

**DAVIES HERITAGE CONSULTANTS PTY LTD**

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**ARCHAEOLOGICAL ASSESSMENT  
of  
INDIGENOUS VALUES  
of  
LOT 100 AND 101 DP629555  
and  
LOT 2 DP800836  
(SAPPHIRE BEACH RESORT)  
PACIFIC HIGHWAY  
SAPPHIRE  
COFFS HARBOUR.**

**by  
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**For  
  
Sapphire Beach Development Pty Ltd**

**March, 2007  
Report Reference JD308**

**ADDENDUM  
TO  
ARCHAEOLOGICAL ASSESSMENT  
OF  
INDIGENOUS VALUES  
OF  
LOT 200 AND 101 DP629555 AND LOT 2 DP800836  
(SAPPHIRE BEACH RESORT)  
PACIFIC HIGHWAY  
SAPPHIRE  
COFFS HARBOUR**

**Re: Director General's Requirements for Environmental Assessment:  
Residential subdivision at 740-742 Pacific Highway, Sapphire Beach – 06\_0148  
Mod 1 and 09\_0060**

The original concept plan for this project was approved on the 9<sup>th</sup> May, 2007 (Approval MP 05\_0148). Since this approval, modifications to the plan have been made. In relation to these modifications, the Department of Planning (Director-General's Environmental Assessment Requirements) has requested that the concept plan modification must address particular key issues. One of these issues was Aboriginal Heritage:

“Provide an up-to-date version of the Archaeological Assessment of Indigenous Values as required by condition C8 of the original approval, and including the actions committed to in 8(a) and 8(b) of the approved Statement of Commitments”.

**Action**

An up-to-date version of this report was forwarded on the 7<sup>th</sup> May, 2009, to the NSW Department of Environment and Climate Change as per C8 of the original 9<sup>th</sup> May, 2007 approval.

Point 8(a) of the approved Statement of Commitments stated:

Community consultation will be undertaken with the Aboriginal community in line with the draft Guidelines for Aboriginal Cultural Heritage impact Assessment before the commencement of construction of the project.

**Action**

Consultation with the Aboriginal community was undertaken following the Department of Environment and Climate Change Interim Community Consultation Requirements as outlined in Section 4.0 of this report.

Point 8(b) of the approved Statement of Commitments stated:

A search of the Department of Environment and Conservation (now Department of Environment and Climate Change) Heritage Information Management System will be undertaken prior to the commencement of construction of the project.

**Action**

A search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken by Davies Heritage Consultants Pty Ltd and the results of this search as documented in this report (see Sub-section 7.3).

**Conclusion**

Davies Heritage Consultants Pty Ltd has reviewed the modification to the original Concept Plan for the above mentioned lots, and advises that these modifications do not alter the recommendations of this report.

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## 1.0 INTRODUCTION

Sapphire Beach Development Pty Ltd intends to redevelop Lot 100 and 101 DP629555 and Lot 2 DP800836 (Sapphire Beach Resort), Pacific Highway, Sapphire, Coffs Harbour, Northern New South Wales (**Figure 1** and **2**). Lot 100 and 101 DP629555 and Lot 2 DP800836 are hereafter referred to as the study area.

This report presents the results of an archaeological assessment of Indigenous values of the study area. The assessment was undertaken in March 2006, by Su Davies (Davies Heritage Consultants Pty Ltd).

