

EVERICK

Heritage Consultants Pty Ltd

ABN 78102206682

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**PRELIMINARY
ABORIGINAL CULTURAL
HERITAGE ASSESSMENT**



**FOR THE PROPOSED
COMMUNITY RESIDENTIAL DEVELOPMENT**

COBAKI LAKES, TWEED HEADS NSW

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EXECUTIVE SUMMARY

The following report presents the results of a Preliminary Cultural Heritage Assessment at Cobaki Lakes (the ‘Subject Lands’), Tweed Heads in northern coastal New South Wales (Figures 1 and 2). It proposes a number of recommendations that will facilitate the immediate protection of areas identified as containing, or highly likely to contain, items of cultural heritage significance. It is not intended to provide a final assessment of the Subject Lands. Everick recognises that this can only be achieved after an extensive consultation process is undertaken with the Aboriginal community. It is therefore intended that these recommendations will be superseded by a comprehensive excavation strategy and Cultural Heritage Management Plan, subject to the approval and participation of the Aboriginal community.

Everick Heritage Consultants (‘Everick’) understands that application is being made by Leda Manorstead Pty Ltd to the Director General, Department of Planning for consideration of a Concept Plan comprising residential development, town centre, schools and open space. As part of fulfilling its obligations to identify and protect Aboriginal cultural heritage within the site, the Developer has engaged Everick to undertake archaeological investigations and community consultation in order to develop appropriate management strategies to be implemented in the form of a Cultural Heritage Management Plan.

Prior to undertaking the field assessment, Everick undertook background research on relevant previous studies in the region, aerial photography and records of past land use. A search of the AHIMS register found no known cultural heritage sites located on the Subject Lands. The Bundjalung Mapping Project database was also consulted. There were no records of archaeological sites of sites on the Subject Lands, although a number of sites have been identified in adjoining lands to the northeast and west. The Subject Lands have been surveyed for archaeological sites twice previously (Hall 1990a and Lilley 1981). In both cases no Aboriginal cultural heritage was found. In his report, Hall noted the highly disturbed nature of the site. An extensive survey and excavation program was undertaken by OzArk (2007) on the nearby Tugun Bypass. Another survey by EYL (2006) on adjacent lands to the west indicates that archaeological material might be found in the hills

and ridges of the Subject Lands. The results of these surveys are an important guide as to the likely pattern of site distribution within parts of the Subject Lands.

Everick has been informed that the Cobaki Lakes development has been in the planning stages for nearly 20 years. During this time, and through the past land uses, the Subject Lands have been highly disturbed. Initial earthworks have been conducted in preparation for the development, and little of the original native vegetation exists due to extensive clearing (Figure 3). Because of this high level of disturbance, Everick undertook an archaeological survey of undisturbed lands identified for development where there was a reasonable likelihood of making cultural heritage finds. This survey was undertaken as a precursor to Aboriginal community consultation, to be used to inform discussions on likely site distribution. It concentrated on the area of sand dune on the western side of Cobaki Lake, and the cleared pastureland in the north and southwest of the Subject Lands and on a ridgeline in the centre of the Subject Lands (Figures 15 - 17). This survey identified a number of isolated finds within the pastureland, and some sites with shell and artefacts within the eastern and southern portions of the central sand ridge.

Additionally, Everick recognises that there may be other heritage values besides archaeological ones contained within the site, and that consultation with the Aboriginal community is important. Accordingly, Everick has undertaken extensive consultation with the Traditional Owners, in accordance with the Department of Environment and Climate Changes “*Draft Interim Community Consultation Guidelines for Applicants*” (2005). Everick will continue to work with the Traditional Owners in undertaking excavation, precautionary measures such as Induction Training and monitoring, and ongoing planning for the Development.

It is intended that these recommendations provide the founding principles on which the Preliminary Cultural Heritage Management Plan submitted with this document is based.

Recommendation 1

It is recommended that all effort must be taken to avoid any impacts on Aboriginal cultural heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the proponent and the Aboriginal Community.

Recommendation 2

It is recommended that a Cultural Heritage Management Plan be developed for the Subject Lands, to be implemented by agreement between the Developer and the Aboriginal Community. This plan will cover issues such as:

- general principles of cultural heritage management to be adopted;
- management procedures;
- responsibilities of the Developer and the Aboriginal community;
- induction training for staff of the developer;
- monitoring by the Aboriginal community;
- remuneration for Aboriginal persons assisting in identifying cultural heritage;
- cataloguing and storing of cultural material;
- employment opportunities for the Aboriginal community;
- dispute resolution procedures; and
- costs.

Recommendation 3

It is recommended that the management processes contained in the Cultural Heritage Management Plan submitted with this report be adopted until such time as a more detailed management plan can be drafted after further consultation with the Aboriginal community. In particular, the processes and principles identified in the following sections should be adhered to:

- Section 4.1 – Principles of Cultural Heritage Management
- Section 8.1 – Responsibilities of the Developer
- Section 12 – Specific Recommendations
- Section 13 – General Recommendations
- Appendix 4 – Human Remains Policy

Recommendation 4

It is recommended that consultation should be continued with the Traditional Owners in accordance with the “*Draft Interim Community Consultation Guidelines for Applicants*” (2005) to ensure that any known cultural heritage within the Subject Lands is identified. Where new cultural heritage is identified, it will be dealt with in accordance with the management principles contained in the Cultural Heritage Management Plan.

Recommendation 5

It is recommended that contractors or employees of the Developer engaged in earthworks or subsurface disturbance on the Subject Lands be given induction training on how to identify Aboriginal cultural material and why it is important that it is preserved.

Recommendation 6

It is recommended that, in areas identified as moderate to high archaeologically sensitive areas in Figure 27, no surface or subsurface disturbance be undertaken until the excavations can be completed in accordance with the Excavation Strategy in Appendix A. The Aboriginal community should be consulted to develop appropriate ongoing management strategies to be implemented during construction.

Recommendation 7

It is recommended that, in areas identified as low to moderate archaeologically sensitive areas in Figure 27, excavations should be completed in accordance with the Excavation Strategy in Appendix A. The Aboriginal community should be consulted to develop appropriate ongoing management strategies to be implemented during construction.

Recommendation 8

It is recommended that an appropriate Keeping Place for any cultural material not to remain in situ within the Subject Lands be identified in accordance with the wishes of the Aboriginal community.

Recommendation 9

It is recommended that a comprehensive survey of the Environmental Protection Areas be undertaken prior to any revegetation, clearing or other works in these areas. This survey should be included as one of the Specific Recommendations in Section 12 of the CHMP.

1. INTRODUCTION

Everick Heritage Consultants ('Everick') have been engaged by Leda Manorstead Pty Ltd and their Planners, Landpartners, to prepare a Cultural Heritage Assessment and accompanying Cultural Heritage Management Plan for the proposed Residential Community Development at Cobaki Lakes, north-eastern NSW (Figures 1 and 2).

This report represents the first stage in the process of identifying cultural heritage within the Subject Lands and ensuring that appropriate consultation and management strategies are implemented from the outset. It details the basis for adopting the management recommendations outlined in the Cultural Heritage Management Plan submitted with this report. In support of these recommendations, this report details the past land use and disturbance history of the Subject Lands and presents the results of previous archaeological studies both on the Subject Lands and within the region. It then presents the results of an archaeological survey conducted by Everick on 21 and 22 of April 2008.

1.1 Property Description

The Cobaki Lakes development contains seventeen separate parcels of land with a total area of 593 hectares (Figure 2).

The Subject Lands are Lot 228 on DP 755740; Lot 305 on DP 755740; Lot 1 on DP 570076; Lot 205 on DP 755740; Lot 206 on DP 755740; Lot 209 on DP 755740; Lot 199 on DP 755740; Lot 54 on DP 755740; Lot 55 on DP 755740; Lot 46 on DP 755740; Lot 200 on DP 755740; Lot 201 on DP 755740; Lot 202 on DP 755740; Lot 2 on DP 566529; Lot 1 on DP 562222; Lot 1 on DP 570077 and Lot 1 on DP 823679.

1.2 Location

The Subject Lands are located south of the Gold Coast within the Tweed Shire Council Local Government Area (LGA) in northern-eastern coastal New South Wales. It is approximately 3.5 km from the present coastline, and extends from the Queensland border in the north to Piggabeen Road in the south and from Cobaki Lake in the east to the McPherson Ranges in the west and northwest (Figure 1).

The mouth of the Tweed River lies 6.5 km southeast of the Subject Lands, and the Terranora Broadwater is 3 km to the south. An extensive network of creeks, lakes and swamps linked to the Tweed River, lie directly to the south and southeast of the Subject Lands. Reedy Swamp and Cobaki Lake form the eastern boundary of the Subject Lands. The Macpherson Ranges, extending up to 100m in elevation in places, form a broad arc to the north and northwest (Figures 1 and 2).



Figure 1: Location of Subject Lands



Figure 2: Aerial View of the Subject Lands

1.3 Proposed Development

Under the Concept Plan for the Subject Lands it is proposed to construct a residential development that will house up to 5,000 residents. The development will contain a range of residential types, as well as a wide range of facilities including shops and offices, schools, retirement communities and car parks. Extensive areas will be dedicated to passive and active open space, environmental protection areas, and lakes.

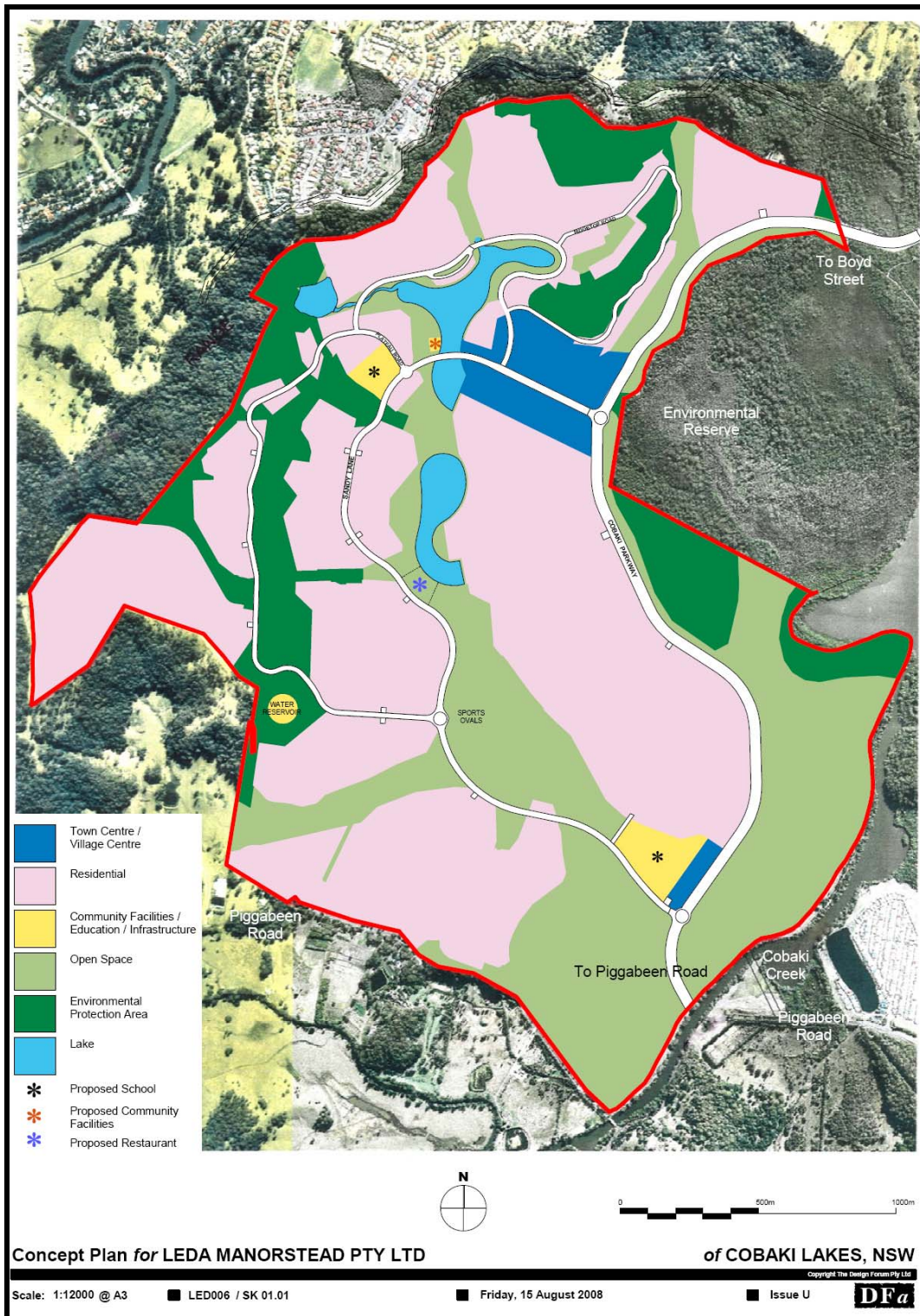


Figure 3: Development Concept Plan, Cobaki Lakes

1.4 Planning Context

The Cobaki Lakes development has been classified as a Part 3A Major Project under the *Environmental Planning and Assessment Act 1979* (NSW). As such it is considered a project of State Significance.

Development consents have been approved and construction commenced for three residential subdivisions, associated works and infrastructure. These consents, listed in Table 1, were approved between 1995 and 2000.

Table 1: Development Consents issued

TABLE 1 – DEVELOPMENT CONSENTS ISSUED			
DEVELOPMENT CONSENT NO.	DESCRIPTION	DATE OF CONSENT	COMMENT
92/315	Boyd Street Extension	5 January 1993	The development has been commenced and the Development Consent is preserved.
94/438	Bulk Earthworks	27 January 1995	The development has been commenced and the Development Consent is preserved.
S94/194	730 Lot Urban Subdivision – Parcels 1 to 5 + 13 Englobo Parcels (The Entrance, The Sand Ridge)	19 September 1995	The development has been commenced and the Development Consent is preserved.
96/271	Bridge over Cobaki Creek (Tweed Shire Council)	8 April 1997	It is understood from Council that the development has been commenced and therefore the consent remains in force.
S97/54	430 Lot Residential Subdivision – Parcel 7 to 10 (The Knoll, Piggabeen)	21 October 1997	It is understood that the development was commenced before 21 October 2002.
K99/1124	560 Lot Urban Subdivision (The Foothills, The Plateau, Valley East, Valley West, East Ridge)	21 July 2000	It is understood that the development was commenced prior to 21 July 2005.
1162/2001 DA	8 Management Lots and Bulk Earthworks (Town Centre)	8 October 2002	It is understood that the development was commenced prior to 8 October 2007.

In addition, twenty earthworks approvals have been issued (Figure 4), and extensive earthworks have commenced (Figure 2).

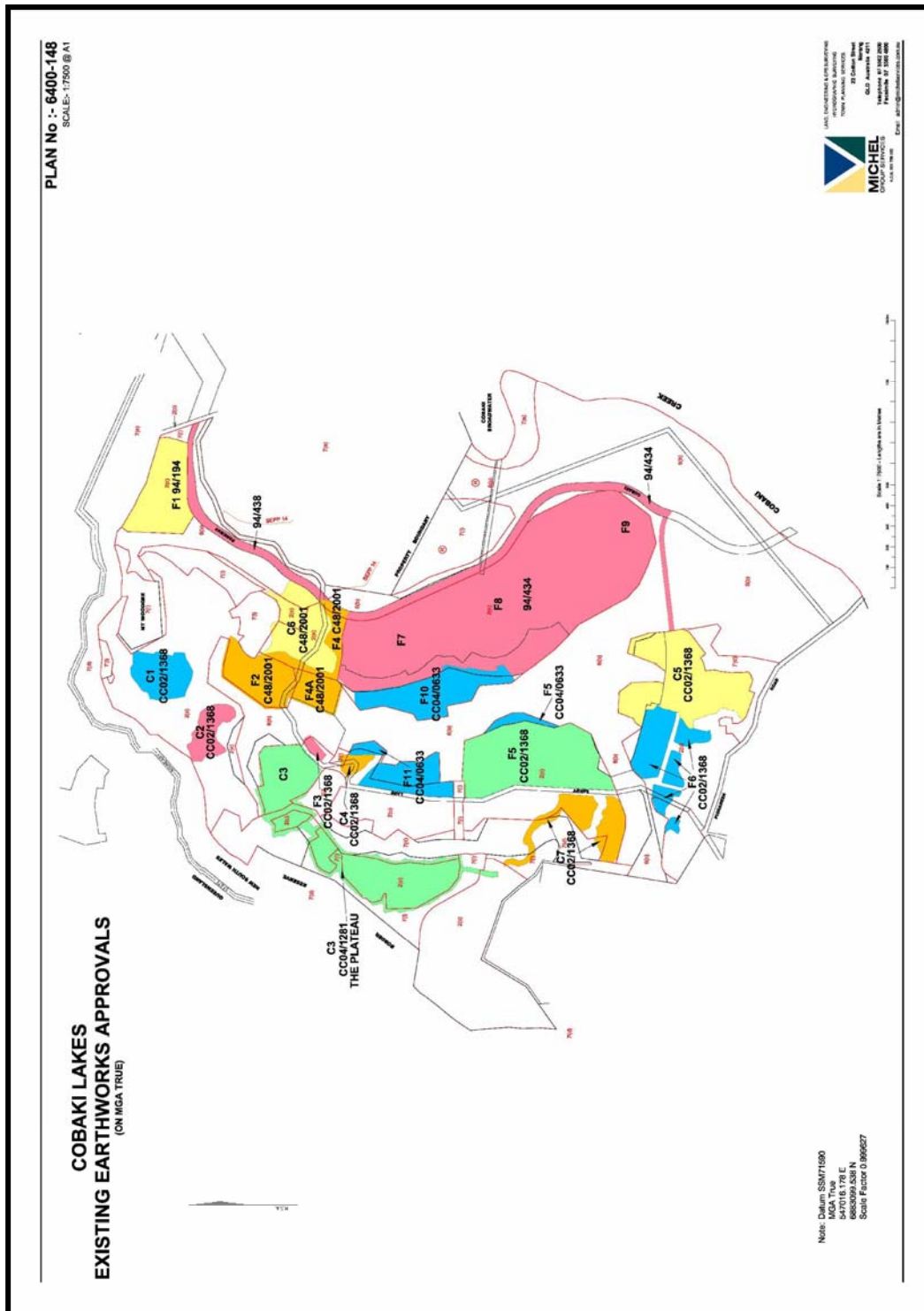


Figure 4: Earthworks approvals

1.5 Aims of this Report

The aims of this Report are to:

- assess previous documentation including published and unpublished reports, the NSW Aboriginal Heritage Information Management System ('AHIMS') and the Bundjalung Mapping Project ('BMP') database;
- assess the environment and past land use within the Subject Lands;
- assess the potential of the Subject Lands to contain Aboriginal archaeological sites and areas identified as having cultural heritage values, including identifying areas of particular cultural sensitivity;
- provide preliminary recommendations on the management of the cultural heritage of the Subject Lands; and
- detail the start of the process of community consultation in accordance with the Department of Environment and Climate Change ('DECC') *"Draft Interim Community Consultation Requirements for Applicants"* (2005).

