approval is sought under the Part 3A transitional provisions of the Act, further approvals under the *National Parks & Wildlife Act, 1974* which protects Aboriginal cultural heritage in NSW are not required. In those instances, management of Aboriginal heritage follows the applicable Aboriginal assessment guidelines (*the Guidelines For Aboriginal Cultural Heritage Impact Assessment and Community Consultation, July 2005*) and any relevant statement of commitments included in the Part 3A Development Approval.

2.2.2 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) provides blanket protection for Aboriginal objects (material evidence of indigenous occupation) and Aboriginal places (areas of cultural significance to the Aboriginal community) across NSW. An Aboriginal object is defined as:

... any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

An Aboriginal place is any place declared to be an Aboriginal place by the Minister for the Environment, under Section 84 of the Act.

It is an offence to disturb Aboriginal objects or places without a permit authorised by the Director-General of the Office of Environment and Heritage (OEH formerly DECCW). In addition, anyone who discovers an Aboriginal object is obliged to report the discovery to OEH.

The operation of the NPW Act is administered by OEH. With regard to the assessment of Aboriginal cultural heritage, OEH has endorsed the following guidelines:

- *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010).
- *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010).
- *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).
- *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (2011).

The provisions of the NPW Act that require various approvals or permits to disturb or discover Aboriginal deposits, objects and places are not applicable to Part 3A projects with Project Approval.

2.2.3 Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act, 1983* allows for the transfer of ownership to an Aboriginal Land Council of vacant Crown land not required for an essential purpose or for residential land. These lands are then managed and maintained by the local Aboriginal Land Council.

No places within the subject area are currently subject to Aboriginal Land Claims.

3. ABORIGINAL COMMUNITY CONSULTATION

3.1 Background

Aboriginal community consultation was undertaken as part of the 2006 assessment. The consultation at the time is understood to have included the three known Aboriginal organisations that practised Aboriginal cultural heritage in the Cumberland Plain. However, it cannot be demonstrated that the consultation in 2006 followed any formal guidelines (all of which have now been superseded).

The following section has been taken from the original 2006 assessment report, outlining the consultation and findings that were undertaken at that time:

Consultation with the local Aboriginal community was undertaken to determine the cultural significance of the study area.

The Deerubbin Local Aboriginal Land Council (DLALC) represents the local Aboriginal community in western Sydney. The Darug Tribal Aboriginal Corporation (DTAC) and Darug Custodian Aboriginal Corporation (DCAC) represent descendents of the Darug people, the traditional owners of western Sydney. DLALC, DTAC and DCAC were consulted to provide advice about the cultural heritage values of the study area and appropriate management of Aboriginal heritage during development.

Site survey was undertaken in partnership with:

- *Mr Phil Khan of Deerubbin Local Aboriginal Land Council.*
- *Mr Alan Evans of Darug Tribal Aboriginal Corporation.*
- *Ms Leanne Watson of Darug Custodian Aboriginal Corporation.*

The recommendations of this report have been developed in consultation with DLALC, DTAC and DCAC. In preparing this assessment we have considered the views of the local Aboriginal community regarding the cultural heritage significance of the study area and management of Aboriginal heritage during development. The representative groups have reviewed this report and have provided written comments regarding the cultural values of the study area and our proposed management of Aboriginal heritage during re-zoning and future development (included in Appendix 1).

OUTCOMES OF CONSULTATION

The outcomes that have emerged to date as a result of consultation with the Aboriginal community regarding cultural heritage values of the study area and management of Aboriginal heritage during development include the following:

- I. The Aboriginal representative groups requested consultation about, and involvement in, all stages of the Aboriginal heritage management process so that Aboriginal community views are considered in management outcomes.*
- II. All Aboriginal sites and objects have cultural value to the local Aboriginal community as an important demonstration of Aboriginal use and occupation of the landscape prior to European dispossession. The degree of cultural significance is a matter for the local Aboriginal community to determine.*
- III. The Aboriginal representative groups provided written support for our recommendations, including support for our recommended programme of archaeological test excavation in areas of development impact to determine the nature, extent and significance of any Aboriginal archaeological deposits prior to site development. The Aboriginal representative groups have requested that they be involved in any further archaeological investigations at the site.*
- IV. The Darug Custodian Aboriginal Corporation has specifically recommended that any cultural material found during archaeological excavations should be re-buried on-site after analysis has been completed.*

3.2 The Current Process

For the proposed Part 3A Concept Approval application, formal Aboriginal consultation in accordance with the Part 3A *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC July 2005) is required. These guidelines actually refer to a now defunct set of Office of Environment & Heritage guidelines from 2004. Subsequently, best practise now uses the current Aboriginal consultation procedure outlined in *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW, 2010).

The 2010 guidelines have six broad phases:

1. Pre-notification - identification of the Aboriginal parties in a region by contacting various State government agencies.
2. Notification - contacting identified Aboriginal parties and advertising in the local print media for interested Aboriginal parties.
3. Presentation of Project - advising the Registered Aboriginal Parties (RAPs) of the project, which may involve meetings and/or site visits.
4. Methodology - providing the RAPs with the proposed field methodology. Tasks (2) and (3) are often combined.
5. Impacts and Mitigation Options - discussion of potential impacts to heritage and appropriate mitigation options before developing the report.

6. Report review – review of the final report.

The consultation process has two aims. The first is to consult with knowledge holders to identify cultural places and values that may be affected by the project. The second is to obtain input on the proposed assessment methodology, and comment on the assessment report and management recommendations.

3.3 This Assessment

Due to long time delays since the 2006 assessment, and the changes in proposed development, it was recommended that Aboriginal consultation be re-initiated for this assessment. Subsequently, Aboriginal consultation was re-started following the steps outlined in *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW, 2010) (see Section 3.2).

The following sections outline the Aboriginal consultation that has been undertaken for this assessment.

3.3.1 Pre-Notification

Initiation of the consultation process was undertaken in June 2012. As required by the guidelines, letters were sent to the organisations listed below on the 1 June 2012 requesting information on Aboriginal individuals/organisations that may hold cultural knowledge relevant to determining the significance of Aboriginal objects and places within the subject area. The following organisations have been contacted with a request for information:

- OEH.
- Deerubbin Local Aboriginal Land Council.
- Office of the Registrar, *Aboriginal Land Rights Act, 1983*.
- National Native Title Tribunal.
- NTSCorp.
- Penrith City Council.
- Hawkesbury Nepean Catchment Management Authority.

Several responses from the organisations were received in early June 2012 (**Appendix 1**). They provide the following list of Aboriginal individuals/organisations who may have had an interest in the subject area:

- Deerubbin LALC.

- Darug Custodian Aboriginal Corporation.
- Darug Aboriginal Cultural Heritage Assessments.
- Darug Land Observations.
- Darug Tribal Aboriginal Corporation.
- Darug Aboriginal Land Inc.
- Tocomwall.
- Gunjeewong Cultural Heritage Aboriginal Corporation.

3.3.2 Notification and Registration of Interest

Each of the Aboriginal organisations outlined in **Section 3.3.1** were notified via letter, e-mail and/or phone call of the project on the 15 June 2012 (**Appendix 1**). The information provided included a brief description of the project, the proposed assessment and contact details for both the proponent and archaeological consultant. A period of 20 days was supplied to respond to the notification (5 July 2012).

In addition, a newspaper advert was placed in the *Penrith Star*, containing notification of the project, and an invitation to register an interest (**Appendix 1**). The advert was published on the 21 June 2012 and provided 14 days to respond.

The following Aboriginal organisations registered an interest in the project:

- Darug Land Observations.
- Darug Tribal Aboriginal Corporation.
- Darug Aboriginal Cultural Heritage Assessments.
- Deerubbin Local Aboriginal Land Council.
- Darug Custodian Aboriginal Corporation.
- Darug Aboriginal Landcare Incorporated.
- Tocomwall.

In accordance with Section 4.1.6 of the guidelines, details of the Registered Aboriginal Parties were provided to OEH and the Deerubbin LALC.

3.3.3 Presentation of Information/Methodology

In accordance with Sections 4.2 and 4.3 of the OEH guidelines, a document detailing the proposed assessment methodology was sent to the RAPs for comment on 6 July 2012 (**Appendix 1**). This document included a detailed description of the proposed development; and the re-structured Aboriginal Cultural Heritage Assessment. The document outlined in detail how the methodology and finalisation periods of the ACHA were being combined, and sought approval to do so. The document also sought information from the RAPs in regard to how they wished to be consulted, how they wished cultural information to be managed, and other relevant matters. A period of 28 days was provided to the RAPs to provide any comments.

In addition, AHMS undertook a series of site inspections and meetings on the 17 July 2012 with all RAPs (excluding the Darug Tribal Aboriginal Corporation who failed to respond to several requests to attend). The meeting provided an opportunity for physical inspection of the site by the RAPs, and to discuss and dispute/elaborate/agree with the findings and recommendation of the report.

All responses received have been included in **Appendix 1**.

3.3.4 Field Investigations

As outlined in **Section 3.3.3**, a site inspection was undertaken with several of the RAPs on the 17 July 2012. The site inspection was undertaken by:

- Darug Land Observations (Gordon and Ron Workman).
- Deerubbin Local Aboriginal Land Council (Steve Randall).
- Darug Custodian Aboriginal Corporation (Justine Coplin).
- Tocomwall (Scott Franks).
- Darug Aboriginal Cultural Heritage Assessments (Celestine Everingham).

For insurance reasons Darug Aboriginal Landcare Inc (Des Dyer) could not participate in the field inspection, but a meeting was held with them on the same day near the study area.

Darug Tribal Aboriginal Corporation did not respond to any correspondence and therefore did not attend the meeting or site inspection.

3.3.5 Review of Recommendations and Report

Under Section 4.3.6 of the OEH 2010 guidelines, potential heritage management options require discussion and/or development with the RAPs. This was undertaken in a series of meetings with the RAPs on the 17 July 2012. A focus of the meetings was to discuss the

archaeological findings and associated recommendations. All RAPs who were spoken to, indicated their support of both the findings and recommendations of this report. There were two further outcomes of these meetings:

1. Cultural information suggests that the former Great Western Highway (now Jamison Road, south of the subject area) was an old songline, and therefore, the site is in close proximity to known cultural activities. This, therefore, concurs with, and supplements, the archaeological findings of the report.
2. Some concern was raised over the how the identification of unexpected/unknown Aboriginal objects would be undertaken during the development. To address this, the RAPs suggested cultural monitoring should be undertaken. AHMS personnel suggested that the requirement (or not) of any form of monitoring should probably occur following the proposed test excavations recommended through this assessment. Since monitoring would probably not be required if no Aboriginal objects were recovered through these excavations.

