

**Shell Cove
Boat Harbour Precinct**

**Concept Plan Application
and Environmental Assessment
Appendix G - Cultural Heritage**

prepared by

LFA (Pacific) Pty Ltd

date

February 2010



CULTURAL HERITAGE REVIEW

CONCEPTUAL MASTER PLAN
FOR THE
PROPOSED BOATHARBOUR PRECINCT
LANDS SHELL COVE, NSW

REPORT TO
AUSTRALAND CORPORATION (NSW)
PTY LTD

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June 2009

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1.0 EXECUTIVE SUMMARY

Australand Corporation (NSW) Pty Ltd (Australand) and Shellharbour City Council are jointly developing the Shell Cove Project which includes the construction of a boatharbour and associated infrastructure. Under Part 3A (Major Projects) of the *Environmental and Planning Assessment Act*, Australand is applying for approval of a conceptual master plan for the lands surrounding the boatharbour (**Boatharbour Precinct Lands**).

The cultural heritage of the Shell Cove area has been recorded and studied by a number of consultant archaeologists over a period of more than two decades. There has also been extensive and at times intensive engagement and consultation with the Aboriginal community during this period, not least during the process of applying for a *NP&W Act* ss 87/90 consent and permit over the wider Shell Cove Project Area.

No heritage relic, site or place of State significance in terms of the *Heritage Act 1977* and no identified physical evidence of Colonial era built heritage is known to occur within the Shell Cove Boatharbour Precinct Lands.

Three AHIMS registered Aboriginal objects/sites occur within the Boatharbour Precinct Lands. However, only part of one of these sites, AHIMS 52-5-437, is assessed as having relatively high heritage values. This site is a shell midden within a foredune on the beachfront. A review of cultural heritage reports and other scientific and historical information and archaeological surveys and inspections indicates that there is no reasonable likelihood of revealing undisturbed and/or scientifically important Aboriginal sites or objects within the Boatharbour Precinct Lands. The potential for significant, undisturbed Aboriginal sites is assessed as low to negligible.

The development consent, certain pre-development activities and *NP&W Act* ss 87/90 consent and permit relating to the larger Shell Cove Project Area have been the subject of serial litigation in the NSW Land and Environment Court by opponents to proposed development. In three judgements, delivered in 2005 and 2007, all claims have been dismissed and the validity of the consents and permit upheld.

Two Archaeological and Cultural Heritage Protection Plans have been prepared by Australand and a ss 87/90 consent and permit (No 2534) has been granted by the NSW Department of Environment and Climate Change (**DECC**) for the wider Shell Cove Development Area. The requirements, protocols and guidelines in these plans and consent and permit, and the provisions of the *NP&W Act* and the *Heritage Act* provide adequate and appropriate protection and conservation/salvage for Aboriginal and non-Aboriginal cultural heritage within the proposed Boatharbour Precinct Lands.

2.0 INTRODUCTION

Under provision of part 3A of the *Environmental Planning and Assessment Act 1979*, Australand is applying for approval of a conceptual master plan for the proposed Boatharbour Precinct Lands at Shell Cove (see Figs 1 & 2). Figure 2 depicts the Boatharbour Precinct Lands in relation to surrounding residential areas and road network.

This report has been commissioned by Australand to address the specific requirements of items 7.1, 7.2 and 7.3 of the Director General's Requirements dated 9 November 2007. The author of the report is Dr Johan Kamminga, Principal of National Heritage Consultants. This report includes:

- history of cultural heritage studies relating to the Shell Cove Project Area and its immediately surrounding land including Shellharbour Village and Bass Point (see Fig. 2);
- description of registered cultural heritage objects/sites within the Shell Cove Boatharbour Precinct Lands (see Fig. 5);
- summary of Aboriginal community consultation carried out in relation to the Shell Cove area (including the Boatharbour Precinct Lands, the Shell Cove Project Area and the wider Shellharbour-Bass Point area surrounding the Boatharbour Precinct Lands);
- Australand's approved Archaeological and Heritage Management Plans for the Shell Cove Boatharbour/Marina (conservation/management measures), and
- the *NP&W Act* ss 87/90 combined consent and permit No 2534 granted by the NSW Department of Environment and Climate Change (DECC) for the Shell Cove Project Area (Appendix 3).

2.1 Location of the Shell Cove Project Area

The Shell Cove Boatharbour Precinct Lands are located 17 kilometres south of Wollongong within the Illawarra region and immediately south of the existing Shellharbour Village (Figs 1 & 2).

The Boatharbour Precinct Lands are approximately 100 hectares in size, and surround the proposed Boatharbour that has received Ministerial Consent. The land area subject of the conceptual plan submission comprises the following land titles (as well as public roads and Crown road reserves): Lot 206 DP 857030, Lots 8031 and 8032 DP 1072187, Lot 1168 DP 1076113 and lot 30 DP229374. This land area includes Shellharbour South Beach and its associated dunal system, remnant areas of Shellharbour Swamp, degraded farmland, part of the former Shellharbour Golf Course, and former Shellharbour tip. A road traverses the eastern sector of the Boatharbour Precinct Lands following the beachfront from Shellharbour Village in the north to Bass Point Reserve in the south. A proposed Harbour Boulevard separates the Boatharbour Precinct Lands from the rest of the Project Area to the west which is primarily residential in nature.

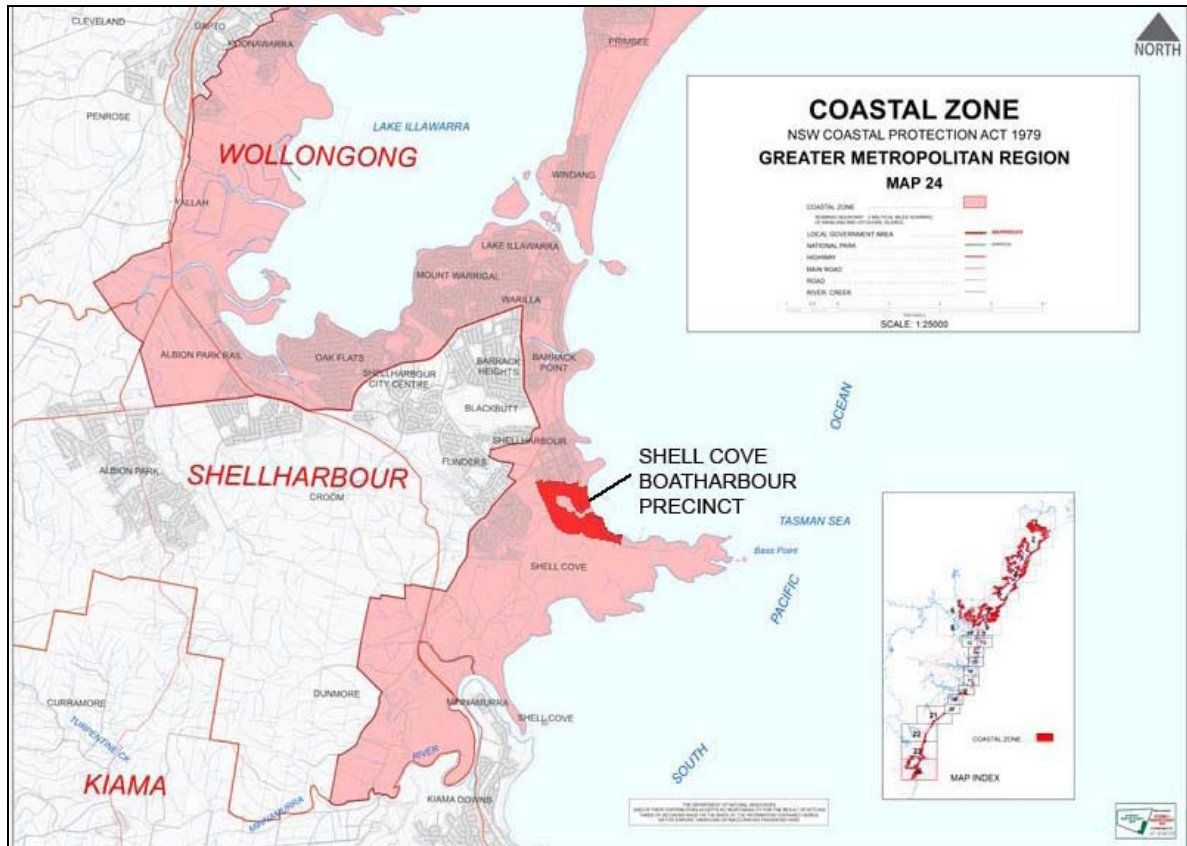


Figure 1 General location of the Shell Cove Boatharbour Precinct Lands.
Wollongong – Kiama region (from LFA 2007).

2.2 History of the Development Consent and its Modifications

In 1995, DA No. 95/133, including a comprehensive Environmental Impact Statement (EIS) prepared by LFA (Aust) Pty Ltd, sought consent for the proposed Boatharbour/Marina development at Shellharbour. At that time Shellharbour City Council proposed to undertake the development with Walker Corporation Limited acting as project manager.

Following an Environmental Commission of Inquiry, the Minister for Urban Affairs and Planning granted the Shell Cove Boatharbour/Marina Development Consent on 26 November 1996. The Development Consent addressed the following key components:

- construction and operation of a Boatharbour/Marina development and associated facilities;
- enlargement and enhancement of wetlands at Shadforth; and
- deposition of waste material extracted from Shellharbour Swamp in engineered landfill cells adjacent to the Quarry Haul Road (QHR).

The conditions of the original consent included requirements to:

- establish a Shell Cove Compliance Committee (which includes a representative of the Aboriginal community);
- protect the area of Aboriginal shell midden site (AHIMS site 52-5-207) identified as having relatively high archaeological value; and
- prepare, as part of the Environmental Management Plan, an Archaeological and Heritage Protection Plan (AHPP) for each component, in consultation with the Aboriginal community and NPWS (now DECC). (The relevant AHPPs subsequently drafted in accordance with requirements are provided in Appendices 1 and 2).

In 2001, the Shire Council applied to the Minister under S.96(2) for a modification of the Development Consent. The application was made to:

- delete the requirement in the Development Consent to construct landfill mounds along the QHR;
- provide for the replacement of the landfill mounds with acoustic barrier panels along the QHR; and
- provide for the disposal of waste material from Shellharbour Swamp (subject to obtaining any necessary further development consent or approval, as required) either into a licensed landfill or alternatively into a site wholly within the land covered by the Development Consent.

The Minister granted approval under S.96(2) to the 2001 modification of the Development Consent by instrument dated 9 November 2001.

In 2003 the Council applied to the Minister under S.96(2) for a further modification of the Development Consent to:

- permit the deposition of waste material, extracted from the Shellharbour Swamp, into a single landfill cell;
- define more precisely the role of the Shadforth Management Committee in terms of environmental management plans to the one required for the Shadforth/Tongarra Creek Wetland System;
- permit the extraction of waste material independent of the practical completion of the Shadforth Wetland;
- permit the option of an insurance bond being used as an alternative to a bank guarantee as security for the satisfactory completion of required works; and
- permit the option for the disposal of actual and potential acid sulfate soils by reburying below RL-1.0 and/or at an EPA licensed landfill site.

The Minister granted approval under S.96(2) to the 2003 modification of the Development Consent by instrument dated 6 September 2004.

