

Our Ref: EV.382

11 September 2020

Mat Morris
General Manager, North Byron Parklands
PO Box 517
BANGALOW NSW 2479

Dear Mat,

**RE: CAMPGROUND MODIFICATION, NORTH BYRON PARKLANDS
ABORIGINAL CULTURAL HERITAGE ASSESSMENT**

I refer to your request for advice, dated 24 June 2020, relating to cultural heritage assessment requirements for the Campground Modification development application at the North Byron Parklands, Wooyung, NSW (see Appendix A). It is noted that the North Byron Parklands have been subject to a previous Aboriginal cultural heritage assessment by Jacquie Collins (2010) and Everick Heritage (2015). This advice relates specifically to the proposed campground which is understood to have been previously assessed.

We have included the following:

- a) Results of the AHIMS and NSW Heritage database search in table format (Appendix 2);
- b) A search of the Aboriginal Heritage Information Management System and Tweed Shire Council Aboriginal Heritage mapping (Appendix 3);
- c) An analysis of the types of disturbance that may affect the nature and distribution of Aboriginal objects (Appendix 4);
- d) A review of relevant legislation (Appendix 5); and
- e) Management recommendations (Appendix 6).

No Aboriginal objects are known to occur within the area of the Proposed campground and there are no environmental features which increase the potential of the campground to contain Aboriginal archaeological sites. As such the assessment has concluded that the proposed campground modifications

will not result in harm to Aboriginal objects and additional Aboriginal community consultation and archaeological investigation is not required to comply with the National Parks and Wildlife Act (1974) and Regulations (2019). The following precautionary recommendations are provided as a minimum management response for the proposed campground modification.

Recommendation 1: Unexpected Find Procedure

The following 'Unexpected Find Procedure' should be put in place as a minimum response to the identification of artefacts during ground disturbance works;

- a) work in the surrounding area is to stop immediately;
- b) a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;
- c) in consultation with the Tweed Byron Local Aboriginal Land Council, an appropriately qualified archaeological consultant is to be engaged to identify the material; and
- d) should the material be confirmed as an Aboriginal object or archaeological site and works cannot be redesigned to avoid the site an Aboriginal Cultural Heritage Assessment Report (ACHAR) completed prior to application for an Aboriginal Heritage Impact Permit (AHIP).

Recommendation 2: Aboriginal Human Remains

Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station (Pottsville), the Tweed Byron Local Aboriginal Land Council and the Heritage NSW Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the Heritage NSW should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.

Please contact Principal Consultant Tim Hill on 0422 309 822, should you wish to discuss this advice further.