The current report was provided in draft form to the RAPs for review. Comments were received from four of the groups, supporting the overall findings and recommendations. Comments received are outlined in the consultation log, and the written correspondence received from the RAPs in relation to the report is included in **Appendix 1**.

4. BACKGROUND INFORMATION

4.1 Physical Setting

The physical setting of the subject area is outlined in Section 3 of the Archaeological Report (Appendix 2).

4.2 Traditional Aboriginal People of the Area

The following sections present a summary of Aboriginal life at contact, as recorded by early European settlers in documents, maps, plans, images and ethnographic records. By studying these sources, we can reconstruct aspects of traditional Aboriginal lifestyle and economy. Although such accounts are fragmentary and present a biased European view of Aboriginal culture, they provide an important insight about traditional Aboriginal use and occupation of the land.

The Sydney Basin was occupied and used by Aboriginal people for thousands of years before European settlement. Within the Sydney Basin (which includes the current study area), creeks, floodplains, swamps and woodlands provided Aborigines with rich and varied resource zones and occupation areas. Aboriginal sites across the Sydney Basin provide tangible evidence and an on-going link with the long history of Aboriginal use and occupation of this area.

The first people known to have an association with the study area were people of the Darug language group. There is considerable ongoing debate about the nature, territory and range of the pre-contact Aboriginal language groups of the greater Sydney region. These debates have arisen largely because, by the time colonial diarists, missionaries and ethnographers began making detailed records of Aboriginal people in the late 19th Century, pre-European Aboriginal groups had been broken up and reconfigured as a result of European settlement activity. Sydney region archaeologist and historian Val Attenbrow has cautioned:

‘Any boundaries mapped today for (these) languages or dialects can only be indicative at best. This is not only because of an apparent lack of detail about such boundaries in the historical documents, but because boundaries between language groups are not always precise lines’ (Attenbrow, 2002:34-35).

4.3 Subsistence

Early observers indicate that the subsistence and economy of Aboriginal groups depended largely on the environment in which they lived. The differences in available food resources between coast and hinterland influenced the diet and subsistence patterns of the groups living in each zone. The current study area is in hinterland along the Georges River.

Inland population densities were assessed by early settlers as being lower than those on the coast. The relative scarcity of resources in the hinterland and the greater work

required to procure terrestrial foods through hunting meant that the hinterland was more thinly populated than the coast (Attenbrow 2002:17).

During a trip along the Hawkesbury-Nepean during 1791, Watkin Tench wrote that hinterland people primarily subsisted on small animals and roots, probably yams (Tench 1793 [1979]:122). However, fish, shellfish and birds were also collected from resource rich swamps and lagoons (Figure 3) (Attenbrow, 2002:88). Important plants and animals were also found in wetlands, providing medicines, fibres, vitamin and food sources.

Open woodland areas were grazing habitat for macropods, and formed an important part of the economy of the Aborigines living on the Cumberland Plain, and were hunted with the aid of deliberately lit fires (Barrallier, 1802 [1975]: 2-3) (Figure 4) or by ambushing them (Mathews in Havard, 1942:237).

Kangaroos, wallabies, possums, koalas, bandicoots, dingoes, wombats, echidnas, fruit bats (flying foxes) and other smaller mammals were amongst the wide range of land animals that inhabited the Sydney region and were available to both coastal and hinterland people. Most Australian land animals are not migratory and therefore their seasonal availability and abundance do not vary markedly (Attenbrow 2002:70). The diet also included honey produced by native bees, as well as ants and their eggs. Many foods were harvested by tree climbing. Birds and tree dwelling mammals could be captured, and birds eggs and honey could be collected in this way (Figure 5) (Tench 1793 [1979]:126).



Figure 3. Joseph Lycett c.1817 'Aborigines Hunting Waterbirds' (Lycett 1830).¹

¹ Joseph Lycett painted most of his pictures of Aboriginal people in the Newcastle region. His works form some of the earliest and most explanatory paintings of Aboriginal life in the late 18th Century. His works are included here to be illustrative and do not depict Aboriginal people from the Sydney region.



Figure 4. *Joseph Lycett c.1817 'Aborigines using fire to hunt kangaroo' (Lycett, J. 1830).*

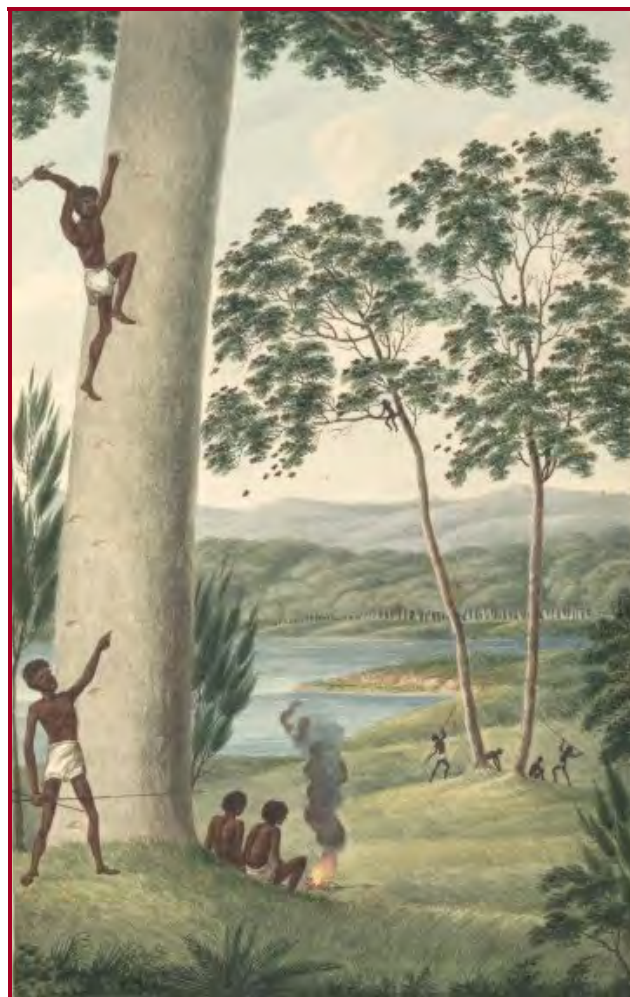


Figure 5. *Joseph Lycett c.1817 "Aborigines climbing a tree, with two Aborigines sitting beside a fire, others spearing birds" (Lycett, J. 1830).*

4.4 Plant Management

Plant management practices similar to those reported in northern Australia were also conducted in the Sydney area. For instance, there is good evidence that Aborigines practiced fire-stick farming in and around Sydney. (Hunter 1793 [2006:74-75]).

Plant management also enabled Aboriginal groups to broaden their range of food sources. Tench provides an interesting account of 'a poor convict' trying to eat a poisonous yam (probably *Dioscorea bulbifera*) and getting violently sick. Tench had seen Aborigines digging this same yam and concluded that they have a way of preparing the roots before they eat them 'which renders these last an innocent food' (Tench 1789 [1979]:83). Such plant management and processing practices were an important part of the economies of Aboriginal groups.

4.5 Shelters

Aboriginal groups in the Sydney Basin lived in bark huts and rockshelters formed from natural sandstone overhangs (**Figure 6**). Tench described how native huts were constructed by laying pieces of bark together in the form of an 'oven'. The end result consisted of a low shelter, which was opened at one end and sufficient to accommodate one person lying down (Tench 1789 [1979]:81).

The rockshelters, referred to by Tench are abundant throughout sandstone country represented within the study area. These shelters, especially those located close to water sources, such as those along the Georges River and Peter Meadows Creek, provided valuable shelters for Aboriginal people.



Figure 6. Joseph Lycett c. 1820 A family of Aborigines taking shelter during a storm (Lycett 1830).

4.6 Weapons and Equipment

Many different tools and weapons were used to obtain food and raw materials, carry small items, make equipment, and for defensive and offensive purposes. These included fishing and hunting spears, spear-throwers, fishing hooks and lines, stone hatchets, shields, clubs, digging sticks, baskets, net bags and other containers, as well as canoes, animal traps, torches, small adzes and scrapers, awls, stones for pounding and beating plant foods and raw materials, stone wedges and fire. In addition, unmodified shells and stones were used opportunistically on some occasions as cutting or adzing tools and missiles. Most tools and weapons were highly portable and also multi-purpose (Attenbrow 2002:85).

Collins pointed out that the spears of the hinterland groups were distinguishable from those of the coast people as they were armed with bits of stone in place of broken oyster shell. Amongst the hinterland groups, stone was hafted into the end of the spear thrower instead of shell (Collins, 1798 [1975:122]).

Tools used for such tasks as cutting/incising, adzing, 'scraping', and beating/pounding were made of stone, bone and shell, and historical accounts indicate that the latter two materials were used for these tasks both in the hinterland and along the coast (Attenbrow, 2002:92).

The archaeological evidence of tools and equipment used in the Sydney region is limited to the more durable implement parts such as bone, shell and stone. These items are not always identifiable as a component of a specific historically described implement, and there are also other artefacts that are not described in the historical accounts (Attenbrow 2002:86).

4.7 Stone

Aboriginal stone artefacts are an important source of archaeological information because stone is preserved for long periods of time whereas organic materials such as bone, shell, wood and plant fibres decay. Stone artefacts provide valuable information about technology, economy, cultural change through time and settlement patterning. Stone has also been used for 'relative' dating of sites where direct methods such as Carbon dating cannot be applied.

The main source locations for stone materials in the Sydney region are gravel beds and palaeo-channels associated with the Nepean-Hawkesbury and antecedent river systems and their tributaries, conglomerate pebbles in the Hawkesbury sandstone, and volcanic formations. The western half of the Sydney region appears to have a greater number and wider distribution of source locations as well a greater range of stone types suitable for making stone tools than the coastal zone. Knowledge of source locations for suitable materials for tool manufacture is of great importance in determining movements, and trade and exchange patterns of the people who inhabited the sites at which artefacts are found (Attenbrow 2002:43).

Temporal changes in stone materials used may have been associated with changes in the range of tools made (the introduction and later disappearance of Bondi points for

instance) or in the way stone tools were made (increased use of the bipolar technique, for example). New subsistence methods or changes in conditions of access to raw materials sources (due to cultural factors such as changes in group alliances or group boundaries that may have affected trade and exchange) are also likely reasons (Attenbrow 2002:121).

Bipolar technique is argued to have been adopted under circumstances where there is a need to gain maximum flakes by reducing cores to their minimum flakeable size. Such circumstances include raw material scarcity. Decreased mobility is also claimed to be associated with an increased use of the bipolar technique (Attenbrow 2002:122).

Research has shown that silcrete is naturally relatively widely distributed in the Sydney region and is also present, albeit in lesser abundance, in the coastal zones and hinterland. On the Western Cumberland Plain, where sources of raw material are more common and more widespread than along the coast, the distance between source and manufacturing/use sites is usually much shorter. Within this part of the hinterland many clans would have had sources within their country (Attenbrow 2002:123).