In December 2005, the Council applied to the Minister under S.96(2) for a further modification of the Development Consent and approval was granted in October, 2006. The application was made to:

- alter the form of the development by
 - an approximate 15° rotation of the Boatharbour plan form, and consequential changes. (The effect of rotation of the harbour was to reduce the disturbance of acid sulphate soil and thereby reduce the environmental impact as well as overall costs).
 - realigning and shortening the breakwater by 50 m and adopting a berm type design for this structure, along with minor changes to the northern groyne, a consequential narrowing of the entrance channel, and the deletion of the southern groyne;
 - reducing the number and change the layout of the marina berths, and
 - deleting the Boatharbour flushing pipe system;
- amend condition 6 of the Development Consent to permit the Council to provide security for the satisfactory completion of required works by either bank guarantee or insurance bond;
- amend condition 7 of the Development Consent so as to require the Council to obtain the prior written consent of the Director-General of the Department of Planning for any changes to the hours of construction rather than the Environment Protection Authority as currently provided; and
- amend condition 14(b) of the Development Consent to ensure that the condition is not in conflict with approvals obtained under the *National Parks and Wildlife Act 1974*.

On 18 September 2007 the Minister for Climate Change, Environment and Water granted a modified approval to Shellharbour Council under Section 41 of the *Coastal Protection Act*.

The Boatharbour Precinct Lands and the wider Shell Cove area are subject to Shellharbour Local Environmental Plan 2000 (LEP 2000). The proposed use of the area is compatible with the specified objectives of this Plan.

A *NP&W Act 1974* ss87/90 combined consent and permit (No 2534) was issued by the Department of Environment and Conservation (now DECC) on 29 September 2006 for the Shell Cove area (which comprises dry land slopes and alluvial flat, creek channels, part of former Shellharbour tip, Shellharbour Swamp and an area of sea bed) (Fig. 5).

3.0 TOPOGRAPHY & GEOLOGY OF THE WIDER SHELL COVE DEVELOPMENT AREA

The land is generally low lying and partly swampy set behind a coastal dune system which runs parallel to the ocean front (Figs. 3 & 4). The majority of the land is below RL5.0 AHD. In the south the land rises to a maximum RL28.0 AHD. The land slopes gently (between 2-4°) towards the approved boatharbour which has an elevation close to sea level. The sand dunes with an elevation rising to RL4.0 AHD separate the remnant swampland from the sea. The approved Boatharbour at Shell Cove generally occupies the area of the existing Shellharbour Swamp.

The Shell Cove catchment extends from Quarry Haul Road and the Killalea ridge in the south to Shellharbour Road in the west and Shellharbour Village to the north. This catchment contains three drainage lines which flow into the approved Boatharbour Precinct Lands. There are a number of existing dams and channels associated with a former golf course (Fig. 3).

The slopes in the south of the area are composed of unconsolidated Quaternary sediments overlaying Bombo Latite bedrock which is a basalt-like rock formed from lava flows. This latite bedrock extends onto the southern beach area. In the northwest the surfacial sediment is underlain by Budgong Sandstone bedrock which is part of the Permian-age Shoalhaven Group. Budgong Sandstone comprises red brown and grey volcanic sandstone that weathers to form clays at shallow depth. The Quaternary sediments include beach and dune sand, and silts and sediments of the swamp and alluvial flats. These alluvial sediments contain potential acid sulphate soils and have been the subject of extensive geotechnical studies (Coffey Geosciences 2003, 2004; Douglas Partners 2003:1-2) (see Fig. 4).



Figure 2 Location of the Boatharbour Precinct Lands within the Shell Cove area (from LFA 2007)



Figure 3 Land-use of the Boatharbour Precinct Lands (from LFA 2007).

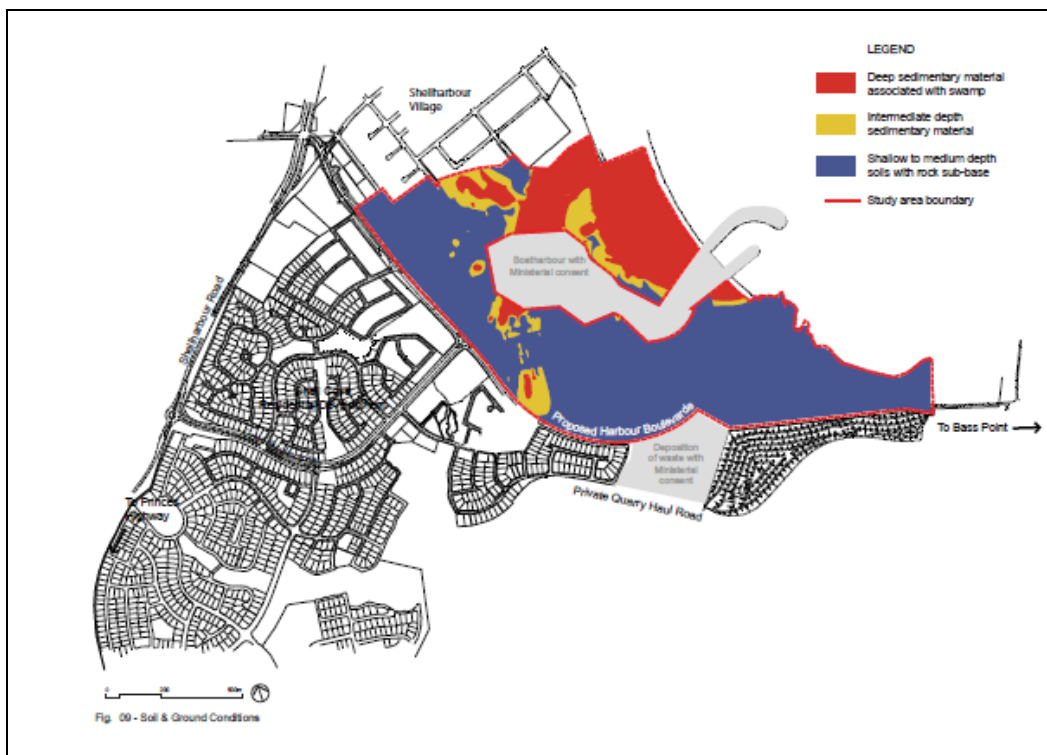


Figure 4 Sediments of the Boatharbour Precinct Lands (from LFA 2007).



Figure 5 Location of registered Aboriginal sites in the Shell Cove area

The location of Aboriginal site AHIMS Site 52-5-207 on the foreshore is indicated by shading and fine parallel infill lines, and lithic scatter sites AHIMS 52-5-436, 52-5-437 & 52-5-438 by dots. The NP&W permit/consent area is indicated by dashed red line.

4.0 HISTORY OF SEDIMENT AND VEGETATION DISTURBANCE AT SHELL COVE

Much of the sequence of subsurface disturbance within the Shell Cove area has been described in a report by Navin Officer (1995a) and is summarised in an Aboriginal heritage assessment report prepared by National Heritage Consultants (Australand 2006). The land surface has undergone considerable modification as a consequence of British settlement during the nineteenth century (wheat farming and livestock grazing) and more recent land-use practices and developments, such as continuation of livestock grazing and construction of the former Shellharbour Golf Course and roads and other facilities. The dominant vegetation is now grass.

One inevitable consequence of this transformation of the landscape and vegetation has been the disturbance of Aboriginal objects (such as stone artefacts) within the surficial sediments of the slopes and alluvial flats around Shellharbour Swamp. However, cultural objects in these sediments also would have been impacted by ongoing processes of natural bioturbation.

The original vegetation prior to British colonial settlement of the Shellharbour-Shell Cove area comprised beach backshore species, lagoon bank and aquatic species, and on the slopes surrounding Shellharbour Swamp dense littoral temperate rainforest (known as the 'Illawarra Scrub'). Land clearance and cultivation must have caused significant disturbance to the uppermost horizons of sediment in the Shellharbour-Shell Cove area. From the early nineteenth century until the 1840s the main agricultural activity around Shellharbour Village was cattle grazing on native vegetation. The main pastoral enterprise at the time was 'Peterborough Estate' owned by the Wentworth family. Beginning in 1843 leasehold and tenant farmers

cleared the rainforest vegetation from the slopes around the Swamp and fenced and cultivated the land.

Dairying commenced in the second half of the nineteenth century, utilising the natural pastures and also fodder crops. By the beginning of the twentieth century dairying was the dominant local industry and was associated with the introduction of *paspalum* for pasture after 1910. Dairying land use continued until the early 1950s. The most recent agricultural pursuit has been livestock grazing (McIntyre 1985; Navin Officer 1995a) which has continued to the present day.

A sedimentological process associated with large-scale forest clearance for a village settlement and agriculture would have been the subsequent downslope transportation of sand and silt into the former lagoon that is now the degraded Shellharbour Swamp. Further impact occurred when drainage channels were cut into the lagoon bed, the northern side of the wetland filled with sediment and construction waste for the southward expansion of Shellharbour Village, and the former creek entrance to the lagoon blocked with sediment. These changes would have contributed to sediment infilling of the lagoon and accelerated its natural transition into a coastal swamp.

Currently around Shellharbour Swamp there are only remnant plants of the former rainforest vegetation, and the slopes and alluvial flats are dominated by grassland species composed of introduced grasses and other herbaceous pasture plants. The common introduced species include the dominant species Kikuyu Grass (*Pennisetum clandestinum*), Paspalum (*Paspalum dilatatum*), Ribbed Plantain (*Plantago lanceolata*), Spear Thistle (*Cirsium vulgare*) and Fireweed (*Senecio madagascariensis*). On the more recently disturbed ground there are also scattered taller weeds, such as Inkweed (*Phytolacca octandra*), Fennel (*Foeniculum vulgare*), Lantana (*Lantana camara*), Fat Hen (*Chenopodium album*) and Paddy's Lucerne (*Sida rhombifolia*). Occasional natives include Dusky Coral-pea (*Kennedia rubicunda*) and a small tree, Red Ash (*Alphitonia excelsa*).

5.0 NON-ABORIGINAL CULTURAL HERITAGE

Responsibility for non-Aboriginal heritage in NSW is shared between the Heritage Council of NSW, the Heritage Office of the Department of Planning, and local government. The Heritage Council of NSW and Heritage Office are responsible for identifying, assessing and protecting items of State significance while local government is responsible for identifying, assessing and protecting items of local significance (Kibble *et al.* 2007:9-11).

The Heritage Council recognises four levels of significance which are to be addressed in heritage assessments:

1. Local
2. State
3. National
4. World

These levels indicate the context in which a heritage place is important – within the local area, state-wide, Australia-wide or worldwide (Heritage Office, NSW 2008).

Section 4A of the *Heritage Act* defines State heritage significance as:

“in relation to a place, building, work, relic, moveable object or precinct, means significance to the State in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.”

This definition is based substantively on the Australia ICOMOS *Charter for the Conservation of Places of Cultural Significance* (commonly called ‘the Burra Charter’) (Australia ICOMOS 1999).

The following set of seven heritage significance criteria are used to assess potential State heritage significance of a place:

- a) an item is important in the course, or pattern, of NSW’s cultural or natural history;
- b) an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW’s cultural or natural history;
- c) an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW;
- d) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons;
- e) an item has potential to yield information that will contribute to an understanding of NSW’s cultural or natural history;
- f) an item possesses uncommon, rare or endangered aspects of NSW’s cultural or natural history;
- g) an item is important in demonstrating the principal characteristics of a class of NSW’s cultural or natural places or cultural or natural environments.

