

appendix e

Archaeology
Mary Dallas Consulting



MARY DALLAS
CONSULTING
ARCHAEOLOGISTS

CULTURAL RESOURCE ASSESSMENT, PLANNING AND MANAGEMENT

John Oliver
Bluegrass Nominees Pty limited
Po Box 5178
Wollongong NSW 2520

Dear John,

RE: SANDY BEACH - MP05-0083
AGENCY COMMENTS ON ENVIRONMENTAL ASSESSMENT [EA]

We refer to the Aboriginal heritage assessment titled "Aboriginal Archaeological Assessment Lots 21 And 22 In Dp1070182, Sandy Beach North, NSW" 2004 by Mary Dallas and Dan Tuck which was included in the EA. We have responded to agency comments and the additional comments of members of the general public, as follows.

1. Department of Planning Response

We refer to the Department of Planning letter and Attachment 1, dated 25.5.09 to Mr Robert Power of Worley Parsons detailing the Department's issues with the EA.

The Department notes that the heritage assessment "incorrectly" refers to the need to apply for a s87 Permit for PAD 1 and advises that as the project is now a Part 3A project the investigation should be done as part of the EA.

The Heritage Assessment was conducted prior to granting Part 3A status to the project. The level of Heritage assessment undertaken at that time and recommendations regarding the management of the Aboriginal heritage would be appropriate for a Part 3A project in all respects except for reference to DECC Permits. The Heritage Assessment remains current in terms of heritage values. The recommended investigations do not need to be finalised at this stage. Consent may be conditional on their completion prior to the commencement of any development works and final management commitments by their outcomes (see also below).

2. Department of Environment and Climate Change Response

We refer to the Department of Environment and Climate Change (DECC) letter dated 28.1.09 (in response to the Concept Plan) and in a letter dated 7.5.09 which refers back to the earlier correspondence.



project and management, were also represented by the LALC [see p6 of the Heritage assessment report]. These two groups have not responded to requests for a formal report and it was assumed they accepted the LALC report as reflecting their views. In any case further consultation with them would be undertaken as part of any future archaeological investigation. This matter and the need for further consultation was discussed with Rojer Mehr, Archaeologist of DECC, Coffs Harbour Office.

Additional Aboriginal community consultation was undertaken at the request of DoP in 2008 [see attachment 3]. The second round of consultation was conducted in accordance with DECC Interim 2004 community consultation guidelines as requested by the DoP. It should be noted that these guidelines were not in force at the time of the original Heritage assessment, nor were they intended be applied retrospectively. None of the groups which were previously consulted during the original heritage assessment, responded to a Public Notice in Local newspapers calling for Expressions of Interest in the project, and from this it can be presumed the nature and level of their previous involvement had been acceptable to them. The only Expression of Interest came from the Bagawa- Birra Murri Aboriginal Corporation who were forwarded a copy of the Heritage assessment report. By telephone and with a follow up letter they expressed their interest in being involved in the recommended archaeological investigation. Naturally there was agreement that the remainder of the items be preserved and interpreted.

The comment that the B-BMAC letter [see Attachment 1] is of an administrative nature and does not convey any support for the proposal is churlish. How an Aboriginal organisation chooses to respond in writing is their prerogative. It should also be noted that the purpose of the Aboriginal community consultation is not to gain the approval of the community for the development concept or development proposal but to seek their involvement/advice in the heritage assessment and development of the management strategy.

Statement of Commitment [SoC]

Please find attached the Aboriginal cultural heritage component of the Statement of Commitments for this project.

3. Additional Public Responses

In addition to the DECC response (referring to an earlier response of 28 January 2009), and the DoP response, three additional public responses were received which referred to Aboriginal cultural heritage. These were as follows:

1. An email response from local resident Melanie Collins of 3 May 2009 contains the comment "What about the Aboriginal Heritage sites?". MDCA take this to indicate a query either as to whether Aboriginal heritage has been considered for the project (indicating that the respondent was unaware of the 2004 Heritage Assessment report), or whether Aboriginal heritage 'sites' recorded through the MDCA investigation have been or are being appropriately managed. In response it is pointed out that both of the identified sites are being protected and the area of archaeological potential is recommended to be investigated prior to development. Thus the Aboriginal Heritage sites have



Survey Findings

DECC notes that 'the location of site ISF 2' is not on the Site Analysis plan. The Site Analysis document prepared by JHLA has been amended to include the location of the ISF 2. It should be noted that ISF 1 is an isolated artefact NOT a site as stated by DECC in this section of its letter].