4.8 Contact History

The decrease in population after British colonisation is well documented. The traditional life of the local people was broken through the course of the early 19th century. The impact of smallpox and influenza decimated the Aboriginal population.

Early European settlement of traditional hunting lands deprived Aboriginal groups of access to food sources, and camping and ceremonial sites. People who survived outbreaks of disease and massacres were forced to live in marginal areas, integrate with European settlers or resist (Liston 1988). Resistance by Aboriginal groups was often met with retaliatory action by white settlers and the colonial administration.

Factors including disease, dislocation and violence led to the demise of traditional lifestyles and a decrease in the Aboriginal population, particularly in and around the early centres of colonial settlement in Sydney, Parramatta and Liverpool.

4.9 Material Evidence

The material evidence of Aboriginal land use, as known for the region, is outlined in Section 4 of the Archaeological Report (Appendix 2). The evidence from the subject area more particularly is discussed in Sections 5 - 7 of the Archaeological Report.

5. CULTURAL HERITAGE VALUES AND STATEMENT OF SIGNIFICANCE

The heritage significance of Aboriginal archaeological sites can be assessed using the four criteria outlined in the *Burra Charter*; aesthetic, historic, scientific, and social or spiritual (Australia ICOMOS, 1999). The scientific significance of the subject area is addressed in Section 8 of the Archaeological Report (Appendix 2). The present assessment addresses the aesthetic, historic, and social or spiritual values of the subject area.

5.1 Cultural Heritage Values

5.1.1 Aesthetic

This criterion refers to aspects of sensory perception. The guidelines to the Burra Charter note that assessment of this criterion may include consideration of the form, scale, colour, texture and material of the item or place, as well as sounds and smells. With regard to pre-contact Aboriginal cultural heritage sites, the placement within the landscape would be considered under this criterion. Individual artefacts, sites and site features may also have aesthetic significance.

If any Aboriginal objects are present sub-surface within the subject area, they are likely to comprise stone artefact deposits. Such sites are very difficult (from an interpretation and logistical viewpoint) to use in communicating aspects of past Aboriginal life. The most common approaches include presentation of artefacts in an interpretive display and use of latex peels to show excavation trench sections in profile.

If any Aboriginal objects are present within the study area, they will have public significance as a demonstration of Aboriginal occupation and life prior to European colonisation. As such they show that a vibrant Aboriginal life existed in the area prior to dispossession.

The subject area has not been identified as having significant aesthetic heritage values.

5.1.2 Historic

The guidelines to the Burra Charter include the following discussion of historic significance:

A place may have historic value because it has influenced, or has been influenced by, an historic figure, event, phase or activity. It may also have

historic value as the site of an important event. For any given place the significance will be greater where evidence of the association or event survives in situ, or where the settings are substantially intact, than where it has been changed or evidence does not survive. However, some events or associations may be so important that the place retains significance regardless of subsequent treatment.

In relation to Aboriginal cultural heritage, many post-contact places and sites would have historic value. Pre-contact places and items may also be significant according to this criterion, although the association with historic figures, events, phases or activities may be more difficult to establish. Place of historic significance may include sacred or ceremonial sites, and archaeological sites with evidence of technological developments.

No significant historic associations have been identified in relation to the subject area.

5.1.3 Social or Spiritual

This criterion concerns the relationship and importance of sites to the Aboriginal community. Aspects of cultural significance include people's traditional and contemporary links with a given site or landscape as well as an overall concern by Aboriginal people for sites and their continued protection.

Unmodified natural features in the landscape can signify sacred sites or places of significance. As such, they are archaeologically invisible and can only be identified with the aid of Aboriginal interpretation. If such sites are known, they hold particular cultural significance to contemporary Aboriginal people. Furthermore, sites of significance are not restricted to the period prior to contact with Europeans. Often events related to the contact period, and at times to the period since European settlement, may be important to the local Aboriginal communities. If these events relate to a specific place in the landscape, then that place (i.e. the site) may become sacred or highly significant to the local Aboriginal communities.

The cultural (Aboriginal) significance is a matter for the local Aboriginal community. Written correspondence received from the representative groups regarding the subject land is included in **Appendix 1**.

5.2 Significance Assessment

At this stage, it is not possible to fully assess the significance of the subject area without sub-surface investigation. Aboriginal community consultation for this assessment is ongoing. This section will be updated once further comments from the RAPs are received regarding the cultural significance of the subject area.

6. IMPACT ASSESSMENT AND MANAGEMENT RECOMMENDATIONS

6.1 Proposed Development

Parkview Penrith proposes mixed residential and commercial development of the subject area (Figure 2). The project is seeking approval under Part 3A of the *Environmental Planning and Assessment Act 1979*. However, it is understood that consent to proceed with specific phases of development will be applied for under Part 4 of the *Environmental Planning and Assessment Act 1979*. The first stage will included the proposed development of three main structures:

1. A Masters Hardware retail store (13,603 m² in size) with up to 380 car park spaces.
2. Several buildings between 4 and 8 stories high and containing approximately 570 apartments, and 995 m² of retail space.
3. A tavern of approximately 1,800 m² in size.

Implementation of the proposal will require excavation for establishment of footings and underground car-parking, up to 3 metres below current ground levels directly underneath the proposed buildings. More generally, the degree of excavation work required for footings, roads/paths, establishment of services and general re-grading are likely to remove original topsoils (the upper 200 - 300 mm of soil) across the entire development area.

6.2 Potential Impact

The assessment of archaeological potential concluded that:

- The areas marked green on Figure 7 may contain remnant A-horizon topsoils with a moderate-high potential to contain Aboriginal sites and objects. They have been identified as a potential archaeological deposit (PAD). The area also contains sandy-clay deposits beneath the topsoil, to approximately 6 metres below current ground. The sandy-clay unit has a low potential to contain highly significant archaeological deposits.
- The areas marked blue on Figure 7 contain sandy-clay deposits beneath imported fills, to a depth of approximately 3.5 metres below current ground. The sandy-clay unit has a low potential to contain highly significant archaeological deposits.

A comparison of archaeological potential with our analysis of the development proposal indicates that sub-ground works within the development footprint are likely to remove and/or disturb remnant A-horizon topsoils with potential to contain Aboriginal sites and objects. The impact on extant topsoils is likely to extend across the area marked green on Figure 7 and Table 3.

In addition, excavation work for footings and car-parking directly beneath buildings will remove the sandy-clay unit to a depth up to 3 metres below current ground levels. Any Aboriginal objects within these excavation areas will be either destroyed or removed.

Table 1. Summary of the potential impact of the proposed development.

Site No.	Type of harm (direct/indirect/none)	Degree of harm (total/partial/none)	Consequence of harm (total/partial/no loss of value)
Nepean Green PAD	Direct	Partial	Unknown



Figure 7. Aerial photo of subject area, showing areas of low disturbance (marked green) and moderate to high disturbance (blue). Following this assessment, the area highlighted in green has been identified as the Nepean Green PAD (Source: Google Maps 2006).

7. MANAGEMENT & IMPACT MITIGATION

7.1 General

A detailed review of the archaeological landscape of the Penrith shows that the banks of the Nepean River were heavily utilised by Aboriginal people in the past. Some data show that the Cranebrook Terrace (immediately north of Penrith) may have been occupied/visited by Aboriginal people as early as 40,000 years ago, although most research suggests a date of 15,000 years BP is more likely. It should be noted, however, that sites with basal dates of 15 ka, such as PT 12 and KII Shaws Creek, are still some of the earliest in the archaeological sites in the Sydney Basin.

In close proximity to the subject area, archaeological research has focussed on the Cranebrook Terrace (Formation) through its ongoing development by the Penrith Lakes Development Company. Historical and recent research shows that the Cranebrook Formation is composed of two adjacent units (refer Figure 3 of Archaeological Report, Appendix 2), the Richmond Unit and the Penrith Unit. Both of these units appear similar, and are characterised by sandy clays (some 6 m deep) overlying cemented gravels (some 5 m thick). Dating suggests that the Penrith Unit is generally too old (>50 ka) to contain Aboriginal objects, but the Richmond Unit is within the known colonisation of Australia, and is the likely unit within which the 40,000 year old Aboriginal objects outlined above were recovered from. The mapping of these two units is currently poor, although the Richmond Unit is generally closer to the Nepean River, with the Penrith Unit further away. Archaeological research does suggest that the *surface* deposits of both units have the potential for Aboriginal objects to occur.

The site inspection of the subject area proved relatively ineffective. However, geotechnical investigation showed that the entire subject area was situated on sandy clays overlying cemented gravels – the Cranebrook Formation. The geotechnical information indicated that the northern portion of the subject site was heavily impacted with up to 1.5 m of modern fill before the natural (presumably truncated) soil profile was reached. Conversely, the southern portion of the subject area reveals limited previous activity, and has an intact soil profile.

The assessment concludes that the subject area is situated on the Cranebrook Formation, and has the potential to contain buried Aboriginal objects. Given the distance from the Nepean River, it is considered that the underlying deposits are probably from the Penrith Unit (and therefore archaeologically sterile), but there is currently no evidence to confirm this. It is therefore concluded that the sandy clays beneath the entire subject site have at least a low potential to contain Aboriginal objects, although those areas heavily impacted to the north of the subject area could be considered ‘disturbed’ in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW, 2010) and require no further consideration. Of greater likelihood, is the

presence of Aboriginal objects occurring in the upper soil profile within the relatively undisturbed southern portion of the site. Consequently, this area has been identified as a potential archaeological deposit (PAD).

The significance of the subject area cannot be adequately defined until test excavations are undertaken to determine the presence/absence of Aboriginal objects within it. It is considered that Aboriginal objects near the surface are likely to be of low - moderate scientific significance. However, any Aboriginal objects recovered from the sandy clay deposits could be of significant age and would be of high scientific significance on these criteria.

Based on a review of the proposed development, impacts to both the PAD and the wider under-lying sandy clay soil units is considered likely. The level of impact to any Aboriginal objects is currently unknown; although it is unlikely to be total destruction based on the proposed design plan - several park areas and other undisturbed (or low impact development such as footpaths) areas being proposed.

It is understood that the principles of the project are being sought through a Concept Approval under Part 3A of the *Environmental Planning and Assessment Act 1979*, with subsequent development being assessed under Part 4 of the EP&A act by Penrith City Council. While the Part 3A process switches off a number of legislative instruments in relation to Aboriginal heritage, Part 4 does not. Under Part 4 processes, management of Aboriginal heritage under the *National Parks & Wildlife Act 1974* and associated guidelines would be required. This includes the need to characterise Aboriginal objects within a subject area using the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010) and the requirement to obtain Aboriginal Heritage Impact Permits from OEH if harm to Aboriginal objects is proposed.