This set of criteria was established in 1998 at the time of the creation of the State Heritage Register and reflected a departure from a more basic system which previously assessed places simply against the categories of historical, social, aesthetic or technical/research significance, supplemented with two “degree” criteria of rarity and representativeness (Kibble et al. 2007:14). Heritage assessment reports prepared prior to 1998 relied on the earlier definition of assessment criteria.

In late 2007 a Department of Planning review panel concluded that:

“... listing based upon meeting only one of the seven available criteria should generally be avoided unless the place possesses a very high level of rarity and is clearly an outstanding item and its significance is unquestionable in the community’s mind. Generally listing should require a place to meet more than one of the criteria for heritage significance. As stated, the experience is that the overwhelming majority of nominations for State significance will meet the test of multiple criteria, so the requirement for multiple criteria will avoid the possibility of facetious or borderline nominations.” (Kibble *et al.* 2007:15).

This panel recommended that “the *Heritage Act* should be amended to provide that items proposed for listing on the State Heritage Register must meet more than one of the heritage significance criteria, except where the place possesses a very high level of rarity and is clearly an outstanding item.” (Kibble *et al.* 2007:15, 24).

Non-Aboriginal cultural features and structures occur within the Shell Cove project area. These include sedimentary infill in Shellharbour Swamp, a sealed road and farm tracks, a power line, fences of various kinds, a vehicular parking area, modern ploughland and remnant pre-mechanised remnant ploughland, drainage swales (channels), landscape features associated with a former golf course, a concrete bridge and a concrete weir.

Some of these non-Aboriginal cultural items were identified and assessed in the mid 1990s by Navin Officer (1995b:69), including the remnant ploughland, drainage swales (channels), and a concrete weir. Navin Officer (1995b:76) assessed the remnant ploughland as having negligible social/cultural, religious, spiritual, aesthetic and educational values, and low to medium historic value in a local context. Potential contribution to research was assessed as medium in a local and probably regional context. Navin Officer assessed the drainage swales and concrete weir as having negligible to low values in terms of all assessment criteria (Navin Officer 1995:77-78). No submerged maritime heritage was identified within the project area. The Navin Officer heritage assessment predated the introduction of revised assessment guidelines by the Heritage Office (Kibble *et al.* 2007:14). In reference to the 1998 revised guidelines and the recommendations of the 2007 Department of Planning review panel the heritage values of all identified non-Aboriginal items within the project area are identified by National Heritage Consultants as negligible to low.

Within the Boatharbour Precinct Lands and the wider Shell Cove Project Area no non-Aboriginal cultural items (building, work, relic, moveable object, place or precinct) are listed in local, state, Australia or world heritage lists. Specifically, there are no World heritage items listed on the World Heritage List by UNESCO, National or Commonwealth heritage items listed on the National Heritage List by the Australian government, State heritage items listed on the State Heritage Register by the NSW government, or Local Heritage items listed on local environmental plans (such as on the current heritage schedule of the Shellharbour LEP) by the Shellharbour City Council (see LFA 1995, 2003, 2007).

There are no known proposals to nominate any non-Aboriginal cultural items within the Shell Cove Project Area or Boatharbour Precinct Lands for inclusion on a statutory list or register (see above).

6.0 HISTORY OF ABORIGINAL CULTURAL HERITAGE STUDIES AT SHELL COVE

Most of the cultural heritage studies of the Shell Cove area have specifically or predominantly focussed on Aboriginal heritage. Over a 20 year period preceding the decision by DECC to grant a ss 87/90 combined consent and permit (No 2534) there had been considerable investigation of archaeological and Aboriginal cultural heritage issues (Australand 2006; Preston 2007). Navin Officer Heritage Consultants Pty Ltd (1985, 1995) has provided a comprehensive summary of the relevant records about Aboriginal settlement in the Shellharbour Shell Cove and Bass Point areas during historical times. Shellharbour and Shell Cove are located within the tribal territory of the Wodi Wodi people (Tindale 1974). In the nineteenth century Wodi Wodi territory extended from Wollongong to north of the Shoalhaven, and west as far as Picton, Marulan and Moss Vale. Eades (1976) identifies the language spoken by Wodi Wodi people as Dharawal.

There are few historical reports about Aborigines inhabitants of the Shellharbour area in the nineteenth century. However, a former Aboriginal camp existed at Bass Point during the later part of the century. By 1885 only two Aboriginal residents at Shellharbour were registered to receive government rations (see review in Navin Officer 1995a).

6.1 Archaeological study in 1985 by Sue McIntyre for the Illawarra Bicentennial Boatharbour

The Shell Cove Project Area (termed Bicentennial Boatharbour at that time) was initially surveyed in 1985 by consultant archaeologist Dr Susan McIntyre in consultation with the Illawarra Local Aboriginal Land Council (McIntyre 1985). The purpose of McIntyre's archaeological survey and heritage assessment was to provide a general appraisal of the Aboriginal sites in the area subject to proposed development (McIntyre 1985: Maps 1 and 2). McIntyre observed that the slopes had originally been covered with rainforest vegetation and that the coastal foreshore was more likely to have been the favoured location for campsites because it offered an open sunny aspect and allowed easy access to freshwater, swamp, rainforest, rock platform and sandy beach resources.

McIntyre located one Aboriginal site during her survey, a shell midden with associated lithic scatter in a beach dune on the foreshore of South Shellharbour Beach (AHIMS Site 52-5-207). McIntyre (1985:10) also reported that the survey area had sustained extensive subsurface disturbance from historic-era settlement activities, an observation subsequently corroborated in detail by Navin Officer (1995a).

6.2 Archaeological study in 1985 by Anutech for the Illawarra Bicentennial Boatharbour

In 1986, the NSW Public Works Department commissioned Anutech to fulfil McIntyre's recommendation that further archaeological assessment be undertaken (Hotchin *et al.* 1986). A team of archaeologists from Anutech (Kieran Hotchin, Allan Lance and Wilfred Shawcross) conducted a test pitting program and heritage assessment of AHIMS Site 52-5-207, and investigated areas of possible archaeological sensitivity identified by McIntyre during the previous year.

The team test-excavated the shell midden site (AHIMS Site 52-5-207) with the assistance of two representatives of the Illawarra Local Aboriginal Land Council, Mr Dick Henry and Mr Roy Kennedy. No further Aboriginal sites were identified during this survey and the recommendations in the Anutech report focussed on the results of the test excavations at the midden and the outcome of consultations with the local Aboriginal community (Hotchin *et al.* 1986:11-16).

6.3 Archaeological survey in 1995 by Navin Officer Heritage Consultants for the proposed Shell Cove Boatharbour/Marina project

Navin Officer's archaeological study for the proposed Shell Cove Boatharbour/Marina development included:

- comprehensive review of all previous archaeological work carried out in the proposed development area and in the surrounding land;
- assessment of the colonial and modern history of land-use disturbance in the Shell Cove area;
- consultation with the Illawarra Local Aboriginal Land Council;
- general archaeological survey of the development area as defined at that time, including subsurface testing of the slope immediately west of Shellharbour Swamp (Navin Officer 1995: Fig. 15). The southern end of the

- a further program of test excavation of shell midden site 52-5-207 in collaboration with the Illawarra Local Aboriginal Land Council;
- analysis of material from the test excavations (analysis of the stone artefacts was carried out by Dr J. Kamminga).

The late Mr Jim Davis of the Illawarra Local Aboriginal Land Council participated in the archaeological re-survey of the proposed development area defined at that time and also in the test excavation of site 52-5-207. A community report by Illawarra Local Aboriginal Land Council was included as an appendix in the Navin Officer report. The test pit program resulted in more precise definition of the area of site 52-5-207 within and immediately behind the foreshore sand dune.

The ground surface survey carried out by Navin Officer focused on areas of ground surface exposure, such as creek banks, road cuttings, vehicle and stock tracks, dams, drainage ditches, and areas of stock trampling. Navin Officer encountered no new Aboriginal sites or objects by ground surface survey or subsurface testing. It was reported that the development area had sustained extensive disturbance from historic-era settlement activities, such as clearing of the native littoral rainforest, extensive cultivation of wheat and other crops, dairying, construction of a golf course, and waste disposal (Navin Officer 1995a, 1995b:6). In general, Navin Officer's findings were consistent with those reported earlier by McIntyre (1985:10).

6.4 Archaeological survey in 1995 by Navin Officer Heritage Consultants of a haul road corridor along the margin of the Shell Cove Project Area

In 1995 Navin Officer carried out a survey for the proposed construction of a haul road from Shellharbour Road to Bass Point Quarry and a series of noise-barrier mounds adjacent to the new road. The haul road and noise-barrier mounds were required for residential development associated with the proposed Shell Cove Boatharbour/Marina. Navin Officer reported that the road easement had sustained comparable European land-use impacts to those on the slopes of Shellharbour Swamp, and in particular, impacts such as forest clearance, ploughing, cropping and pasture improvement. No Aboriginal sites or artefacts were identified during this field survey and the potential for Aboriginal sites to remain in an undisturbed condition and in significant densities was assessed as very low.

6.5 Inspection in 2004 by National Heritage Consultants of alternative locations for a temporary Armour Rock Storage at Shell Cove

A topsoil scrape was undertaken in December 2004 for the purpose of temporary storage of armour rock for the Boatharbour breakwater. This scrape comprised an area of about 4,900 square metres located on the eastern side of the old Quarry Haul Road a short distance south of the Boatharbour Precinct Lands.

In December 2004 National Heritage Consultants carried out inspections of the temporary armour rock storage locality in response to the reported sighting of Aboriginal sites and artefacts within the scrape area (Henry 2004, 2005; Kamminga 2005; Talbot 2005). At the time of the inspections, consultation was undertaken with representatives of the Illawarra Local Aboriginal Land Council and the self-proclaimed Shell Cove Aboriginal Tent Embassy.

Chemical testing established that the soil on this slope was acidic to highly acidic and therefore not conducive to the long term preservation of shell midden deposit or human remains. There were also indications of land disturbance by modern activities, such as farming, road-building, and haulage of quarried rock and other heavy vehicle activity. The consultant archaeologists did not encounter Aboriginal sites or objects. However, during subsequent on-site consultation two stone flakes were shown to the consultant archaeologists by a representative of the Shell Cove Aboriginal Tent Embassy. These two flakes did not appear to be in their natural place and were therefore recorded as isolated finds. The flakes were subsequently removed from the locality (Kamminga 2005; see Talbot 2005).

6.6 Inspections in 2005 by Michael Therin of potential Aboriginal sites at Shell Cove

In May 2005, Mr Allan Carriage, Chairperson of the Wadi-Wadi Coomaditchie United Aboriginal Corporation, commissioned consultant archaeologist Michael Therin to inspect a number of locations at Shell Cove for the presence of Aboriginal objects (Carriage 2005; Therin 2005; Talbot 2005). Therin recorded the presence of a total of 23 Aboriginal stone artefacts he observed on ground surface at three locations (AHIMS Sites 52-5-436, 52-5-437 and 52-5-438; see Fig. 5).

Management requirements for salvage and other protocols in respect of these sites are included in the Aboriginal Heritage Protection Plans prepared by Australand and approved under the framework of the *NP&W Act 1974* ss87/90 combined consent and permit (No 2534).

7.0 ABORIGINAL SITES IN THE WIDER SHELL COVE PROJECT AREA

Four Aboriginal sites have been recorded on the Aboriginal Heritage Information Management System (AHIMS) administered by the NSW Department of Environment & Climate Change (DECC). These sites comprise a shell midden and associated lithic scatter (AHIMS Site 52-5-207), and three lithic scatters (AHIMS Sites 52-5-436, 52-5-437 & 52-5-438). As well as these registered sites, two isolated stone flakes have been removed from their recorded locations in the Shell Cove Boatharbour/Marina Project Area (see Talbot 2005).

