

APPENDIX F: COMMENTS FROM THE ABORIGINAL COMMUNITY

From: Lesley Mye [mailto:LMye@tweed.nsw.gov.au]
Sent: Friday, 31 October 2008 10:00 AM
To: everick@bigpond.net.au
Subject: Creek Street, Hastings Point - Cultural Heritage Assessment of Lot 490 & Excavation Strategy for Cobaki Lakes

Hello Dr Robins

I apologise for the delay in responding to the above three items. In regard to the following: -

- 1) Cultural Heritage Assessment of Lot 490 - you have me down as a Traditional Owner (please see attachment).
Artefacts found, place of keeping should be decided by the Traditional Owners
- 2) Excavation Strategy for Cobaki Lakes my only concern is that the Traditional Owner should decide as to where the artefacts are kept.
- 3) Creek Street Hastings Point the following - the same here with any artefacts found, place of keeping should be decided by the Traditional Owners

I will be tabling the above three items at the next Aboriginal Advisory Committee meeting which is being held on Friday 7 November 2008 and there is a good chance that you will receive more feedback from the Community and Committee members after the meeting.

Once again I apologise for my lateness of replying.

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63 Tringa St
West Tweed Heads 2485

Everick Heritage Consultants
47 Arthur Tce
Red Hill Qld 4059

Dear Richard, **Aboriginal Cultural Heritage Assessment
Lot 490 South of Kingscliff**

Thank you for supplying a copy of the above assessment. I apologise for the delay in responding but with my work commitments and other developments to respond to, I am finding it very difficult to find enough time in the day, to be able to respond appropriately. However, please find my comments:

Firstly, I have a particular interest in the project area as I have ancestral links to this land. I am also aware of other families who have similar ancestral links. I am concerned that most of those families are not aware of the proposed development and how it may affect our Native Title rights. I am advised that Native Title has been extinguished on Lot 490 but not extinguished on Lots 489 and 500.

Background of my involvement so far:

2003-4: My concerns about the future of Lot 490 were being raised at the Tweed Shire Council's Aboriginal Advisory Committee (AAC)

2004: Personal correspondence to Dept. of Lands requesting Aboriginal representation on the committee that was being formed to discuss development options on Lot 490.

25.10.04: I wrote on behalf of the Tweed Aboriginal Cultural Advisory Committee to the NSW Minister for Lands, Mr Tony Kelly, expressing our concerns about the lack of Aboriginal representation on the newly formed committee and asking for a direction from his office to do so, due to the State Government stripping the Tweed Shire Council of its responsibility for Lot 490 in May 2004. Also asking the Minister to what extent Native Title implications are being considered.

July 2005: Mr Phil Fogarty attends the Tweed Shire Council's AAC meeting to discuss Lot 490 and advises that Native Title has been extinguished. Unfortunately for me, this was one of a handful of meetings that I have missed since they began 12 years ago, as I was away overseas.

2005: Direct request to Mr Phil Fogarty, (DOL), on his visit to the Tweed, for me to be advised on what is happening on Lot 490. Response was that I would be advised in due course.

2006-7: Continue to generate discussion & debate on Lot 490 at the Tweed Shire Council AAC.

2007: Phonecalls to Phil Fogarty (DOL) regarding out Native Title rights on Lot 490.

30.4.07: Email to Phil Fogarty(DOL) requesting the tenure history for Lot 490 so that I can understand how Native Title was extinguished and to what extent.

1.5.07: Emailed response from Phil Fogarty agreeing to provide the tenure history but needs more time.

14.3.08: I attend a meeting with Parsons Brinckerhoff (PB) at the Tweed Heads Civic Centre, held to establish an Aboriginal Reference Group(ARG) to discuss the development on Lot 490. I ask Leightons to enquire about the tenure history to determine what actions have extinguished Native Title on Lot 490.

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9.4.08: Reminded Phil Fogarty of his intention to provide the tenure history for Lot 490 to me.