The findings of this assessment indicate that there are no reasons to object to the proposed Concept Approval application under Part 3A of the *Environmental Planning and Assessment Act 1979*. This is because none of the Aboriginal objects/sites are considered of conservation potential at this stage, although further investigation of the PAD and under-lying soil deposits is required to firmly identify their scientific and cultural values as part of development planning.

Should ground disturbance be proposed within the subject area, further assessment would be required to characterise and assess the presence, and significance of any Aboriginal objects that may be present, and determine the potential harm to them from the development. It is likely that any sub-surface assessment of the subject site would require excavations to significant depths. Should there prove to be Aboriginal objects/sites present and at risk of harm, Aboriginal Heritage Impact Permits (AHIP) and associated documentation would need to be lodged with Office of Environment & Heritage for consideration prior to any development.

In the case of the northern portion of the subject area (highlighted in blue in Figure 7), the upper 1.3 m of the soil profile are composed of modern fill, and can be considered 'disturbed' under the *Due Diligence Code of Practice for the Protection of Aboriginal*

Objects in New South Wales (DECCW, 2010). No further assessment is, therefore, required. For deposits below 1.3 m below surface, there is low potential for Aboriginal objects to occur. However, given the existing high disturbance, it is recommended that any sub-surface assessment and/or characterisation of the deposits under-lying the site are focussed within the Nepean Green PAD. The findings of any study here, should be extrapolated across the subject site and include the areas highlighted in blue in **Figure 7** (beneath existing fill units only). The management of the areas highlighted in blue in **Figure 7** with regards to AHIPs and other approvals should also be concluded from the findings of any works in the Nepean Green PAD.

It should be noted that the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010) only permits archaeological investigation in small (0.25 m²) test pits by hand. Any deviations from this approach require an AHIP (for test excavations outside the procedures of the Code) to be obtained from OEH. Given the potential depth of deposits of archaeological interest in the subject area will exceed several metres below the surface, it is unlikely that excavation under the Code of Practice would be feasible, and more likely an AHIP for test excavation would need to be sought. This process may have time delays on the project and should be implemented as soon as possible.

7.2 Registered Aboriginal Party's Views

The draft Aboriginal Cultural Heritage Assessment and Archaeological Report was provided to the six RAPs involved in the project. The reports were provided as part of the presentation of information and methodology phases (Section 3.3.3), since they had been primarily completed in 2006.

To ensure the views of the RAPs were observed, a series of site meetings were undertaken with all but one of the RAPs on 17 July 2012. These meetings provided an opportunity for the RAPs to inspect the site, and provide comments and/or identify issues with the reports.

All of the RAPs agreed with the findings of the report, specifically the potential for deep archaeological materials. They confirmed the area may have been in close proximity to a songline, and thereby adding further cultural evidence to the primarily archaeological findings of the assessment.

The recommendations of the report were discussed in detail by the RAPs, and all were supported. One minor issue was raised in relation to cultural monitoring. The RAPs were concerned that the identification of unknown/unexpected Aboriginal objects may occur during the construction, and some form of monitoring would be required to identify them. It was highlighted by AHMS personnel that a decision on the inclusion of monitoring should probably occur after the proposed test excavations since the findings of these investigations would determine the requirement and scope of any monitoring (i.e. if no

Aboriginal objects are found despite extensive testing, monitoring is similarly unlikely to be necessary).

7.3 Basis for Recommendations

The following recommendations are based upon:

- Requirements of the *National Parks and Wildlife Act of 1974 (as amended 2001)*.
- Results of the archaeological assessment documented in this report.
- Views and recommendations of the local Aboriginal community.

7.4 Recommendations

7.4.1 General Recommendations

- Consultation between Parkview Penrith Pty Ltd and the Registered Aboriginal Parties should be maintained as appropriate throughout the design and construction stages of the proposed development.
- If the boundaries of the proposed development are revised to include areas not investigated during this archaeological assessment and the overall ACHA, assessment of these additional areas should be undertaken in order to identify and appropriately manage Aboriginal objects, sites and/or places that may exist in these areas.
- Parkview Penrith Pty Ltd should ensure that the removal of any Aboriginal object or the disturbance or destruction of any Aboriginal site or place is undertaken professionally, in consultation with relevant Registered Aboriginal Parties, according to applicable heritage statutory requirements and is documented, as appropriate to the level of significance of the object, site or place.
- Parkview Penrith Pty Ltd should ensure that any project-related Aboriginal heritage reports or documents are prepared in accordance with and/or comply with applicable statutory requirements and best practice professional standards. Where appropriate, findings of this assessment are provided to OEH AHIMS Registrar and the relevant Registered Aboriginal Parties.
- Parkview Penrith Pty Ltd should advise all relevant personnel and contractors involved in the design, construction and operation of the proposed development, of the relevant heritage issues, legislative requirements and recommendations identified in the present ACHA.

- In the event that previously undiscovered Aboriginal objects, sites or places (or potential Aboriginal objects, sites or places) are discovered during construction, all works in the vicinity of the find should cease and Parkview Penrith Pty Ltd should determine the subsequent course of action in consultation with a heritage professional, relevant Registered Aboriginal Parties and/or the relevant State government agency.
- Should any skeletal material be identified that may be Aboriginal, the Coroner's Act 1980 requires that all works should cease and the NSW Police and the NSW Coroner's office should be contacted. Should the burial prove to contain Aboriginal ancestral remains, consultation with a heritage professional, relevant Registered Aboriginal Parties and/or the relevant State government agency, should be undertaken by Parkview Penrith Pty Ltd.

7.4.2 Specific Recommendations

- Should potential impacts be proposed to the Nepean Green PAD (Figure 7), further sub-surface investigation and characterisation of these deposits is required prior to any development. This assessment has been developed in accordance with relevant guidelines to allow any sub-surface excavations to be undertaken in accordance with methods outlined in Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW, 2010). However, please note that the potential depth of some of these deposits may require the use of alternative methods to those set out in the Code. This would necessitate the requirement for an application to be made for an Aboriginal Heritage Impact Permit (for archaeological testing) from the Office of Environment & Heritage prior to being implemented. Should Aboriginal objects be identified through this process, an AHIP for their destruction would need to be obtained from the Office of Environment and Heritage prior to development. Consideration of conservation and/or other mitigation measures, and the long term management of the recovered Aboriginal objects would also be required.
- Areas highlighted in blue in Figure 7 are considered to have low potential to contain Aboriginal objects in deposits >1.3 m below the surface. Where impacts below this level would ensue, further assessment to determine the presence/absence of Aboriginal objects would be required. Given the extent of disturbance to the soil profile caused by historical development and land use in this area, it is recommended that sub-surface investigations should be undertaken within the Nepean Green PAD and that the results of those investigations should then be used to extrapolate the extent of potential Aboriginal heritage constraints within the area highlighted in blue. Any management requirements and/or other approvals identified through works in the Nepean Green PAD, should similarly be applied to the areas highlighted in blue in Figure 7 (if below the upper fill layers).
- Three copies of this report should be forwarded to the NSW Office of Environment and Heritage - Planning and Aboriginal Heritage Section, Metropolitan Branch,

Environment Protection and Regulation Group (PO Box 668, Parramatta, NSW 2124).

- One copy of the report should be forwarded to each of the following Aboriginal stakeholders: Deerubbin LALC, Darug Custodian Aboriginal Corporation, Darug Tribal Aboriginal Corporation Darug Aboriginal Cultural Heritage Assessments, Darug Land Observations, Darug Aboriginal Landcare and Tocomwall.

8. REFERENCES

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APPENDIX 1: ABORIGINAL COMMUNITY CONSULTATION

CONSULTATION LOG

Organisation/Group	Representative Contacted	Date	Comments	AHMS Contact
Department of Premier and Cabinet	Lou Ewins	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Penrith City Council	General Manager	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Aboriginal Land Rights Act 1983	The Office of the Registrar	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Deerubbin LALC	Steven Randall	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Native Title Services Corporation	General Manager	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Hawkesbury Nepean Catchment Management Authority	General Manager	1.6.12	Sought information on known Aboriginal stakeholders within the subject area.	Carmel Prunty
Native Title Tribunal	Sylvia Jagtman	6.6.12	Provided information on one active Native Title Claim in the region. The claim does not encompass the subject area (only parts of the Penrith LGA)	Alan Williams
Office of the Registrar	Tabatha Dantoine	6.6.12	Provided advice that no Registered Aboriginal Owners were within the subject area.	Alan Williams
Department of Premier and Cabinet	Cheryl Stanborough	15.6.12	Provided information on the Aboriginal parties in the area.	Alan Williams
Deerubbin LALC	Steve Randall	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Aboriginal Cultural Heritage Assessments	Celestine Everingham	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Tribal Aboriginal Corporation	Sandra Lee	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Custodian Aboriginal Corporation	Leanne Watson	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Aboriginal Landcare Inc	Des Dyer	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Land Observations	Gordon Workman	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Tocomwall	Scott Franks	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Gunjeewong Cultural Heritage Aboriginal Corporation	Cherie Turrise	15.6.12	E-mailed a letter seeking their interest in the project	Alan Williams
Darug Tribal Aboriginal Corporation	Sandra Lee	18.6.12	Registered an interest in the project	Alan Williams
Darug Land Observations	Gordon Workman	18.6.12	Registered an interest in the project	Alan Williams

Organisation/Group	Representative Contacted	Date	Comments	AHMS Contact
Penrith City Star	-	21.6.12	Advertised the project in the local media	Alan Williams
Darug Aboriginal Cultural Heritage Assessments	Celestine Everingham	26.6.12	Registered an interest in the project	Alan Williams
Darug Custodian Aboriginal Corporation	Leanne Watson	25.6.12	Registered an interest in the project	Alan Williams
Penrith City Council	Julie Condon	4.7.12	Provided a list of known stakeholders for the region, namely the Deerubbin LALC	Alan Williams
All RAPs	-	6.7.12	A methodology, presentation of information and draft ACHA was distributed for comment. A period of 28 days was provided for comment	Lisa Murray
Tocomwall	Scott Franks	6.7.12	Tocomwall provided information on their company and interest, and agreed to a site meeting to discuss report.	Lisa Murray
Darug Custodian Aboriginal Corporation	Leanne Watson	6.7.12	DCAC expressed an interest in the meeting, but could not attend the proposed dates, and asked for a revised site meeting date	Lisa Murray
Darug Land Observations	Gordon Workman	6.7.12	DLO provided information on their company and interest, and agreed to a site meeting to discuss report.	Lisa Murray
Darug Aboriginal Landcare Inc	Des Dyer	9.7.12	DALI expressed an interest in a site visit to discuss the report.	Lisa Murray
OEH	Lou Ewins	9.7.12	E-mailed a letter outlining the Aboriginal individuals/organisations who registered an interest in the project.	Alan Williams
Deerubbin LALC	Kevin Kavanagh/Steve Randall	9.7.12	E-mailed a letter outlining the Aboriginal individuals/organisations who registered an interest in the project.	Alan Williams
Darug Land Observations	Gordon Workman	9.7.12	Spoke with Gordon on this and several other projects. Advised that the site meeting would happen shortly to discuss ACHA.	Alan Williams
All RAPs	-	10.7.12	Phone calls and e-mails to re-schedule site meeting to next week.	Alan Williams
Tocomwall	Scott Franks	10.7.12	Confirmed attendance at site meeting	Alan Williams
Darug Aboriginal Landcare Inc	Des Dyer	10.7.12	Confirmed attendance at site meeting	Alan Williams
Hawkesbury Nepean Catchment Management	John Lennis	11.7.12	Advised that the CMA would not release any relevant information on stakeholders and was not interested in	Alan Williams