### 1.1 The Scope of the Project

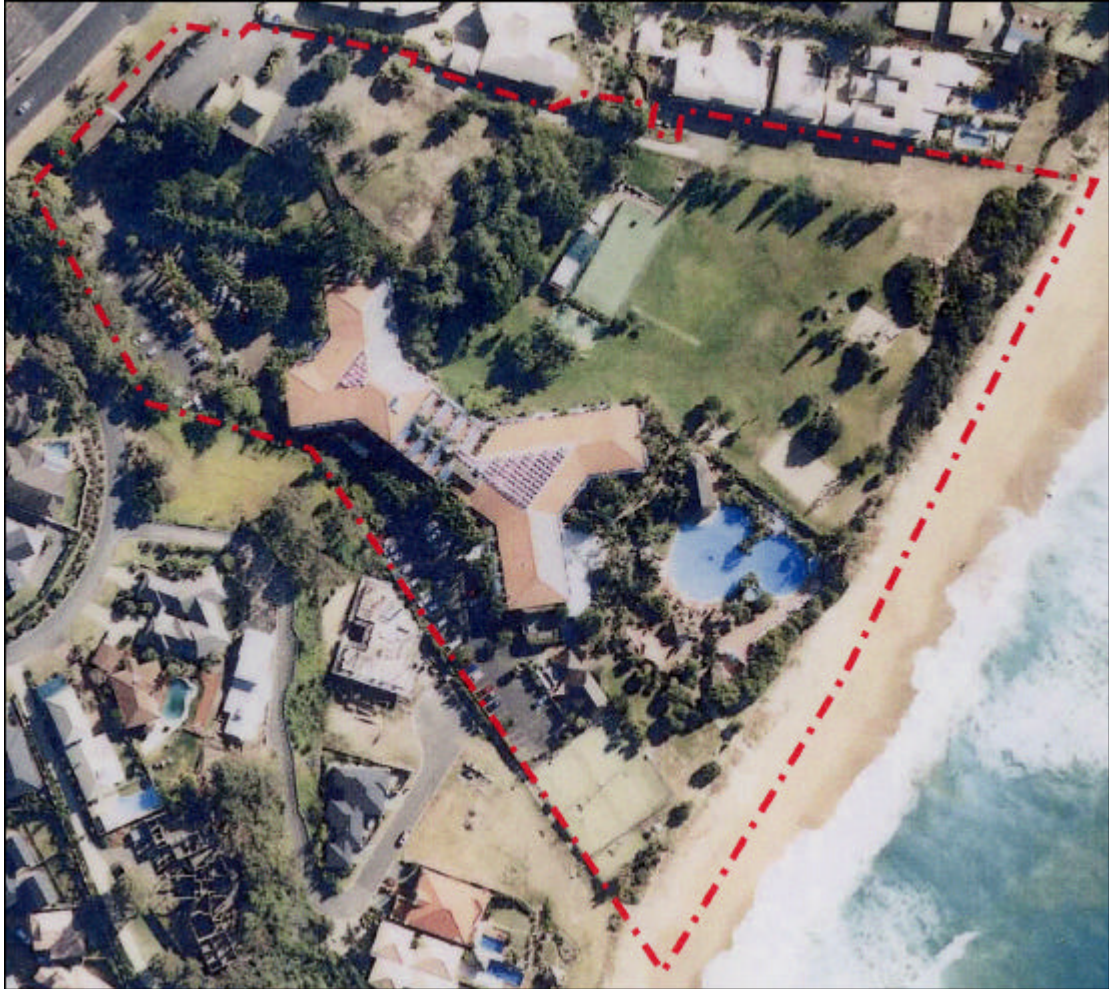
The brief provided by the client for the cultural heritage assessment of Indigenous values included the following:

1. Identification of the Indigenous Registered Stakeholders for the study (see Section 4.0);
2. Background research in relation to known sensitive areas and sites, previous archaeological research and predictive models applicable to the study area (see Sections 5.0 to 10.0);
3. Consultation with the Registered Stakeholders following the Department of Environment and Conservation (DEC) Community Consultation Guidelines (see Section 4.0);
4. A survey of the property with the Registered Stakeholders to identify the presence of any archaeological or cultural sites / places and on-going consultation with the Registered Stakeholders;
5. An assessment of the significance of any sites / places located;
6. An impact assessment of the development on any sites / places located or recorded within the property;
7. Mitigation options and management recommendations for any sites / places identified or previously recorded;
8. Providing the Registered Stakeholders and the client with a draft report detailing outcomes of field work and any management recommendations; and
9. Providing the final report detailing any heritage management recommendations and including comments from the Registered Stakeholders.