Mitigation Measures.

DECC queries the management treatment of ISF 2.

This item is an isolated artefact [not an isolated stone scatter [as DECC states in this section of its letter] which may or may not have survived recent environmental impacts [floods]. Nearly all isolated artefacts in NSW are routinely managed under a s90 Permit [Consent to Destroy] with a possible provision for collection, if the Aboriginal community wish it, except in the case of a Part 3A project. This was not recommended because there are no proposed impacts in this area. The isolated artefact [ISF 1 : a manuport] is located within the Conservation Area along with SBN 1. The recommended management action for the Conservation Area is for site protection and conservation and the development of an Interpretation Plan. Any such plan would address permissible and non-permissible actions within the Conservation Area in the vicinity of both heritage items, including a possible interpretative walking trail. The community consultation to date indicates broad support for this approach. The consultation process will continue throughout the implementation of the recommended management action.

DECC queries the management treatment of PAD 1

Recommended test excavation/investigations into the PAD do not need to be conducted at this stage. Nor can precise details of the future course of actions be provided until it is known that the PAD is or is not an Aboriginal heritage item. Broadly there are a limited number of outcomes. The PAD may or may not represent the type of constraint which might warrant re-design of the development footprint. It is possible that any site identified during a test excavation investigation would not warrant further investigation, salvage or preservation. In the case of a significant site requiring amendments to the layout such changes are permissible under s96 of the EP&A Act. It therefore does not follow that Part 3A status requires all investigations into a site or potential site [PAD] be conducted at this stage. The approval process can proceed with a condition of consent being the completion of the test excavations and a management strategy as may be required in the event a significant site is identified which requires an amendment to the development footprint. The methodology of the test excavation can be specified and circulated to the Aboriginal community and DoP for comment prior to any works commencing. Reference can be made to the Draft 1997 DECC Standards and guidelines as well as current archaeological best practice.

The Coffs Harbour & District Local Aboriginal Land Council Report was provided to us on the 25.3.09 and is presented in Attachment 2.

Community Consultation.

DECC queries the lack of evidence of Aboriginal community consultation

The CH&DLALC has only recently been provided. It was noted that the Gumbilar-Jilipi and Garbi Elders, who supplied representatives for the field survey and preliminary

been subject both to a comprehensive study and are being managed in relation to the proposed development.

2. A letter of 29 April 2009 from Susan Barnett states under the heading "Aboriginal heritage" on a list of objections to the development that:

"The proposed development poses a threat to irreplaceable Aboriginal sites, both middens and cultural. A very large site containing middens and artefacts has already been irrevocably damaged on nearby Sandy Beach headland, as well as other sites in the area destroyed, by earlier sandmining activities. Remaining sites are precious and must be conserved."

MDCA note that it does not appear that Ms. Barnett has specific information about unrecorded sites within the proposed development area but has a general concern about the potential for development works to impact upon Aboriginal heritage sites. We note that all areas of identified and potential Aboriginal heritage within the area of potential impact of the development have been considered by MDCA and that nothing identified is proposed for impact or destruction. Further investigation of the area of Potential Archaeological Deposit may identify Aboriginal cultural material but the management of any such material cannot be determined until its condition, extent and significance has been documented. The recommended archaeological test excavations will achieve this.

3. A letter of 3 May 2009 from Rod McKelvey contains a range of objections to the proposal on various grounds. Under the heading "Indigenous Issues" Mr McKelvey states:

"The Heames [sic] lake area remains of significant importance local in aboriginal lore to certain community members. They recognise Heames Lake as a 'creation site'. Reference abound identifying the Heames Lake area as a sacred Men's place (circumcision site). Reference can be found there in the Australian Museum and in writings by Harman."

The borā-ground to the west at the headwaters of the catchment area, has recorded the plentiful supplies of crystal and stone, and the ancient marking stone was again referenced in 'Woolgoolga' by Neil Yeates."

"It seems that yet again, Aboriginal lore and traditional local knowledge has not been respected or observed in respect to Heame's Lake and this special men's site faces annihilation should this development go ahead."