Organisation/Group	Representative Contacted	Date	Comments	AHMS Contact
Authority			the project.	
DCAC, DACHA, Tocomwall, DLO	Justine Coplin, Celestine Everingham, Scott Franks, Gordon and Ron Workman	17.7.12	Undertook a brief site inspection, followed by a meeting to discuss the report and recommendations	Alan Williams
Deerubbin LALC	Steve Randall	17.7.12	Undertook a brief site inspection, followed by a meeting to discuss the report and recommendations	Alan Williams
Darug Aboriginal Landcare Inc	Des Dyer	17.7.12	Met in Penrith CBD to discuss report and recommendations.	Alan Williams
All RAPs	-	18.7.12	Re-issued draft report with modified sections following meeting yesterday.	Alan Williams
DCAC	Leanne Watson	27.7.12	Letter providing review of draft report, supporting the findings & recommendations. The area is significant and has high potential for intact sites.	Alan Williams
Deerubbin LALC DLO Tocomwall DTAC DALC DACHA	Steve Randall Gordon Workman Scott Franks Sandra Lee Des Dyer Celestine Everingham	30.7.12	Email (fax to DACHA) reminding RAPs that comments due on Friday.	Fenella Atkinson
DLO	Gordon Workman	30.7.12	Email with attachment providing review of draft report. DLO would like to see more study done on the southern side of the building, as this is a special place to the Darug people, and would like to be involved in monitoring of the removal of top soil.	Fenella Atkinson
Darug Aboriginal Landcare	Des Dyer	31.7.12	Email with attachment providing review of draft report. No objections to the proposed development, agree with the recommendations and methodology.	Alan Williams, Fenella Atkinson
DACHA	Celestine Everingham	1.8.12	Fax providing review of draft report. Support aims & objectives, and agree with methodology.	Fenella Atkinson

RESPONSES FROM AGENCIES

RECEIVED

8/6/12



OFFICE OF THE REGISTRAR
ABORIGINAL LAND RIGHTS ACT 1983 (NSW)

11-13 Mansfield Street
Glebe NSW 2037
PO Box 112, Glebe NSW 2037
P. 02 9562 6327 F. 02 9562 6350

Alan Williams
AHMS
349 Annandale Street
Annandale NSW 2038

6 June 2012

Dear Alan

Re: Request - Search for Registered Aboriginal Owners

I refer to your letter dated 30 May 2012 regarding Aboriginal stakeholders within the Penrith, area in NSW.

I have searched the Register of Aboriginal Owners and the project area described *does not have* Registered Aboriginal Owners pursuant to Division 3 of the *Aboriginal Land Rights Act 1983 (NSW)*.

I suggest you contact the Deerubbin Local Aboriginal Land Council. They will be able to assist you in identifying other Aboriginal stakeholders for this project.

Yours sincerely

Tabatha Dantoine

Administrative Officer

Office of the Registrar, *Aboriginal Land Rights Act (1983)*



Office of Environment & Heritage

Our reference: DOC12/22646

Attn: Mr. Alan Williams
Manager NSW – Aboriginal heritage
Archaeological & Heritage Management Solutions
349 Annandale Street,
ANNANDALE NSW 2038

Dear Mr Williams,

Thank you for your letter dated 30/5/2012 to the Office of Environment and Heritage (OEH) regarding obtaining a list of the Aboriginal stakeholders that may have an interest in projects for the area of 164 Station Street, Penrith (Penrith LGA).

Before making an application for the issue of an Aboriginal Heritage Impact Permit, the applicant must carry out an Aboriginal community consultation process in accordance with the National Parks and Wildlife Regulation 2009 and completed to the stage described in subclause 80C.

Please find attached the list of Aboriginal stakeholders known to OEH that may have an interest in the project. OEH's list of regional stakeholders is a list of groups, organisations or individuals who may hold cultural knowledge relevant to a proposal in a region. Consultation with Aboriginal people should not be confused with employment. Inclusion on the OEH's list is not an automatic right to employment. It is the decision of a proponent on who they choose to engage to deliver services based on a range of considerations including skills, relevant experience, and OHS considerations. To be clear, the proponent is under no obligation to employ Aboriginal people registered for consultation.

Further, receipt of this information does not remove the requirement of a proponent/consultant to advertise in local print media and contact other bodies seeking interested Aboriginal parties. Consultation with Aboriginal stakeholders must be in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* which can be found on the Office of Environment and Heritage (OEH) public website by accessing the following link:

<http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>

Please note that these requirements replace the *Interim Community Consultation Requirements for Applicants, December 2004*.

If you wish to discuss any of the above matters further please contact Cheryl Stanborough, Archaeologist, on (02) 9995 6843.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lou Ewins', with a horizontal line drawn underneath it.

Lou Ewins
Manager, Planning & Aboriginal Heritage Section
Metropolitan Region
Conservation and Regulation Division
Office of Environment and Heritage
Department of Premier and Cabinet

Aboriginal Stakeholders that may have an interest in the Western Sydney area and surrounds

Darug Custodial Aboriginal Corporation	Leanne Watson	02 4577 5181 / 0415 770 163	PO Box 81, Windsor NSW 2756
Darug Tribal Aboriginal Corporation	Sandra Lee	02 9622 4081	PO Box 441, Blacktown NSW 2148
Darug Aboriginal Cultural Heritage Assessments	Gordon Morton	02 4567 7421 or 0422 865 831	90 Hermitage Rd, Kurrajong Hills NSW 2758
Darug Land Observations	Gordon Workman	0415 663 763/ fax 02 9831 8868	PO Box 571, Plumpton, NSW 2761
Darug Aboriginal Land Care Inc	Des Dyer	0408 360 814	18a Perigee Close, Doonside 2767
Gunjee Wong Cultural Heritage Aboriginal Corporation	Cherie Carroll Turrise		1 Bellvue Place, Portland NSW, 2847
		(02) 6355 4110	* Cherie is Ngunnawal Elder however lived in the Western Sydney area during her childhood. She recognises she is not from the area but has associations.
		0404 171 544	PO Box 76, Caringbah NSW 1495
Scott Franks			
Deerubbin LALC – Blacktown LGA	Kevin Cavanagh	(02) 4724 5600	2/9 Tindale St, Penrith NSW 2750



National
Native Title
Tribunal



6 June 2012

Alan Williams
Archaeologist
Archaeological & Heritage Management Solutions
349 Annandale Street
Annandale NSW 2038

**South-East & Central Registry
Sydney Office**

Level 25, 25 Bligh Street
Sydney NSW 2000
GPO Box 9973
Sydney NSW 2000
Telephone (02) 9227 4000
Facsimile (02) 9227 4030

Our Reference: 4940/12SJ

Your Reference: 120507-1

Dear Alan

Native Title Search Results of Penrith City Council Local Government Area

Thank you for your search request of 30 May 2012 in relation to the above area.

Search Results

The results provided are based on the information you supplied and are derived from a search of the following Tribunal databases:

Register Type	NNTT Reference Numbers
Schedule of Applications (unregistered claimant applications)	Nil.
Register of Native Title Claims	NC97/7
National Native Title Register	Nil.
Register of Indigenous Land Use Agreements	Nil.
Notified Indigenous Land Use Agreements	Nil.

I have included a Register Extract and NNTT Registers fact sheet to help you understand the search result.

Please note that there may be a delay between a native title determination application being lodged in the Federal Court and its transfer to the Tribunal. As a result, some native title determination applications recently filed in the Federal Court may not appear on the Tribunal's databases.

The search results are based on analysis against external boundaries of applications only. Native title applications commonly contain exclusions clauses which remove areas from within the

external boundary. To determine whether the areas described are in fact subject to claim, you need to refer to "Area covered by claim" section of the relevant Register Extract or Application Summary and any maps attached.

Search results and the existence of native title

Please note that the enclosed information from the Register of Native Title Claims and/or the Schedule of Applications is **not** confirmation of the existence of native title in this area. This cannot be confirmed until the Federal Court makes a determination that native title does or does not exist in relation to the area. Such determinations are registered on the National Native Title Register.

Tribunal accepts no liability for reliance placed on enclosed information

The enclosed information has been provided in good faith. Use of this information is at your sole risk. The National Native Title Tribunal makes no representative, either express or implied, as to the accuracy or suitability of the information enclosed for any particular purpose and accepts no liability for use of the information or reliance placed on it.

If you have any further queries, please contact me on 1800 640 501.

Yours sincerely



Sylvia Jagtman
Senior Case Management Assistant

Telephone (02) 9227 4013

Facsimile (02) 9227 4030

Email sylvia.jagtman@nntt.gov.au

Encl



NATIONAL NATIVE TITLE TRIBUNAL

Application Information and Extract from the Register of Native Title Claims

Application Information

Application numbers:	Federal Court number:	NSD6060/98
	NNTT number:	NC97/7
Application name:	Gundungurra Tribal Council Aboriginal Corporation #6	
Registration history:	Registered from 29/04/1997.	

Register Extract (pursuant to s.186 of the *Native Title Act 1993*)

Application lodged with:	National Native Title Tribunal
Date application lodged:	29/04/1997
Date claim entered on Register:	29/04/1997
Applicants:	Ms Elsie Stockwell, Ms Pamela Stockwell
Address for service:	Eddy Neumann Eddy Neumann Lawyers Level 1 255 Castlereagh Street SYDNEY NSW 2000 Phone: (02) 9264 9933 Fax: (02) 9264 9966

Additional Information:

Not Applicable

Area covered by the claim:

(a) Commencing at 150.52997 east longitude and 34.591636 south latitude, approximately 15.5 kilometres east south east of Moss Vale, the application traverses clockwise starting in a south-westerly direction, passing through points 2 to 36,765 of the following geographic coordinates. They are in decimal degrees and referenced to Australian Geodetic Datum 1984 (AGD84). These coordinates are based on the position of spatial reference data sourced by Land Information Centre, Department of Information Management and Technology, New South Wales as of 18 May 1999.