Figure 1. Location of the Study Area in Northern New South Wales.





**Figure 2. The Study Area.**

## 2.0 THE PROPOSED DEVELOPMENT

Sapphire Beach Development Pty Ltd proposes redevelop the study area. The overriding concept for the redevelopment of the site is to create an upmarket lifestyle resort catering for a mix of both permanent residents and tourists at any one time (PTW Planning 2006). No development is proposed for the section of the land zoned 7(a) Environmental Protection Zone (see Sub-section 8.1.4). It is envisaged that there would be approximately 16 housing lots on the lower portion of the site next to the beach with 80-110 apartments extending up the southern ridgeline and on the upper flat portion of the site adjacent to the Pacific Highway. The main resort building will be located in the northwestern portion of the site area (see **Figure 3**). The precincts will be separated by green corridors and open space areas with a wide area of communal open space being positioned along the eastern margin of the site area (frontal dunes) (see **Figure 3**). One of the aims of the development is to create a bushland setting. As a result there will be significant strips of vegetation within the green corridors and open areas of the site. Public pedestrian access from the Pacific Highway to Campbells Beach will be provided along the northern boundary of the site and pedestrian access to the beach will be controlled by providing formal pathways to minimise potential compaction and erosion (PTW Planning 2006).

### 2.1 Development Methods

Some of the main tasks involved in the redevelopment of the site include:

- Demolition of existing structures and items;
- Cut and fill. Sections will be levelled and the excavated material moved as fill for levelling other sections of the site;
- Installation of facilities (water, sewerage, power, communication lines, etc.);
- Construction of structures. (e.g. resort building, apartments, housing, swimming pool, etc.) roads and parking areas; and
- Landscaping and revegetation.

#### 2.1.1 Potential Impact of the Proposed Development

From the above outline of development methods it is postulated that disturbance to the ground surface and immediate sub-surface would occur as a result of development activities. Although extensive areas of the site have been previously impacted by construction activities, there is a low potential that archaeological material may remain. There is also a potential that archaeological material may be present (both on the surface and in a sub-surface context) within areas that have not been as extensively disturbed / developed. Thus the proposed development has the potential to damage or destroy any archaeological site types that may still exist within the proposed development area.

**Figure 3. The Proposed Development (Jackie Amos Landscape Architect 2007)**

## 3.0 CULTURAL HERITAGE MANAGEMENT

Cultural Heritage Management involves the recognition of culturally significant places through the processes of identification and assessment, and the subsequent making of recommendations regarding their future. The ideal outcome of such studies is the conservation of these places. Where this is not possible or practicable, recommendations which go towards lessening negative impacts (known as mitigation) are made. Strategies for mitigation can range from suggested alterations to proposed development plans so that a lesser amount of culturally significant fabric is destroyed, to recording places prior to their destruction so that some knowledge can be salvaged from the situation.

The identification process is often initiated from the results of research using the documentary record and the assessment process minimally requires a field survey of the relevant place, and generally community consultation. Recommendations as to the future of culturally significant places are usually guided by the philosophy of conservation practice outlined in the Burra Charter, and such recommendations must be operationalised within a legal framework.

### 3.1 The Burra Charter

The Burra Charter (Australian ICOMOS 1999) guides the practice of cultural conservation in Australia. Within this Charter cultural significance is defined as meaning : *“aesthetic, historic, scientific social or spiritual value for past, present or future generations”* (Article 1.2). Each of these values is defined in the attached Guidelines to the Burra Charter for Cultural Significance (Articles 2.2 to 2.5):

➤ **Aesthetic Value**

“Aesthetic value includes aspects of sensory perception for which criteria can and should be stated. Such criteria may include consideration of the form, scale, colour, texture and material of the fabric; the smells and sounds associated with the place and its use”.

