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1 INTRODUCTION

1.1 Study background

Kempsey Shire Council has resolved to prepare a draft Local Environmental Plan (LEP) to facilitate the rezoning of Lots 509 and 19 DP 850963, Lot 52 DP 831284, and Lot 84 DP 792945, Phillip Drive, South West Rocks, for residential purposes.

In accordance with specifications of the Department of Infrastructure, Planning and Natural Resources, a Local Environmental Study (LES) is required to ensure consistency with the NSW Coastal Policy ahead of LEP preparation. Kempsey Shire Council has engaged Connell Wagner to prepare a formal LES in response to this requirement. The LES is designed to make recommendations regarding the most suitable future use of the subject land, based on a comprehensive assessment of relevant environmental, physical, social, cultural, infrastructure, and statutory issues and matters.

This report was prepared on behalf of Connell Wagner and aims to identify and assess features of Aboriginal cultural heritage significance with a view to maintaining their special qualities, and protecting them from undesirable development. To provide the level of information necessary for planning requirements and comply with the provisions of the National Parks and Wildlife Act (1974) and Environmental Planning and Assessment Act (1979), this assessment includes:

- Literature review and compilation of existing data;
 - Consultation with the Kempsey Local Aboriginal Land Council and Dunghutti Elders Council Aboriginal Corporation to determine the location of any sites/places of particular social or spiritual significance, identify contemporary Aboriginal cultural issues applicable to the study area, and establish conservation priorities;
 - Selective field inspection of the study area to determine its archaeological potential and identify sites and archaeologically sensitive landforms that would warrant conservation or further assessment;
 - Assessment of the impact that future development may have on the Aboriginal cultural heritage resource; and
 - Management recommendations appropriate to LES requirements, including opportunities for impact mitigation and site protection.
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1.2 Location of the Local Environmental Study area

The study area comprises approximately 111.8 hectares of land situated 0.58 to 1.95km inland of Trial Bay, between the coastal settlements of South West Rocks and Arakoon on the NSW mid-north coast. It is bounded to the north by Phillip Drive and vacant allotments and residences fronting Phillip Drive, Waianbar Avenue and Currawong Crescent, to the east by a part of Hat Head National Park that encompasses Saltwater Lagoon, to the south by undeveloped land, and to the west by the South West Rocks Golf Course and Sewage Treatment Plant (Figure 1).

Table 1. Study area location details

Local Government Area:	Kempsey
County:	Macquarie
Parish:	Arakoon
1:25,000 topographic map:	South West Rocks 9536-3-S
Local Aboriginal Land Council:	Kempsey

1.3 Potential development impact on Aboriginal sites

Under the current structure plan proposal most of the study area would be developed for residential purposes, with a light industrial area in the vicinity of the Sewage Treatment Plant. Existing bushland corridors would be retained, including all trees bordering Hat Head National Park and upper Saltwater Creek (Figure 2).

The proposed future development would require landscape modifications, including vegetation removal, land leveling and filling, road construction, and the installation of stormwater drainage and in-ground services. Any Aboriginal artefacts occurring within the depth range of necessary earthworks would be displaced at the time of development itself, but many of the activities associated with residential and industrial uses- the excavation of driveways, carparks and building foundations, landscaping etc, introduce ongoing sources of disturbance which add to the cumulative degradation and loss of archaeological sites.

Unless identified and salvaged, or retained within conservation zones, it is anticipated that all Aboriginal sites occurring off the natural bushland corridors will eventually be destroyed as a result of the development.



Figure 1. The study area (yellow) in relation to the distribution of known Aboriginal sites at South West Rocks