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Yours faithfully,

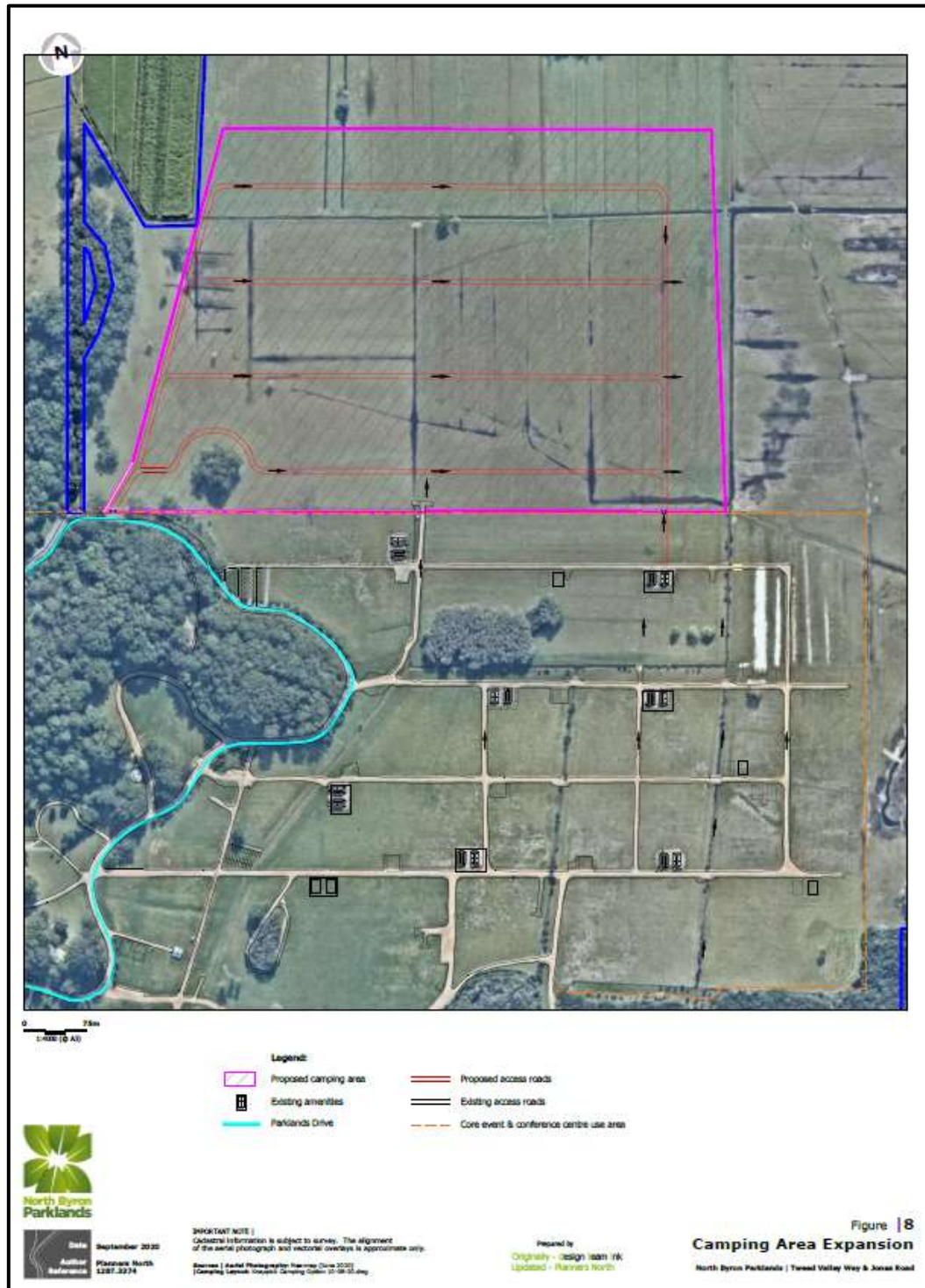


Tim Robins
Managing Director
Everick Heritage Pty Ltd



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APPENDIX 1: MAP OF PROPOSED CAMPGROUND



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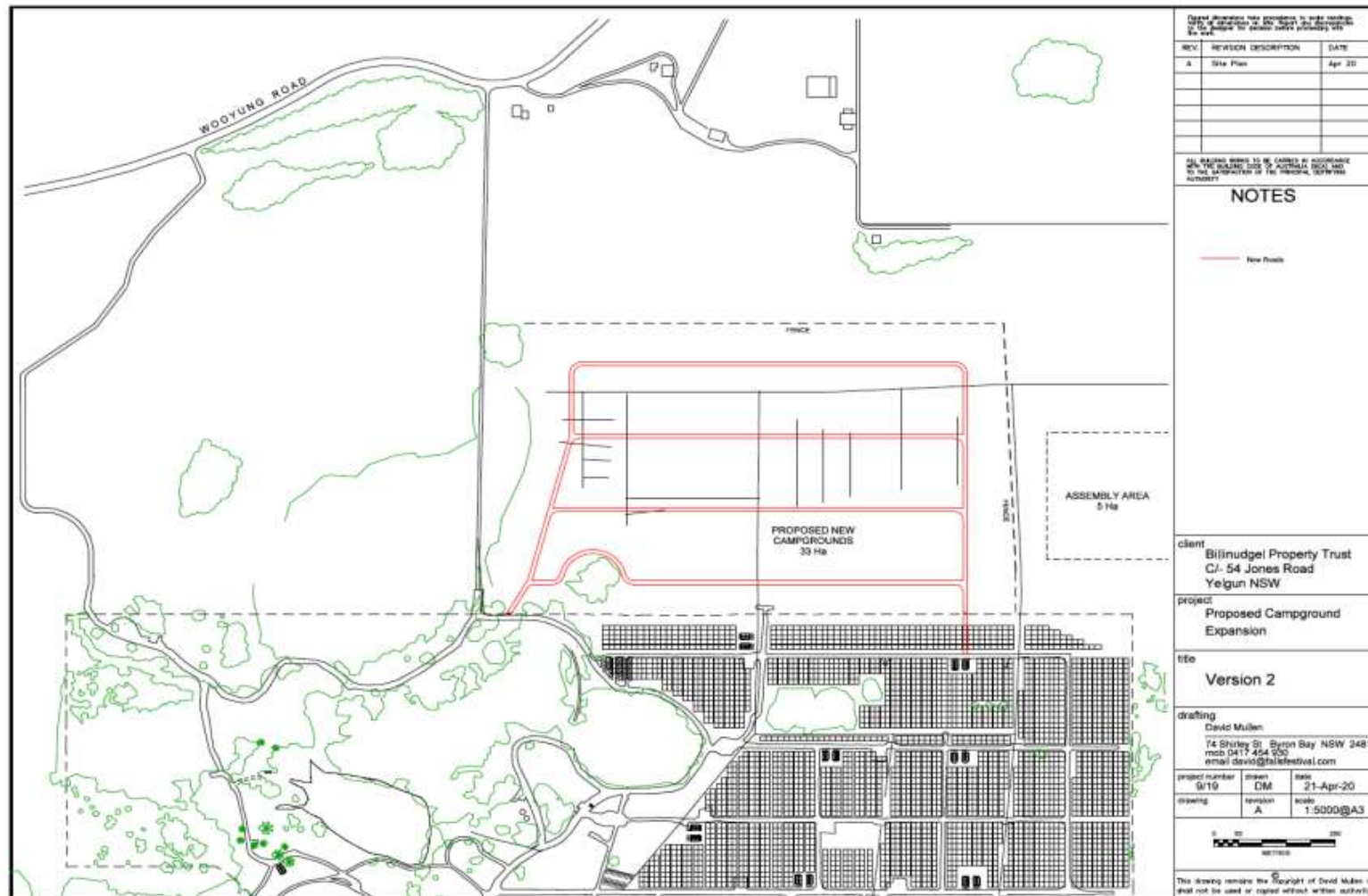