➤ **Historic Value**

“Historic value encompasses the history of aesthetics, science and society, and therefore to a large extent underlies all of the terms set out in this section”.

➤ **Scientific Value**

“The scientific research value of a place will depend upon the importance of the data involved, on its rarity, quality or representativeness, and on the degree to which the place may contribute further substantial information”.

➤ **Social Value**

“Social value embraces the qualities for which a place has become a focus of spiritual, political, national or other cultural sentiment to a majority or minority group”.

The Guidelines also note that other categories of cultural significance may be developed as understanding of a particular place increases (Article 2.6). Article 5 of the Burra Charter promotes the position that: “Conservation of a place should take into consideration all aspects of cultural and natural significance without unwarranted emphasis on any one value at the expense of others”.



## 3.2 Assessing Aboriginal Site Significance

Archaeology is primarily concerned with the interpretation of human history and cultural evolution through the study of material remains, discarded as a result of past human activities. This archaeological record is both fragile and non-renewable and any major disturbance of the environment, such as landscape-altering development, poses a threat to this valuable cultural resource. The major cause of obliteration of much of the archaeological record (information upon which the prehistory of Australia can be reconstructed) is development during the past 200 years, with the impact by natural agencies playing a minor role. Thus, that which remains is all the more valuable due to its scarcity.

The Aboriginal cultural record can generally be divided into two sections: physically identifiable object/s (archaeological sites) and object/s that are not physically identifiable (sites sacred or significant to Aboriginal people which can be unmodified features of the landscape) (Bowdler 1983:38). Archaeological sites can include stone artefact scatters, shell middens, axe-grinding grooves, quarries, scarred trees, ceremonial grounds, stone arrangements, burials and rockshelter sites (see Section 9.1). The assessment of the significance of these sites, both potential and realised, are fundamental to cultural heritage management planning (see Moratto and Kelly 1978). Significance can be assigned to particular sites/places, or to a grouping of sites/places within an area. In the latter case, the importance of a cultural heritage area or precinct may be greater than the sum of its individual sites/places. Put simply, cultural heritage significance is the value of cultural heritage sites/places to us and our society (Kerr 1990:3). The major, non-mutually exclusive criteria by which the significance of Aboriginal cultural heritage sites/places can be assessed internally are:

1. Social and political
2. Scientific
3. Historical
4. Educational and economic
5. Aesthetic

Each of these significance **criteria** can be assigned a relative **value** from low to very high and at a regional, state or national interest level. The following explanation of these criteria is taken from McNiven *et al.* 1994.

### ➤ Social and Political Significance

If a site/place has importance for a particular cultural or ethnic group, either a majority or minority group (Lennon 1992:4), for religious, mythological, spiritual, or other symbolic reasons - it has social significance (Johnson 1992; Moratto and Kelly 1978:10). Sites/places of social significance are usually important in maintaining a community's integrity and **sense of place** (Hall and McArthur 1993a:8; King *et al.* 1977:96). Bowdler (1983:26) recognises two kinds of sites that are significant to Aboriginal people; one relates to pre-contact times, the other to the period since colonisation. For most Aboriginal groups, Aboriginal archaeological sites (e.g. burials) and Aboriginal contact sites (e.g. missions) have strong social significance. In recent years, such associations have become increasingly politicised as Aboriginal people regain control of their ancestral lands and re-establish their sense of place following the devastating effects of non-indigenous invasion and colonisation (see Boyd and Ward 1993:112). Some of these sites/places may be recognisable due to landscape modification or material remains whereas others may consist of a noticeable but natural physical feature. Bowdler (1983:30) stresses that "identification of sacred sites and sites of significance to Aboriginal people is of necessity a matter for Aboriginal people. No-one else can decide either the fact of significance or the

degree of that significance to an Aboriginal community, except members of that community”.