During the consultation process for the Shell Cove Boatharbour/Marina Project (Australand 2006) a number of claims were made by respondents about the presence, or former presence, of Aboriginal sites in the Shell Cove area. None of these claimed sites were independently corroborated or verified nor registered on the DECC AHIMS database. One respondent claimed that a former Aboriginal ceremonial ground occurred in Shellharbour Swamp (Australand 2006:34-37). The same respondent also reported an Aboriginal massacre and burial site which he asserted must exist north of Shellharbour Swamp (Australand 2006:28-33). This respondent also made a third claim that Aboriginal burials had been discovered in 1949 on the margin of Bass Point Quarry (Australand 2006:37-38). Another respondent reported that an Aboriginal “underground oven” existed under an existing car park immediately southeast of the shell midden site (AHIMS No. 52-5-207) and on the ocean side of Bass Point Tourist Drive (Australand 2006:20). However, essential corroborating evidence for these various claims, such as a specific location, the identity of a purported original informant, or corroborating documentary evidence said to exist, was not provided and therefore the claims could not be verified.

8.0 HISTORY OF ABORIGINAL COMMUNITY CONSULTATION

The wider Shell Cove Project Area is located within the boundaries of the Illawarra Local Aboriginal Land Council (Illawarra LALC) and extends over an area of sea bed immediately east and adjacent to the land area. Other Aboriginal organisations (in alphabetical order) that had expressed interest in the Indigenous cultural heritage of the Project Area during the Aboriginal community consultant process are:

1. Korewal (La Perouse) Elouera (Illawarra) Jerrungarugh (Shoalhaven) Tribal Elders Aboriginal Corporation (acronym: KEJ, or KEJ TEAC). (Incorporated 13 July 1994). The General Manager of another Aboriginal organisation, NIAC (see below), advised on 23 May 2006 that KEJ was superseded by other organisations and was no longer active.
2. Northern Illawarra Aboriginal Cooperative Inc. (acronym: NIAC). According to its declared objectives this corporation 'represents different Traditional Custodian lineages from along the southeast Australian seaboard', comprising the Wadi Wadi Coomaditchie Aboriginal Corporation, the La Perouse Botany Bay Aboriginal Corporation, and the Wulungula descendants of Alfred Cummins.
3. Wadi Wadi Coomaditchie Aboriginal Corporation (a member group of NIAC and often referred to as 'Wadi Wadi').
4. Wodi-Wodi Elders Council.
5. New South Wales Aboriginal Land Council.

A number of members of some of these groups are also members of the Illawarra LALC.

Consultation and liaison with the local Aboriginal Community concerning the Indigenous cultural heritage of the Shell Cove area (including the Boatharbour Precinct Lands) began 24 years ago. This consultation occurred mostly between consultant archaeologists and the Illawarra LALC and involved Aboriginal participation in archaeological fieldwork in the Shell Cove area. At various times during this period, Shellharbour City Council also carried out direct consultation about Aboriginal heritage of the area with Aboriginal community representatives.

In 1995, the Minister for Urban Affairs and Planning established a Commission of Inquiry to inquire into and report on the development application that had been lodged by Council for the Shell Cove Boatharbour/Marina Project. During a series of hearings, the Commission of Inquiry afforded the community, government authorities, and the applicant for the development, the opportunity to express views and present information. Submissions were made to the Inquiry both for and against the development proposal.

One of the issues considered by the Commission of Inquiry was Aboriginal culture and heritage, and a number of submissions from the Aboriginal community were considered. The Commission of Inquiry assessed the claims of the applicant, amongst others, of a massacre and burials in the area and considered the archaeological evidence. The Commission of Inquiry issued its report on these matters in 1996.

The Commission stated that it had appraised all of the environmental issues, including the Aboriginal heritage issues, such as the claimed occurrence of a massacre of Aborigines and burial of the victims at Shell Cove. The Commission concluded that the distribution of areas of archaeological value provided

opportunities to construct major elements of the proposed development without directly impacting the most archaeologically significant deposit (at shell midden site AHIMS No. 52-5-207) (Commission of Inquiry 1996:61). The Commission further concluded that the proposed development was appropriate, subject to a number of consent conditions. The submissions relating to Aboriginal culture and heritage were summarised and/or appended in the Commission's report. The Commission's commentary on and assessment of the Aboriginal issues was also included as an Appendix to its report.

On 26 November 1996, the Minister granted development consent to the Council for the construction of a boatharbour/marina, enlargement and enhancement of wetlands at Shadforth and the placement of acoustic mounds adjacent to a Bass Point Quarry Haul road. The conditions of the consent included requirements to: establish a Shell Cove Compliance Committee (which includes a representative of the Aboriginal community); protect the areas of the Aboriginal shell midden site (AHIMS site 52-5-207) identified as having relatively high archaeological value; and prepare, as part of the Environmental Management Plan, an Archaeological and Heritage Protection Plan for each component, in consultation with the Aboriginal community and the NSW National Parks and Wildlife Service (now Department of Environment & Climate Change).

The finalised Archaeological and Heritage Protection Plans (AHPPs) required under the development consent are included in Appendices 1 and 2. These AHPPs were prepared in consultation with representatives of the local Aboriginal Community and the DECC (Australand 2006).

8.1 Aboriginal Community Consultation by NHC in 2005 in relation to the Shell Cove Project

For applications under s87 & s90 of the *NP&W Act 1974* the Department of Environment & Climate Change requires development proponents to engage in consultation with the Aboriginal community in accordance with its policy "*Interim Guidelines for Aboriginal Community Consultation*". In accordance with this policy, Dr Johan Kamminga (NHC) undertook consultation with the Aboriginal community (Australand 2006).

The Aboriginal community consultation process included:

- (a) Direct mailing and publication of notices in relevant local and Aboriginal community newspapers advising all Aboriginal persons and groups who have knowledge of, or were interested in Aboriginal cultural heritage within the Shell Cove area to register their interest in the consultation process.
- (b) Those persons or groups who registered their interest were provided with a Cultural and Archaeological Methodology Briefing Document. The respondents were invited to provide feedback to the proponent, including identification of issues/areas of cultural significance that might affect, inform or refine the assessment methodology. The respondents were advised that there was an opportunity to meet with the consultant archaeologist, Dr Kamminga, for face to face feedback including joint inspection of the Shell Cove area.
- (c) The respondents who accepted the invitation to meet with Dr Kamminga provided feedback during two meetings. Subsequent to these meetings a

number of respondents participated in a tour of Shell Cove which provided an opportunity to indicate to the consultant localities of particular interest and to provide further feedback. Subsequently Dr Kamminga prepared two reports on this feedback which were submitted to the relevant respondents for their approval. These feedback reports formed part of ss87/90 application subsequently submitted to the DECC.

- (d) Written correspondence detailing information and concerns about Aboriginal heritage were also received at various times during the consultation process. Each item of information, issue, concern or recommendation expressed in this correspondence and in the feedback reports was dealt with in a table detailing the development proponent's responses. This table and records of all written and oral communications provided to Dr Kamminga throughout the consultation process were submitted as Attachment 26 to the final Cultural Heritage Assessment Report and part of ss87/90 application submitted to the DECC.

This process of community consultation has been summarised by Australand (2006) and by Preston (2007). On 29 September 2006, the Department of Environment & Conservation issued a ss87/90 combined consent/permit (No 2534) for the Development Area (Appendix 3).

9.0 HISTORY OF LITIGATION IN THE NSW LAND AND ENVIRONMENT COURT IN RELATION TO ABORIGINAL HERITAGE IN THE SHELL COVE AREA

Initial litigation

In 2005, three Aboriginal persons, Aaron Broad Henry, Stephen Henry and Roy Kennedy, commenced Class 4 proceedings in the NSW Land and Environment Court challenging the validity of the development consent granted by the NSW Minister for Planning (alleging the development consent had lapsed) and seeking a declaration that Shellharbour Council, in undertaking development in accordance with the development consent, will cause the movement, damage, defacement or destruction of Aboriginal objects in breach of s86 and s90 of the *National Parks and Wildlife Act* 1974.

In relation to the second challenge, Mr Aaron Broad Henry and Mr Allan Carriage gave evidence in relation to the Aboriginal objects said to occur within and around the Project Area. Expert evidence was given by Mr Michael Therin, a consulting archaeologist who prepared a report on the Applicant's behalf in May 2005. Mr Therin had been escorted to a number of locations at Shell Cove where he was shown stone items claimed to be Aboriginal objects. Therin recorded the presence of a total of about 23 Aboriginal stone artefacts on the ground surface at three locations (AHIMS site 52-5-436, 52-5-437 and 52-5-438). Dr Johan Kamminga also gave evidence in these proceedings, including addressing the evidence of the Applicant and Mr Carriage and Mr Therin.

In two judgments, Justice Talbot dismissed both of the Applicant's claims: *Henry v Shellharbour City Council* [2005] NSWLEC 378 (22 July 2005) (in relation to the challenge to the development consent), and *Henry v Shellharbour City Council* [2005] NSWLEC 600 (21 October 2005) (in relation to alleged disturbance of Aboriginal objects).

Final litigation

On 29 June 2006, Australand Holdings Limited on behalf of Shellharbour City Council and Australand Corporation (NSW) Pty Ltd lodged an application for a permit under s87 and a consent under s90 of the *National Parks and Wildlife Act 1974* to the Department of Environment and Conservation. The application stated that its purpose:

“is to seek a Permit and Consent allowing the management and authorisation of impacts on Aboriginal objects within the Project Area arising from the ongoing development of the Project Area, including the following development:

- (i) work and uses involved in investigative activities, feasibility investigations, pre-construction infrastructure establishment;
- (ii) boatharbour and marina construction;
- (iii) other work including the construction of roads, drainage, services infrastructure, landscaping and buildings within the Project Area; and
- (iv) the ongoing use and development of land and waters within the Project Area for the purpose of the Shell Cove Boatharbour Project.”

The application sought authorisation in the following terms:

“1. **Permission** involved under s87(1) to:

- (a) disturb or excavate land for the purpose of discovering Aboriginal objects (**‘object’**);
- (b) disturb or move Aboriginal objects;
- (c) collect Aboriginal objects for safe-keeping;
- (d) transport, replace and retain Aboriginal objects, for safe-keeping, in an interim repository (Keeping Place) as required by any relevant conditions imposed on the Permit/Consent;

AND

2. **Consent** under section 90 to damage, disturb or destroy:

- (a) Aboriginal objects within the Project Area identified in the EIS and Archaeological and Heritage Protection Plan for the Shell Cove Boatharbour/Marina, or as a result of the monitoring or salvage operations under the s 87 Permit and which are not the subject of protection or salvage measures under the Permit; and
- (b) Aboriginal objects which are not identified in the EIS, Archaeological and Heritage Protection Plan for the Shell Cove Boatharbour/Marina, or during the inspection and salvage operation of the Permit;
- (c) and which are disturbed, damaged or destroyed in the course of carrying out the development within the Project Area pursuant to the Development Consents or the Part 5A assessment, or in the course of other work, including the construction of roads, drainage, services infrastructure, landscaping and buildings within the Project Area or in the course of ongoing use and development of land and waters within the Project Area for the purposes of the Shell Cove Boatharbour Marina Project”.