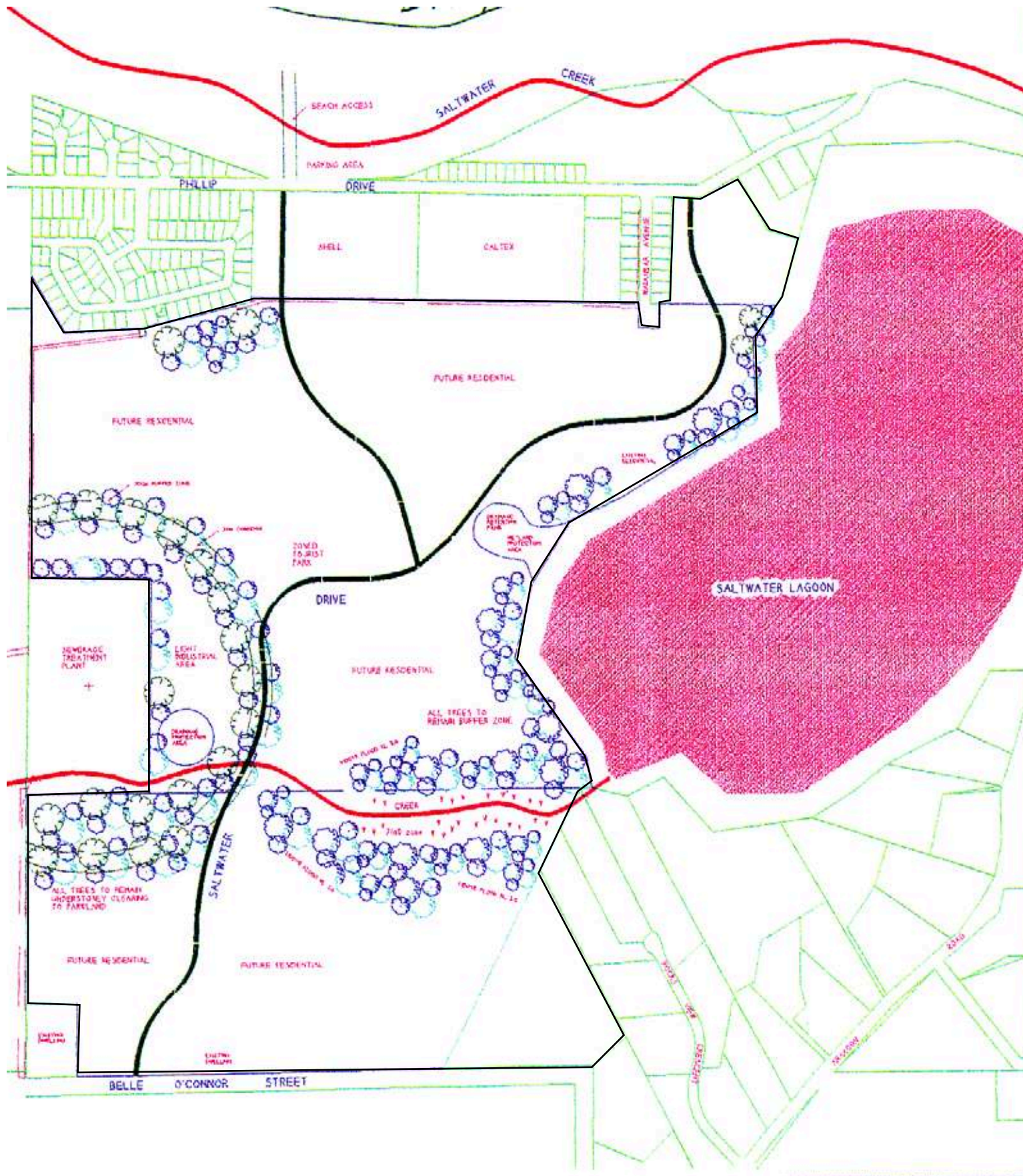


Figure 2. Proposed structure plan (prepared by M.W. Rogers and Associates)

2 ENVIRONMENT AND LANDUSE EFFECTS

The study area lies on the coastal plain west of the Smoky Cape Range, where it straddles the Hat Head and Clybucca Soil Landscape units. These are both low-relief swamp landscapes featuring back-barrier beach ridge swale swamps composed of poorly drained acid peats, podzols and humic gleys. Soils are strongly acid, of low fertility, and have a permanently high water table (Eddie 2000). Prior to sea level stabilisation around 6,000 years ago, the Smoky Cape Range would have been an offshore island (Hails 1968), the study area forming as a result of sand deposition since that time.