2. ABORIGINAL COMMUNITY CONSULTATION

2.1 Traditional Owner Knowledge

Traditional Owners will be consulted with regard to concerns not only about archaeological sites, but other cultural values such as historic and spiritual significance, and values relating to flora and fauna of the area. We recognise that there may be Traditional Owner knowledge that will have to be treated in a confidential manner and we will be seeking advice from Traditional Owners on the appropriate protocols to be adopted in regard to such knowledge.

2.2 The Consultation Process

A consultation process with the Aboriginal community is being undertaken in accordance with the DECC Guidelines. An copy of the Index of the Community Consultation File Everick has developed is provided in Appendix B. On the 26th, 27th and 28th July 2007 an advertisement was placed in the Daily News newspaper inviting Aboriginal persons/organisations with cultural heritage interests in the Cobaki Development Area to advise Everick Heritage Consultants in writing.

From these responses a Stakeholders Register has been compiled.

Responses have been received from the following:

Thomas Hayes - The Gittabal

Debbie Munday - Ngarakwal Nganduwal Aboriginal Moiety

Jackie McDonald and on behalf of Jason McDonald, Jamie McDonald, Adam Mazzarella, Peter Buxton and Paul Buxton

Maxwell Ford, David Ford and John Ford

Marcia Browning

Christine Morgan

Kathleen Lena

Lesley Mye (Tweed Shire Council)

Deidre Currie

Kym Yuke – Gold Coast Native Title Group

The following authorities have been notified and responded to the proposal to produce a cultural heritage assessment for cultural heritage at Cobaki Lakes:

Tweed Byron Local Aboriginal Land Council

New South Wales Native Title Services

Cultural Heritage Unit of the DECC

The Tweed Shire Council

Everick has used the results of the background research and survey conducted in April of 2008 to formulate a proposed methodology for investigating and managing cultural heritage in the Subject Lands. This methodology was sent to all registered Aboriginal community participants on 12 May 2008.

An initial off-site background information meeting was held on 12 June 2008. All registered Aboriginal participants were invited to this meeting. Attendees at the meeting were Traditional Owner Jackie McDonald, Tim Nott of the DECC, Reg van Rij of Leda Manorstead and Dr Richard Robins and Tim Robins of Everick Heritage Consultants. During this meeting it was resolved to endeavour to provide the Aboriginal community with as much information as was reasonably practicable so that they could make informed decisions on managing cultural heritage within Cobaki Lakes. Accordingly, copies of past archaeological assessments, land use histories and environmental reports were distributed to the registered participants on 17 and 18 June 2008. Offers to facilitate broader community involvement have been made such as to develop a mailing list or community newsletter. Through valuable assistance from Aboriginal community leaders Everick is expanding its mailing list and is in the process of seeking new ways to engage the Aboriginal community.

In conversations on 16 and 17 of June 2008, Kym Yuke of the Gold Coast Native Title Group questioned the appropriateness of using Monitors, as is suggested in the preliminary CHMP. Correspondence from Everick addressing this issue is contained Appendix C. Generally, Everick agrees with the Ms Yukes opinion that Monitors are ineffective in many situations. However, there are some situations, such as in sandy soils, where monitoring can be of value. The final decision on if and where monitoring is to be used will only be made following the tests excavations and after further consultation with the Aboriginal community.

All registered Aboriginal community participants were invited to a site inspection on 6 August 2008. In attendance were Jackie McDonald (Traditional Owner), Leslie Mye (Traditional Owner/Tweed Shire Council), Kyle Slabb (Acting CEO of the Tweed Byron LALC) Cyril Scott (Tweed Byron LALC Sites Officer) and Dr Richard Robins and Tim Robins of Everick Heritage Consultants. The attendees were given a tour of the Site and provided the opportunity to inspect areas that they felt to be of particular or potential cultural sensitivity. Dr Robins discussed the results of the preliminary survey and sought opinions on appropriate excavation methods for archaeologically sensitive areas.

From the results of the on-site meeting, Everick developed an Excavation Strategy and distributed it to the registered Aboriginal participants on 21 October 2008 (Appendix A). 40 additional copies were made available in printed and electronic form at a related community meeting on 8 November 2008. The Excavation Strategy was tabled with the Tweed Shire Council Aboriginal Advisory Group on 7 November 2008.

At the time of finalising this report Everick was awaiting written response to the Excavation Strategy from the Aboriginal community. Lesley Mye of the Tweed Shire Council has written to Everick discussing the need for identifying an appropriate 'keeping place' for cultural material. Initial discussions with the registered participants have been positive.

Everick will be requesting the assistance of the Aboriginal community in conducting the test excavations. Subject to the requirements of the Department of Planning and negotiations with the Aboriginal Community, it is anticipated that 4-8 Aboriginal community representatives will be required. Excavations will take between two and three weeks. Payment will be subject to negotiations between the Developer and the participants, but will be fair and equitable to all sides.

Everick also propose to conduct artefact analysis workshops with interested Traditional Owners, so that Everick's archaeologists can pass on some of their scientific knowledge to the Aboriginal community. Participants will be asked to assist us in analysing and cataloguing the artefacts collected during the test pitting. This analysis will be used to form the basis of future reports and recommendations. Payment will be provided.

2.3 Cultural Heritage Management Plan

Everick will seek agreement with the Aboriginal community on appropriate management practices in the form of a CHMP for the site. This CHMP will replace the preliminary CHMP submitted with this report and provide the overarching framework for further identifying and protecting cultural heritage within the Subject Lands.

3. ENVIRONMENT

3.1 General Description

The Subject Lands have three distinct landforms. From north to south they are the mid and lower slopes of the Macpherson Range, a central low sand ridge extending towards Cudgen Lake and the bordering salt marshes of Cudgen Lake.

The Subject Lands contain a ridgeline running along the northern and western edges, as well as a small hill on the north-eastern boundary. These hills slope down towards the south and east of the Subject Lands on to marine plains located in the centre and south-eastern parts of the of the Subject Lands. The local relief ranges from <1 m on the marine plains to 80 m on the hillslopes. Elevations range from c. 20 m AHD to 90 m AHD. The marine plains contain two topographic features: a SEPP 14- Wetland in the centre, south and south east. In the centre of the Subject Lands a low sand ridge projects south from the lower slopes into drained salt marsh.

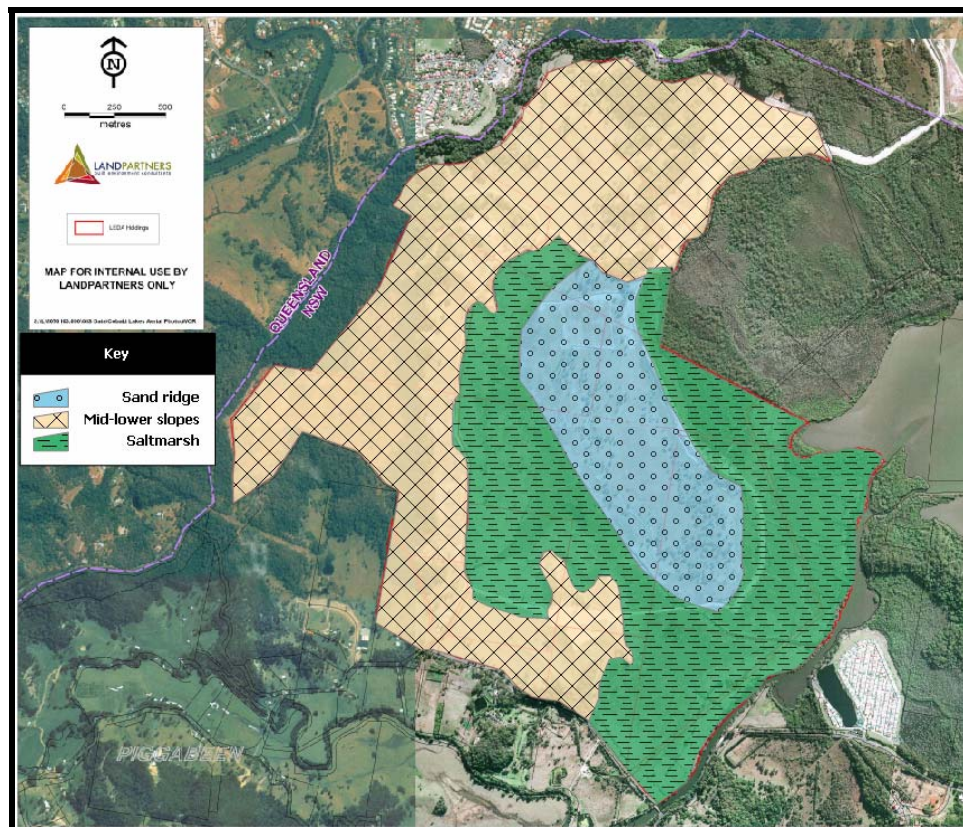


Figure 5: Physiographic Units of the Subject Lands



Figure 6: View from the northern ridge looking south



Figure 7: View from the northern ridge looking east



Figure 8: View from the northern ridge looking southeast over the sand ridge



Figure 9: Undulating hills in the southwest, looking north



Figure 10: View from the ridge in the southwest looking east to Cobaki Lake



Figure 11: Southern section of the sand ridge



Figure 12: Central portion of the sand ridge

3.2 Past Land Use History

Past development activities will have had a significant impact on much of the cultural heritage of the site. Identification of the nature and degree of impact over the site will be an important facet of the management process.

Extensive areas of the Subject Lands have had significant surface and sub-surface ground disturbance, in some cases more than once. Disturbance includes tree clearing, the excavation of numerous drainage ditches, dam construction, ploughing and cropping, grazing, and sand mining or quarrying. Erosion has occurred on cleared hill slopes. In some cases more than one type of disturbance has been undertaken on the land.

Since European settlement, the Cobaki Lakes site has been cleared and used for agricultural purposes including cultivation and grazing of livestock. Currently, up to 400 head of cattle are grazed on the property and this has been the case since approximately the late 1980's (Anderson 2007).

Since 1992 and subsequent to re-zoning and development consents, major earthworks and land forming have been undertaken on the site. Few of the pre-clearing eco-communities exist within the Subject Lands. The most intact ones occur near the top of the ridgelines and adjacent slopes and in parts of the salt marsh areas.

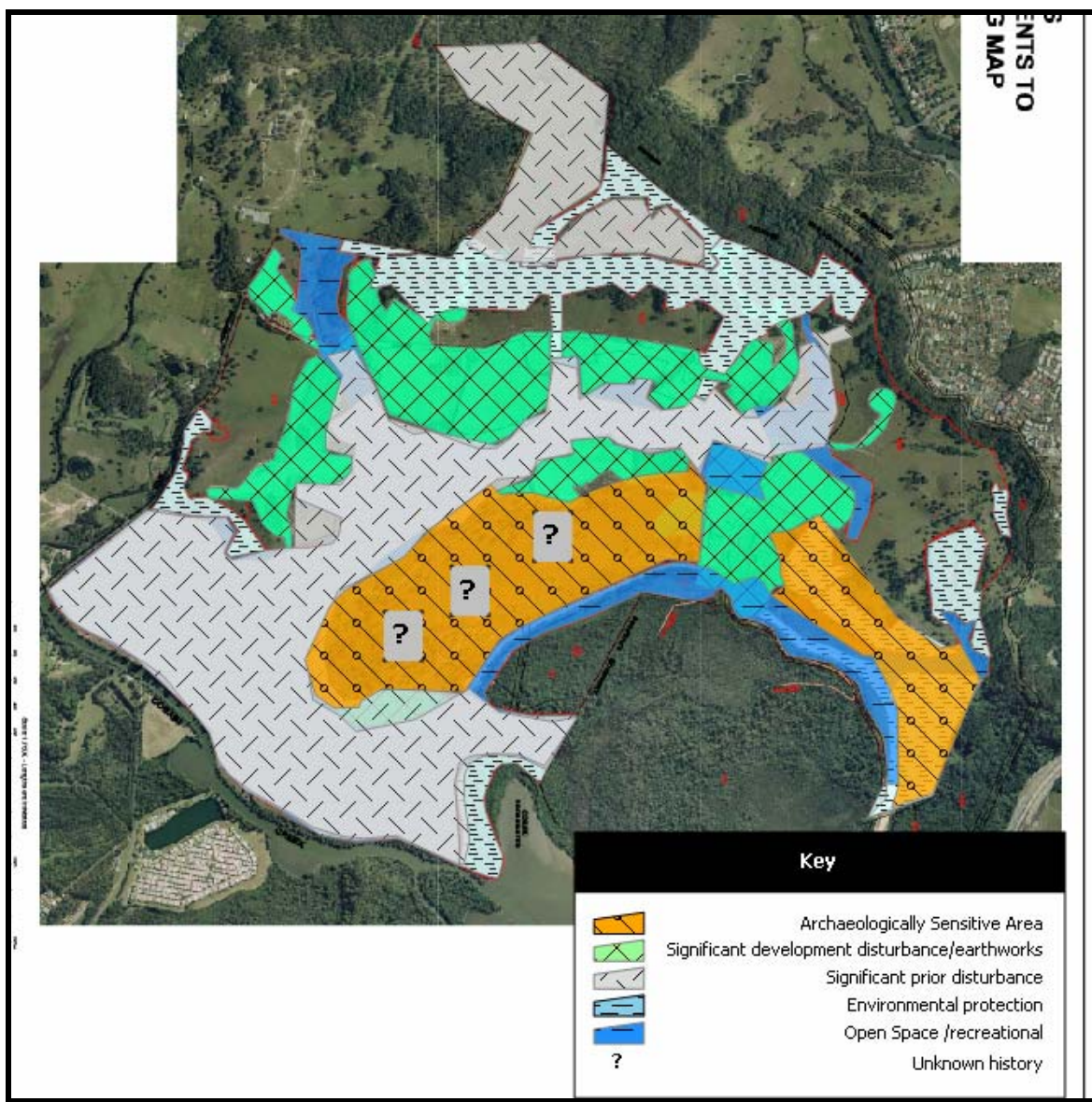


Figure 13: Disturbance history, intended land use and archaeologically sensitive area

4. PREVIOUS ARCHAEOLOGICAL STUDIES

4.1 Previous Studies within the Cobaki Lakes Site

Lilley conducted an archaeological survey of the Subject Lands in 1981. He found no sites of Aboriginal Cultural Heritage during his survey. However, he did note that this may have been due in part to poor surface visibility due to dense vegetation in many areas (Lilley 1981:5). Since 1981 there has been extensive clearing and earthworks in preparation for use of the land for agriculture and then as a residential development.

In 1990 the University of Queensland Archaeological Services Unit carried out a survey and prepared an Archaeological Report in respect of the Cobaki Lakes site (Hall 1990a). Hall (1990a:8-9) made the following observations about the disturbance of the Subject Lands:

The general study area bears the scars of clearing and development of the land into terrain suitable for European pursuits including farming, accompanying outbuildings and supporting roadways. Sand mining has reworked much of the sandy zone and land reforming has been extensive. Thus, even if artefacts were found in the disturbed areas, their provenance could not be trusted. In sum, few places within the study area have been unaffected by European cultural impact of some kind.

Hall recorded that due to recent clearing and mowing of the grass cover on the lower hill slopes that surface visibility was high. The report states that nothing relating to past Aboriginal cultural heritage was found during the survey (Hall 1990a:11).

Since the Hall and Lilley reports, extensive additional earthworks and land reforming has been undertaken in accordance with subsequent development approvals.

4.2 Other Regional Studies

The results of previous studies within proximity of the Subject Lands provide insights into locations where sites are most likely to be found as well as the variety and contents of those sites.

For the purpose of this desk top review of relevant literary sources the review is confined to assessments conducted north of the Tweed River. These include Appleton (1993), Barz (1980),

Ozark (2006, 2007a, b, c), Bonhomme and Craib (2000), Collins (1999, 2005), Hall (1990a, 1990b), Lamb (2004), Lilley (1981) and Piper (1976, 1980, 1991, 1994, 1996, 2000). All of these assessments with the exception of the Collins (2005) assessment in the Bilambil/Terranora hills have concentrated on estuarine waterways, old coastal dune formations and the Tweed River floodplain. Recent studies in relation to the extension of the Coolangatta Airport and the Tugun to Tweed Heads Bypass route, east of the Cobaki Broadwater include Collins (1999), Bonhomme and Craib (2000), Eastern Yugambeh Limited (2005), Ozark P/L (2006a, 2006b, 2007) and Navin & Officer (2007).

4.2.1 Cobaki Broadwater

Studies in the vicinity of Cobaki Broadwater have included Lilley (1981), Hall (1990a, 1990b) and Collins (1999). These studies were undertaken in relation to proposed residential development, planning proposals at Coolangatta Airport and road route options for the Pacific Highway. These studies inspected large parcels of land to the north of Cobaki Broadwater and its south western banks (Lilley 1981, Hall 1990b). An archaeological area on higher dune plain was found to extend between the eastern margins of Cobaki Broadwater and the runway at Coolangatta Airport. A midden (# 04-02-0039) described by Hall (1990b:11) contained dense concentrations of surface and sub-surface shell, mainly estuarine (oyster, cockle and whelk) with a small proportion of beach pipi. Stone artefactual material consisted of cores, flakes and flaked pieces on chert, quartz, silcrete and pebbles of volcanic origin. Bevel edged pounders used in the preparation of fern root were described as common. This site is considered to have high archaeological significance as well as a high cultural social significance to Traditional Owners north and south of the State border.

A study by Collins (1999) reassessed the area in relation to a Route Selection Study for a proposed Pacific Highway deviation. In addition to the archaeological material recorded by Hall, three open campsites and an isolated artefact were recorded on the elevated dune plain between Cobaki Broadwater and the Coolangatta Airport runway. The sites are low-density scatters of stone artefacts, fragments of oyster shell and a nodule of ochre. Raw materials were chert, silcrete and sandstone (Collins 1999:34-35).