The application described the types of Aboriginal objects and their location. Such description was supplemented by attachments. These attachments included the Cultural Heritage Assessment Reports, both draft and final, prepared by Dr Kamminga; five earlier archaeological consultancy reports that provide information about, amongst other things, the Aboriginal objects and the sites in which the Aboriginal objects are found; an extract from the Commission of Inquiry report in 1996 dealing with the Aboriginal cultural heritage and archaeological considerations;

various affidavits in the proceedings in the Land and Environment Court brought by Mr Henry; and the judgments of the Court by Justice Talbot on 22 July 2005 and 21 October 2005.

On 29 September 2006 a delegate for the Director-General determined to grant a s87 Permit and s90 consent subject to the terms and conditions set out in the consent and permit No 2534 (Appendix 3). Schedule A identified the Aboriginal objects to which consent and permit No 2534 applied, namely all Aboriginal objects on the land described in Schedule C, being the land in the Shell Cove Boatharbour/Marina Project Area, including the registered Aboriginal sites of AHIMS 52-5-0207 (but only in relation to areas identified as being of relatively low or no archaeological value in Figure 20 (from the Navin Officer 1995 report)), 52-5-0436, 52-5-0437 and 52-5-0438. However, the consent and permit did not apply to the Aboriginal objects or sites described in Schedule B. These were that part of the AHIMS site 52-5-0207 which was described as “Shell midden in relation to areas identified as being of relatively high archaeological value in Figure 20 (attached)” as well as “All human skeletal material, wherever occurring”. The excluded Aboriginal objects or sites were not to be disturbed, moved, damaged, defaced or destroyed (see Preston 2007; and Appendix 3).

In 2007, Mr Aaron Broad Henry commenced Class 4 proceedings in the NSW Land and Environment Court challenging the validity of the ss87/90 combined consent and permit granted by the Director-General of the Department of Environment and Conservation, and seeking an order restraining Australand Corporation (NSW) Pty Ltd, its servants, employees, agents or contractors from any activity including excavation and clearing of the land allegedly in breach of ss86 and/or 90 of the *National Parks and Wildlife Act 1974* (Broad Henry v Director-General and [2007] NSWLEC 722; Preston 2007).

Mr Henry challenged the validity of the permit and the consent on four broad grounds: failure to consider relevant matters; considering irrelevant matters; denial of procedural fairness; and bias and racial discrimination by the decision maker. Affidavits in these proceedings were submitted by Mr Henry, Mr Alan Carriage and Dr Johan Kamminga. Hearings were held over three days (17-19 September 2007). Dr Johan Kamminga provided expert evidence during the proceedings.

In a judgement delivered on 1 November 2007 Justice Preston found that the Applicant had failed to establish each of the claimed grounds of review; and accordingly dismissed the application in its entirety.

10.0 SUMMARY & CONCLUSIONS

Over the past 20 years a number of archaeological investigations have been carried out in the Shell Cove area for the proposed Shell Cove Boatharbour/Marina (formerly known as the Illawarra Bicentennial Boatharbour). The three primary archaeological field surveys (McIntire 1985, Hotchkin, *et al.* 1986; Navin Officer 1995a) and an associated field survey of the Quarry Haul Road easement (Navin 1995b) have variously included:

- reviews of the history of extensive subsurface disturbance during historic times;

- archaeological subsurface testing of a shell midden and associated lithic scatter (AHIMS Site 52-5-207) in a sand dune on Shellharbour South Beach, and within the slope adjacent to Shellharbour Swamp; and
- archaeological ground-surface surveys in the Shell Cove area generally, including the development area for the proposed Harbour Boulevard/Shallows Drive.

During these archaeological ground surface surveys/subsurface testing programmes no Aboriginal or (protected) non-Aboriginal objects or structures were identified on the slopes adjacent to Shellharbour Swamp. McIntyre and Navin Officer concluded from their field surveys and reviews of land-use history that the archaeological sensitivity of the slopes was generally low.

While the Navin Officer field surveys of the Shell Cove Development Area and Haul Road Landfill were carried out over a decade ago, they were thorough and were accompanied by a competent literature review and cultural heritage assessment. Their surveys therefore alone provided a reasonably reliable basis for assessing whether large Aboriginal sites were likely to occur on the slopes to the west and north west of Shellharbour Swamp. Navin Officer concluded that there were no identifiable cultural heritage constraints on the proposed development of the slopes and ridge top.

In 2004 and 2005, National Heritage Consultants and Therin Archaeological Consulting separately carried out archaeological inspections of specific localities within the Shell Cove area (Kamminga 2005; Therin 2005; Australand 2006; see also Talbot 2005). These inspections variously resulted in the recording of three stone artefacts scatters and two isolated stone artefacts within the general Shell Cove Project Area. The nature and circumstances of these identifications have been documented in proceedings in the Land and Environment Court (Carriage 2005; Henry 2004, 2005; Kamminga 2005a; Talbot 2005; Therin 2005; Australand 2006).

Whilst it has been alleged by some individuals that other significant Aboriginal sites or site types (such as a massacre site and ceremonial site) occur within the Shell Cove area (see Australand 2006) none of the claims have been professionally corroborated; and the DECC has not identified or registered any of the alleged sites.

The Shell Cove area in general has been extensively modified and transformed by colonial-era and modern land-use practices and developments. These processes have diminished the preservation of both Aboriginal and non-Aboriginal cultural heritage within the area. Aboriginal people have inhabited Australia for many millennia (Mulvaney and Kamminga 1999) and non-biodegradable Aboriginal stone objects, such as flaking debris and utilitarian stone tools, occur as a general feature of Holocene-age sediments within the south east Australian coastal zone. However, chemical testing has demonstrated that the sediment of the slopes surrounding Shellharbour Swamp is generally acidic to highly acidic. It is inferred that organic archaeological materials, such as shell midden and human burials, are very unlikely to be preserved in the sediments of the slopes and alluvial flats of Shell Cove. Preservation conditions in specific circumstances are generally better for the sand body that comprises the present day beachfront on the east of Bass Point Tourist Drive. However, proposed development works in this specific area will be subject to the management procedures (including archaeological salvage and monitoring) indicated in the approved Archaeological and Heritage Protection Plan for the Shell Cove Boatharbour/Marina (see Appendix 2) and the ss87/90 permit/consent issued by the DECC (see Appendix 3). Special conditions apply if human remains are identified during development activities. Condition 3 of the Consent entitled

"Protection of Human Remains", at page 5, provides for the protection of human remains. If Aboriginal ancestral remains are identified during development activities, such activities should cease in the immediate area of these remains, with DECC being notified as soon as practicable and any directions given by DECC complied with (see Appendices 1 to 3).

There is no reasonable likelihood that undisturbed and/or scientifically important Aboriginal sites will be revealed by further archaeological test pitting or ground surface survey. The potential for significant, undisturbed Aboriginal sites is assessed as low to negligible.

In conclusion, the two Archaeological and Cultural Heritage Protection Plans prepared by Australand in conjunction with National Heritage Consultants (see Appendices 1 & 2), and the ss87/90 consent and permit (No 2534) granted by the NSW Department of Environment & Conservation (now the NSW Department of Environment & Climate Change) (see Appendix 3) provide adequate and appropriate protection and conservation/salvage of Aboriginal and non-Aboriginal cultural heritage within the Boatharbour precinct lands.

11.0 REFERENCES

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APPENDIX 1

Archaeological and Heritage Protection Plan for the Extraction of Waste Material from Shellharbour Swamp and its Emplacement in the Single Landfill Cell – Shell Cove Waste Relocation

This Archaeological and Heritage Protection Plan is part of the Environmental Management Plan (EMP) for the extraction of waste material from Shellharbour Swamp and its emplacement in the single landfill cell (Shell Cove Waste Relocation). It concerns the following three areas of land (see Attachment 1):

- the former municipal tip, which is partly located within Shellharbour Swamp (shown as EXISTING LANDFILL in Attachment 1);
- the approved single landfill cell to be constructed (shown as PROPOSED WASTE CELL in Attachment 1); and
- the haul road from the tip to the landfill cell.

3.6 Archaeological and Heritage Protection Plan

This Section addresses Development Consent Condition 15(d)(vi).

Environmental Aspect and Impact

Impact on archaeological and heritage sites is likely to result from:

- Unauthorised works and activities within these identified sites; and
- Excavation of undiscovered objects outside of these sites.

Requirements

The Archaeological and Heritage Protection Plan shall provide details on:

- Maintenance;
- Management;
- Monitoring; and
- Remedial measures.

This Plan for the Aboriginal sites and objects within the Shell Cove Waste Relocation project area shall be amended to comply with the conditions specified in any s.87 permit and s.90 consent for the Shell Cove Boatharbour/Marina

development issued by the Director General of Department of Environment and Conservation in accordance with the *National Parks and Wildlife Act 1974*.

The Contractor shall undertake and manage all site works to ensure compliance with:

- *National Parks and Wildlife Act 1974*;
- *NSW Heritage Act 1977*;
- the conditions specified in any issued s.87 permit or s.90 consent; and
- the requirements of this Archaeological and Heritage Protection Plan.

The Contractor shall undertake and manage all site works to ensure those works and vehicle movements are kept within the designated areas.

Management Strategy/Control Measures

Over the past 20 years, a number of archaeological investigations have been carried out for the Shell Cove Boatharbour/Marina development. These have variously included:

- reviews of the history of extensive subsurface disturbance during historic times;
- archaeological subsurface testing of a shell midden and associated lithic scatter (AHIMS Site 52-5-207) in a sand dune on Shellharbour South Beach, and within the slope adjacent to Shellharbour Swamp; and
- archaeological ground-surface surveys within the general Shell Cove area which includes the Old Landfill, the route of the Haul Road and the SCWCC.

None of the identified Aboriginal sites or objects was located within the areas of the Old Landfill, the route of the Haul Road and the SCWCC. However, the route of the Haul Road is close to AHIMS Site 52-5-437 and it may be necessary, prior to its construction, to undertake the proposed salvage and protection measures stated below.

Also, the EIS (LFA 1995) and the Statement of Environmental Effects (LFA 2003) concluded that there were no identified items of European heritage significance within those areas.

Proposed salvage measures for AHIMS Site 52-5-437

The proposal for salvage measures for this site is in two stages, as follows:

Stage 1

Preliminary collection by a qualified archaeologist and Aboriginal community representative(s) of Aboriginal objects evident on ground surface and taken to a place of safety.

Stage 2

Ground surface scrape and collection of identified Aboriginal objects evident within a defined area of creek margin and according to OH&S requirements. This process, which will vary according to specific circumstances, is as follows:

A bulldozer systematically exposes the sediment within scrape areas along one or both sides of the creek at AHIMS Site 52-5-437. The area of the scrapes are hypothetically overlain by a grid of collection squares, generally by running tapes off several base lines. The bulldozer progressively removes thin layers (e.g., up to 10 cm) of sediment under the supervision of the qualified archaeologist and Aboriginal community representative(s). After each pass of the dozer, the ground and mounded sediment is inspected on foot and any visible Aboriginal objects are collected and taken to a place of safety.

Where features of potential significance (such as dense stone artefact clusters) are identified within a scrape, they will not be initially collected or subject to further mechanical excavation, but will be temporarily protected until controlled hand excavation is undertaken under the supervision of a qualified archaeologist. The primary objective of hand excavation is to retrieve the evidence that comprised the feature, in a manner consistent with obtaining maximum possible information. Hand excavation is predominantly done by trowel in 1 m² squares and by 10 cm spits below the starting level of the scraped surface. The soil from the excavation is sieved.