Although runoff is presently discharged via a network of artificial drains, the study area was originally drained by a small creek (referred to here as upper Saltwater Creek) that flows into Saltwater Lagoon through the southern section. However, the creek channel was augmented during the early 1980's to provide better drainage to the adjacent golf course and is no longer in its natural condition. Saltwater Lagoon is a shallow saline lake with swampy margins that exits to the ocean through Saltwater Creek on the northern side of Phillip Drive. The western edge of the Saltwater Lagoon wetland is fringed by a low sand rise contained within Hat Head National Park adjacent to the north-eastern study boundary.

The vast majority of the study area comprises flat drainage-impered lowland. The naturally swampy nature of this area is reflected in an 1878 account that describes it as "an immense plain covered with long reedy swamp grass. In wet weather this is a marsh" (Town and Country Journal, cited in Carey 1993:20-30). From an archaeological perspective, the only topographic features of any note are a low densely vegetated hind dune in the north-east, and a slightly higher and better drained forested section of the plain in the south-west.

Much of the study area has been highly disturbed as a result of drain excavation, road construction, vegetation clearing, slashing, ploughing and land leveling, and features a combination of full sand exposures and sparse heath regrowth. At least 6ha in the north-western part of the area has been used to cultivate potatoes in the past (B. Laut pers comm.). Despite disturbance, the study area still supports several natural vegetation communities. These have been mapped by Parker (2002) and include Needlebark stringybark, Red bloodwood, Banksia, Paperbark and Prickly tea-tree open forest around Saltwater Lagoon (most within Hat Head NP); a corridor of Scribbly gum, Hakea, Red gum, Swamp mahogany and Coastal wattle tall open woodland extending from Saltwater

Lagoon along upper Saltwater Creek, becoming scattered in the west; Red gum, Swamp mahogany and Coastal wattle tall open woodland in the far west adjacent to the golf course; Banksia and Tea-tree tall closed shrubland in the swampy south-eastern part of the area; and Sedgeland, recorded in places along water bodies and roads, and within the woodland and shrubland communities.

3 CULTURAL CONTEXT

3.1 Landuse and economy

Linguistic evidence indicates that Ngaku, a dialect of the Dunghutti language, was traditionally spoken in the lower Macleay district (Eades 1979:250-1). As with other parts of Australia, the Dunghutti operated within a series of nested social groupings. The hearth group, comprising a man, his wife or wives and their children, formed the basic socio-economic unit and several hearth groups would often co-operate, forming highly flexible 'bands' which would gather and then disperse as conditions demanded (Godwin 1990:97). During the course of everyday life, residential bands were usually made up of "small parties of eight to ten men, with their women and children, for the greater convenience of hunting etc, and these detached companies roam(ed) over any part of the country within the prescribed limits of the main tribe to which they belong(ed)" (Hodgkinson 1845:222).

The broad picture of the Dunghutti at the time of first European contact was of a "vigorous and healthy people, the majority of whom lived on the floodplain and its surrounds, relying heavily on aquatic resources" (Callaghan 1980:25). The population is said to have been "very numerous about Trial Bay" (Massie 1846). While early reports suggest that fish provided a local dietary staple (eg Hodgkinson 1845:22), shellfish, and terrestrial plants and animals, especially those from the river's gallery rainforests, were also integral to the economy (Callaghan 1980:24). Evidence suggests that the country was regularly burnt to assist in hunting (Sullivan 1982:121). Cook, for instance, sailed past the study locality in 1770 and observed so many Aboriginal fires that he named Smoky Cape as a result (Beaglehole 1955:315-6).

A wide variety of the Macleay region's material items were made from wood, bark and plant fibre. These include spears, boomerangs, clubs, shields, digging sticks, containers, canoes, and woven nets and bags (Campbell 1978:93-4). Aboriginal people controlled the natural fracture properties of fine-grained stones to produce a variety of cutting and scraping tools, many of which were used to manufacture and maintain these types of perishable items. The cultural assemblage also included spears barbed with “jagged bits” of flint or glass (Henderson 1851:2, 144).

3.2 Mythology

Myths, or sacred stories, accounted for the existence of both Aboriginal people and their environment, providing tangible links between the two. Some myths associated with landscape features explain the origin of aspects of the natural world, while others are concerned with the exploits and travels of Dreaming deities and culture heroes. A well-known site (#22-4-35) reflecting this latter type of myth is situated on a low bedrock ridge in the centre of the South West Rocks Golf Course approximately 250m west of the study area. The site, marked by a naturally occurring granite boulder, represents the grave of the culture hero Birrogun (often referred to as the ‘Aboriginal Jesus’), who was speared during a tribal battle.