MDCA note that Mr McKelvey's response does not reference the MDCA study and it is not clear whether the respondent is aware that consultation with the local Aboriginal community was undertaken and that opinion on such matters was sought. It appears (from his use of the term "they" to describe the Aboriginal community) that Mr McKelvey is not himself an Aboriginal person and he does not identify the 'community members' to whom he asserts the lake is important.



Research by MDCA suggests that much if not all of the information supplied by Mr McKelvey is derived from a recent collection of local historical references to Aboriginal people and culture in the area produced by the Bagawa-Birra Murri Aboriginal Corporation¹. This document merely collates snippets of general information from a variety of sources. Much of the material is unreferenced printed sources which may or may not be related in terms of topic or location. References are often general in nature, not place specific and cannot be taken to refer specifically to the current study area.

Similarly Mr McKelvey does not specify the precise area/s to which he is referring, for example using the term "Hearnes [sic] lake area", which could apply to many adjacent areas outside of, and potentially not directly relevant to, the current study. For example Page 34 of the above B-BMAC collection contains excerpts of several documents under the heading "Hearn's Lake was a men's site". These include a letter from The Australian Museum to a Mr J Harman (presumably the "Harman" referred to by Mr McKelvey) concerning an unusual stone artefact found by Mr Harman at Woolgoolga. It also includes an excerpt of a 1939 article from the journal *Mankind* [which in fact contains only a general reference (and is not site specific) to Gumbaynggirr and Worimi initiation ceremonies], and an excerpt of a map and a figure of a stone artefact from the Woolgoolga Headland. There is an unreferenced statement on the same page to a "Bora Ground up off Graham Drive" and this could be the same bora ground Mr McKelvey refers to below.

References do not 'abound' to Hearns Lake being a male initiation (circumcision) site, as he states. Male initiation was conducted at Bora grounds (Rings). There is no reference to a bora ground within the current study area or areas immediately adjacent. Mr McKelvey states that there is a bora ground to the west of Hearns Lake at the headwaters of the catchment. This is sufficiently distant that even ancillary activities associated with the bora ground would be unlikely to have occurred at Hearns Lake.

MDCA note that a recent Aboriginal heritage assessment study to the immediate north of the current study area² referred to Aboriginal community members noting the Hearns Lake generally as part of their "Dreaming" (p13, Appendix B) but ascribed no specific significance or association with male ceremony. The nearest identified site of special cultural importance are the adjacent offshore islands.

There are no doubt places of general and specific Aboriginal cultural significance in the general vicinity of Hearns Lake (as the MDCA report notes). However the assertion that the lake, and particularly the current study area, are specifically associated with male ceremony, has not been supported by local Aboriginal community input on the project, other adjacent projects, or research into places

¹ Bagawa-Birra Murri Aboriginal Corporation 2008. *Footprints of the Ulitarro. Part 1 Report Cunnurigin Moonee [The Northern Beaches]. The first foot print of the Ulitarro.*

² Collins, J. 2007. *Lot 21 DP 714858 Hearnes Lake Road, Woolgoolga, NSW mid-north coast. Aboriginal cultural heritage assessment* (Report to BBK Development Corporation Pty Ltd).

of Aboriginal cultural significance in this area in the past with local senior Aboriginal knowledge holders³.

If the lake was of special ceremonial and/or cultural significance to local Aboriginal people, it is considered unlikely that this would not have been raised in any way during the course of the MDCA study, or the previous Collins study. Extensive research into the important sites of this part of the coast, including the axe factory sites at Moonee Beach by Professor Isabel McBryde in the 1960's similarly did not identify Hearn's lake as an area of male initiation. It is likely that the claims of Mr McKelvey do not relate to the specific area of the current study.

We trust the above comments cover the issues raised by the Department of Planning and the Department of Environment and Climate Change and by the submissions of individual members of the public as they relate to Aboriginal heritage in their responses to the EA.

Yours sincerely,



Mary Dallas
21.7.09

Cc Charles Hill

³ The Aboriginal Sites of Significance Surveys carried out in the 1970s by the then National Parks & Wildlife Service.