Once the controlled hand excavation is completed, the area is subject to further surface scrapes. The location of the object is recorded within the 5 x 5 metre alphanumerically labelled collection squares. Any objects collected are then washed, dried, recorded and bagged for long term storage. The process is repeated for each scrape area until the main horizon potentially containing Aboriginal objects has been excavated.

APPENDIX 2

Archaeological and Heritage Protection Plan for the Shell Cove Boatharbour/Marina

This Archaeological and Heritage Protection Plan is part of the Environmental Management Plan (EMP) for the Shell Cove boatharbour/marina. It concerns the following areas of land (see Attachment 1):

- the Shell Cove Project Area in general; and
- AHIMS Sites 52-5-207, 52-5-436, 52-5-437 and 52-5-438.

3.6 Archaeological and Heritage Protection Plan

This Section addresses Development Consent Condition 15(d)(vi).

Environmental Aspect and Impact

Impact on archaeological and heritage sites is likely to result from:

- Unauthorised works and activities within these identified sites; and
- Excavation of undiscovered objects outside of these sites.

Requirements

The Archaeological and Heritage Protection Plan shall provide details on:

- Maintenance;
- Management;
- Monitoring; and
- Remedial measures.

This Plan for the Aboriginal sites and objects within the Shell Cove Boatharbour/Marina Project area shall be amended to comply with the conditions specified in any s.87 permit and s.90 consent for the Shell Cove boatharbour/marina development issued by the Director General of Department of Environment and Conservation in accordance with the *National Parks and Wildlife Act 1974*.

The Contractor shall undertake and manage all site works to ensure compliance with:

- *National Parks and Wildlife Act 1974*;
- *NSW Heritage Act 1977*;
- the conditions specified in any issued s.87 permit or s.90 consent; and
- the requirements of this Archaeological and Heritage Protection Plan.

Background

This Archaeological and Heritage Protection Plan is part of the Environmental Management Plan (EMP) for Shell Cove boatharbour/marina. It concerns the following areas of land (see Attachment 1):

- the Shell Cove Project Area in general; and
- AHIMS Sites 52-5-207, 52-5-436, 52-5-437 and 52-5-438.

Over the past 20 years a number of archaeological investigations have been carried out in the Shell Cove area for the proposed Shell Cove boatharbour/marina (formerly known as the Illawarra Bicentennial Boatharbour). The three primary archaeological field surveys (McIntire 1985, Hotchkin, *et al.* 1986; Navin Officer 1995a) and an associated field survey of the Quarry Haul Road easement (Navin 1995b) have variously included:

- reviews of the history of extensive subsurface disturbance during historic times;
- archaeological subsurface testing of a shell midden and associated lithic scatter (AHIMS Site 52-5-207) in a sand dune on Shellharbour South Beach, and within the slope adjacent to Shellharbour Swamp; and
- archaeological ground-surface surveys in the Shell Cove area.

During these archaeological ground surface surveys/subsurface testing programmes no Aboriginal objects were identified on the slopes adjacent to Shellharbour Swamp. Subsequently, in 2005, three stone artefacts scatters and two isolated stone artefacts were identified by qualified archaeologists in the general Shell Cove development area. The nature and circumstances of these identifications have been documented in proceedings in the Land and Environment Court (Carriage 2005; Henry 2004, 2005; Kamminga 2005a; Talbot 2005; Therin 2005).

The topography, vegetation, degree of ground cover, topsoil characteristics and colonial and modern land-use history of the approved Single Landfill Cell and Landscape Mound areas are the same as those for the adjoining slopes. These areas have been extensively modified and transformed by colonial era and modern land-use practices (Kamminga 2005b). No Aboriginal objects have been reported to occur in the two areas and the potential of archaeological ground surface survey is considered to be negligible.

Also, the EIS (LFA, 1995) and the Statement of Environmental Effects (LFA, 2003) concluded that there were no identified items of European heritage significance within the Shell Cove development areas.

Proposed heritage protection measures for the Project Area in general

The proposed heritage protection measures for the Project Area in general are:

1. The development proponents will apply for a s.87 permit and a s.90 consent from the Director General of NPWS in accordance with the *National Parks and Wildlife Act 1974*. The Application Area for the permit and the consent will

excluding all the portions of AHIMS Site 52-5-207 identified as being of relatively high archaeological value in Figure 20 of Appendix 6 of the EIS (see Attachment 1).

2. All development activities shall be managed in accordance with the *National Parks and Wildlife Act 1974*.
3. Maintenance, management, monitoring and remedial measures as appropriate for Aboriginal sites and objects identified during construction activities shall comply with the conditions specified in the s.87 permit and the s.90 consent.
4. Contractors involved in construction activities will be advised in writing about the conditions specified in the s.87 permit and the s.90 consent to ensure that they adhere to all permit and consent conditions relevant to their work activities.
5. Contractors/Construction personnel that will be involved in site stripping or excavation tasks will be required to undergo a cultural heritage induction as part of the development site induction process before commencing groundbreaking construction work.
6. The excavation of beach sand required to create the boatharbour entrance and the bioretention swale (north of the harbour entrance) to a sediment depth of RL 0.49m AHD (a precise level approximating the mean high water mark) will be monitored by representative(s) of the Aboriginal community and a qualified archaeologist.
7. In accordance with relevant conditions specified in the s.87 permit and/or the s.90 consent, Aboriginal objects evident on ground surface at AHIMS Sites 52-5-436, 52-5-437 and 52-5-438 will be collected and taken to a place of safety by representative(s) of the Aboriginal community under supervision of a qualified archaeologist.
8. If Aboriginal ancestral remains (human remains) are identified during development activities, work shall cease in the immediate area of these remains, DEC will be notified as soon as practicable, and any directions given by DEC in this regard shall be complied with.
9. If during the abovementioned monitoring activities any other type of Aboriginal site (specifically a site that is seen to comprise more than a single Aboriginal artefact, manuport or shell) is identified and assessed as having high archaeological integrity and overall heritage value by the qualified archaeologist in consultation with the participating Aboriginal community representative, development work will cease in the immediate area of this site. A representative sample or the area of highest salvage potential will then be archaeologically excavated by broad-area or test pit method and/or by relocating bulk sediment to an appropriate long-term storage location. The proposed storage location shall be selected in consultation with the participating Aboriginal community representative(s).
10. An inventory will be prepared that details the contents of the collections of Aboriginal objects. The inventory will include information about the original location of artefacts and their physical and cultural attributes.

11. The collection of objects and its inventory will be deposited with Aboriginal organisation(s), if required by the conditions of the ss87/90 permit/consent under the provision of a DEC Care Agreement for Aboriginal Objects, or alternatively, with the Australian Museum as directed by DEC pursuant to the relevant conditions of the ss87/90 permit/consent.

Proposed salvage and protection measures for AHIMS Site 52-5-207 (shell midden and associated lithic scatter)

All portions of AHIMS Site 52-5-207 identified as being of relatively high archaeological value in Figure 20 of Appendix 6 of the Environmental Impact Statement (EIS) will be preserved and protected from potential impact by development activities.

The proposed protection and conservation measures detailed below are based on an evaluation of the current condition of, and the ascertained current and potential threats to, the midden deposit and the sand dune containing the midden deposit.

Existing protective measures

The sand dune containing the midden deposit has been protected from potential adverse vehicular impact by a timber post and wire fence constructed in the 1980s along the western side of this sand dune. There are also two fenced walkways orientated east-west across the fenced area of sand dune. These walkways are the only pedestrian access corridors across the dune to the beach in this location. Maintenance of these fence lines has been instrumental in encouraging vigorous regrowth of coastal plants on the dune. Existing fence lines along the eastern margin of Bass Point Tourist Road and its associated parking areas currently restrict vehicular access to the sand dune and to the beachfront south of the sand dune. As a consequence, currently the sand dune in general is thickly covered with vegetation and is stable.

Proposed measures

Proposed salvage, protection and conservation measures include the following specific measures:

During Boatharbour Construction Phase

1. A fence will be constructed under supervision of a qualified archaeologist to create a boundary and buffer between the northernmost portion of the midden identified in the EIS as having relatively high archaeological value and the works activities area for the creation of the boatharbour entrance and breakwater. No development activities involving disturbance of subsurface sediments or vehicular traffic will be permitted on the sand dune south of this fence line (part of the Exclusion Area).
2. The existing fence lines south of the abovementioned new fence and along the eastern margin of the sand dune and the eastern margins of Bass Point Tourist Road (and associated parking areas) will be maintained where possible. In locations where the existing fence line cannot be preserved a new fence will be constructed to provide a minimum 5 m buffer from the high

3. For the balance of Site 52-5-207 (i.e., those areas not identified as being of relatively high archaeological value), the excavation of sediment will be monitored by representative(s) of the Aboriginal community and a qualified archaeologist. A representative sample of Aboriginal objects located during this monitoring will be collected and taken to a place of safety. If an Aboriginal site is identified and assessed as having high overall heritage value by the qualified archaeologist, in consultation with the participating Aboriginal community representative(s), work will cease in the immediate area of this identified cultural deposit and at least a representative sample will be salvaged.
4. An inventory will list the items comprising the collections of Aboriginal objects. The inventory will include information about the original location of items and their physical and cultural attributes.
5. The collection of objects and its inventory will be deposited with Aboriginal organisation(s) if required by the conditions of the ss87/90 permit/consent under the provision of a DEC [now DECC] Care Agreement for Aboriginal Objects, or alternatively, with the Australian Museum as directed by DEC pursuant to the relevant conditions of the ss87/90 permit/consent.
6. The sediment and any cultural material in and around the two areas of inferred midden deposit will be excavated by earthmoving equipment, and transported and redeposited to the Landscape Mound or other deposition site within the Project Area or offsite.
7. If Aboriginal ancestral remains (human remains) are encountered during construction activities work shall cease in the immediate area of these remains, DEC will be notified as soon as practicable, and any directions given by DEC in this regard shall be complied with.

Post Boatharbour Construction Phase

1. At the present time the current walkway corridors across the sand dune do not intersect with the shell middle horizon within the dune. Potential adverse impact from the walkway corridors has not been identified during the 2005-2006 community consultation process and therefore it is proposed that the existing walkway corridors be retained.
2. Existing fencing of the sand dune containing the shell midden horizons will be retained and augmented where necessary. All other fencing, including temporary construction buffer fencing, may be removed.
3. Existing vegetation on the high archaeological value area of the sand dune is currently stabilising and protecting the midden horizons. This dunal vegetation will be retained and will be augmented where necessary.
4. Degraded areas of land surface in the immediate vicinity of the high archaeological value shell midden deposit (but not the high archaeological value deposit itself) will be dressed with topsoil to create an even ground

Proposed salvage and protection measures for AHIMS Site 52-5-436

The approximately eight to ten identified stone artefacts comprising this site, or those that are evident at the time of collection, will be removed and taken to a place of safety.

The excavation of the sediment in the area of the site, down to RL 0.49m AHD, will be monitored by representative(s) of the Aboriginal community and a qualified archaeologist.

Natural sediment and any unsalvaged cultural objects within that sediment and around the area of the site will be excavated, transported and relocated to the Landscape Mound or other deposition site within the Project Area or offsite.

Proposed salvage and protection measures for AHIMS Site 52-5-437

The proposal for salvage measures for this site is in two stages, as follows:

Stage 1

Preliminary collection by a qualified archaeologist and an Aboriginal community representative(s) of Aboriginal objects evident on ground surface and taken to a place of safety.