Unfortunately, the site is not in its natural condition. A 60 acre (24.3ha) area including Birrogun’s grave was dedicated as a recreation ground/racecourse in 1892, but periodic race meetings were held there from as early as 1878 (Carey 1993:44-5,102). Two separate accounts of the Birrogun myth related to Robinson (1989:68,70) indicate that the grave site was located in the racecourse, “where the winning post is” (John Flanders, cited in Robinson 1989:70). Birrogun’s grave was later encompassed by the South West Rocks Golf Course, and in the 1960’s its marking boulder was moved to the side to make way for the seventh fairway (Gumbaynggir Language and Culture Group 1992:32; G. Blair pers comm.). The site also comprised a number of Paperbark trees (into which Birrogun’s mother transformed his enemies following his death) but few, if any, of these have survived golf course development.

Birrogun’s grave represents the end point in a cycle of myths that trace Birrogun’s journey south from his Valla homeland, spiritually connecting the Dunghutti people with their Gumbaynggir neighbours to the north. Several detailed accounts of Birrogun’s travels and exploits have been published (Smythe 1948; Ryan 1964; Robinson 1965, 1989; Hoddinott 1978; Nayutah and Finlay 1988; Gumbaynggir Language and Culture Group 1992).

Particular places linked to Birrogun's journey, including places along the Nambucca River, Mount Yarrahapinni, and his South West Rocks grave, are of enduring cultural significance despite modern modifications.

4 ABORIGINAL INVOLVEMENT AND CONSULTATION

The study area falls within the territory administered by the Kempsey Local Aboriginal Land Council (LALC) and within the area of custodianship of the Dunghutti Elders Council Aboriginal Corporation (CAC). The area is also of interest to the Figtree Aboriginal community of South West Rocks. The field survey component of this assessment was undertaken with the assistance of Kempsey LALC Sites Officer and Dunghutti Elder Harold Smith and Figtree Aboriginal community representative Greg Blair on the 18th of May 2004. Dunghutti Elders CAC Sites Officer David Hoskins was unavailable on this day and participated in a further inspection with the consultant on the 25th of June 2004.

On completion of the field survey, the results were discussed with Harold Smith, Greg Blair and David Hoskins and management recommendations developed accordingly. Correspondence subsequently received from the Land Council and Dunghutti Elders CAC is reproduced in Appendix A, and a fieldwork report from Greg Blair in Appendix B.

As discussed in Section 3.2 above, Birrogun's grave (#22-4-35) is a significant mythological site located in the South West Rocks Golf Course only 250m west of the study boundary. Because it was clearly possible that any future residential development of the study area could have an impact on this site's spiritual qualities and attachments, consultation was undertaken with the Kempsey LALC and Dunghutti Elders CAC to this end. However, as advised orally by the Sites Officers during the survey and outlined in the Appendix A correspondence, Birrogun's grave is considered to be adequately buffered by the golf course itself. As related in the Land Council correspondence, the natural and spiritual qualities of its surrounds have already been compromised to such an extent by relocation of the marker stone, development of the golf course, a sports ground to the north, housing estates to the south and west, and construction of the Sewage Treatment Plant to the east, that residential development of the study area would have little further adverse effect on the site's contemporary cultural values. Figtree Aboriginal community representative Greg Blair also supported this conclusion.

Dunghutti Elders CAC Sites Officer David Hoskins advised that a Bora/ceremonial ground is known to have once been situated somewhere near the north-eastern corner of the study area, although its exact location is uncertain. Inspection of the possible Bora ground location revealed high level disturbance caused by an abandoned horticultural enterprise and it was concluded that this site, if ever present within the study area, has been destroyed.

As a result of their consideration of the survey results and the environmental character and past disturbance of the study area and adjacent land, both the Kempsey LALC and Dunghutti Elders CAC have advised that they have no fundamental objections to future residential development of the study area providing the recommendations of this report are implemented.