Attachment 1: Bagawa Birra Murri Correspondence



Bagawa Birra Murri
Aboriginal Corporation
No. 7050

19-5-2008 ©

Attention: Mary Dallas

Research Historian
36 Skinners Close
Emerald Beach NSW 2456
Phone / fax 66560966
bagawa.aunts@bigpond.com

Re Fax to Peter Darby

Dear Mary

This is to confirm our conversation this morning. Many thanks for getting back to the Bagawa Birra Murri Aboriginal Corporation and the confirmation that we will be consulted on the project during the process.

I have posted the Report part 1 of the Foot Prints of the Ulitarra and Oorrara The Orara.

A complimentary copy of Yarmugay in Bagawa Country from the Bagawa Aunts.

I have met Fay and Dennis Haslam, this morning at Pet Porpoise Pool

[they're a sponsor for our Yarmugay Booklet] where I got a spare copy of the Oorrara for you.

Details you may need I am the research Historian from the Gumbula Julipi Elders As well as the tradition Owners the Bagawa Birra Murri Aboriginal Corporation.

Sue Hoskins BBMAC Chairperson phone 66584878 also the Chairperson of Gumbula Julipi Elders the Elders contact.

Dennis Haslam is our ECO Fay is our Secretary to lessen my work load which I appreciate very much, their new phone contact no is 0266564568

Dennis has informed me that the Reports are \$50 plus Oorrara \$35.

I will invoice you as Dennis is not up and running until about Wednesday.

The BBMAC was set up originally as the Bagawa Birra Murri Aboriginal Women's Council because we had men speaking in incorrectly on Women's sites. As we discussed this morning due to problems with Site workers with advice from Canberra we have now become the Bagawa Birra Murri Aboriginal Corporation and therefore will address any sites in Bagawa Country From Woolgoolga to Nymboida to Eastern Dorrigo Orara Upper Orara to Coffs Harbour to Bongil Bongil in the south Clan Country.

I personally with the Bagawa Aunts handed a letter to the Minister Of Aboriginal Affairs Mr Paul Lynch on the serious matters concerning Site workers. We have meet and also raise this matter with Roger Mehr DECC

Thanking you for help in these matters

Arlene Hope on behalf of the BBMAC



Coffs Harbour & District Local Aboriginal Land Council

Cnr Pacific Highway & Arthur Street, Coffs Harbour 2450

PO Box 6150, Coffs Harbour Plaza NSW 2450

Phone: (02) 6652 8740

Fax: (02) 6652 5923

26th March 2009

Attention: Mary Dallas

Mary Dallas Consulting Archaeologists
31 Waterview Street
Balmain NSW 2041

Re: Aboriginal Cultural Heritage Assessment – Lots 21 & 22 DP 1070182, Sandy Beach, New South Wales.

Dear Ms Dallas,

Thank you for providing the Coffs Harbour and District Local Aboriginal Land Council with a draft copy of the field reconnaissance for the Aboriginal Cultural Heritage assessment of the above mentioned allotments.

I can confirm that after reviewing the draft report the Coffs Harbour and District Local Aboriginal Land Council is in agreement with the report recommendations.

In summary of the report, the Coffs Harbour and District Local Aboriginal Land Council would strongly recommend that prior to an application being forwarded to Department of Environment and Climate Change (DECC) for a Section 87 permit under the National Parks and Wildlife Act 1974, that further consultation be forthcoming to our Land Council in relation to the proposed methodology to undertake a controlled testing program. This would ensure that there is a detailed consultation process in place to allow DECC to make an informed decision pertaining to issuing of S87 permits.

If you have any questions with regard to this matter, please do not hesitate to contact me on the number listed above.

Yours truly,

Chris Spencer
Chief Executive Officer

Attachment 3 : Report on Additional Aboriginal community consultation



CULTURAL RESOURCE ASSESSMENT, PLANNING AND MANAGEMENT

Mr John Oliver
Project – Development Manager,
Sandy Shores Developments Pty Limited
PO Box 5178
Wollongong NSW 2520

Dear John,

Sandy Beach - Hearn Lake Aboriginal Archaeological Assessment - Additional Aboriginal Community Consultation

This letter is to advise that the Department of Planning DGR's for additional Aboriginal community consultation on the above project have been completed. The outcome of this consultation is detailed below.

An advertisement calling for expressions of interest from Aboriginal stakeholders was placed in the Coffs Coast Advocate on the 28th April, 2008. The advertisement noted the previous consultation which had been undertaken and identified the area subject to assessment. A single written response was received [see attached] from the Bagawa Birra Murri Aboriginal Corporation. This local Aboriginal community organisation was also suggested by Roger Mehr, Archaeologist with the Coffs Harbour Office of the Department of Environment and Climate Change as appropriate knowledge holders for the area and he assisted with additional contact details.