➤ **Scientific Significance**

The scientific significance of sites/places represents their ability to furnish data on, and insight into, either past cultural activities (social, technological and ecological) and/or past natural/environmental conditions (see Bickford and Sullivan 1984; Moratto and Kelly 1978; Pearson 1984). For example, archaeological sites provide unique information on human activities, particularly everyday lifeways, which more often than not are not available in documentary sources. Such insights apply equally to literate and non-literate societies. Similarly, such insights may relate to questions of local culture history spanning tens or even thousands of years, and more general and theoretical questions relating to the evolution of cultural systems. Archaeological sites can also supply unique information on past climates and vegetation patterns (e.g. pollen grains) and past fauna (e.g. shell and bone remains).

The scientific significance of sites/places should be assessed according to “timely and specific research questions (research potential) on the one hand, and representativeness on the other” (Bowdler 1984:1). The focus of both research potential and representativeness can change over time. As research interests vary and archaeological methods and techniques change through time, criteria for assessing site significance are also re-evaluated. Consequently, the sample of site types conserved must be large enough to account for such changing variables. The concepts of “research potential” and “representativeness” are detailed below.

**Research Potential**

A number of criteria may be employed to gauge the research potential of a site. These include site integrity, site structure and site content (Dancey 1981).

Site integrity is a property of the archaeological record concerned with the degree of preservation represented by a given deposit (site) (Dancey 1981:20). Site preservation is affected by both cultural and non-cultural processes, for example post-colonisation development and/or erosion. Sites least affected by such processes may contain significant information regarding the occupation of that site. Where disturbance is extensive there is a greater likelihood that information has been destroyed. Hence, the research potential of such disturbed sites is reduced.

Site structure refers to factors such as stratification, size and patterning of archaeological material within a site. As artefacts and soils accumulate at a given place the resulting deposit may attain a layered appearance. Where layering (stratification) occurs the bottom layer is generally older than the top layer. Thus, stratified sites offer the possibility of detecting changes in the cultural deposit through time. Larger sites may indicate major campsites which may have been occupied over generations, or intensively by larger groups. Internal site patterning may indicate distinctive activities undertaken at a site, or other preferences of site use or organisation.

Site content refers to the different types of archaeological material which occur in a site. These may be both cultural and non-cultural. Cultural material may include artefacts and the waste material from artefact manufacture, discarded food remains, and charcoal (from hearths). Non-cultural material may include sediments and pollen, both of which may be analysed for information about the environment of the site at the time of its occupation.

### **Representativeness**

Representativeness takes account of how common a particular type of site is (Bowdler 1984:2). That is, it allows sites to be evaluated with reference to the known archaeological record within the region of a particular site. As a rule, the more common a site type, the lower the significance of individual examples of such site types. Similarly, the older the site the greater its significance given that older sites tend to be rarer due to the vagaries of time and decay (Coutts and Fullagar 1982:61). However, an area exhibiting numerous similar (read common) sites can have considerable significance as it may provide a rare opportunity to investigate past land-use patterns. In this instance, the significance of the area is greater than the sum of its constituent sites (see Bowdler 1983:40). From a different perspective, representativeness also relates to maintaining the diversity of archaeological sites for future generations. This notion helps compensate for the biases inherent in academic research agendas that may ignore certain site types today but focus on these in the future (King *et al.* 1977:99). Sites may also be assessed to have scientific value if (based on current archaeological understanding of the area) they exhibit unique or rare qualities. The singular rarity or uniqueness of a site should be judged from a local, regional or national perspective.

#### **➤ Historical Significance**

A site or place has historical significance if it is associated with either significant person(s) or significant event(s). As Kerr (1990:10) notes, these “may include incidents relating to exploration, settlement foundation, Aboriginal-European contact, disaster, religious experience, literary fame, technological innovation and notable discovery”. However, historical significance may also include the ability of a site/place to be representative of cultural patterns from a particular historical period (Moratto and Kelly 1978:4). As a rule, the greater the degree of physical integrity of a site and its setting the greater its significance (Lennon 1992:4).