5 ARCHAEOLOGICAL CONTEXT

5.1 Registered Aboriginal sites in the study locality

While none occur within the study area itself, 63 sites have been so far registered on the DEC (Department of Environment and Conservation) Aboriginal Heritage Information Management System between the Macleay River/Spencers Creek and coastline north of Jerseyville. These include six sites within a kilometre of the study boundaries, details for which are given in Table 2. Sites in the wider study locality are plotted on Figure 1.

South West Rocks has a remarkably large number of surviving Aboriginal sites in comparison to other parts of the NSW mid-north coast. Shell middens make up 84% (n=53) of the registered sites in this area, burials 8% (n=5, of which two are found in middens), open campsites (stone artefact scatters) and natural mythological sites each 3% (n=2), and Bora ceremonials with carved trees 2% (n=1).

Table 2. Recorded sites within one kilometre of the study area

Site No.	Location/name	Site Type	Environmental context
22-4-35	Birrogun's grave	Natural mythological	Crest of bedrock spur.
22-4-08	Arakoon	Midden	Frontal dune.
22-4-90	South West Rocks	Midden/burial	Wetland margin.
22-4-48	Spencers Creek	Burial ground	Footslope of sand ridge near perennial creek.
22-4-18	Big Smoky	Midden	Bedrock footslope adjacent to wetland.
22-4-94	Spencers Creek	Midden/open camp	Sand plain near perennial creek.

As the most common site type, middens cluster along the present and former shores of the Macleay estuarine system, where they form distinctive mounds of cockle (in basal layers) and oyster shell (in upper layers). These estuarine middens are believed to have been occupied between 5,000 and 2,000 years ago, and reflect silting up of the open estuary and formation of confined mangrove communities (Sullivan 1982:115-6). Many smaller pipi shell middens have also been recorded in frontal dunes along South Smoky Beach. The pipi middens appear to be more recent than their estuarine counterparts and reveal little reliance on non-coastal resources (Connah 1976). Overall, archaeological evidence indicates an Aboriginal economy that was strongly influenced by local environmental conditions (Collins 1995:11).

5.2 Past surveys in the study locality

Systematic research into the prehistory of the Macleay Valley commenced in 1969 with an academic survey of coastal middens conducted by Campbell. Site #22-4-08 was recorded on the frontal dune at Arakoon during this survey.

Campbell's initial work was followed by a more intensive academic investigation involving the excavation of two shell middens at Clybucca and Stuarts Point north of the Macleay River, and two middens at Maguires Crossing further south (Connah 1975,1976). The range of radiocarbon dates obtained from the middens indicates that Aboriginal people were occupying the area at least 5,000 years ago, at that time depending exclusively upon estuarine shellfish resources. The resource base later broadened to include fish and land animals (Knuckey 1999).

Occupation of the coastline itself is believed to have occurred only within the last one to two thousand years (Egloff and Oxley 1989:20). Two of these recent coastline sites (#22-4-46 and 47), situated beside a small creek at the base of Smoky Cape, were excavated by Hughes (1979), revealing 60-75cm deep cultural deposits composed of open shore and rock platform shellfish, with small quantities of fish, bird and macropod bone.

Archaeological work has also been undertaken in response to individual development proposals at South West Rocks. This work has included a ground-probing radar survey of a reported post-contact Aboriginal burial ground at Spencerville (Collins and Griffin 1993), and a shovel test pit and auger investigation of land adjacent to a series of middens that stretch along a former embayment of the Macleay River (Collins 1995).

Two small land parcels (each approximately one hectare) covering the hind dune between the study boundary and Phillip Drive have been surveyed by Sites Officers from the Kempsey LALC. The first of these was inspected by Leslie Donovan in 1996, and encompassed the area now developed as the Waiabar Avenue residential subdivision. No archaeological materials were detected. The adjoining allotment (Lot 506 DP 827889) was surveyed by Kempsey LALC Sites Officer Harold Smith with the assistance of the present consultant in 2001. At least one third of this allotment consisted of fully exposed eroded sand sheets, but no archaeological materials were apparent (Smith 2001).