On the 19th of May, I spoke with Arlene Hope, Research Historian with the Bagawa Birra Murri Aboriginal Corporation. I also emailed Dennis and Fay Haslam, CEO and Secretary of that organisation to advise them on the content of our conservation. Arlene Hope advised me on her extensive research into the Aboriginal and early settler histories of the region and that there are a number of Aboriginal families who hold knowledge and who feel they have not been adequately represented by local Aboriginal organisations in the past. I advised Arlene on the results and recommendations of the Aboriginal Archaeological Assessment as detailed in our report entitled "Aboriginal Archaeological Assessment Lots 21 and 22 in DP1070182 Sandy Beach North, NSW" dated December 2004.

It has been agreed that the Bagawa Birra Murri Aboriginal Corporation will be represented throughout the course of the recommended further archaeological investigation and will assist in the development of the Interpretation Plan for the open camp site recommended for preservation and conservation.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Mary Dallas', is written over a faint, larger version of the same signature.

Mary Dallas
19.5.08

Attachment 4 : Aboriginal Heritage Component of Statement of Commitments

The following Statement of Commitments reflects current industry best practice and conforms to methodologies endorsed by the DECC⁴:

1. Aboriginal groups consulted during the assessment (specifically the Coffs Harbour & District Local Aboriginal Land Council, Gumbilar-Jilipi Elders, Garbi Elders and the Bagawa-Birra Murri Aboriginal Corporation) will continue to be consulted in relation to the archaeological test excavations of PAD 1 and public interpretation relating to Aboriginal culture and heritage for the project.
2. The archaeological test excavation of PAD 1 will be undertaken according to industry best practice and methods endorsed by the DECC in the 1997 *Aboriginal Cultural Heritage Standards & Guidelines Kit*. If Aboriginal cultural material is found to be present, management options for this material will be discussed with the Aboriginal stakeholder groups mentioned above. This may include redesign of the proposed development layout in this area if significance remains are located, impact to the site with or without salvage and may also include public interpretation.
3. Management of any Aboriginal cultural material (expected to be restricted to stone artefacts) retrieved during the test excavations will be discussed and negotiated with the abovementioned Aboriginal stakeholder groups. This may include storage of artefacts by one of these groups (e.g. the Coffs Harbour & District Local Aboriginal Land Council) if appropriate storage facilities are available, or deposition at the Australian Museum.
4. An Interpretation Plan for the Conservation Zone and the Aboriginal site and isolated artefact contained therein will be devised in conjunction with the abovementioned Aboriginal stakeholder groups. The Interpretation Plan will also be guided by the results of the test excavation of PAD 1. The Interpretation Plan for the conservation Zone will specify activities which are permissible and non-permissible in the vicinity of these items, conservation measures for the long term protection and management of the items and interpretive signage.
5. Any previously unregistered Aboriginal sites documented during the project will be registered on the DECC Aboriginal Heritage Information Management System.

⁴ NPWS *Aboriginal Cultural Heritage Standards & Guidelines Kit*. DRAFT 1997. Some components of this kit, such as the "Guidelines for Archaeological Survey Reporting" are still in draft form and have not been finalised. Other sections such as the "Standards Manual for Archaeological Practice in Aboriginal Heritage Management" were intended as updatable guides though no supplement has been provided since the original edition in 1997. These documents are assumed therefore to be continuing valid expressions of best archaeological practice according to the DECC.

Registration of Interest

An Aboriginal Cultural Heritage Assessment was undertaken by Mary Dallas Consulting Archaeologists (MDCA) of the North Lakes residential subdivision, west of Newcastle in April, 2004. The Awabakal LALC has been the principal Aboriginal organisation consulted on this project to date.

MDCA is seeking to identify any other Aboriginal stakeholder groups who may have an interest in the project as it is currently reaching its final stages. Registration must be done in writing and be lodged by Wednesday 19th August, 2009.

Registration of Interest should be directed to Mary Dallas of MDCA at 31 Waterview Street, Balmain, NSW, 2041. Enquiries on PH (02) 98183287 FAX (02) 98184574