Figure 2: Proposed Campground Layout.

APPENDIX 2: SEARCH RESULTS

An search was undertaken of the Aboriginal Heritage Information Management System ('AHIMS') database on 9 July 2020 (reference #519191) which identified no Aboriginal sites within 200 metres of the proposed campground (Figure 3).

A search of the Tweed Shire Council Aboriginal Heritage mapping indicates that the eastern section of the proposed campground modification- which specifically comprises the proposed 'assembly' area has the potential to contain Aboriginal heritage values (Figure 2). The area to the east of the Project Area is adjacent to Bilinudgel Creek and it is considered that this formation would have been the focus of Aboriginal occupation.

Previous archaeological and cultural heritage assessments (Collins 2010, Fox 2003, Navin/Officer 1990, Piper 2002) have identified a range of Aboriginal sites within and near to the NBP. Within the NBP, with the exception of isolated artefacts, all sites have been low density artefact scatters on Marshalls Ridges and spurs. These areas have been excluded from infrastructure construction and event activity. The construction of an underpass beneath Jones Road was considered by the Stakeholders not to detract from the wider cultural significance of the area as a whole.

An exception to the generally low density and possibly transitory nature of Aboriginal artefact scatters was the Yelgun 1 site on a low knoll overlooking the Yelgun flats which was assessed as being of potentially high scientific significance in addition to its Aboriginal cultural significance. Specific management recommendations were decided upon by stakeholders for the preservation of the site and its exclusion from construction activity and events visitation.

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AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : EV382 North Byron parklan

Client Service ID : 519191

Everick Heritage Pty Ltd

Date: 09 July 2020

Level 9 Matisse Tower, 110 Mary Street
Brisbane Queensland 4000

Attention: Tim Hill

Email: t.hill@everick.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot: 11, DP:DP1192842 with a Buffer of 200 meters, conducted by Tim Hill on 09 July 2020.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

Figure 3: AHIMS Search Results (#519591).

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Figure 4: Tweed Shire Council Aboriginal Cultural Heritage Mapping (source Tweed Shire Council).

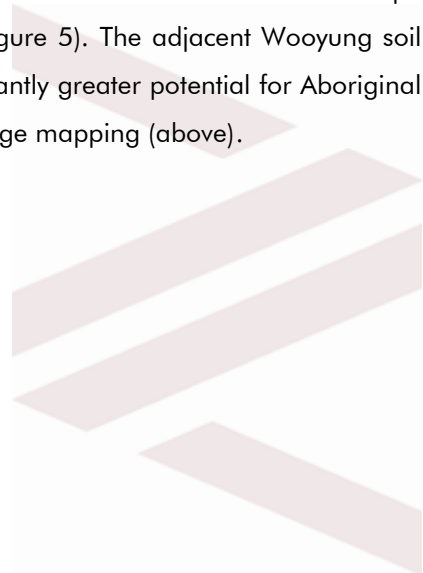
APPENDIX 3: REVIEW OF KEY LANDFORM FEATURES

The Due Diligence Code of Practice (DECCW 2010:12) identifies broad types of 'landscape features' which are considered to be consistently associated with Aboriginal Objects. These include areas;

- "within 200m of water, or
- located within a sand dune system, or
- located on a ridge top, ridge line or headland, or
- located within 200m below or above a cliff face, or
- within 20m of, or in a cave, rock shelter or cave mouth".