(b) Subject to clauses (d) and (e) the area covered by the application excludes any land or waters covered by:

- (i) a scheduled interest;
- (ii) freehold estate;
- (iii) a commercial lease that is neither an agricultural lease nor a pastoral lease;
- (iv) an exclusive agricultural lease or an exclusive pastoral lease;
- (v) a residential lease;
- (vi) a community purposes lease;
- (vii) a lease dissected from a mining lease as referred to in s23B(2)(vii);
- (viii) any lease (other than a mining lease) that confers a right of exclusive use over particular land or waters;

which was validly vested or granted on or before 23 December 1996.

(c) Subject to clauses (d) and (e) the area covered by the application excludes any area covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commenced on or before 23 December 1996.

(d) Where the act specified in (b) and (c) falls within the provisions of

- (i) s23B(9) - Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders;
- (ii) s23B (9A) - Establishment of a national or state park;
- (iii) s23B (9B) - Acts where legislation provides for non-extinguishment;
- (iv) s23B (9C) - Exclusion of Crown to Crown grants; and
- (v) s23B (10) - Exclusion by regulation,

the area covered by the act is not excluded from this application.

(e) Where an act referred to in clauses (b) and (c) covers land or waters referred to in:

- s47 - Pastoral leases held by native title claimants;
- s47A - Reserves etc covered by claimant applications; and
- s47B - Vacant crown land covered by claimant applications,

the area covered by the act is not excluded from the application.

(f) Where an area is covered by a previous non-exclusive possession act (s 23F) the native title claim group does not claim possession, occupation, use and enjoyment to the exclusion of all others.

(g) The area covered by the application excludes land where native title has been extinguished at common law.

(h) The area covered by the application excludes areas covered by prior Gundungurra claims filed with the National Native Title Tribunal being NC96/7, NC96/27, NC96/30, NC96/36 and NC97/4.

Persons claiming to hold native title:

The native title claim group comprises all members of the Gundungurra Tribal Council Aboriginal Corporation

Registered native title rights and interests:

The following Native Title Rights & Interests were entered on the Register on 23/06/2000:

1. Subject to (2) - (5) below, the full and free enjoyment of the following native title rights and interests area are claimed in relation to the land and waters the subject of the application:

- a. A right to possess, occupy, use and enjoy the claim area;
- b. A right to make decisions about the use and enjoyment of the claim area;
- c. A right of access to the claimed area;
- d. A right to control the access of others to the claimed area;
- e. The right to control the use and enjoyment of others of resources of the claimed area.
- f. (Right not registered)
- g. (Right not registered)
- h. (Right not registered)

2. With respect of those parts of the area the subject of the application which are, or have been, the subject of a previous non-exclusive possession act within the meaning of s 23F of the Native Title Act 1993, the native title rights and interests area set out in (1) are claimed subject to the rights and interests created in the 'non-exclusive possession act' which are not inconsistent with the rights and interests claimed and, in the case of rights granted which are inconsistent with the rights and interests claimed, subject to any suspension of the native title rights and interests which those inconsistent rights and interests cause.

3. With respect to those parts of the area the subject of the application which are, or have been, the subject of:

- a. a category B intermediate period act within the meaning of s232C of the Native Title Act 1993;
- b. a category C intermediate period act within the meaning of s232D of the Native Title Act 1993;
- c. a category D intermediate period act within the meaning of s232E of the Native Title Act 1993;

the native title rights and interests claimed are those set out in (1) above subject to the rights and interests created in the non-exclusive possession act which are not inconsistent with the rights and interests claimed and, in the case of any rights granted which are inconsistent with the rights and interests claimed, subject to any suspension of the native title rights and interests which those inconsistent rights and interests cause.

4. With respect to those parts of the area of the application which are, or have been, the subject of:

- a. a category B past act within the meaning of s230 of the Native Title Act 1993;
- b. a category C past act within the meaning of s231 of the Native Title Act 1993;
- c. a category D past act within the meaning of s232 of the Native Title Act 1993;

the native title rights and interests claimed area those set out in (1) above subject to the rights and interests created in the non-exclusive possession act which are not inconsistent with the rights and interests claimed and, in the case of any rights granted which are inconsistent with the rights and interests claimed, subject to any extinguishment or suspension of the native title rights and interests which those inconsistent rights and interests cause.

5. The native title rights and interests identified above do not extend to ownership of any minerals, petroleum or gas which are wholly owned by the Crown.

6. The native title rights and interests identified above do not include a claim for exclusive occupation and use of offshore areas as defined by s253 of the Native Title Act 1993.

Register attachments:

1. Plan of Application Area, Attachment C of the Application, 1 page - A4, 29/04/1997.

Note: The Register may, in accordance with s.188 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.



Searching the NNTT Registers in New South Wales

Search service

On request the National Native Title Tribunal will search its public registers for you. A search may assist you in finding out whether any native title applications (claims), determinations or agreements exist over a particular area of land or water.

In New South Wales native title cannot exist on privately owned land including family homes or farms.

What information can a search provide?

A search can confirm whether any applications, agreements or determinations are registered in a local government area. Relevant information, including register extracts and application summaries, will be provided.

In NSW because we cannot search the registers in relation to individual parcels of land we search by local government area.

Most native title applications do not identify each parcel of land claimed. They have an external boundary and then identify the areas not claimed within the boundary by reference to types of land tenure e.g., freehold, agricultural leasehold, public works.

What if the search shows no current applications?

If there is no application covering the local government area this only indicates that at the time of the search either the Federal Court had not received any claims in relation to the local government area or the Tribunal had not yet been notified of any new native title claims.

It does not mean that native title does not exist in the area.

Native title may exist over an area of land or waters whether or not a claim for native title has been made.

Where the information is found

The information you are seeking is held in three registers and on an applications database.

National Native Title Register

The National Native Title Register contains determinations of native title by the High Court, Federal Court and other courts.

Register of Native Title Claims

The Register of Native Title Claims contains applications for native title that have passed a registration test.

Registered claims attract rights, including the right to negotiate about some types of proposed developments.

Register of Indigenous Land Use Agreements

The Register of Indigenous Land Use Agreements contains agreements made with people who hold or assert native title in an area.

The register identifies development activities that have been agreed by the parties.

Application summaries

An application summary contains a description of the location, content and status of a native title claim.

This information may be different to the information on the Register of Native Title Claims, e.g., because an amendment has not yet been tested.

How do you request a search?

A search request form is available on the Tribunal's web site at:
<http://www.nntt.gov.au/registers/search.html>
Mail, fax or email your request to the Tribunal's Sydney registry, identifying the local government area/s you want searched.

Email: SydneySearch@nntt.gov.au

Fax: (02) 9227 4030

Address: GPO Box 9973, Sydney NSW 2001

Phone: (02) 9227 4000

NATIVE TITLE APPLICATION

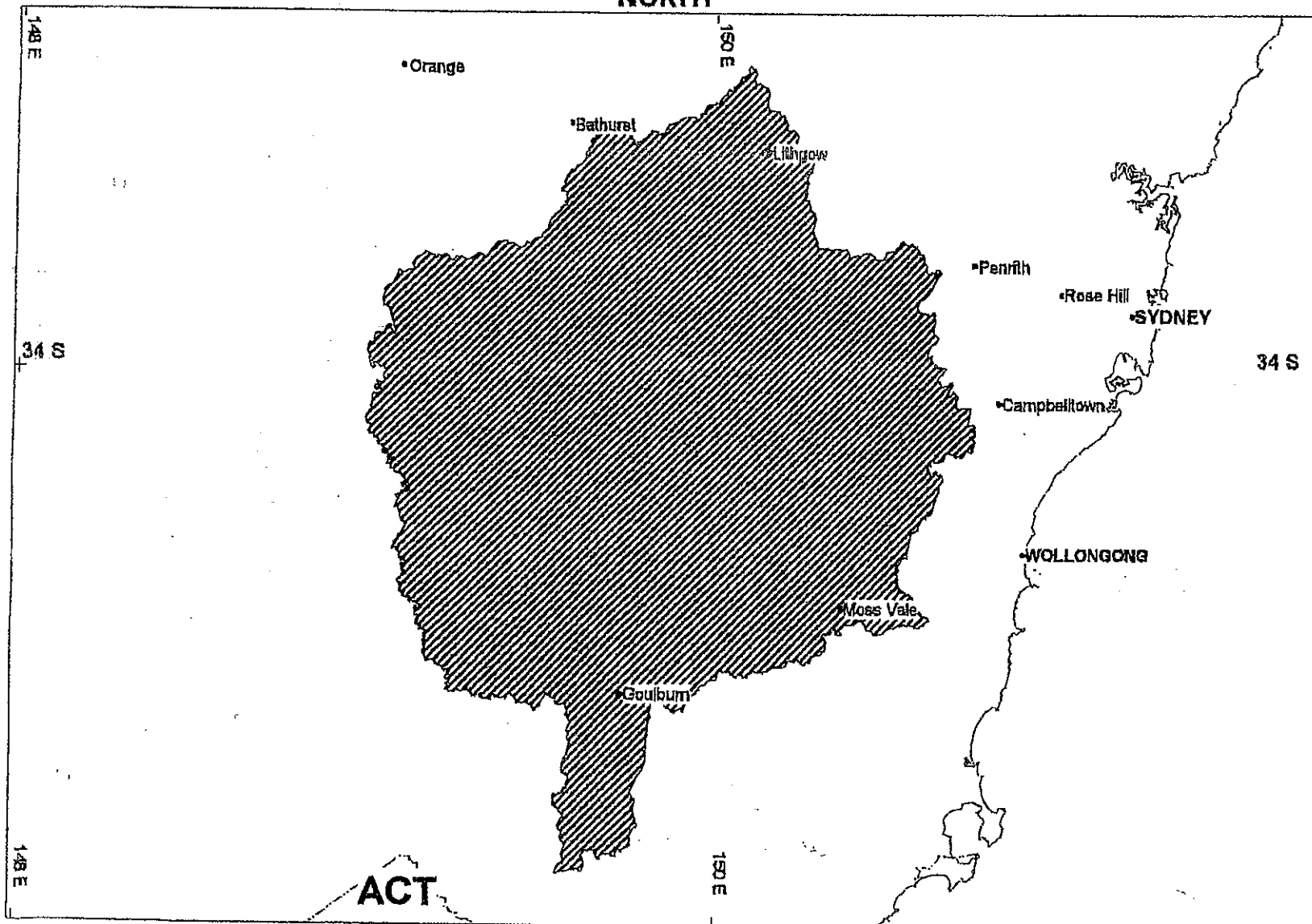
as at 18/05/1999

Map created from data sourced from Land Information Centre, DIM&T, NSW
by Geospatial Information Unit, National Native Title Tribunal

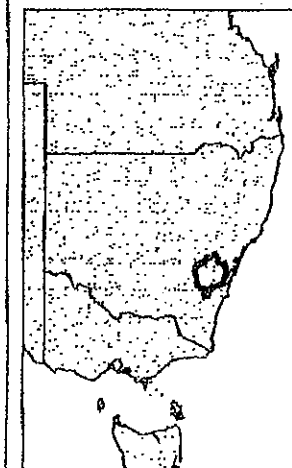
NSD6060/98 (NC97/7)
Plan of Application Area
Attachment C of the Application
Page 1 of 1, A4, 29/04/1997

0 60
KILOMETRES
Latitude and Longitude based on Australian Geodetic Datum 1984

NORTH



Location of NC97/007
Within New South Wales & ACT



NOTIFICATION ADVERTISEMENT

Penrith City Star, 21 June 2012

Notification of Aboriginal Heritage Assessment and Invitations for Registrations of Interest - Nepean Green 164 Station Street, Penrith, NSW

Parkview Penrith Pty Ltd is undertaking an Aboriginal Heritage Assessment for a proposed mixed use development at 164 Station Street, Penrith, NSW.