10.4.08: Response from Tony Watts (DOL) that the tenure history has been provided to Leightons.

17.4.08: Written acceptance from PB for my son, Jason McDonald and myself to part of the ARG

22.4.08: Attendance at ARG meeting

10.6.08: My apologies given for the ARG meeting, due to a bereavement.

29.7.08: Attendance at ARG meeting.

My detailing of this involvement is to give a clearer picture of our wish to be consulted at all stages, not after the decision has been made to lease the land.

Recommendation

I would like the records amended to more accurately reflect my involvement.

Aboriginal Reference Group

With respect, although the ARG provided a forum for discussion about the development, it provided representation from organisations but did not attract Traditional owners, other than myself. The nomination process requested people who could demonstrate that they could make a contribution, similar to a resume, and be in a position to feed information back to their community interest group. This process placed an onerous responsibility on me to contact and distribute information about the development to other Traditional owner families, although I was not resourced to do so.

2.2 (page 13) I have a concern about the following statement...*Although the ARG was formed independently of Everick, it was concluded that the efforts Leighton Properties had put into identifying appropriate Traditional Owners and developing channels of communication provided an appropriate mechanism for this assessment.*

At the meeting on 22.4.08, I suggested that as a matter of Indigenous protocol, a meeting be held with those families who have traditional links to the area, to discuss the development proposals. To my knowledge, this has not occurred. From my information sharing, another descendant known to me, attended the last meeting on 29.7.08.

I note that my apologies are not recorded in the Minutes of the ARG meeting 10.6.08, although I know my apologies were given and the reason was discussed. A minutes silence for the passing of the person we were mourning is recorded in the same minutes.

Recommendation

That due to certain families having a Native Title interest in the areas known as Lot 490 (including parts of Lots 489 and 500) a meeting be held with representatives from those families to discuss the development proposals. A copy of the ACHA should be provided to the representatives.

2.3 Bundjalung Mapping Project (page 17)

The Bundjalung Mapping project is a community project and is a work in progress (page 4). A number of Aboriginal sites, as we remember them from our childhood days, are still being entered onto the BMP data base. As we find the time to work our way around community members, memories are shared and information is collected and stored. Other recordings are held at the Lower Tweed River Historical Society and certain extracts are entered on the BMP. One such recording is the interview with my partner's Uncle, Les Togo who has since passed away. Uncle Les's parents were forced from their homelands to be used as indentured labour for the sugar cane industry.

Known as Kanakas, the South Sea people inter-married with the local Aboriginal people and were very much aware of the significance of Aboriginal places and values.

This is a direct quote from Uncle Les's interview when he was recalling instructions from his parents when he was a child (approx. 85 years ago)....

Quiggan's Creek, when you come across the Kingscliff bridge, you're going south, on the right hand side, that's an Aboriginal area, a lot of people don't know that. When we were kids out there, swimming, all the Cudgen kids, all the old South Sea people used to tell us: "You'd better not go along that area there" Someone would ask why. "That's Aboriginal ground".

The statements on page 17 and 18 contradict the statements on page 32 about information contained in the Bundjalung Mapping Project regarding 'anecdotal accounts of areas at South of Kingscliff along Cudgen Creek being an Aboriginal area'.

Recommendation

The ACHA must be amended to more accurately reflect community knowledge, both past and present, about the project area.

Other documented Cultural information

Another very important piece of information belonging to this cultural landscape is recorded in J.G.Steele's 'Aboriginal Pathways in Southeast Queensland and the Richmond River' 1984.

The following reference appears to be in close proximity to the subject lands.

"A few kilometres north of Norries Head there was a stone arrangement on sandy ground in the rainforest, the stones being arranged in a spiral pattern about three metres in diameter. The report of this stone arrangement came from a man who worked on a sand-mining dredge, who collected the stones before the dredge moved over the site".

P.48. Footnote: R C Wittle, private communication 1980, quoting James Korsch.