The archaeological content and Aboriginal cultural heritage significance of the Coolangatta Airport lands, northern shores of Cobaki Broadwater and areas of Tweed Heads west have recently been reviewed by Bonhomme, Craib (2000), Eastern Yugambah Limited (2005), Ozark Environmental and Heritage management (2006a, 2006b, 2007). The most recent body of cultural heritage assessment and archaeological investigation has been by Ozark Pty Ltd. It centred on the route of the Tugun Bypass. A May 2006 report recommended that test excavations and possibly salvage excavations be conducted in two zones (7 & 10) of the proposed route and monitoring of vegetation clearance and ground disturbing works take place in five zones (5, 7, 10, 11, 13) of the proposed route (Ozark 2006 a, b, 2007).

An Archaeological Test Excavation at a site in Zone 7 produced an assemblage of 388 stone artefacts and 132 manuports or otherwise unidentifiable fragments from 28 excavation squares. These comprised 26 assemblage elements (or different categories of stone artefacts) and 12 varieties of raw material (Ozark 2006b:28). The site was considered to possess a number of unusual features: the richness of the assemblage was high; the site was intact and showed patterning that could indicate an intact cultural stratigraphy; the number of backed blades point to areas of the site likely used as knapping floors for backed artefacts (an extremely rare find the region), the preponderance of large red, yellow and black ochre crayons with abundant signs of use suggest decorative activities were an important part of the use of the site (ibid:52-53). A radiocarbon determination of a charcoal sample returned a relatively modern age for the site at 298 Before the Present (BP) (or c. 1600AD) (ibid:50).

A subsequent salvage excavation programme at pier construction impact points over the Zone 7 site produced 389 stone artefacts from 24 excavation squares comprising 12 classes of artefacts on nine types of raw materials. From the mean artefact density of the 1x1 m excavated squares it was estimated that 76,418 artefacts and ochre fragments were contained in the pier cluster areas (Ozark 2007:29,30). A radiocarbon determination of 7258 BP was obtained from a charcoal sample. However the authors urged caution in accepting the date as one that necessarily related to Aboriginal occupation as there were no intact archaeological features from which a date could be obtained. Early dates (9kya-15kya) are referenced in the report as a possible context for the Tugun sites if the date can be accepted (Ozark 2007:37).

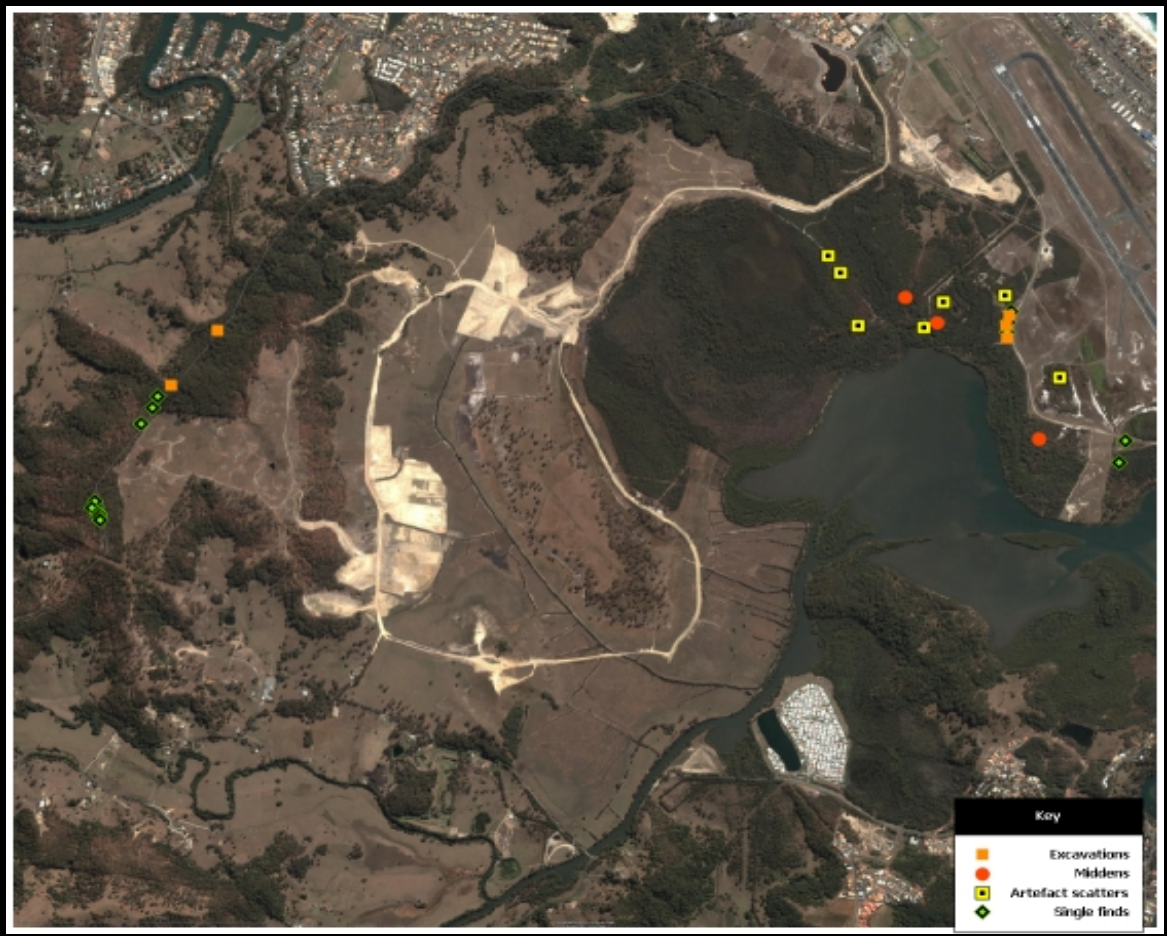


Figure 14: Location of archaeological sites recorded in the vicinity of the Subject Lands (Google Earth)

4.2.2 Terranora Creek- Terranora Broadwater

The study of the foreshores of Terranora Creek and Terranora Broadwater (Piper 1991) recorded nine midden sites between Barney's Point Bridge and Tommys Island in Terranora Broadwater, a distance of approximately 5.0 km. These sites ranged in content from thin bands of estuarine shell eroding into the river to compacted (20–50 cm) deposits of shell and stone artefacts many metres in extent. The shell contents of these sites were estuarine shell species: oyster, cockle and whelk. A small number of stone artefacts comprising a retouched flake were observed at Site 5 (# 04-02-79); a bevelled pounder and stone axe were recorded at Site 10 (# 04-02-83) in the region. Poor visibility due to dense vegetation bordering the waterways hampered the effectiveness of the survey. However, 14 estuarine shell middens were located. The bank of midden sites (Sites 6–13) on the eastern shore of Terranora Broadwater was considered to be of high archaeological and Aboriginal significance (Piper 1991:16-18) because of there being few sites of concentrated deposits remaining. Four other middens (Sites 1, 2, 3 and 5) were assessed as being of low to moderate archaeological significance. A shell midden on Ukerebagh Island (Site 14) in the Tweed River was also considered to have a high archaeological and Aboriginal significance.

Information on two additional sites was located in the files of the Bundjalung Mapping Project. These were a burial ground for both Aboriginal and non-Aboriginal people on the south bank of the Tweed River at Phillip Drive and a possible ceremonial ground on Lakeview Drive on a ridge overlooking Terranora Broadwater. This site was observed in 1974 after a bushfire, but now has houses on it.

4.3 The DECC Aboriginal Heritage Information Management System (AHIMS)

4.3.1 Tweed River and Terranora Lakes System

A search of the New South Wales DECC AHIMS register found that there were thirty-eight sites listed in the area included on the Tweed Heads, 1:25,000 mapsheet. Midden sites make up 75% (n=28) of the total number, open campsites 10.5% (n=4), burial sites 5.2% (n=2), ceremonial bora ground 2.6% (n=1), natural mythological sites 2.6% (n=1) and an open campsite/midden (n=1). The results of the site search do include the possibility of omission and not indicate whether the site is still in existence. Sites recorded as single artefact finds, for example a single stone axe are not listed in the results of the search.

The majority of recorded sites are middens clustered along the shores of Terranora Creek, the eastern banks of the Terranora Broadwater and the lower slopes of the Terranora ridge adjoining the northern banks of the Tweed River. The main concentration of sites is along the margins of the waterways of the Tweed River, Terranora Creek and Terranora Broadwater. Two of these sites (Site No: 04-02-0006 and 04-02-00071) have been excavated and produced dates of occupation of c. 600 BP (Barz 1980) and c. 4700 BP (Appleton 1993) respectively. Both were salvage excavations and both sites are now under residential developments.

The predominant site type in this area are shell middens comprised largely of shellfish refuse but may also include fish and other animal bone, stone artefacts and ochre, and charcoal. These may take the form of thin linear bands of shell to large mounds of concentrated shell. Middens may contain human burials as was the case at a large midden deposit on the north bank of the Tweed River (Site No: 04-02-006).

Few of the sites recorded on the northern bank of the Tweed River are still in existence. Residential developments on river foreshores have eliminated numbers of registered sites. The largest midden sites were mounds on low spurs projecting from the eastern base of Terranora ridge. One of these sites, Terranora 12 (Site No: 04-02-0024) survives. The only group of sites not heavily disturbed by development is the midden sites on the eastern bank of Terranora Broadwater and Terranora Creek

(Site Nos: 04-02-0080 to 04-02-0085). These are middens of estuarine shell species on the foreshores of extensive shellfish gathering areas, immediately below high basalt soil ridges. It would appear that the occupants of all the estuarine sites on the lower Tweed River waterways had immediate access to extensive tracts of rainforests. However, no occupation sites have been found on the higher elevations which supported sub-tropical rainforests.

4.3.2 Cobaki Lakes System

A search (25-10-08) over 30 km² centered on the Subject Lands indicates 23 sites in the search area. No recorded sites are located in the Subject Lands. The surrounding site landscape contains four middens, seven BMP sites described as shell but not termed middens, six artefact sites, one resource gathering/burial/hearth, one resource gathering/habitation site, one scarred tree at West Tweed Heads and one ceremonial/dreaming site at Campbell Hill. Historical sites include one resource gathering/habitation site at Bingham Bay, a potential archaeological deposit at West Tweed Heads and the Boyd Memorial (burials) at Tweed Heads South. Thirteen of the 23 sites are concentrated in the fringes of Cobaki Lakes and a short distance to the east in Coolangatta Airport lands. Sites in the immediate vicinity of the Subject Lands are indicated in Figure 14.

4.4 Bundjalung Mapping Project Database (BMP)

A Search of the BMP database for sites in, or near the vicinity of the Cobaki Lakes development was conducted in April 2008. In addition to the New South Wales DECC AHIMS registered sites in that database, four artefact scatters and one possible resource tree had been recorded in the bushland between Cobaki Lakes and the Tugan Bypass (Figure 14) (I. Fox pers. com. April 2008). The BMP also had records of an archaeological survey conducted on the western side of the Subject Lands in Queensland (EYL 2006). This survey recorded nine isolated finds of flakes or flaked pieces. Twenty-four test pits were also excavated up to a depth of 40 cm. Fourteen of these pits contained artefacts. Numbers of artefacts for each pit varied from 2 to 37. The location of isolated find and test pits adjacent to the Subject Lands boundary are indicated in Figure 13.

4.5 Potential Site Types and Site Locations

As part of the process of developing a methodology, Everick conducted an inspection of the Subject Lands on 10 December 2007. On the basis of this inspection, a review of previous studies in the region (including a previous one of most of the Subject Lands), a search of the DECC AHIMS database and the history of site disturbance, potential archaeological site types and site locations are summarised in Table 2.

Table 2: Table of Archaeological Site Sensitivity for Subject Lands

Site Type	Sand Ridge	Drained Salt Marsh	Mid-lower Hill slopes
Midden	Moderate	Low	Low
Burial	Low -moderate	Low	Low
Scarred Tree	Low	Low	Low
Open Campsite	Moderate	Low	Moderate
Quarry	Nil	Nil	Low
Single artefacts	Moderate	Low	Moderate
Bora/Ceremonial site	Low	Low	Low

This analysis is also informed by the results of the recent excavation conducted for the Tugan Bypass Roadworks (Ozark 2007), 1.3 km to the east of the eastern boundary of the Subject Lands, where significant archaeological sites were identified through excavation. Everick used this information to develop a predictive model of archaeologically sensitive areas in which further investigation is warranted (Figure 15).

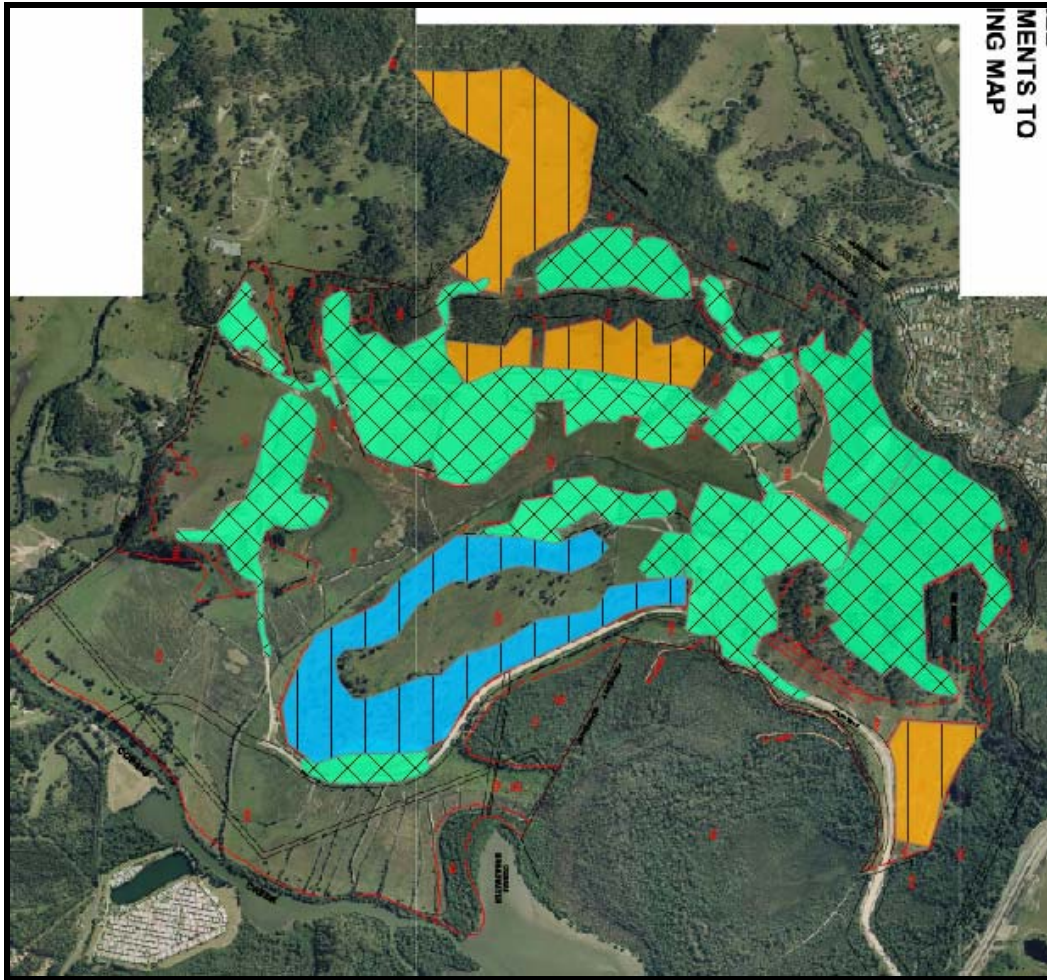


Figure 15: Preliminary Model of potentially archaeologically sensitive areas, where Green is of No-Low Sensitivity due to past disturbance, Yellow is of Low-Moderate Sensitivity and Blue is of Moderate-High Sensitivity.

Due to the high levels of disturbance over much of the Subject Lands there is little likelihood that undisturbed Aboriginal archaeological sites or objects will exist on previously disturbed/cleared land or eroded surfaces. Bora/Ceremonial areas which consist of above ground earth or rock structures would have long since been cleared and levelled had they existed. Due to extensive clearing of trees of sufficient age in the proposed area of residential subdivision, scarred or carved trees are likely to have a low probability of being found. Human burials in the volcanic soils of the ridges and the organic rich salt marsh lands are considered to have a low probability of surviving. They may exist in sandy areas that have not been disturbed. The existence of middens is considered a possibility. The most likely potential location of middens within the proposed residential area is the low sand ridge identified in Figure 5. Single artefacts or open campsites are unlikely to be found in the saltmarsh

but may be found in the hills or in the sand ridge. In both these circumstances it is likely that many will be in disturbed contexts. There is only a low probability that a quarry would be found due to the unsuitability of the local stone for as a source for artefacts. The areas with the highest potential to contain cultural material are the sand ridge and northern foreshore areas of Cobaki Lake.

There is the potential that the Subject Lands will contain non-archaeological Aboriginal sites that may be of significance to Traditional Owners that have not been recorded on existing databases. Identification of these sites will be a part of the ongoing consultation process.

4.6 Preliminary Archaeology Survey

4.6.1 Methods

An archaeological survey was undertaken by Everick Heritage Consultants and a representative of the Tweed Byron Local Aboriginal Land Council on 21 and 22 April 2008. The aim of this survey was to ground truth through surveying the site location and site type model. The areas selected for survey were those identified as having archaeological potential. The survey did not cover areas of the development that had suffered massive disturbance through earthworks, previously been salt marsh or were going to be preserved as undisturbed environmental areas. The survey was conducted on foot by a team of four. The areas covered by the survey and survey conditions are presented in Figures 15 & 16. When cultural material was identified, its location was recorded as a waypoint and photographs of the material and its location taken. Notes were made on the type, size and type of raw material. Other factors such as degree of disturbance were also noted.