Stage 2

Ground surface scrape and collection of identified Aboriginal objects evident within a defined area of creek margin and according to OH&S requirements. This process, which will vary according to specific circumstances, is as follows:

A bulldozer systematically exposes the sediment within scrape areas along one or both sides of the creek at AHIMS Site 52-5-437. The area of the scrapes are hypothetically overlain by a grid of collection squares, generally by running tapes off several base lines. The bulldozer progressively removes thin layers (e.g., up to 10 cm) of sediment under the supervision of the qualified archaeologist and Aboriginal community representative(s). After each pass of the dozer, the ground and mounded sediment is inspected on foot and any visible Aboriginal objects are collected and taken to a place of safety.

Where features of potential significance (such as dense stone artefact clusters) are identified within a scrape, they will not be initially collected or subject to further mechanical excavation, but will be temporarily protected until controlled hand excavation is undertaken under the supervision of a qualified archaeologist. The primary objective of hand excavation is to retrieve the evidence that comprised the feature, in a manner consistent with obtaining maximum possible information. Hand excavation is predominantly done by trowel in 1 m² squares and by 10 cm spits below the starting level of the scraped surface. The soil from the excavation is sieved.

Once the controlled hand excavation is completed, the area is subject to further surface scrapes. The location of the object is recorded within the 5 x 5 metre alphanumerically labelled collection squares. Any objects collected are

then washed, dried, recorded and bagged for long term storage. The process is repeated for each scrape area until the main horizon potentially containing Aboriginal objects has been excavated.

Proposed salvage and protection measures for AHIMS Site 52-5-438

This site comprising the five artefacts and the general area around this site has been impacted by dam construction and heavy earthmoving equipment.

Some or all of the natural sediment and any unsalvaged Aboriginal objects within and around the area of the artefacts will be disturbed or damaged by works activities.

It is proposed that the approximately five identified stone artefacts comprising this site, or those still evident on the ground surface, be collected and taken to a place of safety.

APPENDIX 3

**NP&W Act section 87/90 combined consent
and permit No 2534 granted for Shell Cove
Boatharbour/Marina**



CONSENT AND PERMIT # 2534

CONSENT AND PERMIT TO COLLECT

CONSENT TO CARRY OUT THE DESTRUCTION OF AN ABORIGINAL OBJECT/PLACE AND PERMIT TO COLLECT AND/OR EXCAVATE FOR THE PURPOSE OF SALVAGE

Background

An application has been made to the Director-General of the Department of Environment and Conservation by:

Australand Corporation (NSW) Pty Limited ACN 001 022 117

of (address in full):

Level 3, 1C Homebush Bay Drive, Rhodes NSW 2138

for a permit pursuant to section 87 of the *National Parks and Wildlife Act 1974* ("the Act") to disturb and move Aboriginal objects for the purpose of salvage and also a consent pursuant to section 90 the Act to destroy, damage or deface Aboriginal objects in the course of development activities associated with the **Shell Cove Boatharbour/Marina Project**.

Permit and consent granted subject to conditions

NOW I, Lou Ewins, Manager Planning & Aboriginal Heritage Section, Metropolitan Branch of the Department of Environment and Conservation, grant to Australand Corporation (NSW) Pty Ltd ("the proponent"):

(a) pursuant to Section 87 of the Act, a PERMIT for the disturbance and excavation of land described in Schedule C for the purpose of discovering Aboriginal objects and the disturbance and movement of certain Aboriginal objects identified in Schedule A on the land described in Schedule C, for the purpose of salvage; AND

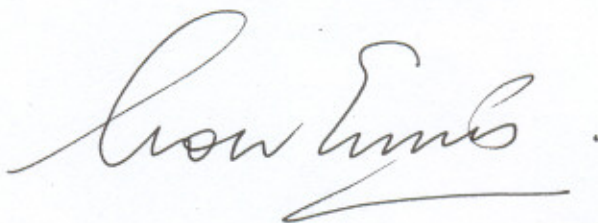
(b) pursuant to Section 90 of the Act, CONSENT to destroy, damage or deface the remaining Aboriginal objects identified in Schedule A on the land described in Schedule C, following the salvage described in paragraph (a) above;

but only in accordance with all of the conditions of this permit and consent.

TERMS AND CONDITIONS OF THIS PERMIT AND CONSENT

This Permit and Consent are issued subject to the conditions specified below.

DATED at Sydney this *29th* day of *September* 2006

A handwritten signature in black ink, appearing to read 'Lou Ewins', with a long horizontal flourish extending to the right.

Lou Ewins
Manager Planning & Aboriginal Heritage Section
Metropolitan Branch
Environment Protection and Regulation Division
Department of Environment and Conservation
(by delegation)

SCHEDULE A: Aboriginal objects to which this permit and consent apply

All Aboriginal objects on the land described in Schedule C, including the following registered Aboriginal sites:

Site reference	Site description	Approximate eastings	Approximate northings
Shellharbour Beach (52-5-0207)	Shell midden, but only in relation to areas identified as being of relatively low or no archaeological value in Figure 20 (attached).	AMGe305110	AMGn6170090
SH1 (52-5-0436)	stone artefact scatter	AMGe304821	AMGn6170370
SH2 (52-5-0437)	stone artefact scatter and associated potential archaeological deposit	AMGe304138	AMGn6170238
SH3 (52-5-0438)	stone artefact scatter	AMGe304016	AMGn6170032

However, this permit and consent do not apply to the Aboriginal objects or sites described in Schedule B.

SCHEDULE B: Excluded Aboriginal objects or sites which must not be disturbed, moved, damaged, defaced or destroyed

Site reference	Site description	Approximate eastings	Approximate northings
Shellharbour Beach (52-5-0207)	Shell midden, in relation to areas identified as being of relatively high archaeological value in Figure 20 (attached). ("the Conservation Area")	AMGe305110	AMGn6170090
	All human skeletal material, wherever occurring		

SCHEDULE C: Land to which this permit and consent apply ("the land")

The land is the Shell Cove Boatharbour/Marina Project Area (identified within the red dotted boundary area shown on attached plan Drawing No. 4717-2-059), which is located south of Shellharbour township. The land is approximately 179 hectares and comprises the following titles (as well as the public roads and Crown road reserves within the external boundary):

Lot 206 DP 857030

Lots 8031 and 8032 DP 1072187

Lot 1168 DP 1076113

Lot 22 DP 1010797

Lot 74 DP 229374

Lot B DP 420074

Lot 1 DP 584291

Lot 2 DP 109304

Lot 82 DP 729172

Lots 1 and 2 DP 1022866

SPECIAL CONDITIONS RELATING TO PERMIT

1. The proponent must appoint either Johan Kamminga or Allan Lance ("the Archaeologist") to oversee, for and on behalf of the proponent, the activities authorised by the permit, including salvage, monitoring and investigative works, unless an alternative person is approved in writing by the DEC office.

If an alternative person needs to be appointed whilst the permit remains in force, the proponent must advise the DEC office in writing of the name and relevant qualifications or experience of the individual that the proponent proposes to appoint as a replacement.

If, in the opinion of the DEC office, that person is unsuitable the proponent must provide, within 5 days of receiving a written request from the DEC, the details of 2 alternative individuals available to undertake this role and provide details of their name and relevant qualifications or experience.

2. Excavation works associated with the boatharbour/marina construction which will impact the portion of shell midden 52-5-207 referred to in Schedule A must be monitored by the Archaeologist and member(s) of the Aboriginal Community in accordance with the methodology outlined in the Archaeological and Heritage Protection Plan.
3. Aboriginal objects evident in artefact scatters 52-5-436 and 52-5-438 are to be collected by member(s) of the Aboriginal Community and the Archaeologist.
4. Monitoring of excavation works associated with the boatharbour/marina construction in the area of site 52-5-436 is to be undertaken by member(s) of the Aboriginal Community and the Archaeologist as described in the Archaeological and Heritage Protection Plan.
5. Stone artefact scatter 52-5-437 is to be salvaged in accordance with the methodology described in the Archaeological and Heritage Protection Plan.
6. The proponent must ensure that the following further measures are undertaken in regards to the salvage of 52-5-437:
 - Mechanical scrapes are to be undertaken where practicable along either side of the unnamed creek on which site 52-5-437 is situated and that drains into Shellharbour Swamp ("the Creek"), where site 52-5-437 occurs within the land.
 - The mechanical scrapes must where practicable extend along the entire length of the Creek banks near where site 52-5-437 occurs within the land in all areas where sediment that is likely to contain Aboriginal objects (to be determined by the Archaeologist) is present.
 - The initial scrapes either side of the Creek must be positioned as close to the edge of the Creek banks as practicable.
 - A series of scrapes must be undertaken to a minimum width of ten metres along the sides of the Creek where site 52-5-437 occurs.
 - If features of potential archaeological significance (such as dense stone artefact clusters) are encountered, the DEC must be contacted to determine whether additional mechanical scrapes, salvage and/or other management measures are required.
 - A summary report of the results of the salvage undertaken pursuant to this condition must be supplied by the supervising archaeologist to the DEC office following completion of the salvage works for review prior to any construction activities commencing in the vicinity of any registered site referred to in Schedule A.

7. Once any salvage/monitoring requirements have been fulfilled, any soils excavated from any of the registered Aboriginal sites listed in Schedule A during construction activities must be tagged to record their source. The purpose of this condition is to enable the tracking of soil which may contain Aboriginal objects.
8. Any Aboriginal objects recovered, being the property of the Crown, shall be deposited at The Australian Museum, in accordance with adopted procedures for the deposition of Aboriginal objects as prescribed by The Australian Museum, at or before a period of twelve months from the date of salvage of the objects. Information about deposition requirements can be obtained from the Aboriginal Archaeological Collections Manager, Division of Anthropology, The Australian Museum, on (02) 9320 6000.
9. At the same time that Aboriginal objects are deposited in the Australian Museum, a copy of any relevant reports, field notes, site plans, section drawings and relevant photographs, shall be deposited at The Australian Museum.
10. The proponent must furnish the DEC office with a report within twelve months of the completion of the salvage/monitoring work. The report must include:
 - a complete list of all Aboriginal objects recovered;
 - a detailed description of the methods of excavation/collection and analysis used;
 - a detailed plan of the site, including the location of collection areas, all trenches, auger holes and spoil heaps;
 - summary of consultation undertaken with the Aboriginal Community and any role that members of the Aboriginal Community played in monitoring, salvage or other activities on the land.

CONDITIONS APPLYING TO BOTH PERMIT AND CONSENT

Commencement

1. This permit and consent commence on the date this document was signed.

Duration of permit and consent

2. This permit and consent remain in force for 18 years from the date this document was signed.

Protection of human remains

3. If any human remains are located in, on or under the land, the proponent must:
 - (a) contact the local police so that the necessary investigations can be undertaken to establish whether it is a crime scene;
 - (b) not disturb or excavate these remains;
 - (c) immediately cease all work at the particular location;
 - (d) notify the DEC office as soon as practicable and provide any available details of the remains and their location; and
 - (e) not recommence any work at the particular location until authorised in writing by the DEC.

Protection of the Conservation Area (the excluded portion of shell midden 52-5-0207)

4. The Conservation Area must not be disturbed.
5. Vehicles must not be driven in the Conservation Area.
6. The Conservation Area must not be used to store plant, equipment or any materials, including fill.