There appears to be a direct link between information provided by Uncle Les Togo and the information provided by R C Wittle quoting James Korsch. It supports contemporary knowledge of today's descendants.

Also, when I was a child of about 10, Aboriginal human remains of more than one person were uncovered on the hill at Kingscliff near the reservoir. My partner, Geoff Togo also remembers this.

5.3 Aboriginal Heritage Information Management System

When I look at the map in page 33, I sadly recall the number of middens that used to be here when I was a child, that are not yet recorded on the BMP or AHIMS. It is obvious when looking at the map on page 33 that sand mining is responsible for the removal of a lot of cultural material from these 3 lots. Even the mouth of the creek, as I knew it as a child, has been redirected.

Continuous Use of the Cultural Landscape

Although things have changed the cultural landscape to a point, one thing that hasn't changed, is the families ongoing use of the same cultural landscape for many generations. The landscape has changed slightly, the use of specific tools has changed, our first names have changed but our blood is the same and we are collecting and gathering the same things for sustenance and well being.

Recommendations

The subject lands must be acknowledged in the ACHA as part of the overall cultural landscape, even though it has been modified. Lot 490 remains an area of cultural significance because of contemporary knowledge, it's interconnectedness to other nearby existing sites and it's continuous use by Traditional descendants today.

The ACHA should contain a section giving recognition to the local Aboriginal people's interest in Lot 490, which also states the issues raised by the Aboriginal parties. The issues also need to reflect the concerns of the Traditional owners that the activities proposed on Lots 489 and 500, where Native Title still exists, will essentially extinguish Native Title on the footprint of those activities. A further section should address how the issues raised by the Aboriginal parties will be incorporated into the Lot 490 development.

Thank you for the opportunity to comment.
Yours sincerely,



Jackie McDonald
6.11.08

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Our Ref –EV490-03

To Everick Heritage Consultants

Thursday 27th of Nov 2008

Dear Dr Robbins

Re – Lot 490 Cultural Heritage Assessment

It has been noted by the Moiety that the document prepared for Leighton Properties focus is tangible Archaeological assessment and does not include the Mythological Anthropological importance of the Lot 490 development site.

State legislation stealthily omits to assess Anthropological assessment of sites, in what is perceived by many, as a means of State facilitating and attributing ownership of the tangible archaeological finds to State Government systems such as Local Aboriginal Lands Councils who are NOT representative of the ancestral bloodlines or keepers of lore.

The Lot 490 report clearly shows biases towards the Local Aboriginal Lands Council, and the private company WICEEDO as the preferred 'community consultation' representatives and paid infield site assessors for the State's LOT 490 development processes.

Despite the dearth of procedural fairness, including the failure of any *Draft Cultural Heritage Assessment* to be provided to the Ngarakwal Nganduwal or Githabul in Oct 2008 as occurred with the Lands Aboriginal Lands Council and all stakeholders [page 143- Heritage Report] or any offer to *incorporate any site meetings or site inspections*, or to *alter any recommendations as required*; only further confirms the bias and procedural unfairness of the State process towards State Aboriginal administration bodies which are NOT representative of ancestral bloodline moieties. This bias and procedural unfairness occurs despite the State process being in conflict with federal ATSI Heritage Protection Legislation, the Commonwealth Native Title Act, Archival Acts, amongst others, and denial of the subsequent Constitutional inconsistencies which prevail.

However, after having to make specific enquires requesting to be provided with a report in which to comment on, we have been asked to respond to the Cultural and Spiritual significance of the Lot 490 site for the Ngarakwal Nganduwal & Githabul moieties.