The proposed campground is located on reclaimed swampland which forms part of the Crabbes Creek catchment, which drains northwards to Pottsville. The lands are flat and have no contour, except for drains which were constructed to remove water and allow for sugarcane production.

The Project Area is mapped as part of the Kingscliff Variant B soil landscape which comprises Pleistocene sand sheets overlying peat and alluvium. The sand sheets are characteristically very flat with relief below 5 metres (<https://www.environment.nsw.gov.au/Salis5app/resources/spade/reports/9541kib.pdf>). The Project Area also comprises the Pleistocene and Holocene estuarine alluvium of the Cobaki soil landscape and rolling metamorphic hills of the Billinudgel soil landscape (Figure 5). The adjacent Wooyung soil landscape comprises Pleistocene sand dunes which have a significantly greater potential for Aboriginal sites as demonstrated by the Tweed Shire Council Aboriginal Heritage mapping (above).



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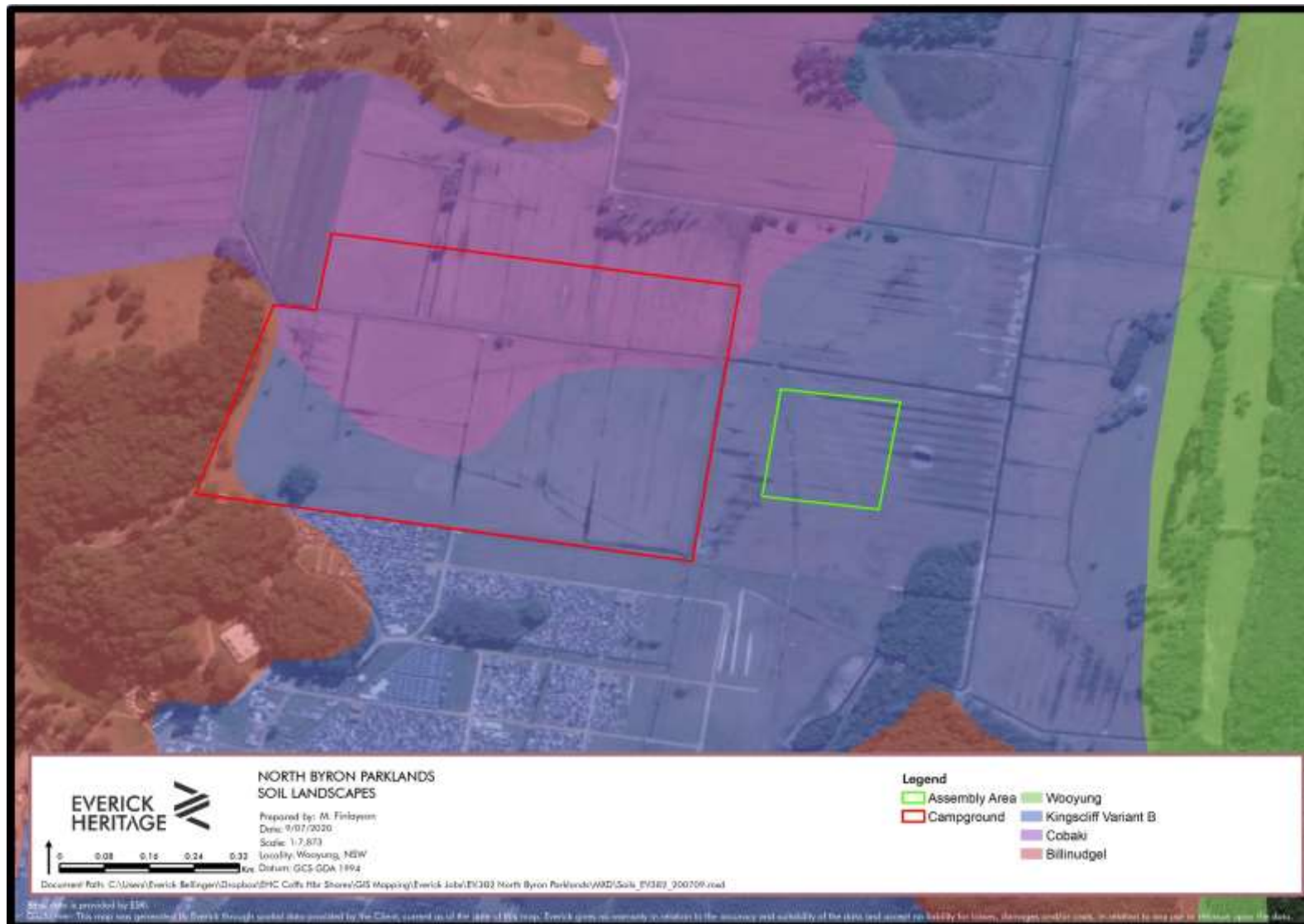