5.3 Past surveys in the study area

A 60ha section of the study lowland (then Lot 510 DP 850963) was surveyed by Kempsey LALC Sites Officer Neville Cohen in 1997 in response to a previous development proposal. No archaeological materials were detected despite three days of survey and high visibility conditions provided by a recent fire. Mr Cohen also consulted with Elders from the South West Rocks Aboriginal community but there was no knowledge of culturally significant sites in the area (Cohen 1997a).

In addition to the field survey mentioned above, Neville Cohen monitored drain digging through the study area, returning for an additional two days to monitor the spreading out of drain spoil/topsoil. Again, no archaeological materials were detected (Cohen 1997b).

Although there are no available written records of these inspections, Harold Smith and Greg Blair advised that the vegetated hind dune in the north-eastern corner of the study area, and the better drained area in the south-west have also been inspected by Land Council representatives in the past, both with a nil result.

5.4 Potential site types in the study area

On the basis of information gained through a review of background environmental, ethnohistorical and archaeological data, and the results of past surveys at South West Rocks, there is some likelihood of the following types of Aboriginal sites surviving in the study area.

Stone artefact scatters (open campsites)

This type of site can range from as few as two stone artefacts to an extensive scatter containing a variety of tools and flaking debris, sometimes with associated materials such as bone, shell, ochre, charcoal and hearth stones.

An artefact scatter does not necessarily mark a place where actual camping was carried out, but may instead be the product of specialised and/or short-term activities involving some level of stoneworking (eg the manufacture or rejuvenation of a single tool during hunting, or whilst in transit from one camp to another) (Hiscock 1988:19). Artefact scatters may occur as surface concentrations or as dateable stratified deposits, and can provide information on such things as patterns of Aboriginal landuse, movement and exchange.

Isolated stone artefacts

Isolated artefacts can be located anywhere in the landscape and represent either the remnant of a dispersed artefact scatter (open campsite), or the simple loss or random discard of artefacts.

Scarred trees

These are trees that bear scars caused through the removal of bark or wood for making material items such as canoes, shields and containers, or which have been marked for other reasons (eg toe-holds to aid climbing). Because scarred trees are usually associated with domestic activities, their distribution often correlates with the distribution of artefact scatters and middens (Rhoads 1992, cited in Long 1998:28).

Shell middens

Shell middens are the most common kind of archaeological evidence on the lower Macleay. They are generally found near water sources and represent the remains of Aboriginal meals of shellfish. Some middens are thin surface scatters which have constituted little more than a meal for a small group gathering food away from a main camp, while others are well consolidated deposits representing consistent use by large groups of people over hundreds or even thousands of years.

Aboriginal middens differ from natural shell beds in that they comprise predominantly mature specimens of edible mollusc species. They may also contain faunal remains, stone artefacts and charcoal and ash from cooking fires. Aboriginal burials have been recorded in direct association with midden deposits at South West Rocks.

Burials

Aboriginal burials on the mid-north coast are most commonly found as unmarked graves in sand or midden deposits in sand. The burials are normally simple primary interments (Meehan 1971). Due to their subsurface context burials are seldom detectable during surveys of undisturbed surfaces.

Natural mythological sites

Unlike archaeological sites, natural mythological sites are natural landscape features which have not been modified by Aboriginal people. Usually, these sites are of spiritual significance and remain an integral part of contemporary Aboriginal culture. As discussed in Section 3.2, Birrogun's grave natural mythological site (#22-4-35) is located 250m west of the study boundary.

Natural mythological sites and other spiritually-significant places are not located through the usual process of site survey but rather, with the help of Aboriginal people with traditional knowledge of specific areas. Consultation with such individuals was undertaken during the present assessment in an effort to ascertain whether any natural mythological or otherwise culturally-significant sites/locations (including Birrogun's grave) would be adversely affected by future residential development of the study area.

5.5 Predicting site locations

It has long been recognised that archaeological sites recur in favourable environmental settings. Predictive models take advantage of these redundancies by exploiting contrasts between environmental characteristics of places where sites do and do not occur. Providing the data is good it is possible to make predictions from a relatively small sample of known locations to a much broader area (Warren 1990:201).