The Cultural and Spiritual significance of the Lot 490 site for the Ngarakwal Nganduwal & Githabul moieties is documented and filed into the federal database, the Australian Institute of Aboriginal & TSI Studies in Canberra

The online verification of this data can be obtained by following the web link below

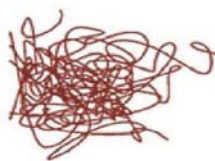
<http://unicom.aiatsis.gov.au/uhfbn/cgisirsi/oTveuxCpiR/SIRSI/127540044/123>

We sincerely hope the State Administrative process of Lot 490 has the foresight and vision to be mindful of federal laws which provides for the equitable inclusion of the Ngarakwal Nganduwal and Githabul moieties in this project and thank Everick Heritage Consultants Pty Ltd for the opportunity to make State aware of it's Constitutional inconsistencies in it's current operational legislation, and findings, surrounding this project.

Regards

Stella Wheildon – for the Ngarakwal Nganduwal & Githabul moieties

APPENDIX G: SITE MEETING MINUTES



Minutes

Attendees:	Joyce Summers (TO), Jackie McDonald (TO), Kyle Slabb (TO/CEO Tweed Byron LALC), Cyril Scott (TO, Aboriginal Heritage Officer, Tweed-Byron LALC, Richard Robins (Everick), Adrian Piper, Glenda Nalder (Gold Coast Native Title Group),
Apologies:	Lesley Mye (Tweed Byron LALC), Carol Dawney (TO), Tim Robins (Everick), Des Williams
Meeting date:	Saturday 8 November 2008
Meeting time:	11:30 am (EDST)
Location:	Lot 490, Kingscliff

Minutes:

Correspondence

A report produced by Everick Heritage entitled *Cultural Heritage Assessment, Lot 490, South Kingscliff NSW (September 2008)* was distributed by Richard Robins. Copies were provided in both printed format and on CD. Additional copies were provided so that the meeting participants could distribute them amongst the Aboriginal community.

Robins explained that one of the aims of the meeting was to explain the results of the heritage assessment that had been carried out to date. He indicated that the report was to be submitted on the 11th of November. He emphasised the fact that this meeting was part of an ongoing process of consultation, not an end point and that the report will identify the need for ongoing consultation.

Cyril Scott explained to the meeting the results of the archaeological survey that had been undertaken by Everick and the Tweed Byron LALC. On that survey no artefacts or other evidence of Aboriginal cultural heritage had been found.

A disturbance history, based on historical aerial photographs was undertaken by Dr Errol Stock, a geomorphologist with expertise on Australian east coast sand bodies, was presented. Stock determined that, with the exception of a small strip of land in the northern section, all the blocks had been extensively disturbed. This analysis confirmed the impressions obtained from the survey – that is, with the exception of a small strip of land, within lot 490 have been heavily disturbed and all cultural heritage destroyed. There remains the possibility that the small strip of undisturbed land still contains some archeological evidence.

Jackie McDonald pointed out before sand mining there were numerous middens in the area, as well as a stone arrangement and other areas that were considered significant. She raised the possibility of using the small original land strip as an area that could be used in some way to acknowledge that this area was and still is, an important area for Traditional Owners. A clear idea its use has not been identified, but it could be used for educational and community purposes. It is a piece of land that requires appropriate management.

Kyle Slab reinforced the sentiment Traditional Owners hold for the area. Cudgen Creek was a boundary between groups to the north and south, and fights and gatherings were held here. There are important religious sites in Cudgen Creek. The creek was, and still is an important resource area, particularly for mullet. There is an ongoing association between the Traditional Owners and this area.

Glenda Nalder expressed concern over the loss of Native Title on lots 500 and 498. All Traditional Owners expressed concern about the loss of Native Title and linked issues of compensation to assist the ongoing



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maintenance of cultural links with the land. Kyle Slab suggested the construction of a cultural facility near the proposed boatshed. He also raised the need for discussions with the developer over Traditional Owner employment and business opportunities. All Traditional Owners expressed concern over what they perceived as a lack of communication over cultural heritage with the developers and with the other reference groups.

APPENDIX H: INDEX OF COMMUNITY CONSULTATION FILE

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