Figure 5: Soil Landscapes mapping.

APPENDIX 4: DISTURBANCE ANALYSIS

The Due Diligence Code of Practice (DECCW 2010) provides the following definition of 'disturbed land';

"Land is disturbed if it has been the subject of human activity that has changed the land surface, being changes that remain clear and observable. Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water and sewerage pipelines, stormwater drainage and other similar infrastructure) and construction of earthworks" (DECCW 2010:18)

Based on the known history of disturbance it is reasonable to conclude that the entire alignment has been subject to disturbance as defined by the Due Diligence Code of Practice. This includes the following;

- removal of original swamps and heathland by mechanical removal, burning and alteration of groundwater via construction of drains;
- extensive horticulture, namely sugarcane production; and
- improvement of pasture for cattle production including clashing and grazing.



APPENDIX 5: LEGISLATIVE AND PLANNING CONTEXT

The following legislation provides the context for cultural heritage in NSW: the National Parks and Wildlife Act 1974 (NSW), the Environmental Planning and Assessment Act 1979 (NSW) and the Heritage Act 1977 (NSW) and local council Environmental Plans and Development Control Plans. The Commonwealth also has a role in the protection of nationally significant cultural heritage through the Environmental Protection and Biodiversity Conservation Act 1999 (Cth), The Protection of Movable Cultural Heritage Act 1986 (Cth) and the Historic Shipwrecks Act 1976 (Cth).

For the purposes of this assessment it is the State and local legislation that are most relevant. Approval from the Heritage NSW will only be required should the Project impact on identified Aboriginal Objects. The information below lists the legislative and policy framework within which this assessment is set.

The National Parks and Wildlife Act 1974 (NSW) and the National Parks and Wildlife Regulations 2009 (NSW)

The National Parks and Wildlife Act 1974 (NSW) (NPW Act) is the primary legislation concerning the identification and protection of Aboriginal cultural heritage. It provides for the management of both Aboriginal Objects and Aboriginal Places. Under the NPW Act, an Aboriginal Object is any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area, regardless of whether the evidence of habitation occurred before or after non-Aboriginal settlement of the land. This means that every Aboriginal Object – regardless of its size or seeming isolation from other Objects – is protected under the Act.

An Aboriginal Place is an area of particular significance to Aboriginal people which has been declared an Aboriginal Place by the Minister. The drafting of this legislation reflects the traditional focus on Objects, rather than on areas of significance such as story places and ceremonial grounds. However, a gradual shift in cultural heritage management practices is occurring towards recognising the value of identifying the significance of areas to Indigenous peoples beyond their physical attributes. With the introduction of the National Parks and Wildlife Amendment Act 2010 (NSW) the former offence provisions under Section 86 of 'disturbing', 'moving', 'removing' or 'taking possession' of Aboriginal Objects or Places have been replaced by the new offence of 'harming or desecrating'. The definition of 'harm' is 'destroying, defacing or damaging an Object'. Importantly in the context of the management recommendations in this assessment, harm to an Object that is 'trivial or negligible' will not constitute an offence.

The new amendments also significantly strengthen the penalty provisions. The issue of intent to harm Aboriginal cultural heritage has been formally addressed by separating it from inadvertent harm. The penalty for individuals who inadvertently harm Aboriginal Objects has been set at up to \$55,000, while for corporations it is \$220,000. Also introduced is the concept of 'circumstances of aggravation' which allows for harsher penalties (up to \$110,000) for individuals who inadvertently harm Aboriginal heritage in the course of undertaking a commercial activity or have a record for committing similar offences. For those who knowingly harm Aboriginal cultural heritage, the penalty will rise substantially. The maximum penalty will be set at \$275,000 or one year imprisonment for individuals, while for corporations it will rise to \$1,100,000.