#### **➤ Educational and Economic Significance**

Cultural heritage sites/places can have important educational significance by providing opportunities for people to visually examine and better appreciate the nature of these sites for themselves. Such opportunities not only have important or indeed profound social consequences in terms of maintaining a community’s identity, authenticity and sense of place (Lipe 1984:6), but also can have significant economic consequences in terms of cultural tourism (Hall and McArthur 1993b). From another perspective, economic significance of sites is increasingly becoming an issue of competing with alternative land-use activities (e.g. development). Although traditionally seen as mutually exclusive pursuits, cultural heritage preservation and economic development can work together. Best results occur when heritage issues are considered and accommodated for in the early stages of development planning (Rickard and Spearritt 1991).

#### **➤ Aesthetic Significance**

The aesthetic qualities of a site/place relate to the visual appeal, however subjective, of sites/places and their setting (Kerr 1990:10; also see Ramsay and Paraskevopoulos 1994).

## **3.3 Managing Significant Aboriginal Places**

The Burra Charter has not always been found appropriate for places of significance to Aboriginal people. For this reason the ‘*Guidelines for the Protection, Management and Use of Aboriginal and Torres Strait Islander Cultural Heritage Places*’ has been

drafted in a project by the Department of Communication and the Arts, managed for the Australian Heritage Commission and the Australian Institute of Aboriginal and Torres Strait Islander Studies, the Australian Nature Conservation Agency and Aboriginal and Torres Strait Islander Commission. It includes five points:

1. Aboriginal and Torres Strait Islander Involvement
  - Aboriginal or Torres Strait Islander people have the right to be involved in decisions affecting their cultural heritage, and in the on-going management of their cultural heritage. Aboriginal or Torres Strait Islander involvement in management must be continuous and at the level they consider appropriate.
  - Aboriginal or Torres Strait Islander people who have rights to speak for the place, and/or have interests in the place, should be identified and involved in decisions affecting that place. This will include wide and inclusive consultation, at the beginning of and throughout the process.
  - Decisions which have an effect at the local level need to have full local level involvement. Regional planning should accommodate local level input. Local level planning should be integrated with regional planning.
2. All Interest should be Considered
  - The concerns of all interest groups must be taken into account. Some places have cultural values for both Indigenous people and other groups in the community. All relevant groups should be consulted to allow agreement to be reached on the future of the place.
3. Cultural Significance
  - Cultural heritage place management must look after the cultural significance of a place. The “cultural significance” of a place describes the value or importance the place has to a community and includes the “social, aesthetic, historic, and research or scientific value of the place for present, past or future generations”. The term “social value” includes spiritual values. The cultural significance of a place can change over time.
4. Process and Actions
  - Decisions about cultural heritage places should be made as a result of a conscious and logical planning process. This process, guided by and maintaining the cultural significance of the place, takes into account all the management issues affecting the place and identifies the objectives for the management of the place.
    - . actions affecting places need to be considered only after the cultural significance of the place has been established, and a statement of objectives has been agreed upon by the relevant Indigenous community or owners.
    - . physical intervention or other management actions should be taken to support cultural significance and should be the minimum required to achieve this aim. Actions which conserve cultural significance have top priority.
5. Making and Keeping Records
  - Records of places, records of decisions made about them and records of actions taken at heritage places should be made, kept, stored and accessed in a way which is appropriate to the place and meets the wishes of the community. Ownership of, storage and use of, and access to information should be openly agreed at the outset of a project with the people who own, provide or have rights to the information. Availability of information supports the cultural significance of the place.