A large number of Aboriginal occupation sites have been recorded at South West Rocks. These sites display a very strong association with well-drained ground, particularly foredunes and footslopes/natural rises bordering estuarine channels and swamps. In view of the study area's topographic character, it is predicted that archaeological evidence will be primarily restricted in its distribution to the hind dune on the north-east corner, and the slightly higher section of plain in the south-west. This evidence is most likely to take the form of small scatters of shell and/or artefacts which may be concealed beneath aggrading sand.

The location of burial sites within the landscape is difficult to predict, based on current information. However, as discussed in Section 2, soils of the study area are strongly acid. Organic materials degenerate rapidly under acid conditions (Davis 1987:27; Dowman 1970:21) and unless interred in relatively recent times, or preserved within a midden deposit, burials are unlikely to survive in the study area's archaeological record.

Although their survival probability is low, scarred trees may be present wherever ecologically mature trees occur.

6 FIELD INVESTIGATION

6.1 Constraints to site preservation

While ethnographic data and known site distribution patterns can be used to develop archaeological expectations for any given area, the current location and condition of archaeological materials, along with their potential for discovery during survey, is determined by many factors other than where and how those materials were originally abandoned.

The study area has been subject to a variety of mechanical activities that will have compromised the survival potential of its cultural heritage resource. Although remnant woodland remains along the margin of the Hat Head NP and adjacent to the Sewage Treatment Plant in the south-west, most of the study area has been cleared of its natural vegetation and is highly disturbed. A number of gravelled roads have been constructed, and a network of drainage ditches excavated. Extensive leveling of the lowlands appears to have been carried out north of upper Saltwater Creek, with drain spoil spread across the harrowed and regularly slashed surfaces. At least 6ha in the north-western part of the area has been used in crop cultivation.

As outlined in Section 2, the course of upper Saltwater Creek has been augmented and modified to provide better drainage. The natural banks have been removed, the creek now presenting as a 'U-profile' drainage channel.

6.2 Survey strategy and procedure

Field survey of the Local Environmental Study area was conducted with the assistance of Kempsey LALC Sites Officer and Dunghutti Elder Harold Smith and Figtree Aboriginal community representative Greg Blair on the 18th of May 2004, and with the assistance of Dunghutti Elders CAC Sites Officer David Hoskins on the 25th of June 2004. The weather was fine and lighting was conducive to the detection of archaeological materials. A logbook was maintained to record relevant environmental observations, and photographs taken to document the various levels of surface exposure and visibility. Selected plates have been included in this report to provide a general overview of survey conditions.

Owing to the study area's low-lying topography, level of mechanical disturbance and the likely types and distribution of archaeological sites, it was considered that blanket survey coverage was not warranted. Instead, a selective sampling strategy was adopted to maximise coverage of less disturbed surfaces and subsurface sediments (drain cuttings), and to inspect areas identified as being of potential cultural heritage value. In addition to the detailed surface survey, a general reconnaissance was made in order to locate and inspect all of the remaining mature trees for evidence of Aboriginal scarring.

The survey was completed using a combination of parallel transects and single traverses, with the distance between surveyors tailored to suit the type of exposure being inspected. On linear features such as drains, two surveyors walked the margins, checking the opposite cutting for subsurface evidence. Elsewhere, the inspection was carried out by two or three surveyors walking up to five metres apart, resulting in the coverage of a 10-15m wide strip. Particular attention was paid to degraded surfaces which were more conducive to artefact exposure and detection than those churned during recent slashing and harrowing.

6.3 Survey coverage

Land covered in the field, representing approximately 15.6% (17.4ha) of the study area, is shaded on Figure 3 (see summary details, Table 3) in relation to the survey units into which the area was divided to assist with reporting and coverage analysis. Owing to dense vegetation and mechanical disturbance, not all of the surveyed land provided conditions suitable for detecting surface sites.

The concept of coverage analysis has been developed as a means of specifying the proportion of a surveyed sample that permitted site detection. To generate data sufficient for evaluating the potential for and distribution of undiscovered sites, variables constraining site detection were estimated for all survey units. These include an estimation of the mean frequency with which surface exposures were encountered, as well as an estimation of the quality of visibility on those exposures (mean frequency of bare ground suitable for artefact detection).

Once the variables of exposure and visibility are taken into account, it is estimated that around 35.8% of the survey sample was subject to effective coverage (Table 3). This amounts to an overall effective coverage of 5.6% of the total study area.