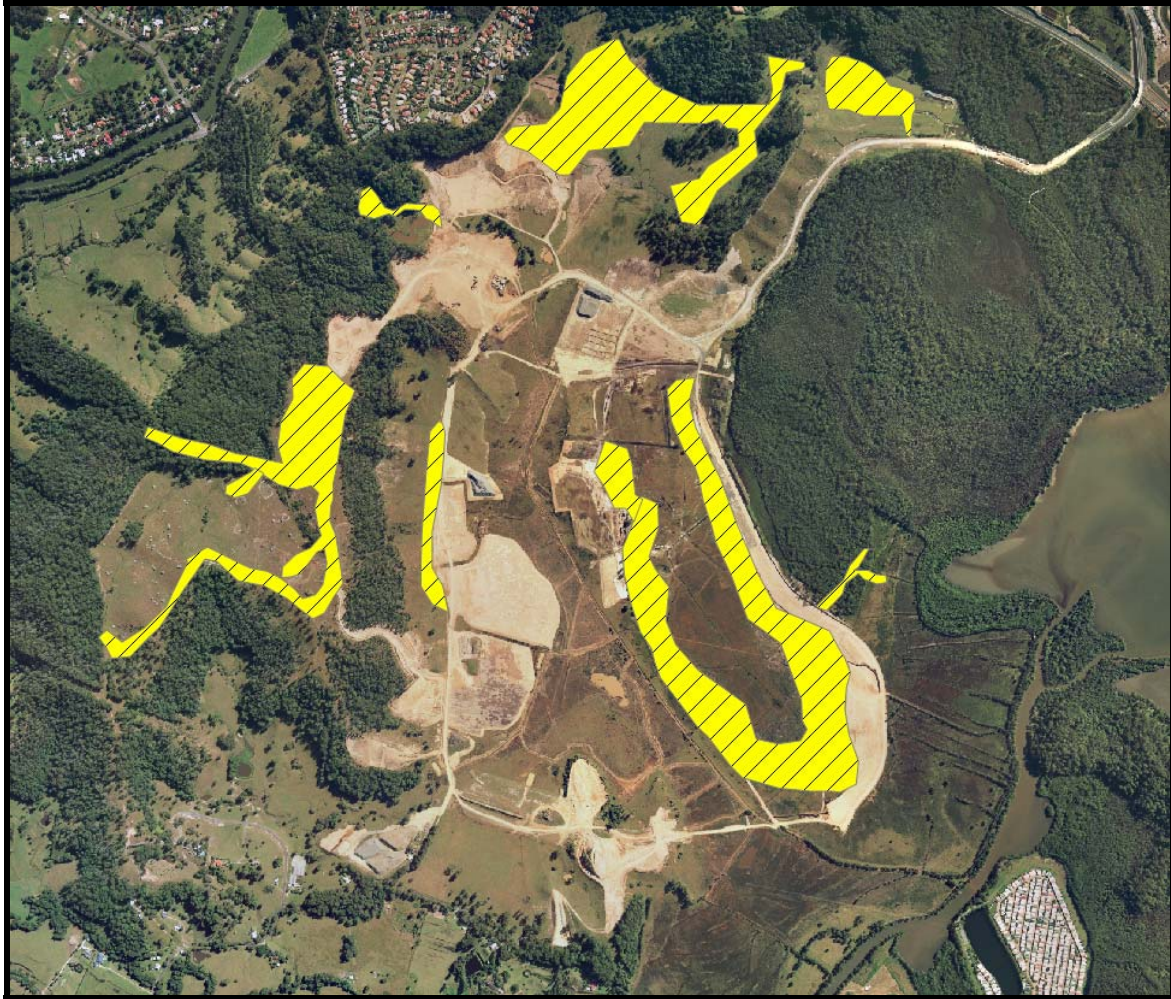


Figure 16: Areas surveyed for cultural material in yellow

4.6.2 Constraints to Site Detection

Constraints to site detection can be influenced by previous and present European land uses and dense surface vegetation. The area of surface exposure and the degree of surface visibility within exposed surfaces are usually the product of recent land uses e.g. ploughing, road construction, natural erosion and accelerated erosion (McDonald et al. 1990:92). In this case no area where extensive earthworks have been conducted, apart from sections of the central sand ridge were investigated. Specific areas were selected for inspection where there was exposure through erosion, road and track construction or there was generally low or sparse ground cover. These areas are indicated in Figure 16. Exposure and visibility were highly variable. There is no direct relationship between exposure and visibility and the recording of cultural material.

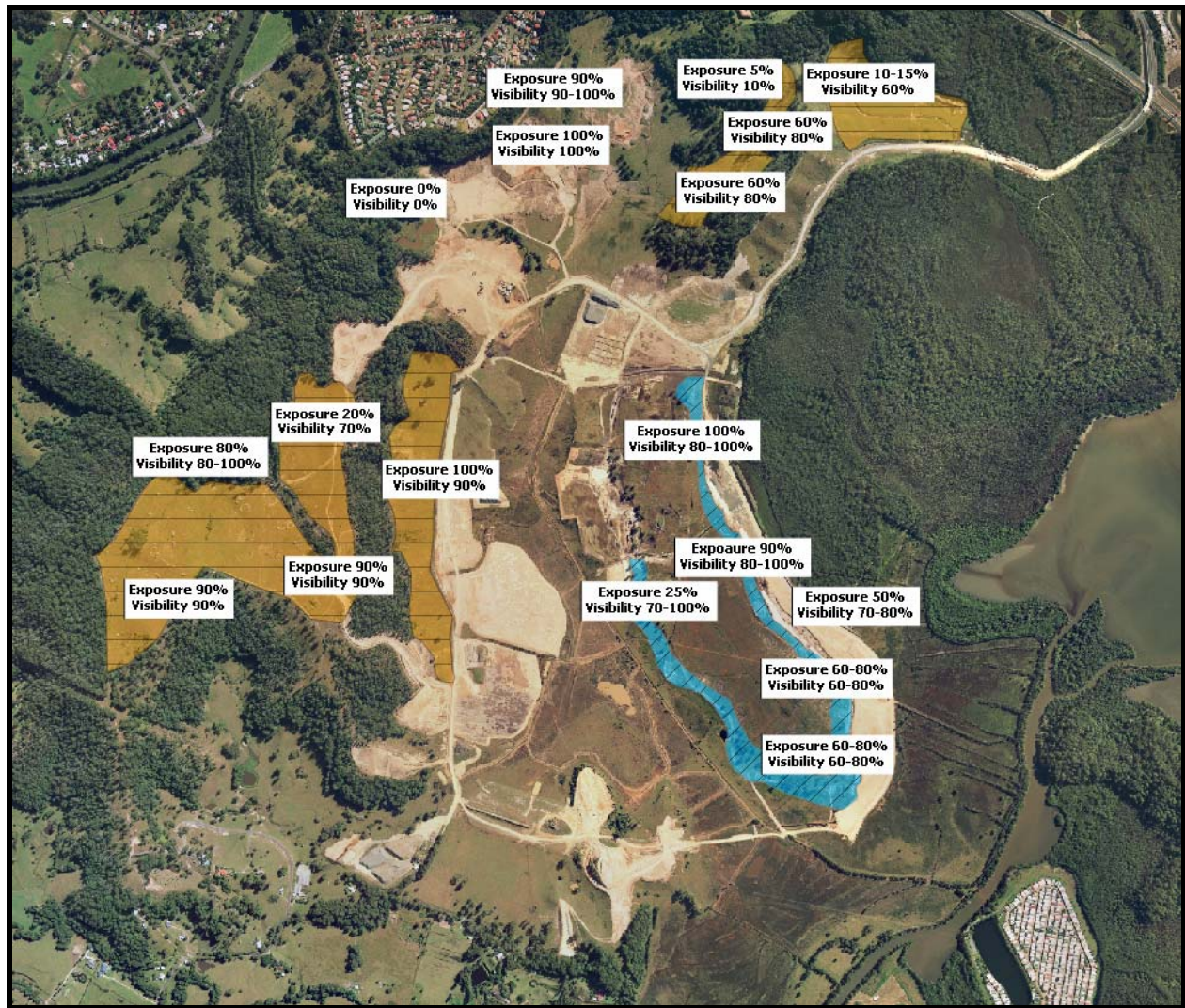


Figure 17: Exposure and visibility of areas covered in the survey

4.6.3 Survey Coverage

Figure 16 provides an evaluation of survey coverage which affords an approximate measure for the potential for the land surface to reveal archaeological evidence. This method is the preferred method outlined in N.S.W. N.P.W.S. Aboriginal Cultural Heritage Guidelines for Archaeological Survey Reporting, Appendix 4:44-48. The figures in Figure 17 do not provide an exact percentage of ground coverage but are a reasonable estimate.

4.6.4 Results

Nineteen locations with cultural material were identified (Figure 18, Table 3). These include eight individual artefacts, four shell and artefact scatters, three artefact scatters, three shell scatters and one possible scarred tree (Figures 19 - 26). Because of the complexity of the distribution of cultural material on the sand ridge which has been exacerbated by development works, at this stage there has been no attempt to identify sites. This will require further work, particularly subsurface investigation involving a range of subsurface exploratory approaches.

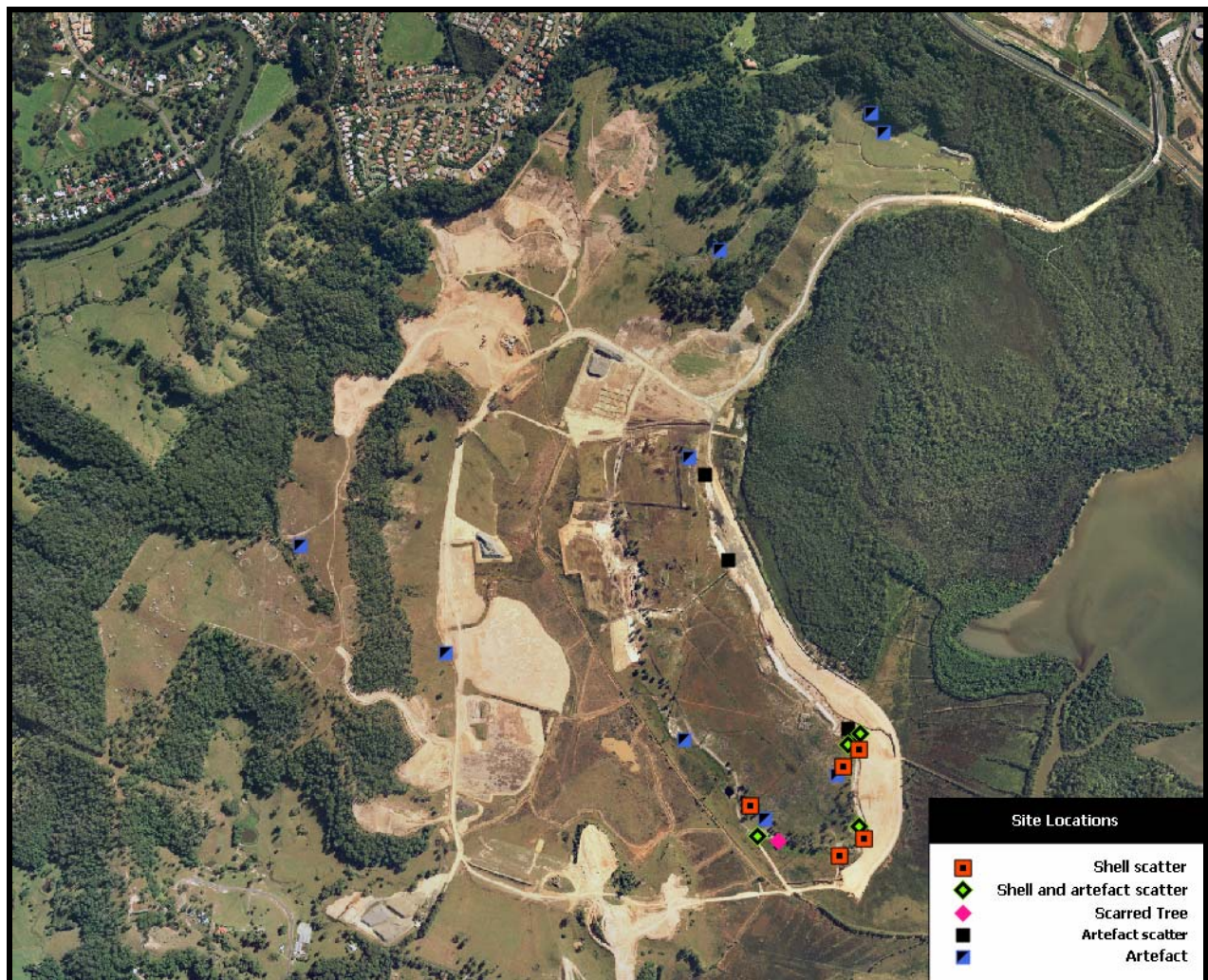


Figure 18: Distribution of archaeological material on the Subject Lands

Table 3: Description of archaeological material recorded during the survey of the Subject Lands

Location	Northing	Easting	Environment/site type	Artefacts		
				Description	Materials	Measurements
1	-28.17288	153.48095	Sand ridge –Cleared and levelled , top 30 cm removed on outer edge /artefact scatter	Retouched Flake	Chert	
				Retouched Flake	Silcrete	
				Flake	Wongawallen Chert?	
				Bevel-edged fragment	Greywacke	130 x 75 x 60mm
2	-28.17123	153.48036	Sand ridge -Cleared and levelled top 30 cm removed from outer edge/artefact scatter	Core		31 x 20 x 12mm
				Possible hammerstone??		39 x 32 x 8mm
				Flake	Wongawallen Chert?	19 x 19 x 3mm
				Flake	Chalcedony?	26 x 25 x 4mm
				Flake	Obsidian	22 x 20 x 4mm
				Ochre pieces		25 x 20 x 6mm
				quartz pieces (2)	Quartz	
Flaked piece	Chert	16 x 6 x 2mm				
3	-28.17025	153.48037	Sand ridge –Partially cleared and levelled / single artefact	Flake - hinge fracture	Pink Chert	29 x 16 x 12mm
4	-28.16987	153.47979	Sand ridge –Partially cleared and levelled / single artefact	Hammerstone	Sandstone/ Greywacke	60 x 30 x 20mm
5	-28.17855	153.4851	Sand ridge –Cleared and levelled /Thin shell deposit (6m NS - 6m EW). Deposit mixed with tree trunk	Shell fragments	Oyster, whelk, cockle	
				two ochre pieces		
				Flake - retouched (adze?)	Cream Chert	8 x 32 x 15mm
				Manuport		
6	-28.17856	153.48529	Sand ridge –Cleared and levelled /Single artefact on levelled surface next to spoil heap	Bevel-edged pounder	Greywacke	112 x 90 x 80mm
				Flake - hinge fracture	Basalt	33 x 56 x 10mm
7	-28.17792	153.48521	Most north easterly point on sand ridge drop. Cleared and levelled/ Artefact scatter on sand edge (100m x 20m N-S). Maximum artefact density = 8 artefacts/m ²	Bevel-edged pounders (2)	Greywacke	
				Flakes (2)	Chert/Chalcedony	
	Retouched Flakes	Chert/Chalcedony				
	Grindstone fragments	Greywacke				
	Shell Fragments (c.10cm below current surface)	Oyster, whelk, cockle				
	Ochre pieces					
	Coresh	Greywacke				
Manuports	Greywacke					
8	-28.18093	153.48549	Sand ridge –Cleared and levelled/ Thin shell scatter from edge of east face to spoil heaps	Flakes	Chert/Silcrete	
	-28.1811	153.48552		Flake - retouched	Greywacke	
9	-28.18163	153.48485	Partially cleared, Scribbly Gum on sand ridge/Shell scatter (18m x 15m)	Shell	Oyster, whelk, cockle	
				Shell fragments	Oyster, whelk	
				Shell fragments	Oyster, whelk, cockle	
10	-28.18127	153.48281	Partially cleared, Scribbly Gum on sand ridge/Scarred tree	Scarred Tree (scar is 2.7m x 19cm. Commences 35cm above ground)	Eucalypt	80cm diam.
11	-28.18113	153.48215	Partially cleared, Scribbly Gum on sand ridge/Shell and artefact scatter	Edge ground axe fragment	Greywacke	
				Shell fragments	Cockle, whelk, oyster	
				Flakes (2)	Silcrete	
12	-28.17881	153.48515	Partially cleared, Scribbly Gum on sand ridge/Shell scatter	Shell fragments	Oyster, whelk, cockle	
13	-28.17876	153.48479	Partially cleared, Scribbly Gum on sand ridge shell scatter (5m N-S 30-40EW)	Shell fragments	Oyster, whelks	
14	-28.17822	153.47952	Partially cleared, Scribbly Gum on sand ridge/single artefact	Flaked piece	Chert	
15	-28.17252	153.46656	Partially cleared, Scribbly Gum on sand ridge/single artefact	Flake	Chert	
16	-28.16371	153.48068	Cleared ,steep hill slopes with shallow rocky soils/single artefact	Flake	Silcrete	
17	-28.17566	153.4716	Cleared ,lower hill slopes with shallow rocky soils/single artefact	Retouched flake	Silcrete	55 x 30 x 15mm
18	-28.15965	153.48571	Cleared and drained lower slopes with deep soils/single artefact	Retouched Flake, some cortex, extensively worked	Fine grained Silcrete	50 x 40 x 32mm
19	-28.16018	153.48605	Cleared and drained lower slopes with deep soils/single artefact	Core	Silcrete	90 x 40 x 40mm



Figure 19: Flakes exposed on the north-eastern side of the sand ridge



Figure 20: Hammerstone located on the north-eastern side of the sand ridge



Figure 21: Scatter of shell and artefacts on the eastern end of the sand ridge



Figure 22: Shell exposed by tree clearing, eastern side of the sand ridge



Figure 23: Close up of shell exposed by tree clearing



Figure 24: Levelled area exposing stone artefacts and shell fragments



Figure 25: Location of artefact eroding out of a road cutting



Figure 26: Possible scarred tree, southeastern side of sand ridge

4.7 Discussion

With the exception of the south-western corner of the development - which had extensive ground cover at the time of survey - most of the areas were accessible for inspection. Areas that would be impacted by residential development or significant infrastructure development (as understood by Everick in consultation with the Developer) were inspected. In addition, some areas declared open space or environmental protection, were also inspected.

The model derived from the desktop study was largely substantiated, although some modification was required to the postulated pattern for the central sand ridge (Figure 27). Two patterns of archaeological site distribution can be identified. The first is a low density distribution of stone artefacts throughout the mid and lower slopes of the hills. Although only small numbers of artefacts were recorded here, the type of material and pattern of distribution is similar to that identified by the EYL (2006) survey in adjacent land on the Queensland side of the Border. As in that case, the surface distribution of cultural materials on these parts of the Subject Lands is likely to be a general indicator of the subsurface distribution of cultural material. Our modelling predicts the subsurface artefact types, raw material and subsurface density will be similar to that already identified in the field survey, and EYL (2006) excavations. The number of artefacts located in subsurface soils will likely be higher than that visible on the surface, although we do not anticipate it to be significantly so. We do not consider it likely that any sites of high archaeological significance are located within this area as it has sandy soils through which artefacts move, and the surface has been extensively disturbed through grazing and clearing. However, cautionary excavations have been recommended to confirm this model and develop appropriate salvage techniques.