7. Appropriate sediment and erosion controls must be installed in and operated to prevent any disturbance of Aboriginal objects in, on or under the Conservation Area, as described in the Archaeological and Heritage Protection Plan.
8. In relation to the most northerly cell of the Conservation Area shown on Figure 20 (adjoining the boatharbour entry excavation area) a fenced buffer zone of at least five metres must be maintained around the northerly cell of high archaeological value area. This portion of the Conservation Area must be protected in accordance with the management principles outlined in the Archaeological and Heritage Protection Plan and the further information regarding this matter sent by the proponent to DEC by letter dated 11 September 2006.
9. Once the protective measures for the Conservation Area outlined in the Archaeological and Heritage Protection Plan have been put in place the proponent must ensure that the Conservation Area is adequately protected. The proponent must inspect the condition of the midden on two (2) yearly basis and report back to the Aboriginal Community and the DEC in writing following the inspections. If, in the DEC office's opinion, the midden is suffering degradation then alternative protective measures must be developed in consultation with the Aboriginal Community and the DEC.

GENERAL TERMS AND CONDITIONS APPLYING TO BOTH PERMIT AND CONSENT

1. This permit and consent are not transferable.
2. This permit and consent may be revoked at any time at the discretion of the Director-General.
3. The terms and conditions of this Permit and consent may be varied at any time at the discretion of the Director-General.
4. The proponent must ensure that all of its employees, contractors, sub-contractors and agents are made aware of the conditions of this permit and consent and the corresponding offence provisions and obligations contained in the Act.
5. The proponent must notify the DEC office in writing as soon as practicable after becoming aware of any failure to comply with Part 6 of the Act or any condition of this permit and consent.
6. Where a DEC officer reasonably suspects that an incident which may have breached Part 6 of the Act has occurred, the officer may request in writing that the proponent prepare a written report as soon as practicable about the incident.
7. The proponent agrees to indemnify and keep indemnified, the Crown in right of NSW (DEC), the Minister administering the Act, the Director-General, and their employees, agents and contractors, in the absence of any willful misconduct or negligence on their part, from and against all actions, demands, claims, proceedings, losses, damages, costs (including legal costs) charges or expenses suffered or incurred by them resulting from any damage or destruction to any real or personal property and injury suffered or sustained (including death) by any persons arising out of or in connection with the activities undertaken pursuant to this permit and consent.
8. The proponent agrees to release to the full extent permitted by law, the Crown in right of NSW (DEC), the Minister administering the Act, the Director-General, and their employees, agents and contractors, in the absence of any willful misconduct or negligence on their part, from all suits, actions, demands and claims of every kind resulting from any damage or destruction to any real or personal property and injury suffered or sustained (including death) by any persons arising out of or in connection with the works undertaken pursuant to this permit.
9. DEC is entitled to make copies of any reports provided to DEC under this permit and consent. The proponent must ensure that any culturally sensitive information that should be accessed subject to conditions (eg. gender related cultural reasons) be identified in a separate letter accompanying the report.

Note: DEC may be required to produce a copy of a report provided to it in response to a lawful requirement. This request may occur, for example, as part of court proceedings or under freedom of information legislation. In providing a copy of any report which contains culturally sensitive information to which access is restricted, DEC will provide a copy of the letter setting out the restrictions and request that any person receiving a copy of the report take all reasonable precautions to comply with the specified access restrictions.

DICTIONARY

Aboriginal Community means those Aboriginal groups or individuals in the local area including those which registered an interest to be consulted during the community consultation undertaken for the project and any other Aboriginal group or individual which notifies the proponent of a wish to be consulted about the activities referred to in this permit and consent.

Act means the *National Parks and Wildlife Act 1974*

Archaeological and Heritage Protection Plan means the *Archaeological and Heritage Protection Plan for the Shell Cove Boatharbour/Marina* (2006) by Australand Corporation (NSW) Pty Ltd and Shellharbour City Council.

Archaeologist means Johan Kamminga or Allan Lance or an alternative person appointed by the proponent in accordance with the conditions of the permit.

Consent means this consent issued pursuant to s.90 of the Act

Conservation Area means that portion of shell midden Site 52-5-0207 which must not be disturbed, as described in Schedule B

Damage in relation to an Aboriginal object, means to damage, deface or destroy, or knowingly cause or permit the destruction or defacement of, or damage to, the Aboriginal object (unless otherwise specified)

DEC means the Department of Environment and Conservation

DEC office means the Parramatta office; contact Lou Ewins, Manager Planning & Aboriginal Heritage Unit, Metropolitan Region ph: (02) 9995 6802 fax: (02) 995 6900

Figure 20 means Figure 20 of Appendix 6 (Cultural Heritage Assessment) of *Environmental Impact Statement Shell Cove Boatharbour/Marina* (June 1995) by Navin Officer Archaeological Resource Management.

Heritage Act means the *Heritage Act 1977* (NSW)

Land means the land described in Schedule C

Permit means this permit issued pursuant to s.87 of the Act

Proponent means Australand Corporation (NSW) Pty Limited ACN 001 022 117

INFORMATION ABOUT THIS CONSENT

Responsibility for obtaining all approvals and compliance with applicable laws

The proponent is responsible for obtaining and complying with all approvals necessary to lawfully carry out the work referred to in this permit and consent, including but not limited to development consents and any permits required under Part 3A of the *Rivers and Foreshores Improvement Act 1948* to carry out excavation near watercourses.

Exercise of investigation and compliance powers

Officers appointed or authorised under the Act may exercise certain powers and functions, including the power to enter land.

Entry to the land only with permission of owner or occupier

A permit or consent does not authorise the holder to enter or work on the land. Permission must be obtained from the owner or occupier.

Obligation to report newly identified Aboriginal objects

Nothing in this permit and consent affects the proponent's responsibility under s.91 of the Act to report newly identified Aboriginal objects.



DRG STATUS: PRELIMINARY, NET FOR CONSTRUCTION

C	MINOR REVISIONS
D	MINOR REVISIONS
C	REVISED FOR SECTION 87(9) APPLICATION
B	REVISED AND ISSUED TO AUSTRALIA FOR APPROVAL
A	ISSUED TO AUSTRALIA FOR INFORMATION
0000	Details of Issues

Case	Q	CSE	
C36	Q	C36	18.11.05
C37	Q	C37	08.11.05
C38	Q	C38	03.11.05
C39	Q	C39	18.09.05
C40	Q	C40	08.09.05

DETAILS SHOWN IN THE ADJACENT ISSUE
RECORDS INDICATE THE STAGES UNDERTAKEN IN
THE DRAWING APPROVAL PROCESS. DRAWINGS
ARE ONLY TO BE USED WHEN APPROVED BY
PATTERSON BROTHER & PARTNERS AND THEN
ONLY AS NOTED FOR AND SIGNED ON THE
ORIGINAL. SIGNATURES CAN BE FOUND ON THE
REVERSE SIDE OF THE ORIGINAL OF THE 1940
REGISTER/TRANSMITTAL FORM NA.3.2.
ISSUED BY PATTERSON BROTHER & PARTNERS

WEEK 5
Site: Mount St Helens
North Fork, 2200
 telephone: (509) 427-4751
 fax: (509) 427-4751
 e-mail: wst@mtsthl.com
 A.C.N. 003 002 076

Patterson Britton & Partners Pty Ltd
 consulting engineers

Client	AUSTRALAND HOLDINGS LTD SHELL HARBOUR CITY COUNCIL
Project	SHELL COVE BOATHARBOUR STAGE 2 PRELIMINARY DESIGN DEVELOPMENT

PROJECT AREA

4717-2-059

BOATHARBOUR DEVELOPMENT

LEGEND:

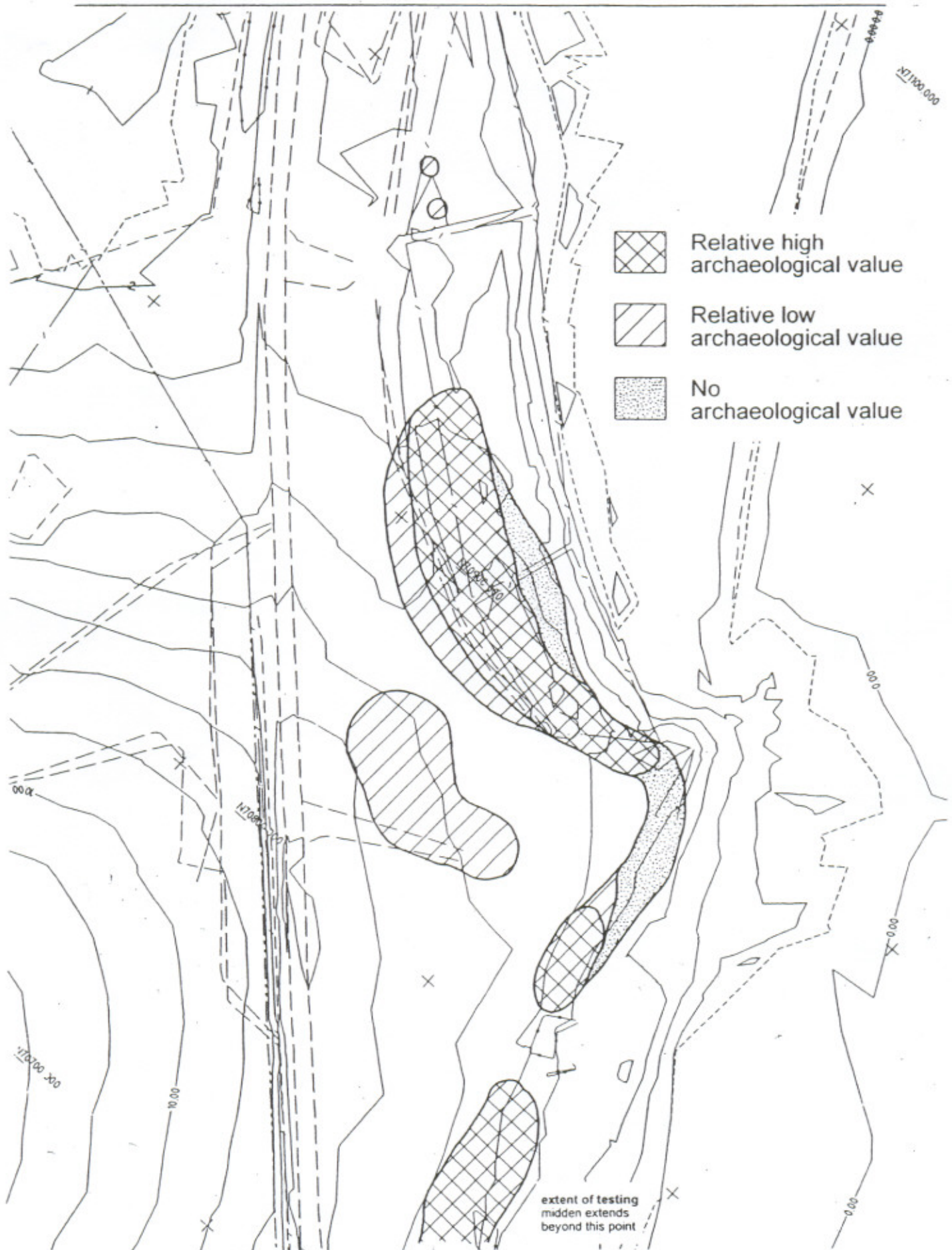


Figure 20: Interpretive map of Shellharbour Aboriginal midden site, NPWS No. 52-5-207, showing extent of archaeological material, and areas of relative high, low, and no archaeological value (1:1000 base map supplied by client).