Registrations are invited from Aboriginal individuals and/or organisations, who may hold cultural knowledge for the area relevant to determining the significance of Aboriginal objects and/or places and who wish to be involved in the community consultation process.

The purpose of the Aboriginal community consultation is to assist the proponent in preparing an Aboriginal Heritage Assessment for the project area, and if necessary to assist the Department of Planning and Infrastructure and/or the Office of Environment and Heritage in considering the assessment.

Registrations of interest should be provided by no later than 5 July 2012 to Alan Williams, of Archaeological and Heritage Management Solutions P/L, by:

Phone: (02) 9555 4000

Fax: (02) 9555 7005

Email: awilliams@ahms.com.au

**Or Post: 349 Annandale Street,
Annandale, NSW 2038.**

INVITATION TO REGISTER INTEREST

**ARCHAEOLOGICAL & HERITAGE MANAGEMENT SOLUTIONS****SYDNEY**

349 Annandale St.
Annandale, NSW 2038
P: (02) 9555 4000
F: (02) 9555 7005

MELBOURNE

2/35 Hope St.
Brunswick, VIC 3056
P: (03) 9388 0622

PERTH

13/336 Churchill Ave
Subiaco, WA 6008
P: (08) 6262 2025

W: www.ahms.com.auE: info@ahms.com.au

ABN: 45 088 058 388

ACN: 088 058 388

15 June 2012

Our ref: 1200522-1

«First_Name» «Last_Name»

«Company_Name»

«Address_Line_1»

«City» «State» «ZIP_Code»

**Re: Notification of Aboriginal Cultural Heritage Assessment - Nepean Green, 164
Station Street, Penrith, NSW
Project Information and Invitation for Registration of Interest**

Dear «First_Name»,

In accordance with the NSW Office of Environment and Heritage's (OEH) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*, I am writing to notify you that we have been engaged by Parkview Penrith Pty Ltd to undertake an Aboriginal Cultural Heritage Assessment and/or Aboriginal Heritage Impact Permit applications for a proposed mixed use development at 164 Station Street, Penrith, NSW (Figure 1).

The development includes the installation of a Masters Hardware store (13,700 m²), approximately 573 residential dwellings and a tavern. The land in question is located on Station Street within the Penrith Local Government Area (Lot 12 DP 234581). The proponent is Parkview Penrith Pty Ltd who can be contacted via Amy Romero (A: Suite 3, 2 Wentworth Park Road Glebe NSW 2037; T: 02 9506 1500).

Parkview are seeking approval for the project under Part 3A of the *Environmental Planning and Assessment Act 1979*. However, subsequent stages of the project are likely to be assessed by local council. An assessment was undertaken of the site in 2006 by AHMS. This report indicated that much of the study area was disturbed, but that the southern parts were situated on the Cranebrook Terrace and had potential for sub-surface archaeological deposits (Figure 2). AHMS has been engaged to re-fresh the report in accordance with current guidelines and undertake any further tasks that may be required. One of this tasks includes Aboriginal consultation in accordance with current OEH guidelines.

**Archaeological and Heritage Management Solutions Pty Ltd**

349 Annandale St, Annandale, NSW 2038

Phone: (02) 9555 4000 Fax: (02) 9555 7005

email: info@ahms.com.au

ACN 088 058 388 ABN 45 088 058 388

An additional purpose of the Aboriginal community consultation may be to assist the applicant in the preparation of an application for an Aboriginal Heritage Impact Permit (AHIP) should it be necessary, as well as to assist the Office of Environment and Heritage to consider and determine any such application.

We are inviting registrations from Aboriginal individuals and/or organisations, who may hold cultural knowledge for the area relevant to determining the significance of Aboriginal objects and/or places and who wish to be involved in the community consultation process.

If you or your organisation are interested in being part of the consultation process, please provide a registration of interest to:

Alan Williams

Address: AHMS, 349 Annandale Street, Annandale, NSW 2038;

Phone: 02 9555 4000;

Fax: 02 9555 7005; or

Email: awilliams@ahms.com.au.

Registrations are requested on or by 5 July 2012.

To assist us with communicating project information effectively could you please include the following information in your registration of interest:

1. A clear identification of the organisation registering an interest in the project;
2. Your preferred method of communication with AHMS and the proponent during consultation for this project, including a nominated contact person and contact details;
3. Comment on the level of consultation / project involvement you require (Do you wish to attend any meetings? Do you wish to be involved in any fieldwork? Do you simply want a copy of the final report?);
4. If you wish to be involved in any meetings or fieldwork, please ensure we have current copies of your public liability, workers compensation and professional indemnity (if available) insurances as soon as possible. Please also provide daily rates;
5. Guidance on the protocols, sensitivity, use and/or distribution of any cultural information that you provide to AHMS and the proponent as part of this project; and
6. Identification of any Aboriginal objects or places of cultural significance that you are aware of within or in the vicinity of the proposed activity area.



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As part of the consultation process we are obliged to provide the contact details of organisations and individuals who register an interest to the OEH and the Deerubbin LALC. Please advise us if you do not wish this to occur.

Please note that registration of interest will not necessarily lead to participation in fieldwork. Participants will be engaged by the client on the basis of experience, cultural knowledge, appropriate insurances and our personnel requirements.

Please don't hesitate to contact me on (02) 9555 4000 if you have any queries or concerns.

Yours faithfully,



Alan Williams
Archaeologist



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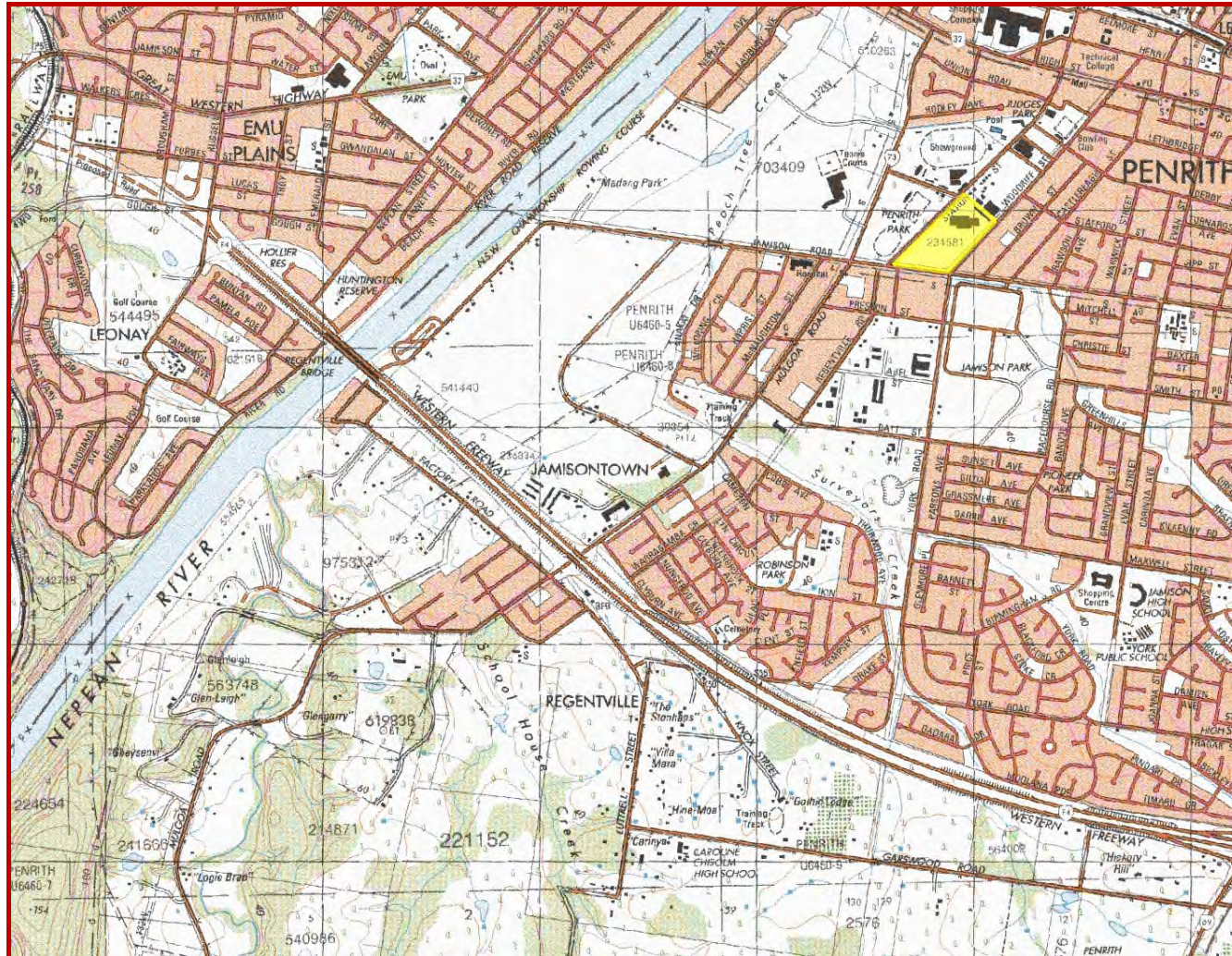


Figure 1. Location of Subject Area.





Figure 2. The disturbance plan of the study area developed by AHMS in 2006. The disturbance plan was used to identify where sub-surface archaeological materials were most likely (i.e in areas of low disturbance).



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REGISTRATIONS OF INTEREST

DARUG - LAND - OBSERVATIONS



ABN: 87239202455
E-MAIL: gordow51@bigpond.net.au
PO BOX: 571 Plumpton. NSW 2761
Phone: 029831 8868 or 0415 663 763



18-6-2012

Mr Alan Williams
Senior Archaeologist

Notification and Registration of ALL Aboriginal Interests
Re: Nepean Green 164 Station Street, Penrith, NSW

Please be advice that D.L.O is seeking to be involved in any and all consultation meetings and field work.