The second pattern of archaeological site distribution more reflects patterns found in the sand ridges to the north extending from Cobaki Lakes north to the Coolangatta Airport. An extensive scatter of cultural material, including a diversity of artefact types on diverse raw material and estuarine shells, were found throughout this area. Due to development works much of this material has been disturbed. Nevertheless, the pattern identified indicated that the sand ridge was a place that was used by Aboriginal people for a variety of tasks, including extracting the resources of Cobaki Lake, and the wetlands encompassed by the sand ridge. It is clear that not all of the area initially predicted as having cultural material will have that potential. Field inspection revealed that the centre of the ridge is low and frequently inundated. It has been drained in the past, and has possibly been cleared and levelled.

A programme of systematic excavation (on the sand ridge) would provide a more comprehensive understanding of the patterns of cultural distribution, and ensure appropriate management strategies can be implemented (Figure 28).

Our predictive model for the Sand Ridge concludes that the general distribution of artefacts on the surface represents a reflection of the sub-surface distribution and content of cultural material. Visible on the surface are single artefacts and artefact/shell scatters. Sub-surface investigations would likely find similar evidence, although in moderately higher quantity. Due to the level of acidity in the soil, caused by an underlying layer of peat and the proximity of a fluctuating water table, it is unlikely that any burials will be found.

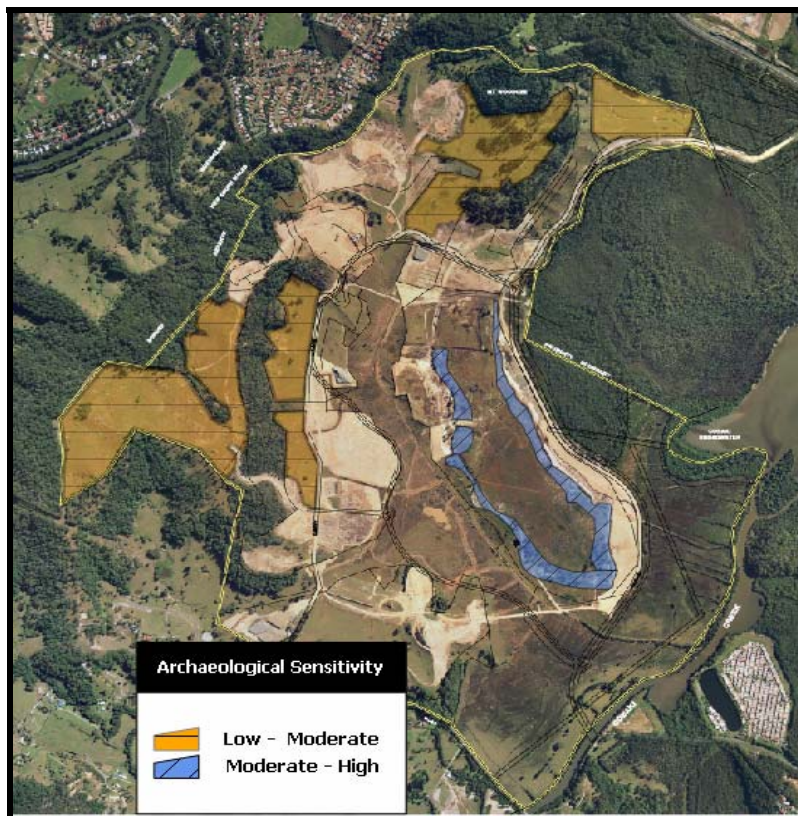


Figure 27: Revised model of the archaeological sensitivity.

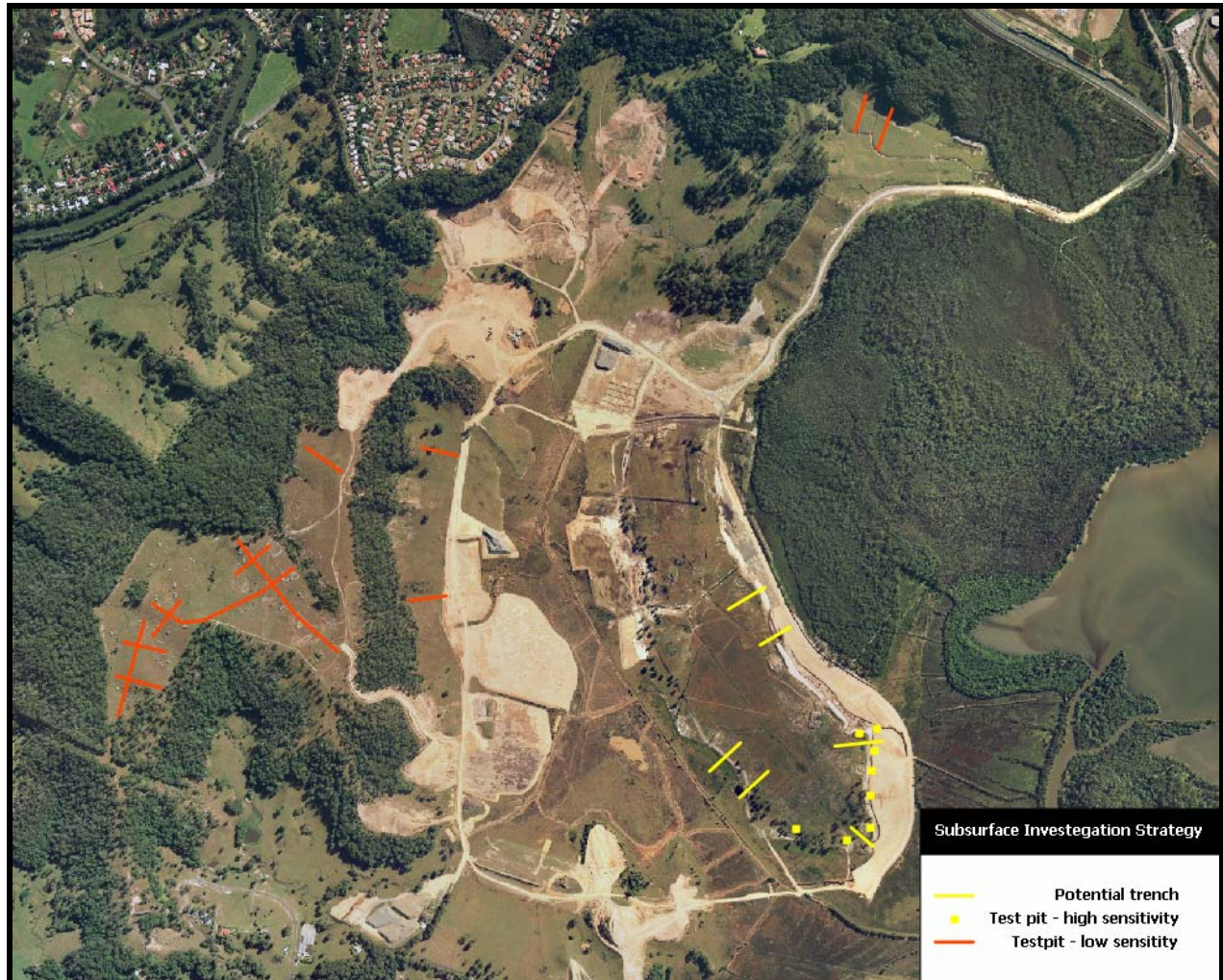


Figure 28: Sampling model for test pits

5. RECOMMENDATIONS

The following recommendations are based upon:

- the desktop study (Sections 4.1,4.2)
- assessment of aerial photography (Figure 2)
- preliminary field inspection (Section 4.5)

These recommendations are informed by the following:

- The Subject Lands have already had two archaeological surveys undertaken on it, and no archaeological sites were found during those surveys.
- The Subject Lands have been granted development consents and earthwork approvals, and significant earthworks have already commenced. The current application for modifications does not alter the footprint.
- Much of the Subject Lands have been developed for agriculture prior to the current development. Extensive areas of the site have had significant disturbance, in some cases more than once. Disturbance includes tree clearing, the excavation of numerous drainage ditches and draining of the marshlands, dam construction, ploughing and cropping, grazing, and sand mining or quarrying. Erosion has occurred on cleared hill slopes. In some cases more than one type of disturbance has been undertaken on the land.
- Significant subsurface archaeological sites have been found in sandy areas adjacent to the Subject Lands.
- Significant areas of the site will not be disturbed, or will have minimal disturbance. In the event that heritage values remain in these areas, they will not be impacted by development activities.
- Extensive consultation with Traditional owners
- Leda Manorstead recognises that there are existing concerns of the Aboriginal community about the heritage values of the Subject Lands. They recognise that there may be other heritage values besides archaeological ones, and that ongoing consultation with the Aboriginal community is important.

It is intended that these recommendations provide the founding principles on which the Preliminary Cultural Heritage Management Plan submitted with this document is based.

Recommendation 1

It is recommended that all effort must be taken to avoid any impacts on Aboriginal cultural heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the proponent and the Aboriginal Community.

Recommendation 2

It is recommended that a Cultural Heritage Management Plan be developed for the Subject Lands, to be implemented by agreement between the Developer and the Aboriginal Community. This plan will cover issues such as:

- general principles of cultural heritage management to be adopted;
- management procedures;
- responsibilities of the Developer and the Aboriginal community;
- induction training for staff of the developer;
- monitoring by the Aboriginal community;
- remuneration for Aboriginal persons assisting in identifying cultural heritage;
- cataloguing and storing of cultural material;
- employment opportunities for the Aboriginal community;
- dispute resolution procedures; and
- costs.

Recommendation 3

It is recommended that the management processes contained in the Cultural Heritage Management Plan submitted with this report be adopted until such time as a more detailed management plan can be drafted after further consultation with the Aboriginal community. In particular, the processes and principles identified in the following sections should be adhered to:

- Section 4.1 – Principles of Cultural Heritage Management
- Section 8.1 – Responsibilities of the Developer
- Section 12 – Specific Recommendations
- Section 13 – General Recommendations
- Appendix 4 – Human Remains Policy

Recommendation 4

It is recommended that consultation should be continued with the Traditional Owners in accordance with the “*Draft Interim Community Consultation Guidelines for Applicants*” (2005) to ensure that any known cultural heritage within the Subject Lands is identified. Where new cultural heritage is identified, it will be dealt with in accordance with the management principles contained in the Cultural Heritage Management Plan.

Recommendation 5

It is recommended that contractors or employees of the Developer engaged in earthworks or subsurface disturbance on the Subject Lands be given induction training on how to identify Aboriginal cultural material and why it is important that it is preserved.

Recommendation 6

It is recommended that, in areas identified as moderate to high archaeologically sensitive areas in Figure 27, no surface or subsurface disturbance be undertaken until the excavations can be completed in accordance with the Excavation Strategy in Appendix A. The Aboriginal community should be consulted to develop appropriate ongoing management strategies to be implemented during construction.

Recommendation 7

It is recommended that, in areas identified as low to moderate archaeologically sensitive areas in Figure 27, excavations should be completed in accordance with the Excavation Strategy in Appendix A. The Aboriginal community should be consulted to develop appropriate ongoing management strategies to be implemented during construction.

Recommendation 8

It is recommended that an appropriate Keeping Place for any cultural material not to remain in situ within the Subject Lands be identified in accordance with the wishes of the Aboriginal community.

Recommendation 9

It is recommended that a comprehensive survey of the Environmental Protection Areas be undertaken prior to any revegetation, clearing or other works in these areas. This survey should be included as one of the Specific Recommendations in Section 12 of the CHMP.

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Appendix A: Excavation Strategy



EVERICK
Heritage Consultants Pty Ltd

EXECUTIVE SUMMARY

This document outlines the investigative methods that Everick proposes to use to establish the archaeological and cultural record of Cobaki Lakes. It is proposed that a number of test pits (small archaeological excavations) are undertaken in areas previously being identified as likely to contain cultural material. It is proposed that these investigations will be undertaken by members of the Aboriginal community under the guidance of Everick's archaeologists. Lab based analysis will then be undertaken to establish as much information as possible about the artefacts and their context.

The test pit strategy has been designed not just to search for and collect artefacts, but be undertaken in a controlled and systematic manner so that we can add to the 'story' of Aboriginal occupation of Cobaki Lakes, and ensure that important cultural information is retained for future generations. It is proposed that after analysis of the artefacts that they are handed over to the Tweed Byron Aboriginal Land Council for safe keeping until such time as agreement can be reached as to how they should best be stored.

In this Excavation strategy, we have provided a brief summary of our past archaeological assessment, including a summary of the development plans, the environment and past archaeological assessments of the land. To assist the Aboriginal participants in understanding the various options we have open to us for conducting further investigations, we have provided an overview of the different relevant archaeological techniques and their strengths and weaknesses. We then detail our proposed excavation methods as summarised below.

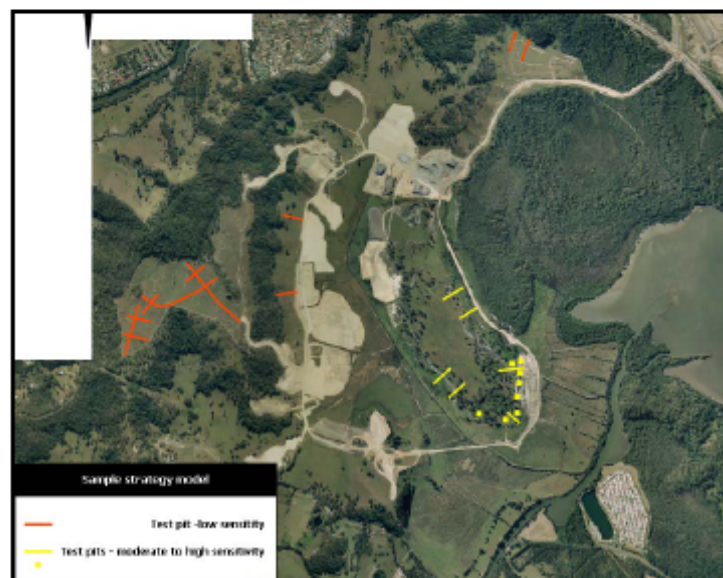


Figure 1 – Aerial view of Cobaki Lakes test excavation strategy



We propose to request the assistance of 4 - 8 Aboriginal community representatives for the Test Pitting, and an additional 4 participants in an artefact analysis workshop.

Back Paddock and Front Paddock Strategy

We propose adopting a sampling strategy based on 20 m x 20 m quadrants (Figure 16). Depending on the time and amount of cultural material, we proposed to excavate between 10 and 20 quadrants. These quadrants will be strategically placed to sample different topographic areas – on the top of ridges, ridge slopes, gullies, saddles etc. Within each square, two 1.5 m trenches will be dug with an excavator (Trenches A and B). Each excavation unit will be 5 cm deep. The deposit will be excavated through the upper sandy-clay layer to an estimated maximum depth of 50 cm, although in most cases it will be less. The deposit will be sieved through 6mm and 4mm mesh sieves. If artefacts are encountered, mechanical excavation will cease and hand excavations using 50 x 50 cm test pits will be undertaken.

If no artefacts are encountered, two additional excavation trenches will be made at right angles to the first (Trenches C and D). This approach offers efficient ground covering and good control. All artefacts will be collected and their stratigraphic context noted. A detailed photographic record, plans and sections will be made where appropriate. All test pits will be 50 x 50 cm, and will be excavated in bucket spits for close control. All excavated deposits will be sieved through 6mm and 4mm mesh sieves. Where appropriate, soil and charcoal samples will be collected. Artefacts collected will be weighed and measured. Their geological character will be described. A selection of artefacts will be examined in detail for usewear and technological characteristics. Each square will be mapped and placed within the broader environmental context.



Figure 2 - Example of proposed Back Paddock Excavation Strategy



Sand Ridge Strategy

We propose a flexible excavation strategy over the sand ridge that is capable of producing the maximum amount of information in the time we have. We propose to have a team of 4-6 people excavating the Sand Ridge for two weeks. During this time, the sand ridge investigation will be conducted in four parts.

1. The first part will be the collection and recording of all artefacts that are exposed on the surface as a result of the development activities (Figure 17). In doing so we will prevent them from being damaged or pushed deeper into the soil and lost.
2. The second part will be a series of auger samples, which will be undertaken in a grid pattern. These will be placed over the sand ridge to determine the extent, depth and character of the subsurface shell distribution. The location of the excavation squares will be determined on the basis of the auger-hole results.



Figure 3 - Example of Sand Ridge Excavations Stage 2 - Auger Strategy

3. The detailed subsurface investigation will be conducted by using 1.0 x 1.0 m excavation pits. These pits will be placed at areas selected to obtain information about the subsurface character of the cultural material – particularly its depth, character and age. The pits will be excavated in bucket spits (approximately 2 cm thick). All sediment will be sieved in 6mm and 4mm sieves. Artefacts collected will be weighed and measured. Their geological and technological character will be described, and a sample examined for use wear.

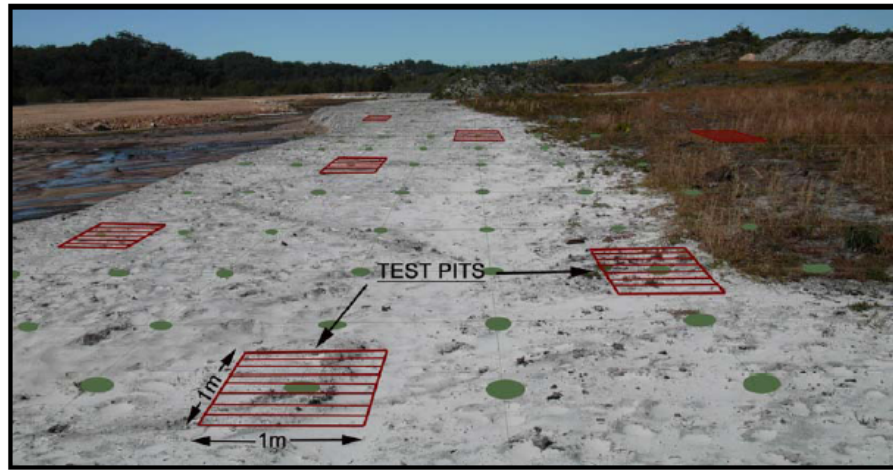


Figure 4 - Sand Ridge Excavation Strategy: Example of Stage 3 Test Pitting

4. As a precautionary measure, a number of mechanised test trenches will be made through the site - in areas that have not been designated as parkland - to further determine the character of the cultural material throughout the ridge. These trenches will be 1.5 metres wide and excavated in 5 cm spits and all the sand material will then be sieved.