Where a land user has or is likely to undertake activities that will harm Aboriginal Objects, the Director General (Heritage NSW) has a range of enforcement powers, including stop work orders, interim protection orders and remediation orders. The amended regulations also allow for a number of penalties in support of these provisions. The NPWA also now includes a range of defense provisions for unintentionally harming Aboriginal Objects:

- a) undertaking activities that are prescribed as 'Low Impact';
- b) acting in accordance with the new Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010) ('Due Diligence Code');
- c) using a consulting archaeologist who correctly applies the Code of Practice for Archaeological Conduct in New South Wales (DEECW 2010) ('Archaeological Code of Practice') (see Appendix A); and
- d) acting in accordance with an Aboriginal Heritage Impact Permit (AHIP).

'Low Impact Activities'

The new regulations allow for a range of low impact activities to be undertaken without the need to consult the Heritage NSW or a consulting archaeologist. Generally, those who undertake activities of this nature will not be committing an offence, even if they inadvertently harm Aboriginal Objects. These activities include:

- a) Maintenance – For example on existing roads and tracks, or on existing utilities such as underground power cables and sewage lines.
- b) Farming and Land Management – for land previously disturbed, activities such as cropping, grazing, bores, fencing, erosions control etc. *
- c) Removal of dead or dying vegetation - only if there is minimal ground disturbance.

- d) Environmental rehabilitation – weed removal, bush regeneration.
- e) Development in accordance with a Development Certificate issued under the EPA Act 1979 (provided the land is previously disturbed). *
- f) Downhole logging, sampling and coring using hand held equipment.
- g) Geochemical surveying, seismic surveying, costeaning or drilling. *

* This defense is only available where the land has been disturbed by previous activity. Disturbance is defined as a clear and observable change to the land's surface, including but not limited to land disturbed by the following: soil ploughing; urban development; rural infrastructure (such as dams and fences); roads, trails and walking tracks; pipelines, transmission lines; and storm water drainage and other similar infrastructure.

Due Diligence Code of Practice for the Protection of Aboriginal Objects

The Due Diligence Code operates by posing a series of questions for land users before they commence development. These questions are based around assessing previous ground disturbance. An activity will generally be unlikely to harm Aboriginal Objects where the activity is in an area where there is no known Aboriginal heritage and Aboriginal heritage is not reasonably likely to occur and:

- a) will cause no additional ground disturbance; or
- b) is in a developed area; or
- c) is in a significantly disturbed area.

Where these criteria are not fulfilled, further assessment for Aboriginal cultural heritage will typically be required prior to commencing the activity.

The ACHCRP (2010)

The Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010) ('ACHCRP') provides an acceptable framework for conducting Aboriginal community consultation in preparation for Aboriginal Heritage Impact Permits. Proponents are also required to follow the ACHCRP where undertaking a project that is likely to impact on cultural heritage and/or where required by the consent authority. For planning purposes it should be noted that completion of the ACHCRP can take between 3 and 6 months.

The Tweed Local Environmental Plan 2014

The Tweed Local Environmental Plan ('LEP') 2014 provides statutory protection for items already listed as being of heritage significance (Schedule 5), items that fall under the ambit of the Heritage Act 1977 (NSW) and Aboriginal Objects under the NPW Act. It aims to ensure best practice components of the heritage decision making process are followed. For listed heritage items, or building, work, relic or tree and heritage conservation areas, the following action can only be carried out with the consent of the Ballina Shire Council:

- a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area;
- b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior;
- c) altering a heritage item that is a building by making structural changes to its interior;
- d) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed;
- e) disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance;
- f) erecting a building on land on which a heritage item is located or that is within a heritage conservation area; and
- g) sub-dividing land on which a heritage item is located or that is within a heritage conservation area.

The Project Area is not identified as an item of environmental heritage (Schedule 5) under the Tweed Local Environment Plan 2014.

APPENDIX 6: MANAGEMENT RECOMMENDATIONS

The assessment has concluded that the proposed campground modifications will not result in harm to Aboriginal objects. As such additional Aboriginal community consultation and archaeological investigation is not required. The following precautionary recommendations are provided as a minimum management response for the proposed campground modification.

Recommendation 1: Unexpected Find Procedure

The following 'Unexpected Find Procedure' should be put in place as a minimum response to the identification of artefacts during ground disturbance works;

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Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station (Pottsville), the Tweed Byron Local Aboriginal Land Council and the Heritage NSW Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the Heritage NSW should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

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