This office specializes in Aboriginal and community consultation. An has a membership that comprises of Traditional owners from the area in question those retain strong story and song lines and oral history and continued contact. We would also like to state that we do not except or support any person or organization that are NOT from the DARUG Nation that comments regarding the said area.

Please also be advised that this aboriginal Organization does not do volunteer work or attend unpaid meetings. I hope that you advise your client of this so that, This Group will not be discriminated against and refused paid field work.

All Correspondence should be emailed to the following
gordow51@bigpond.net.au

Yours faithfully

Uncle
Gordon Workman
Darug Elder

Sites Officer

Lisa Murray

From: mulgokiwi@bigpond.com
Sent: Monday, 25 June 2012 1:35 PM
To: Alan Williams
Subject: Nepean Green

Dear Al,
The Darug Custodian Aboriginal Corporation would like to register their interest in the Nepean Green project.

Regards
Leanne Watson

6/07/2012

Darug Aboriginal Cultural Heritage Assessments

ABN 51734106483

Gordon Morton & Associates

Mob: 0422 865 831

Fax: 45 677 421

Celestine Everingham

90 Hermitage Rd., Kurrajong Hills, 2758

Ph/Fax: 45677 421

Mob: 0432 528 896

26. 6. 12

attention

Alan Williams

re: Nepean Green - 104 Station St. Penrith

DACHA wish to register their interest in
the above area. We wish to be consulted
at all times and be involved in any fieldwork.

Yours Sincerely,
C. Everingham

Fenella Atkinson

From: Scott Franks <scott@tocomwall.com.au>
Sent: Friday, 6 July 2012 1:39 PM
To: Lisa Murray
Cc: Alan Williams
Subject: RE: Nepean Green Project - Methodology
Attachments: 2011-2012public Lia.pdf; Tocomwall Profession Indem Certificate of Insurance AUG2011.pdf; Workers Comp.pdf; Tocomwall Statement of Capabilities.pdf; Company Schedule of Rates JUL2011.pdf

Dear Lisa,

I have read and understood the Methodology and the ACHM regarding the Nepean Green Project. Tocomwall accepts and supports the current Methodology/ACHM and once again would like to Thank AHMS staff for a very strait to the point approach and a clear understanding with regard to current Guild lines for proponents. I will attach our schedule of rates for the site visit, could please advise as soon as possible of acceptance to ensure that we can have a Field officer available. Also please be advised that the rates are for a senior Field officer.

Regards,

Scott Franks
Director & Aboriginal Heritage Manager

TOCOMWALL PTY LTD

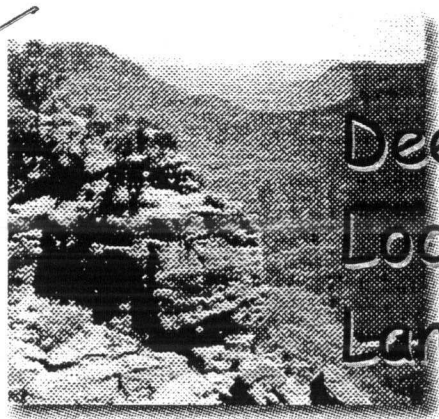
Po Box 76
CARINGBAH NSW 1495
p: 0404 171544
f: 02 95244146
e: scott@tocomwall.com.au

From: Lisa Murray [<mailto:LMurray@ahms.com.au>]
Sent: Friday, 6 July 2012 1:11 PM
To: scott@tocomwall.com.au
Cc: Alan Williams
Subject: Nepean Green Project - Methodology

Dear Scott,

Thank you for registering an interest into AHMS' assessment (ACHA) of the Nepean Green Project at 164 Station Street, Penrith, NSW. As you may be aware, this assessment was undertaken in 2006 with several Aboriginal stakeholders. For this reason, rather than starting from scratch we have simply re-structured and supplemented the existing assessment to conform with current guidelines. Due to tight timeframes on the project, the completed draft ACHA is attached for your review and comment. We hope to finalise this report in early August 2012 (28 days from today).

However, to ensure everyone has the opportunity to discuss the ACHA and to have a look at the study area, I am proposing to undertake a meeting on site on the **13 July 2012**. At this meeting, I will run everyone through the ACHA and its findings, give everyone an opportunity to inspect the site (most of the archaeological issues are, however, likely to be 1+m below ground surface), and ensure everyone is happy with the process outlined above. Should significant issues occur through the meeting, the report will, of course, be revised and I will re-issue it shortly after the 13 July 2012, and provide another 28 days for comment.



Deerubbin Local Aboriginal Land Council

5/271 Beames Avenue
PO Box 3184
Mt Druitt Village
NSW 2770 Australia

Ph: (02) 9832 2457
Fax: (02) 9832 2496
Email: Staff@Deerubbin.org.au
Web: <http://www.deerubbin.org.au>

Jon Lindsay
Parkview Penrith Pty Ltd
Lot 1, Pier 8/9
23 Hickson Road
WALSH BAY. NSW. 2000

Our Reference: 1626

24 July 2006

**SUBJECT: ABORIGINAL CULTURAL HERITAGE ASSESSMENT
164 Station Street, Penrith**

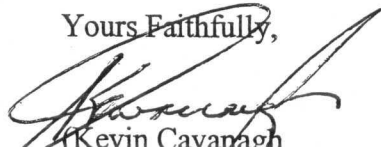
Dear Mr Lindsay,

A representative of the Deerubbin Local Aboriginal Land Council (Phil Khan) inspected 164 Station Street, Penrith on the 21 June 2006. Mr Khan conducted an Aboriginal cultural heritage assessment to evaluate the likely impact that the proposed development has on the cultural heritage of the land. Consulting archaeologist from AHMS Pty Ltd carried out a scientific survey at the same time

Our representative reports that, no Aboriginal cultural material (in the form of stone artefacts, for example) was found within the study area.

Deerubbin LALC therefore, has no objections to the proposed development on the grounds of Aboriginal cultural heritage, however prior to any construction or activity that may disturb the soil, you shall arrange with Deerubbin LALC for our appropriately qualified representative to be present on-site to monitor such works.

Yours Faithfully,



(Kevin Cavanagh
Executive Officer)

c.c. Gavin Martin, Dept of Environment & Conservation

c.c. General Manager, Penrith City Council

c.c. Jim Wheeler, Aboriginal Heritage Management Solutions Pty Ltd

COPY

Darug Tribal Aboriginal Corporation

(Incorporating Darug Link Associating Inc.)

P.O.Box 441 Blacktown 2148
ABN-GST No. 77184151969

Jim Wheeler
349 Annandale St
Annandale
NSW 2038

Re: Draft Assessment Report 164 Station St Penrith

The Darug Tribal Aboriginal Corporation has read the Draft Research Design we support the Methodology for excavation and salvage of the above sites.

The Darug Tribal Aboriginal Corporation would like to be involved in this matter and monitor the work.

Respectfully yours,



Des Dyer
Secretary
Darug Tribal Aboriginal Corporation

**DARUG CUSTODIAN ABORIGINAL
CORPORATION**

PO BOX 81 WINDSOR 2756.
PH: 45775181 FAX: 45775098 MOB: 0415 770163
ABN: 81935722930
molgokiwi@aol.com

15th August 2006.

ATTENTION: Jim Wheeler.

Subject: Draft Assessment Report- 164 Station St Penrith.

Dear Jim,

The Darug Custodian Aboriginal Corporation have received and read the draft report prepared by AHMS for 164 Station St Penrith.

We support the information and the recommendations set out in this report and would like to be involved in all aspects of these works. We would also like to recommend that any cultural heritage materials collected during these works be reburied on site after analysis has been finished.

Leanne Watson

L. Watson

Chairperson

REPORTS AND RESPONSES TO DRAFTS

Darug Aboriginal Cultural Heritage Assessments

ABN 51734106483

Gordon Morton & Associates

Mob: 0422 865 831

Fax: 45 677 421

Celestine Everingham

90 Hermitage Rd., Kurrajong Hills, 2758

Ph/Fax: 45677 421

Mob: 0432 528 896

1. 8. 12

attention

Fenella Atkinson

A H M S

re Nepean Green Project, 164 Station St, Penrith

DACHA have reviewed your assessment
of Nepean Green and we support your aims and
objectives for this project. We feel your
methodology is sound and we look forward
to working with you on this site.

Yours Sincerely
C. Everingham

Darug Aboriginal Landcare Incorporated

18a Perigee Close
Doonside 2767

Alan Williams
Senior Archaeologist
AHMS
349 Annandale Street
Annandale 2038
NSW


Re: Parkview Penrith.

Dear Alan,

The Darug Aboriginal Landcare Incorporated has no objections to the proposed development to this area.

We agree with the recommendations and Methodology as discussed in our consultation.

Kind regards


Des Dyer
Public Officer
Darug Aboriginal Landcare Incorporated
Mobile 0408 360 814
Fax (02) 88 14 95 47
Email desmond4552@hotmail.com

DARUG CUSTODIAN ABORIGINAL
CORPORATION

PO BOX 81 WINDSOR 2756

PH: 45775181 FAX: 45775098 MOB: 0415770163

ABN: 81935722930

mulgokiwi@bigpond.com

26th July 2012

Attention: Allan Williams .

SUBJECT: Aboriginal Cultural Heritage Assessment : 164 Station St Penrith, NSW.

Dear Allan,

The Darug Custodian Aboriginal Corporation have received and reviewed the Aboriginal Cultural Heritage Assessment for 164 Station Street Penrith.

This area is significant and has high potential for intact Darug sites due to the deposit on this site, the deposit on this site potentially holds very significant information and materials, intact and preserved. The Penrith area is an area that is undisputed Darug land and more information and research into this area is vital for Darug people.

We support the findings and recommendations set out within this report. We find this report and study to be thorough and support the recommendations.

Please contact us with all enquiries on the above contacts.

Regards

Leanne Watson



Director

DARUG - LAND - OBSERVATIONS



ABN: 87239202455
E-MAIL: gordow51@bigpond.net.au
PO BOX: 571 Plumpton. NSW 2761
Phone: 029831 8868 or 0415 663 763



30-7-2012

Fenella Atkinson

AHMS

Re: Nepean Green - Station Street Penrith

D.L.O would like to see more study done on the southern side of the building as it is a very special place to the Darug People

As always D.L.O would be involved in the monitoring of the top soil removal and all other form of works to be carried out on this Nepean Green – Station St Penrith.

Yours faithfully

**Uncle
Gordon Workman
Darug Elder**

Sites Officer

APPENDIX 2: ABORIGINAL ARCHAEOLOGICAL REPORT