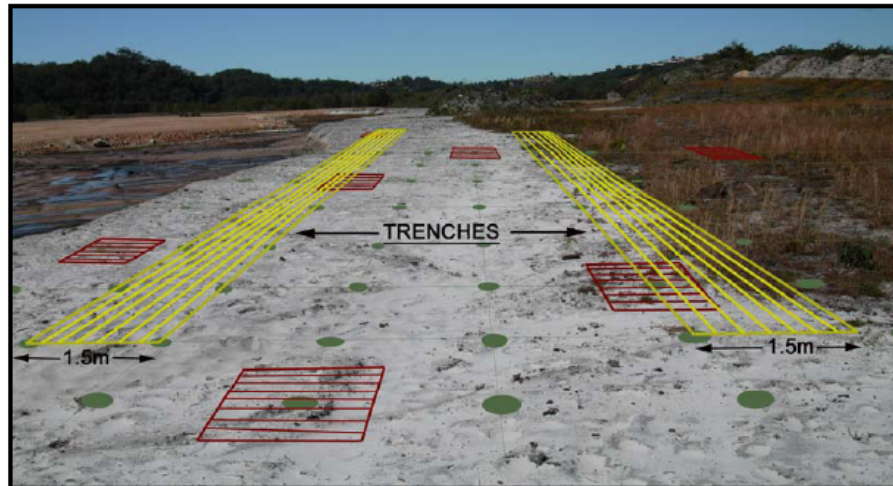


Figure 5 - Sand Ridge Excavation: Example of Stage 4 Trenching

We advise that a more detailed analysis of the Cobaki Lakes site from an archaeological perspective is contained in our Preliminary Assessment (June 2008) which has been distributed to the registered Aboriginal respondents and other stakeholders. Should you require an additional copy, please contact us.

Appendix B: Index of Community Consultation File

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Appendix C: Correspondence Regarding Monitoring



EVERICK
Heritage Consultants Pty Ltd

PO Box 146 RED HILL 4059
47 Arthur Terrace RED HILL 4059
t: 07 3368 2660 f: 07 3368 2440
everick@bigpond.net.au
www.everick.com.au
ABN 78 102 206 682

Our Ref: EV.78

1st August 2008

Ms Kym Yuke
Gold Coast Native Title Group
PO Box 1233
COORPAROO DC QLD 4151

Dear Kym,

**RE: CULTURAL HERITAGE ASSESSMENT REPORT FOR
PROPOSED COBAKI LAKES RESIDENTIAL DEVELOPMENT**

I refer to your conversation on 17 June 2008 with our Project Manager Tim Robins, at which time you requested that if Everick were to recommend monitoring that we provide some academic comment on the past success of such procedures on identifying cultural heritage. During this conversation you expressed reservations over the use of monitoring as an effective means of identifying cultural material on a given site.

We are sympathetic to this view, and from the outset note the limitations of monitoring. It is not intended that monitoring would be the only method of archaeological investigation. However, it would be remiss of us not to consider the benefits that monitoring may have to the project, some of which we have outlined below.

We advise that as part of producing a methodology for the project, Everick has developed a predictive model of archaeologically sensitive areas in which further investigation is warranted. Based on the sensitivity of an area, Everick recommends using a suite of methods to identify and / or recover cultural heritage items. As well as sub-surface testing in some areas, monitoring during earthworks has been identified as a method that has potential value.

Generally, monitoring development sites can provide a way of identifying and recovering cultural heritage features and artefacts that may have been undetectable by surface field surveys. Monitoring acts as a further safeguard for any artefacts that may have been missed. If any archaeological evidence is detected during monitoring, we generally advise that clearing and / or earthworks should cease pending advice from the DECC and Traditional Owners.

No archaeological survey is ever likely to uncover all the cultural heritage remains in an area and test pits will not necessarily give a representative sample of cultural heritage materials (Burke & Smith 2004:257). Additionally, due to time constraints and the cost factor there are insufficient resources to conduct endless test pits.

As we have previously informed you, under current Development Approvals, earthworks on parts of Cobaki Lakes are well under way. These Approvals were granted following archaeological studies that were undertaken by other consultants. Due to the high levels of disturbance over much of the Subject Lands there is little likelihood that undisturbed Aboriginal archaeological sites or objects will exist on previously disturbed / cleared land or eroded surfaces. We suggest that in such situation the primary goal of monitoring would be to



collect and preserve any and all artefacts or features of cultural heritage significance exposed in the course of work in the project area.

Section 3.17 of National Parks and Wildlife Service Guidelines for Archaeological Survey Reporting (1997) accepts that monitoring of areas during the construction / earthworks stage is valid when used in conjunction with prior sub-surface testing, and may be necessary in situations where there is the possibility of burials.

Attenbrow (1992:4) reports from Cumberland Street in Sydney how “*archaeologists monitoring the construction excavations after their archaeological excavations were completed...noticed shell exposed on a construction site during bulldozing operations by the building contractor.*” Some archaeologists even conduct Cultural Resource Management salvage excavations using heavy equipment, such as front-end loaders, “*to scrape or blade a site surface in order to locate and recover possible features and artefacts*” (Hester et al. 1997:75; see also Condon & Egan 1984). While this is not actually implied here, in any case the recommendation that monitoring take place during earthworks for subsurface material is consistent in reports. For example:

From Collins’ report (2006:13) Byron LALC expressed no objections to a development proposal at Yelgen, NSW where “*Land Council representative/s are engaged to monitor all development-related clearing and earthworks. Owing to concerns for potential traditional burials, Bundjalung Elder John Roberts advised that it would be prudent for Aboriginal monitors to be in attendance during the course of any deep excavations that may be necessary on these landforms.*”

In an earlier study of the Yelgen area Davies (1994:28) assessed forested spurs towards the northern boundary to have archaeological potential and recommended Aboriginal construction monitoring. In the absence of wide area excavation, Collins (2006:33) assessed that “*it is extremely unlikely that any dispersed human burials (if they were ever present and still survive) or isolated artefacts would be intercepted during a subsurface archaeological investigation, and Aboriginal monitoring of development-related earthworks thus offers the only real chance of detecting these types of sites.*”

A report conducted by Navin Officer Heritage Consultants (2006:31) notes that “*beyond the scope of archaeological sampling, the potential to encounter background artefacts within the context of development related ground disturbance will always remain. While the intrinsic scientific value of any recovered artefacts does not, in general, outweigh the expense of conducting the monitoring however, low density distributions of artefacts are a current subject of interest by some heritage practitioners and DEC policy regarding this issue may change in the future. The monitoring of construction related ground works by Aboriginal groups is now increasingly practiced.*”

Kuskie & Clarke (2006:48-49) suggest that “*Subsequent to testing, the proponent may be in a position to implement one or a combination of strategies...Monitoring is the primary strategy for managing the possible occurrence of Aboriginal skeletal remains. Monitoring for the presence of shell and stone artefacts is also often of value to the aboriginal community who may be seeking to identify and salvage material that was not visible on the surface during a preliminary study. Monitoring may represent a suitable strategy as a final salvage measure after Development Consent is granted.*”



EVERICK
Heritage Consultants Pty Ltd

PO Box 146 RED HILL 4059
47 Arthur Terrace RED HILL 4059
t: 07 3368 2660 f: 07 3368 2440
everick@bigpond.net.au
www.everick.com.au
ABN 78 102 206 682

In a report by Barry & Wheeler (2007:44), one outcome that emerged as a result of consultation with the Aboriginal community, during development at Moruya, NSW, was that *“Cobowra LALC has recommended they be invited to monitor development earthworks in order to salvage Aboriginal artefacts that are culturally significant to their community.”*

Ngarang-Wal Cultural Heritage Management Group and Turnix Pty Ltd (2005:8) undertook a cultural heritage survey of the proposed Tugun Bypass from Steward Road to Kennedy Drive in August 2005. One of the recommendations made in the report was *“that because of the possibility that indigenous burials may be encountered during roadworks in this area an agreement for monitoring during initial earthworks should be developed and implemented.”*

OzArk (2006), in Stage 2 of the CHMP for Tugun Bypass C4 route, also included archaeological management recommendations comprising test / salvage excavation and monitoring.

These are but a few Cultural Heritage Assessments that document the practice of appointing Monitors to carry out observations during excavations and sub-surface disturbance activities on the Site.

We note that no decision has been made as to whether monitoring will be appropriate at this stage. This is something that will be decided after extensive consultation with the Aboriginal community and the relevant government authorities. I should also state that it is our recommendation that monitoring be limited to the sand only areas of the site. In these areas the contrast between artefacts and sand, or more importantly, between bone and sand, makes monitoring a viable approach to supplement other techniques.

If you have any further queries then please contact us.

Yours faithfully,

Dr Richard Robins
Archaeologist
Everick Heritage Consultants



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2005 Tugun Bypass Indigenous Cultural Heritage Visit, 1 August, 2005, a report to Main Roads South Coast Hinterland by Turnix Pty Ltd for Ngarang-Wal Cultural Heritage Management Group (Turnix report 68).

Cultural Heritage Management Plan



Relating to COBAKI LAKES DEVELOPMENT, KINGSCLIFF, NSW

To be implemented by agreement BETWEEN:

LEDA MANORSTEAD PTY LTD

AND

THE TRADITIONAL OWNERS

Prepared by **Everick Heritage Consultants Pty Ltd**

PO Box 146

Red Hill, Qld, 4059

Ph: (07) 3368 2660

Fax: (07) 3368 2440

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1. DETAILS

Date: 22 February, 2008

Parties

Name LEDA MANORSTEAD PTY LTD (“Developer”)

Short form name Leda Manorstead
Notice details

Reg Van Rij
Regional Manager – Residential
Leda Developments Pty Ltd
Level 1, 46 Cavill Avenue
SURFERS PARADISE QLD 4217
Ph: 07 5570 5500
Fax: 07 5570 5050
Email: ledadev@ledagc.com

Name TWEED BYRON TRADITIONAL OWNERS (“Traditional Owners”)

Short form name To be advised
Notice details

2. RECITALS

Application has been made by Leda Manorstead Pty Ltd (the “Developer”) to the Director General, Department of Planning for consideration of a Concept Plan for the Cobaki Lakes Development Area as a residential community and associated retail, commercial, and recreation amenities. This Cultural Heritage Management Plan (“CHMP”) sets out the principles and processes the Developer proposes to adopt for the identification, protection and management of Aboriginal Places and Aboriginal Objects within the Development Area. It represents an acknowledgement by the Developer of their responsibility to protect Cultural Heritage and a commitment to consult widely with the Aboriginal community on how this should be achieved.

The terms of this CHMP have been drafted to reflect the findings of Everick Heritage Consultants Pty Ltd in their Preliminary Cultural Heritage Assessment of the Development Area. Their methodology and findings can be found in the report submitted

with this CHMP. In accordance with this assessment, this CHMP makes general recommendations for the whole of the Development Area and then allows for more detailed surveying and possible monitoring processes in an area identified as being of a sensitive nature. For ease of distinction, the Development Area has been categorised into two areas (Appendix 1).

Firstly, there is the Disturbed Area: an area where there is little likelihood of any Aboriginal Objects being harmed during the course of construction due to the heavily disturbed nature of the land from past land use. This CHMP recommends a series of general Induction programs for Staff conducting surface and sub-surface disturbance within the Development Area so that if any Aboriginal Objects are unearthed they stand a better chance of being identified and protected. Accordingly, this CHMP puts in place a process for stopping work, cordoning off any Finds and ensuring the Traditional Owners and specialists are consulted.

Secondly, there is the Archaeologically Sensitive Areas: areas marked in Appendix A as being either of Low to Moderate Archaeological Sensitivity or Moderate to High Archaeological Sensitivity. This CHMP applies the same processes as are applicable in the Disturbed Area, but also recommends additional surveying procedures are undertaken by an independent heritage advisor and the Traditional Owners. It also allows for monitoring by the Traditional Owners should it be deemed appropriate by the Parties after the further survey has been completed.

The Developer acknowledges that more consultation is needed with the Traditional Owners before the terms of this CHMP can be finalised. At the time of the drafting this Document, the consultation process between the Developer and the Traditional Owners is ongoing. It is envisaged that new agreements, in the form of a CHMP or otherwise, will replace this CHMP as Project Application's are lodged with the Department of Planning. These new agreements will be drafted following the principles outlined in this CHMP, after further consultation with the Traditional Owners in accordance with the Department of Environment and Climate Change's Draft *'Interim Community Consultation Requirements for Applicants'* (2005); a process which is already well underway.

3. OPERATIVE PROVISIONS

3.1 Definitions

“Aboriginal Co-ordinator(s)” means the person or persons nominated by the Traditional Owners under Section 6 of this CHMP and whose responsibilities are outlined in Section 6.2.

“Aboriginal Cultural Heritage” or **“Cultural Heritage”** means Aboriginal Objects and/or Aboriginal Places.

“Aboriginal Cultural Heritage Site(s)” or **“Site(s)”** means areas exhibiting one or more attributes of Aboriginal Cultural Heritage.

“Aboriginal Cultural Heritage Survey” means any survey of the Cultural Heritage in the Development Area undertaken by the Developers, in conjunction with the Traditional Owners.

“Aboriginal Cultural Heritage Risk Assessment” means a risk assessment undertaken by the Developers in accordance with the Project Area Agreement.

“Aboriginal Place” has the same meaning as that provided in Section 5 of the *National Parks and Wildlife Act 1974* (NSW).

“Aboriginal Object” has the same meaning as that provided in Section 5 of the *National Parks and Wildlife Act 1974* (NSW).

“Archaeologically Sensitive Areas” means the areas likely to contain Aboriginal Cultural Heritage as identified in *Appendix 1*.

“CHMP” means this Cultural Heritage Management Plan, all Appendices to this CHMP and any subsequent amendments to this CHMP from time to time as agreed by the Parties.

“Construction” means any surface and sub-surface disturbance during the Construction works undertaken by the Developer within the Development Area.

“Contractor” means a contractor, including Sub-Contractors, employed by the Developer to provide Construction services for the Development.

“Cultural Heritage Advisor” means a person or organisation, independent from the parties, with specialised archaeological and/or anthropological training and appointed under Section 10 of this CHMP.

“Cultural Heritage Contact” means a person or persons nominated by the Developer to act as the main point of contact between the Developer and the Traditional Owners.

“Cultural Heritage Management Protocols” are the specific recommendations for the management of each Aboriginal Place and Aboriginal Object which form part of the Cultural Heritage Survey Report (*Appendix 2*).

“Cultural Heritage Team” means the person or persons appointed by the Traditional Owners as Monitor during Construction of the Development at the Sites identified in this CHMP.

“**Cultural Heritage Survey Report**” means a report prepared by the independent Cultural Heritage Advisor in accordance with this agreement.

“**DECC**” means the New South Wales Department of Environment and Climate Change.

“**DECC Guidelines**” means the DECC draft *Interim Community Consultation Requirements for Applicants* (2005).

“**Development**” means the Cobaki Lakes Development to which this CHMP applies

“**Development Area**” means the area detailed in *Appendix 1* and referred to in the **Recitals** on which Construction and associated works are taking place.

“**Developer**” means Leda Manorstead Pty Ltd, including All Staff, and such persons who shall come to own, lease, manage or otherwise exhibit control over the use of land within the Development Area.

“**DOP**” means the New South Wales Department of Planning.

“**Exclusion Zone**” means the area, not less than thirty (30) metres, around an Aboriginal Cultural Heritage Site that the Developer may not enter for the purposes of any Construction until appropriate arrangements for the management of the Site have been made in accordance with this CHMP.

“**Find**” means an Aboriginal Place or Aboriginal Object.

“**Human Remains**” does not include –

- a) human remains buried under the authority of a law of the Commonwealth or any State or Territory; or
- b) human remains in or from a place recognized as a burial ground for internment of remains as referred to in paragraph (a).

“**Induction**” means Aboriginal Cultural Heritage induction training sessions developed by the Traditional Owners or its representatives in consultation with the Developer and presented by persons with knowledge and experience in Aboriginal Cultural Heritage and the obligations imposed by a CHMP.

“**Monitor**” means a representative of the Traditional Owners who shall perform the functions of a Monitor as outlined in Section 5 and *Appendix 2*, and when appropriate will work as part of a Cultural Heritage Team.

“**Monitor Roster**” means the roster developed in order to effectively monitor the activities to be performed by the Developer in carrying out the Construction as set out in *Appendix 6*.

“**Parties**” means the Traditional Owners and the Developer.

“**Project Applications**” means Project Applications lodged with the DOP involving Construction within the Development Area under the Statutory framework of Part 3A

Major Projects in the *Environmental Planning and Assessment Act 1979* (NSW).

“Project Construction Manager” means the on-site manager appointed by the Developer to oversee all matters of Aboriginal Cultural Heritage.

“Staff” means all employees, Contractors and sub-contractors of the Developers involved in the Development.

“Traditional Owners” means Aboriginal persons entitled under the laws and departmental guidelines of New South Wales to be consulted on the management of Aboriginal Cultural Heritage and who are a Party to this CHMP.

3.2 Rules for Interpreting this Document

The following rules also apply in interpreting this CHMP, except where the context makes it clear that a rule is not intended to apply:

- (a) a singular work includes the plural, and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) if an example is given of anything (including a right, obligation or concept), the example is for clarity and does not limit the scope of that thing;
- (d) the word “agreement” includes an undertaking or understanding, whether or not in writing; and
- (e) subject to this clause, the Appendices, whether or not completed at the dates of this CHMP will be considered part of this CHMP for all purposes.

4. PRINCIPLES OF CULTURAL HERITAGE MANAGEMENT AND PURPOSE OF THIS CULTURAL HERITAGE MANAGEMENT PLAN

4.1 Principles of Cultural Heritage Management Plan

The principles of Cultural Heritage management in this CHMP are:

- (a) a practice of respect, understanding and value for Aboriginal traditions and Aboriginal Cultural Heritage should be conveyed to relevant employees, agents, consultants, Contractors and sub-contractors of the Developer through Induction training;

- (b) Aboriginal traditions should be respected and Aboriginal Cultural Heritage should be conserved and protected;
- (c) the Developer accepts that Construction has the potential to damage Aboriginal Places and Aboriginal Objects. Consequently, it is necessary to implement a series of actions and procedures to avoid or minimise the potential impact of Construction on these Aboriginal Places and Aboriginal Objects; and
- (d) the Developer accepts that particular care will be needed for Construction within the Archaeologically Sensitive Areas, requiring monitoring and special Induction training.

4.2 Purpose of this CHMP

With the Cultural Heritage management principles detailed above in mind, this CHMP seeks to:

- (a) encourage direct involvement of the Traditional Owners in the development and implementation of this CHMP and future agreements to manage Cultural Heritage within the Development Area;
- (b) provide an acceptable framework for implementing CHMP's or other agreements to identify and protect Cultural Heritage as part of future Project Applications to be submitted to the DOP for each stage of the Development;
- (c) set up a process through which Areas identified in *Appendix 1* are the subject of Traditional Owner consultation and further archaeological investigation as soon as possible;
- (d) ensure that, as much as possible, any items of Aboriginal Cultural Heritage that are unearthed during Construction are identified and appropriate procedures are in place to ensure that they are protected;
- (e) ensure direct involvement for the Traditional Owners in all management actions deemed necessary to manage Aboriginal Places and Aboriginal Objects located during Construction within the Development Area;

- (f) allow the Developer to fulfill its commercial and corporate obligations and objectives while protecting or otherwise managing Aboriginal Cultural Heritage which exist in the Development Area;
- (g) meet the Developer's obligation imposed on the Developer by the DOP and DECC; and
- (h) provide a strong foundation for an ongoing, open and mutually beneficial relationship between the Parties.