### **3.4 Impact Assessment and Mitigation Strategies**

Once the cultural record has been identified and its significance assessed, an important step in cultural heritage management studies is to predict the specific impacts on the cultural record that a particular proposal will generate. Negative impacts may need to be avoided or at least mitigated. Prediction of impacts requires an awareness of the various components of the cultural record in a particular area, as well as of the varying impacts that an activity may have on these components. Both human and natural processes impact upon the archaeological record. In



considering development impacts, consideration must be given to the overall scope for potential impacts, beyond the construction stage to the operational stage.

➤ **Impact of Natural Processes**

Natural processes have always played a part in the disruption of the archaeological record. As soon as they have been discarded, artefacts undergo post-depositional processes that are integral to the nature of the cultural record, particularly the archaeological record, as we see it today. Such processes may include erosion, tree growth, weathering, and the impact of chemicals, tree roots or animals. On-going natural processes are not to be confused with impacts arising from any proposed development. However, some development can accelerate these natural processes (e.g. intensified erosion) and these are then considered associated impacts.

➤ **Impact of Cultural Processes**

Cumulatively, cultural activities (particularly since non-indigenous settlement) have led to often substantial though varying degrees of disturbance to the cultural record. The damage caused may be either direct (eg. quarrying, ploughing or land clearing) or indirect (e.g. changes to the erosion patterns of an area). The level of damage caused will also depend on a correlation between the site type and the kind of activity carried out. The degree of site survival will ultimately depend upon such factors, in addition to the general extent and intensity of historical disturbances. Prior cultural impacts are not considered part of any particular development proposal, but the nature of prior impacts can affect the severity of potential impacts of proposed development. Where the record is relatively undisturbed, any new disturbance will have a severe impact. Where the record has been disturbed, new impacts will correspondingly be of less severity.

➤ **Scope of Impacts**

Activities during active construction phases of development proposals are perhaps the most obvious source of impacts. However, impacts are not restricted to this stage. In particular, the changes in land use due to a development can bring about new threats to the cultural record. For instance, even though a place may not have been destroyed during a residential subdivision, the new concentration of people in the locality may lead to inadvertent or malicious damage of retained sites by new residents. Impacts may also relate to the cultural record outside the study area. Where access roads or living camps need to be provided during the course of construction, this construction and also the influx of people into the area can generate impacts on parts of the cultural record.

So, in summary the potential impact of a particular development will vary according to a number of factors, amongst them being the inherent characteristics of a site type and the degree of previous site disturbances. The lesser the degree of disturbance in an area, the greater is the impact of new activities there.

➤ **Mitigation Options**

At times it will be recommended that proposed developments be modified to avoid impacts. Where this is not feasible, mitigative strategies may be employed. In the case of significant Aboriginal archaeological sites, a mitigation option would entail salvage work to recover the potential scientific knowledge of a site prior to its disturbance or destruction. Specific salvage mitigative work would depend upon the nature of the site and procedures can range from detailed recording, surface collection of artefacts to excavation of sites. Generally in assessing the need for mitigative measures, attention should be focused first upon areas of least disturbance and then progressively applied to other, increasingly disturbed locations (Hall and Lomax 1993). Additionally, any mitigative options must be formulated and

operationalised in consultation and with the co-operation of the relevant Aboriginal community/s.

Detailed recording may be undertaken on immovable site types such as quarries and axe grinding grooves, as well as extensive sites. Surface collection of artefacts would normally be recommended for relatively undisturbed sites, or in regions where there have been few other recorded sites. Relocation of scarred trees is another form of collection. Excavation would be warranted if there are indications of a depth to deposits, in particular if stratification is in evidence.

Although these salvage procedures go towards recovery of scientific information, they are nevertheless destructive of the site. Where the sites are strongly valued by the Aboriginal community, such destructive mitigative activities may not have the approval of the relevant community. In these cases in particular, avoidance of impacts is considered the base management option.

## 3.5 Legislative Protection

Some culturally significant places are regulated by various pieces of legislation. The relevant provisions usually intend to prevent their unnecessary destruction. In making management recommendations about places, this legislative context must be borne in mind.