4.3 Details of Prior Studies conducted in the Development Area

An Assessment has been conducted by Everick Heritage Consultants, using fieldwork and the results of past studies form the basis of this CHMP (Robins R. 2008 Preliminary Cultural Heritage Assessment for Leda Manorstead Pty Ltd, Unpublished report).

In 1990 the University of Queensland Archaeological Services Unit carried out a survey and prepared an Archaeological Report in respect of the Cobaki Lakes site (An Archaeological Assessment of a Proposed Development Site at Cobaki, South Tweed Heads NSW, H. J. Hall, Director, University of Queensland Archaeological Services Unit, Report No. 148, March 31, 1990). That report acknowledges that clearing, farming and sand mining together with land reforming has been extensive and few places within the study area have been unaffected by European cultural impacts of some kind. The report states that nothing relating to past Aboriginal cultural heritage was found during the survey.

Lilley conducted an archaeological survey of the Subject Lands in 1981. He found no sites of Aboriginal Cultural Heritage during his survey. However, he did note that this may have been due in part to poor surface visibility due to dense vegetation in many areas (Lilley 1981:5). Since 1981 there has been extensive clearing and earthworks in preparation for use of the land for agriculture and then as a residential development.

5. OBLIGATIONS OF THE TRADITIONAL OWNERS

In implementing this CHMP, the principles that the Developer will apply when seeking agreement with the Traditional Owners will be on such terms as to encourage the Traditional Owners to:

- (a) where employed by the Developer; work diligently to assist with the implementation of this CHMP and enable it to operate successfully;
- (b) provide any reasonable information required by Developer to implement this CHMP;
- (c) provide information as required by Monitors to carry out their obligations under this CHMP;
- (d) co-operate with the Developer to ensure that it is able to go about its activities in a timely and efficient manner;
- (e) assist the operations of the Developer's Staff where they are acting in accordance with this CHMP;
- (f) nominate and appoint one or more of their people with the appropriate skills and experience to act as Aboriginal Co-ordinator(s); and
- (g) ensure that any plans given to them by the Developers are used solely for the effective implementation of Cultural Heritage Monitoring procedures, and are not given to any person or entity not a Party to this CHMP.

6. ABORIGINAL CO-ORDINATOR(S)

The Traditional Owners will be requested to select a member or members of their group with the appropriate experience and skills to act as the Aboriginal Co-ordinator(s) during any Cultural Heritage Monitoring and Construction.

6.1 The role of the Aboriginal Co-ordinator(s)

The Aboriginal Co-ordinator(s) are intended to be the point of contact between the Project Construction Manager and the Cultural Heritage Team. If there is no conflict with the Aboriginal Co-ordinator's responsibilities, the Aboriginal Co-ordinator(s) may undertake monitoring activities.

6.2 The responsibilities of the Aboriginal Co-ordinator(s)

Aboriginal Co-ordinator(s) may, by prior agreement between the Parties, be responsible for:

- (a) nominating suitable Monitors to form Cultural Heritage Teams (when required);
- (b) ensuring that an appropriate Monitoring Roster for Cultural Heritage Teams is drawn up and implemented through consultation with Project Construction Manager;
- (c) ensuring the Traditional Owners have a copy of the Roster and have nominated Monitors for the following week;
- (d) ensuring that the Cultural Heritage Teams are on site and able to work in an effective manner;
- (e) ensuring that Monitors are aware of their responsibilities and tasks under this CHMP;
- (f) co-ordination of Induction programs for the relevant Developer's Staff and Contractors working on the Development to ensure they have basic skills in identifying Cultural Heritage, understanding the rationale for the CHMP and understanding the role of the Cultural Heritage Team;
- (g) ensuring that all breaches of this CHMP are managed in accordance with the agreed-upon breach procedures;
- (h) keeping an accurate record of all work undertaken by the Cultural Heritage Team, including the filling out of any Clearance Sheets, as contained in *Appendix 6*, where appropriate; and
- (i) making prompt decisions with respect to the nature of detected surface or sub-surface Aboriginal Places and Aboriginal Objects, and determining culturally appropriate management measures.

6.3 Powers of Aboriginal Co-ordinator(s)

For areas agreed upon by the Parties under this or any subsequent agreement, the Aboriginal Co-ordinator(s) may have the authority to stop machinery if that machinery is

encroaching into an Exclusion Zone or Aboriginal Place where it has not previously been agreed that it may do so, or that the machine is likely to cause damage to an Aboriginal Object or Aboriginal human remains.

7. CULTURAL HERITAGE MONITORS

7.1 Powers of Monitors

For areas agreed upon by the Parties under this or any subsequent agreement, the Monitors may have the authority to stop machinery working if that machinery is encroaching into an Exclusion Zone or Aboriginal Place where it has not previously been agreed that it may do so, or that the machine is likely to cause damage to Aboriginal Cultural Heritage.

7.2 General Monitoring Procedures

Monitoring may be required from time to time during activities within the Development Area. Areas to be monitored are to be negotiated between the Traditional Owners and the Developer prior to Construction taking place and may include, if appropriate, all or part of the Archaeologically Sensitive Areas identified in *Appendix 1*.

The general monitoring procedures contained in *Appendix 2* will provide the basis for negotiations between the Parties as to the monitoring procedures to be applied during the Construction works.

The Monitor may be authorised by the Traditional Owners to make binding decisions on-site when dealing with Cultural Heritage that directly affects the Development, subject to any applicable statutory requirements.

The general conditions of employment for Monitors contained in *Appendix 3*, will provide the basis for negotiations between the Parties as to the conditions of employment for Monitors. If Monitors are unable to perform the tasks agreed upon the Traditional Owners will be requested to nominate replacement Monitors for any unsuitable Monitors within twenty-four (24) hours.

8. RESPONSIBILITIES OF THE DEVELOPER

8.1 General Responsibilities

The Developer undertakes to apply the following practices in implementation of this CHMP:

- (a) provide progress reports to the Aboriginal Co-ordinator(s), at a frequency as agreed upon by the Parties;
- (b) ensure that breaches of this CHMP are managed in accordance with the breach procedures as agreed upon by the Parties, a proposed model of which is provided in *Appendix 5*;
- (c) provide the Traditional Owners with relevant drawings of the proposed Developments as soon as practicable;
- (d) keep the Traditional Owners informed as to the progress of the Development;
- (e) work diligently to make this CHMP operate successfully;
- (f) provide resources as necessary for the implementation of this CHMP;
- (g) mark the locations of known Aboriginal Cultural Heritage Sites and the Archaeologically Sensitive Area on working plans of the Development Area and these plans will then be displayed at the site office;
- (h) ensure any Contractors employed for any part of the Development are informed of the roles and duties of all Parties involved with the implementation of this CHMP and comply with the Developer's obligations under this CHMP;
- (i) ensure safety and first aid equipment are available for use by Monitors when required;
- (j) provide workplace health and safety and environmental management induction training to Monitors; and
- (k) adhere to the Specific Recommendations contained in Section 12 of this CHMP.

8.2 Conditions of Employment of Cultural Heritage Monitors & Co-ordinator(s)

The Developer will:

- (a) look to negotiate fair and equitable conditions of employment for Cultural Heritage Monitors and Aboriginal Co-ordinator(s) where their assistance is required; and
- (b) use the general conditions of employment contained in *Appendix 3* of this CHMP as the basis for negotiations between the Parties as to the conditions of employment for Monitors and Aboriginal Co-ordinator(s).

8.3 Induction of Staff on Duties under the CHMP

The Developer will:

- (a) ensure that the Developer's relevant Staff are given an Induction on the Developer's responsibilities under this CHMP and the roles and responsibilities of the Cultural Heritage Team in implementing this CHMP;
- (b) allow sufficient time before Construction commences for this Induction to occur; and
- (c) brief staff, who are unable to attend the Induction or begin work after the Induction process is completed, on Cultural Heritage requirements.

8.4 Induction on Culture and Tradition

The Developer will use all reasonable endeavours to arrange that all persons who are likely to have contact with the Traditional Owners are given appropriate instruction:

- (a) to familiarise all persons with traditions and culture of the Traditional Owners;
- (b) to promote an understanding and respect for the culture and traditions of Traditional Owners;

- (c) to promote an understanding and foster good relationships between members of the Traditional Owners and others; and
- (d) to instill understanding of the principles embodied in this CHMP.

9. COMMUNICATIONS

9.1 Developers Cultural Heritage Contact

The Developer will nominate a person within the organisation as Cultural Heritage Contact who will be the main point of contact between the Developer and the Traditional Owners in relation to the implementation of this CHMP.

9.2 Aboriginal Contacts

The Traditional Owners will be requested to nominate persons, one of whom is the Aboriginal Co-ordinator(s), as the main point of contact between the Traditional Owners and the Developer in relation to the implementation of this CHMP.

9.3 Communication Protocol

Where possible, all communication between the Parties is to occur via the contact people defined in this Section, unless otherwise agreed by the Parties.

10. INDEPENDENT CULTURAL HERITAGE ADVISOR

10.1 Appointment

An appropriately selected and qualified independent Cultural Heritage Advisor will be used to provide advice on issues concerning Cultural Heritage:

- (a) during the Construction within nominated Sensitive Areas or near known Cultural Heritage, if required;
- (b) where there is any conflict or disagreement between the Traditional Owners and the Developer; and
- (c) at other times when agreed by the Traditional Owners and the Developer.

10.2 Cultural Heritage Monitoring

The Cultural Heritage Advisor will facilitate in identifying Cultural Heritage Finds during the proposed Construction in order to identify those Aboriginal Places and Aboriginal Objects requiring management.

The Cultural Heritage Advisor will produce a Cultural Heritage Survey Report for the Parties which will form the basis of decisions regarding the management of Cultural Heritage during Construction. For each Aboriginal Place and Aboriginal Object within the Development Area, the Cultural Heritage Survey Report produced for the Parties should, where appropriate:

- (a) name, describe and identify the location (by GPS co-ordinates) of all Aboriginal Places and Aboriginal Objects;
- (b) document significance and impact assessments;
- (c) outline mitigation and management recommendation for those Aboriginal Places and Aboriginal Objects during Construction;
- (d) confirm the exact location of the Aboriginal Places and possible Aboriginal Objects; and
- (e) outline specific management recommendations for each Aboriginal Place and Aboriginal Object during the Construction works. This may include recommendations detailing mitigation techniques for each identified area. Where agreed by the Parties, these will become the Cultural Heritage Management Protocols and form part of this CHMP or any future agreements that succeed this Plan (*Appendix 2*).
- (f)

10.3 Ratification

The Developer commits that following the Cultural Heritage Survey Report, the recommendations and measures contained therein, will be discussed by the Parties. This discussion will be in a manner to be agreed (e.g. a meeting of some kind that ratifies with the relevant authority, the proposed Construction and any management measures to be taken), and will continue to form part of the consultation process.

Where required by law, the management process agreed upon by the Parties will be submitted to the relevant Government Departmental Bodies for Approval. Any alterations or additional requirements imposed by these Departmental Bodies will be binding on the parties.

11. CONSTRUCTION

Monitoring by a Cultural Heritage Team will be limited to Construction works carried out in the Archaeologically Sensitive Areas or within thirty (30) metres of a Cultural Heritage Find.

For the Construction monitoring work the Aboriginal Co-ordinator(s) will be requested to appoint the Cultural Heritage Team. If agreement cannot be reached between the Traditional Owners as to who should be a part of the Cultural Heritage team then the Developer shall nominate the members of the Team, having regard to the skill and knowledge of the applicants. The number of Monitors will usually comprise of up to a total of two (2) monitors. If during Construction exceptional circumstances arise, the number of monitors may be reviewed by the Parties.

The Aboriginal Co-ordinator(s) may undertake monitoring duties as one (1) of the two (2) Monitors.

12. SPECIFIC RECOMMENDATIONS

The Developer will follow the following recommendations, as recommended by Everick Heritage Consultants, until such time as any new agreement is reached between the Parties about managing specific areas of the Development. The Developer commits that:

- (a) in the areas identified in **Appendix 1** as being ‘Archaeologically Sensitive Areas’ will be further surveyed in order to ascertain the existence or otherwise of any Cultural Heritage. The Developer will consult with Traditional Owners and the Cultural Heritage Advisor in order to seek agreement over whether Monitoring of these Sites will be necessary during Construction work; and

- (b) in the area identified in Appendix 1 as being of ‘Moderate to High Archaeological Sensitivity,’ prior to undertaking any Construction work or disturbing the land in any way, further consultation with the Traditional Owners must take place to develop procedures over how the Cultural Heritage within this area should be managed.

13. GENERAL RECOMMENDATIONS

No Construction activity (by hand or mechanised) is to take place within an Exclusion Zone, without the necessary approval of the relevant authorities. In general, the Developer and its Contractors will use all reasonable endeavours to confine Construction works in accordance with this CHMP.

Where flagging is deemed appropriate, Aboriginal Places and Aboriginal Object will be flagged with an agreed colour of flagging tape. No entry is allowed into areas marked with this coloured tape. This colour must not be used by Developer or their Contractors for any other purpose in relation to the Development.

The Developers acknowledge that further Aboriginal Places and Aboriginal Objects, not already identified, may be discovered during the course of the Construction. These potential discoveries fall into two (2) distinct categories: Aboriginal human remains and sub-surface Aboriginal Places and Aboriginal Objects.

Aboriginal human remains will be dealt with as according to the Human Remains Policy outlined in *Appendix 4*, with special regard to the following principles:

- (a) in all cases suitable dignity is required in the handling of the issue;
- (b) the primary intention of this strategy is to avoid the unnecessary removal or disturbance of the human remains and to allow appropriate Aboriginal people final decision-making powers if the remains should prove to be those of an Aboriginal person; and
- (c) where this is not the case the discovery Site will be deemed a crime scene and Contractor and its contractors will be subject to police direction.

Response to the discovery of sub-surface Aboriginal Places and Aboriginal Objects will be at the discretion of the Cultural Heritage Team in consultation with the Developer, providing it is in accordance with the applicable government approvals. This response is on the basis that the area of discovery is secured, work ceases, and agreed measures are determined by consultation and notification of the respective group, and in all cases if agreement cannot be reached, then the dispute resolution process applies, as contained in Section 15 of this CHMP.

Where Aboriginal Cultural Heritage is detected, Construction in the immediate vicinity of the land containing the detected sub-surface Aboriginal Place, Aboriginal Object or Aboriginal human remains must cease immediately. An Exclusion Zone is then to be agreed upon between the Aboriginal Co-ordinator(s) and the Project Construction Manager, after which Construction may recommence outside that Exclusion Zone.

14. OWNERSHIP OF INFORMATION

The Developer will own all information, reports or other documents generated or compiled in the implementation of this CHMP (“the reports”), except where such information is the property of another person or is already in the public domain.

The Traditional Owners will be requested to provide any information to the Developer, which is required to meet any requirements of law, including for the purpose of applying for any permits, licences, approvals or other authorities required by law for the Development or for the purpose of any programs associated with this CHMP.

Where information generated in the course of implementing this CHMP is of a confidential nature to the Traditional Owners and where the Traditional Owners have informed the Developer of this fact, that information:

- (a) may not be used for any purpose other than in fulfillment of the Parties’ obligations under this CHMP; and

- (b) cannot be supplied to or used by any third Party, or used for any other purpose, other than as required by law, without the express written permission of the Traditional Owners.

The Developer, with the consent of the Traditional Owners, will look to use Traditional names wherever practical and appropriate. Names could be used for streets and parks in the Development Area.

The Traditional Owners must be consulted about the appropriateness and spelling of any language names. The Parties agree that traditional names may be used solely for these purposes.

15. DISPUTE RESOLUTION

15.1 Disputes as to the management of Aboriginal Cultural Heritage

If disputes occur in the course of implementation of this CHMP in relation to the management of Aboriginal Places and Aboriginal Objects, the following principles and procedures will apply:

- (a) wherever possible, issues will be negotiated directly between the Aboriginal Monitor(s) and the Developer's Staff with minimum disruption to Construction;
- (b) failing resolution under (a), an on-site meeting at a time convenient to the Parties, will be convened between the Developer's Cultural Heritage Contact and the Aboriginal Co-ordinator(s) and Monitors;
- (c) if resolution under (b) is not achieved, a meeting of the Developer's Cultural Heritage Contact, and the Aboriginal Co-ordinator(s) and an appropriately selected and qualified independent Cultural Heritage Advisor will be convened on site as soon as practicable to resolve the dispute; and
- (d) if resolution under (c) is not achieved, the Independent Cultural Heritage Advisor will decide on the appropriate course of action, with regard being had to the principles contained in this CHMP and any relevant legislative requirements or government Departmental directions.

15.2 Clearance of decisions of the Independent Cultural Heritage Advisor

Where the Independent Cultural Heritage Advisor is required to make a decision under the power granted to it by Section 15.1(d) of this CHMP, the Parties will sign a Clearance Sheet ratifying the decision of the Independent Cultural Heritage Advisor.

Whether or not the clearance Sheet is signed, the decision of the Independent Cultural Heritage Advisor will be binding on the Parties.

15.3 Dispute as to the Terms or Implementation of this CHMP

Where there is dispute as to the rights and obligations of each Party under the Terms of this CHMP:

- (a) wherever possible, issues will be negotiated directly between the Developer's Cultural Heritage Contact and the Aboriginal Co-ordinator(s) and Monitors; and
- (b) failing resolution under (a), a group meeting between the appropriate representatives of the Developer and the Traditional Owners will be convened to negotiate a resolution to the dispute;
- (c) failing resolution under (b), an independent mediator will be appointed by agreement between the parties to resolve the dispute; and
- (d) the independent mediator will have the power to make binding decisions on the rights and obligations of the Parties under this CHMP.

16. ABORIGINAL EMPLOYMENT AND BUSINESS OPPORTUNITIES

The Developer will in the course of the Development, look to employ members of the Traditional Owners, as is practicable, where they are capable of carrying out in a satisfactory manner the particular work or services required at a competitive price and to the Contractor's usual standards. The Developer will communicate with the Aboriginal Co-ordinator(s), to ensure this takes place.

The Developer will request that the Traditional Owners nominate several people as possible employees to be assessed by the Developer. The Developer will select and offer employment to the person or people who are most suitable to the skill mix requirements of the Developer.

The Developer commits that:

- (a) except as otherwise agreed between the Parties, general workings standards, including rates of pay, hours of work and roster period requirements for Aboriginal employees will be as for other employees; and
- (b) they will consider whether there are areas in which a Aboriginal person(s) or an incorporated Aboriginal body might successfully be employed or contracted for the supply of goods and services; and they will look to provide tenders to these persons or Aboriginal bodies.

17. NOTICES

The Developer will, where practicable, provide any notices, consents or other communication under this CHMP in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax.

18. TERM

This CHMP will start at a date to be agreed upon by the Parties, and will continue until alternative agreements or CHMP's are entered into between the Developer and the Traditional Owners.

19. SAFETY ISSUES

The Developer may not direct the Aboriginal Co-ordinator(s) and/or Monitors to do any act or thing, except in relation to specific issues of workplace health and safety, or other administration issues, as agreed between the Parties from time to time.

The Developer will provide (if required) helmets, safety glasses, hearing protection, safety vests and sunscreen to the Monitors while the Monitors are in the Development Area. The Monitors must supply their own safety boots.

20. COSTING

Costs of the investigation, salvaging and storage of any Aboriginal Cultural Heritage are to be borne by the Developer, including costs incurred by the Cultural Heritage Advisor.

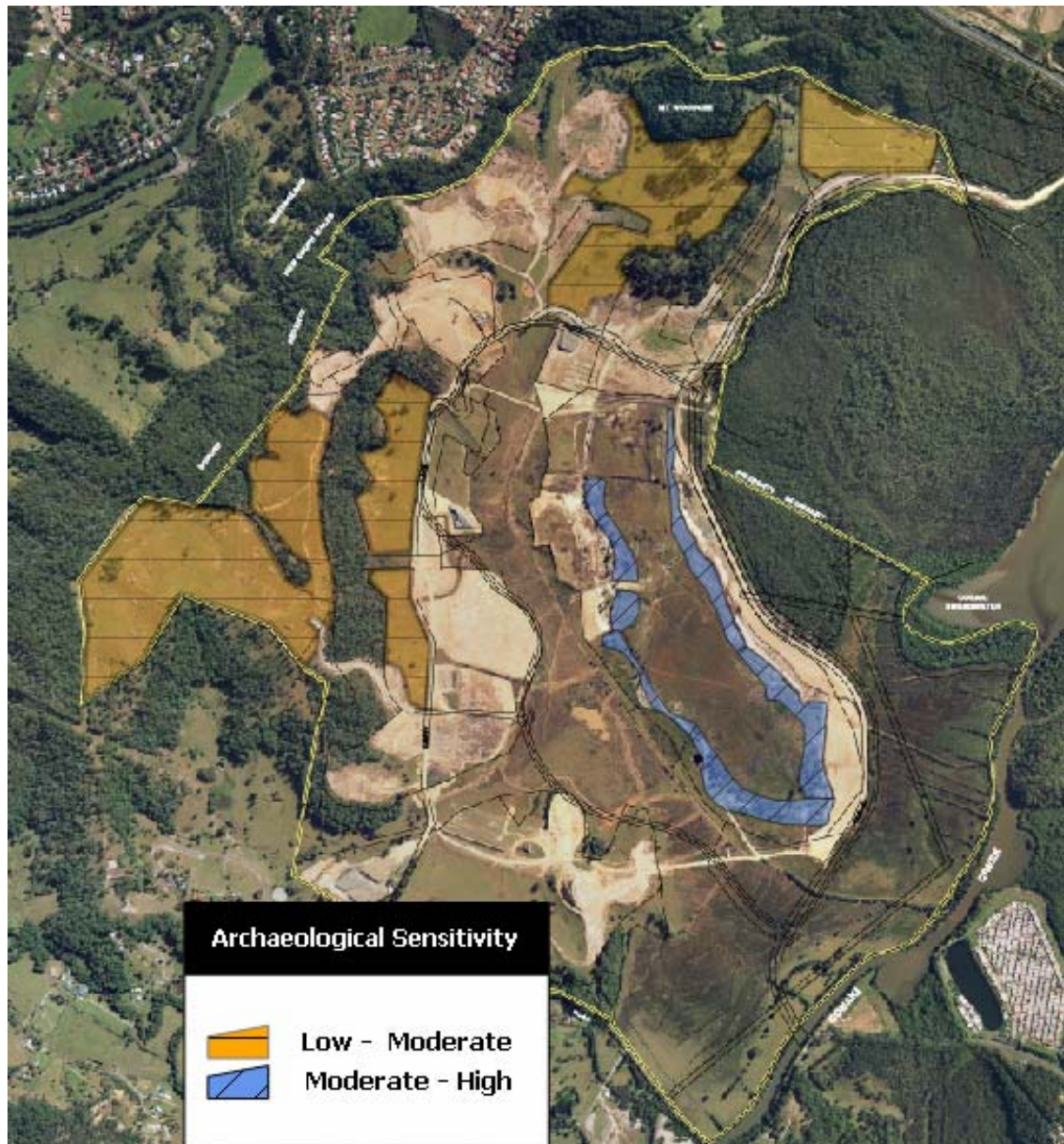
Costs of mediation under Section 15 of this CHMP are to be allocated at the mediator's discretion.

21. APPROVAL OF THE DIRECTOR-GENERAL

The Developer will lodge this CHMP with the Director-General of the Department of Planning for approval.

APPENDIX 1

SITE MAP – ARCHAEOLOGICALLY SENSITIVE AREAS HIGHLIGHTED



APPENDIX 2

PROPOSED MONITORING PROTOCOLS

Monitors will:

- Participate in Cultural Heritage monitoring and sub-contract works.
- Report to the Aboriginal Co-ordinator(s) at a brief daily meeting of the Cultural Heritage Team on all work to be undertaken by them during that day and undertaken on the previous day, and otherwise relating to their performance of the duties of Monitors in accordance with the CHMP.
- Provide preliminary determination of the extent of any previously unidentified Finds and approximate determination of the appropriate Exclusion Zone for any identified Aboriginal Cultural Heritage Sites or Objects.
- Report back to the Project Construction Manager and Traditional Owners with regard to monitoring activities and any “Finds”.
- Attend the Site within 4 hours of an item of Aboriginal Cultural Heritage or potential significance being discovered.
- Undertake the Developers specific Workplace Health and Safety Induction training.
- Wear safety clothes and equipment as required by the Developer, including but not limited to steel capped boots, safety vest and hard hat (to be provided by the monitor).
- Not impede the operations of Construction staff.
- Complete time sheets at the beginning and end of each day or part day that the monitor is on Site as reasonably required by the Developer.
- Comply with any protocols and procedures for visitation to the Site.
- Immediately inform the Project Construction Manager of the location and nature of any Cultural Heritage “Find” during monitoring.
- In the event that skeletal material is found, follow procedures detailed in **Appendix 4**.
- At the end of each relevant working day, finalise a monitoring completion sheet which will be provided by the Developer.
- Ensure that they arrive at the designated site at the designated time.
- Monitor Construction in areas close to the Areas identified in Appendix 1 as containing Aboriginal Objects or Aboriginal Places.
- Be available to work on 48 hours’ notice.
- Remain at their assigned locations except in an emergency.

On-site Monitoring Procedure

- If the Monitors are late on site, work will proceed whether they are present or not.
- The Project Construction Manager will inform the Monitors of the type of work that will be carried out during the day.
- Once this has been established, the Monitors will begin monitoring for cultural material (e.g. stone artefacts, shell material, bone, etc) unearthed during the clearing work.
- Monitors will stay at the designated contract site unless the Project Construction Manager is advised or requests otherwise.
- Monitors will be introduced to the drivers of the earth moving equipment who will be undertaking the clearing. The driver and Monitor are to come to a mutual arrangement regarding procedures they will follow (e.g. hand signals) when the Monitor wishes the driver to temporarily stop so that he can inspect any suspected Cultural Heritage material that may have been exposed.

- When working in proximity to large earthmoving equipment, such as bulldozers, graders or excavators, stringent safety rules are to be observed.
- Monitors will check-in any cultural material (e.g. stone artefacts, shell material, bone etc) collected during the day's work, along with the Collection Record Sheets, any completed Clearance Forms and their Monitoring Kits.

Raising Issues

If the Monitors wish to raise any issues, or report incidents or accidents that may have occurred while they were monitoring that day, they should contact the Project Construction Manager or the Cultural Heritage Co-ordinator.

Monitors must wear prescribed safety equipment and abide by the following rules:

- Never walk in front of a moving or operating machine.
- Never be close when trees are being felled or pushed or pulled.
- Observe at least 20 metres safety zone between the Monitor and the machine.
- Machinery such as Bobcats can be approached reasonably safely, provided that eye contact is maintained and the operator is aware at all times of the position of the Monitor.

APPENDIX 3

PROPOSED CONDITIONS OF EMPLOYMENT FOR ABORIGINAL MONITORS

Monitors shall be employed by the Developer, for the purpose of providing workers compensation, superannuation, tax contributions and insurance and to oversee the employment, management, administration and remuneration of the Monitors.

Monitors must comply with all relevant legislation including all Workplace Health and Safety Regulations.

Monitors shall be nominated by the Traditional Owners based on their qualifications, experience and availability.

Taxation provisions will govern the net dollar figure paid for every Monitor engaged in Monitoring the Development. The Remuneration Scale, listed below, is to be made clear to the Monitors before the commencement of the Cultural Heritage Monitoring.

Time sheets must be signed by each Monitor before payments are processed. It is not necessary to provide a copy of the time sheet to the Monitor unless he/she requests it.

Transport to and from the relevant Site will not be provided by the Developer.

No alcohol or non-prescription drugs will be allowed on the Development Area. Persons found in possession of, or on reasonable grounds suspected of being under the influence of alcohol or non-prescription drugs, will be summarily dismissed and not paid for that day.

Monitors will work only as required by the Developer under the terms of the CHMP.

Where applicable, work programs will be presented by Developer to each of the Co-ordinators on a weekly basis. Each of the Co-ordinators will be required to forward the names and contact details of people nominated to be Monitors to the Developer.

The Developers recognise that certain protocols or cultural events may exist or occur within the Traditional Owners community (particularly in relation to family issues and bereavement) that may within reason affect the ability of the Monitors to perform in accordance with the terms of the CHMP. In such cases the Traditional Owners will communicate with the Developer as soon as possible and use their best endeavours to avoid any cessation of Monitors' activities and thereby avoid disruption of Work Programs. Failure of monitors to be on site at an agreed time without prior notification will not constitute a reason for the Developer to cease work. The Developer will assume that the Traditional Owners has decided that no monitors are required on that day or at that location. Where notification is provided, the Developer accepts that operations where monitors are required will cease where necessary for the period agreed between the Parties.

APPENDIX 4

HUMAN REMAINS POLICY: MANAGEMENT OF ABORIGINAL BURIAL REMAINS

The following principles have been developed to conform with the National Parks and Wildlife Service “*Standards for archaeological Practice in Aboriginal Heritage – Aboriginal Ancestral Remains*” published in September of 1997.

1.1 Guiding Principles

Death in all human societies is a significant event. It occurs on a regular, but unpredictable basis, removing individuals from family, close relations and friends. Death is often associated with complex rituals. This was and still is the case with Aboriginal people. Disturbance to burials is therefore of major concern to them, as it is for other people in the community.

Aboriginal and Torres Strait Islander people have been in New South Wales for more than 40,000 years. In that time they have buried hundreds of thousands of their dead in a variety of ways. In some cases people were cremated, in others their bones were placed in hollowed-out logs or trees or wrapped in bark cylinders and placed in rock shelters. Many were also buried in the ground with grave goods. Burials commonly occur in sand dunes and alluvial deposits which were easy to dig. Wind and water easily erode such locations and frequently these natural processes expose remains. Other common burial locations are rock shelters, rocky overhangs and hollow trees. The close proximity of scarred or carved trees and stone arrangements and the remains of fireplaces, stone artefacts and food refuse may be suggestive of an Aboriginal burial.

When acting under this CHMP, the Cultural heritage Advisor will adhere to the following Principles and Rules contained in the *Code of Ethics of the Australian Archaeological Association*:

Principle 3: ‘To acknowledge the special importance of indigenous ancestral human remains, and Sites containing and/or associated with such remains, to the indigenous people.’

Rule 5: ‘Members shall not interfere with and/or remove human remains of indigenous peoples without the written consent of representatives authorised by the indigenous people whose cultural heritage is the object of investigation.’

1.2 Legislation and Regulations Background

The *National Parks and Wildlife Act 1974* (NSW) gives protection to all “Aboriginal remains” except those occurring within cemeteries in which non-Aboriginals are also buried and those being dealt with in a forensic or related context (e.g., by a Coroner). The relevant section of the Act [Part 1 Section 5(1)] reads:

“**Aboriginal remains**” means the body or the remains of the body of a deceased Aboriginal, but does not include:

- a) a body or the remains of a body buried in a cemetery in which non-Aboriginals are also buried, or

- b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons”

The Police Commissioner’s Instruction 120.08 is intended to help police deal sensitively with the skeletal remains of Aboriginal people. It states:

If any material is suspected of being of Aboriginal origin and there are no suspicious circumstances, then the Site must be secured and a National Parks and Wildlife Officer contacted to identify the remains. Police are also asked to contact the nearest Aboriginal Community Liaison Officer (ACOL).

1.3 Procedure for when Aboriginal remains are Located

Where human remains are found, the Site should be cordoned off and the remains themselves should remain untouched. Efforts should then be made to notify the New South Wales Police Service.

The remains should be examined by a physical anthropologist or medical practitioner in order to establish their ancestry (as Aboriginal or European). The antiquity of the remains should also be determined by a physical anthropologist.

The find should then be reported to the Traditional Owners. Any report should use respectful language, treating them as the remains of Aboriginal people rather than as scientific specimens, and written in plain English.

APPENDIX 5

PROPOSED BREACH OF CHMP GUIDELINES

Where a breach of the CHMP is alleged, the monitor is to detail the alleged breach as soon as possible after any breach has been identified using identification included in the master list of Sites/places compiled for the project. The written breach is then to be copied, with copies provided to the Aboriginal Co-ordinator(s) and the Developer's Project Construction Manager, and the original filed;

The Aboriginal Co-ordinator(s) will advise the Project Construction Manager immediately that there is an alleged breach of the CHMP;

Aboriginal Co-ordinator(s) and the Project Construction Manager will jointly institute measures to investigate the alleged breach. They will also advise the Traditional Owners of the alleged incident, and advise what measure have been implemented to investigate the incident;

As a first step, the Aboriginal Co-ordinator(s) and the Project Construction Manager will review the CHMP to determine what management measures were to have been implemented at the Site/place in question. They will assess whether such measures were in place, and whether the alleged incident comprises a breach of those management measures;

Where Aboriginal Co-ordinator(s) and Project Construction Manager determine that there has not been a breach of the measures as specified in the CHMP and related documents, they will determine whether additional measures are required to appropriately manage the Site/place and what those measure should include, and a schedule to implement the agreed additional measures. They will advise the Traditional Owners of the results of their investigation, and recommendations arising and action taken. They will also formally advise all relevant personnel of the amended management measures for that Site/place;

Where Aboriginal Co-ordinator(s) and Project Construction Manager determine that the measures have been breached they will initiate an investigation of the incident. All relevant work sheets filed by the Monitors will be reviewed to determine whether the Site or place has been subject to previous inspection, and when such inspection took place, thereby enabling determination of when the incident may have occurred, and which members of the work crew or other personnel may have been in the vicinity of the area where the incident took place at the time it took place. Where the Site has not been the subject of previous documented inspection, then the Project Construction Manager is to take all reasonable steps to determine which members of the work crew or other personnel were in the vicinity of the Site/place at the time the incident is believed to have occurred;

When the nature and timing of the incident have been determined, and relevant members of the work crew or personnel identified, the Project Construction Manager will undertake interviews to determine where possible if any person has any knowledge of the incident, including how it occurred, when it occurred and who was responsible. The Project Construction Manager will also establish whether the party/ies responsible had been Inducted on the cultural heritage management as provided for in the CHMP, and appropriately briefed as to the agreed management arrangements and measures if they were to undertake any work in the vicinity of any Site/place identified in the CHMP or related documents. The Project Construction Manager will maintain a formal record of the results of all interviews, which is

to be signed by the Project Construction Manager and the party interviewed at the conclusion of the interview;

The Project Construction Manager will publish, within five (5) days, the conclusions reached on the basis of the investigation and interviews;

Where it is determined that there has been a knowing and wilful breach of the CHMP then the Project Construction Manager will initiate disciplinary measures as per the work agreement signed by the relevant party/ies on their commencement on the project;

Where it is determined that the breach was not the result of wilful and knowledgeable action, the Project Construction Manager will ensure that the party/ies is/are inducted and appropriately briefed, and will, in collaboration with the Aboriginal Co-ordinator(s), review existing management measures and adopt any additional management measures that seem appropriate. (The party/ies so briefed and/or inducted will confirm receipt of this in writing). The Project Construction Manager and Aboriginal Co-ordinator(s) will advise the relevant Traditional Owners of the results of their investigation, recommendations arising and action taken. They will place an amending *pro forma* in the master CHMP detailing the additional measures and noting when they were implemented – this *pro forma* is to be signed by the Project Construction Manager and Aboriginal Co-ordinator(s). They will formally advise all relevant personnel of the amended management measures for that Site/place;

Where appropriate, the Project Construction Manager and Aboriginal Co-ordinator(s) will also determine what mitigation measures should be adopted to repair any damage to the Site/place. They will advise the Traditional Owners in writing of these proposed mitigation measures. The Traditional Owners will review the proposed measures, and will advise the Aboriginal Co-ordinator(s) of the outcomes of their deliberations. The Project Construction Manager and Traditional Owners, through the Aboriginal Co-ordinator(s), will agree on the resources required to implement the mitigation measures, and the timing of implementation of the mitigation measures. No mitigation will be undertaken without the express authorisation of the Traditional Owners, nor without their direct involvement.

APPENDIX 6

CLEARANCE SHEET

PROJECT: _____ DATE: _____

NAME :	NAME :
REPRESENTING :	REPRESENTING :
CHAINAGE	WIDTH
from : / to :	from : / to :

Details

Name of Monitor: _____ Signature: _____

Name of Monitor: _____ Signature: _____

Notes:.....

SIGNATURE OF CONTRACTOR: _____

Name: _____

Date: _____

SIGNATURE OF CULTURAL HERITAGE REPRESENTATIVES: _____

Name: _____

Date: _____