### 3.5.1 Federal Legislation

Two pieces of relevant Federal legislation are the Australian Heritage Commission Act 1975-1990 and the Aboriginal and Torres Strait Islander Heritage Protection Act 1986.

➤ ***Australian Heritage Commission Act 1975-1990***

This Act is comprehensive in its approach, covering a wide range of culturally significant places. Classes of items which might be placed on the Register of the National Estate include those of the historic environment (including buildings and structures, modified landscapes and archaeological sites); the natural environment; and items from the Aboriginal environment (both archaeological sites and unmodified natural features such as sacred sites). Section 30 provisions protect items on the Register from unnecessary destruction by actions of Federal Government Departments, agencies and instrumentalities.

State Governments and private developers are not constrained by the provisions of this Act unless Federal funding is involved.

➤ ***Aboriginal and Torres Strait Islander Heritage Protection Act 1986***

The purpose of this Act is to preserve and protect areas and objects of particular significance to Aboriginal Australians from injury or desecration. In particular, this legislation can provide protection for sacred sites. Any steps necessary for the protection of a threatened place are outlined in a gazetted Ministerial Declaration (Sections 9 and 10), and this can include the prevention of development. As well as providing protection to areas, it can also protect objects by Declaration, and in particular Aboriginal skeletal remains (Section 12). Heavy penalties may be levied in the case of contravention of provisions of a Declaration (Section 22).

Although a Federal Act, it can be invoked in a State if the State is unwilling or unable to provide protection for such sites or objects.

For both these Federal Acts, Bills have been proposed which would modify their protective regimes.

### 3.5.2 New South Wales Legislation

The three major pieces of legislation at the New South Wales state level are the *National Parks and Wildlife Act, 1974*, the *Environmental Planning and Assessment Act, 1979* and *The Heritage Act 1977*

➤ ***National Parks and Wildlife Act, 1974, as amended***

This Act provides for the protection of Aboriginal objects and Aboriginal places. An aboriginal object is defined as:

"...any deposit, object or material evidence (not being a handicraft made for sale) relating to Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with the occupation of that area by persons of non-Aboriginal extraction, and includes aboriginal remains (as defined with the meaning of the NPW Act)".

An Aboriginal place is defined as:

"...a place which has been declared so by the Minister administering the NPW Act because he or she believes that the place is or was of special significance to aboriginal culture. It may or may not contain aboriginal objects."

Archaeological relics do not have to be present at Aboriginal places. It is an offence under the Act (Section 90) to destroy, deface, damage or desecrate, or cause or permit the destruction, defacement, damage or desecration of, an Aboriginal object or Aboriginal place unless the Aboriginal object or Aboriginal place is dealt with in accordance with a heritage impact permit issued by the Director-General of NPWS.

A Protected Archaeological Area may be dedicated (Section 65) where land is not unoccupied Crown land, and only with the consent of the owner and occupier.

The National Parks and Wildlife Service may also enter into Conservation Agreements with land owners, providing that landowners give their written consent to the conservation agreement (Section 69B) where relics or Aboriginal Places of special significance are situated (Section 69C(1d)). Conservation agreements may contain terms binding on the owner and/or Minister, including, for example, financial assistance, technical advice and implementation of plans of management. Conservation Agreements are attached to the land, in so far as they are binding on subsequent land owners.

➤ ***Environmental Planning and Assessment Act, 1979***

In effect, this Act generates a broad spectrum of protection for Aboriginal sites by requiring that an Environmental Assessment, incorporating an assessment of anthropological and archaeological values be prepared for certain developments and activities. Any site located during such an assessment would be automatically protected under the above Act.

➤ ***The Heritage Act 1977***

Aboriginal heritage is primarily protected under the *National Parks and Wildlife Act 1974* but may be subject to provisions of the *Heritage Act 1977* if the item is listed on the state Heritage Register or subject to an Interim Heritage Order.