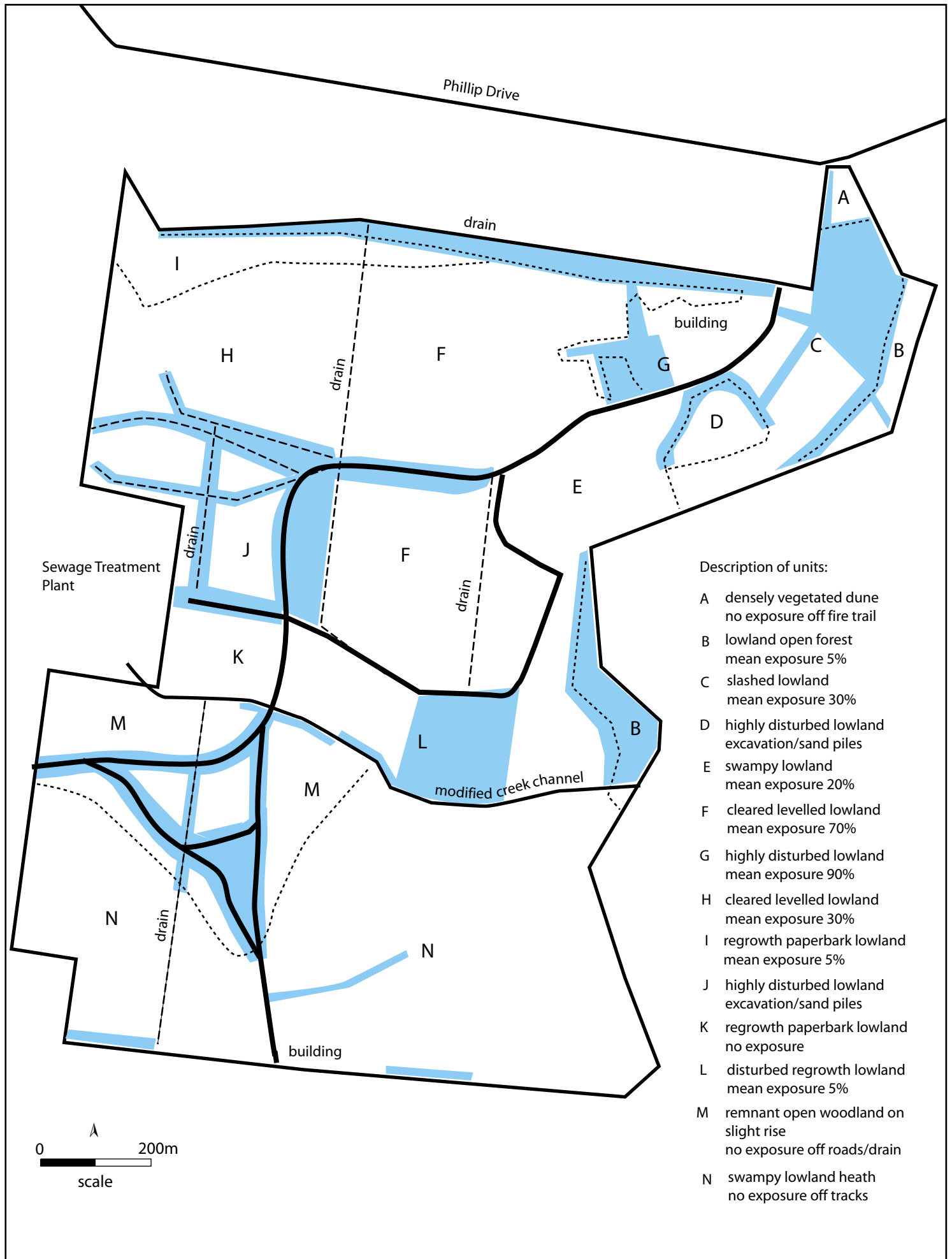


Figure 3. Location and description of survey units (surveyed areas shaded)

In view of the study area's topographic character and disturbance history, and the environmental context of areas that provided useable exposures, the effective survey sample is considered to have been satisfactory for the purposes of assessing the nature, extent and distribution of the archaeological resource.

Table 3. Survey coverage data

Survey unit	Surveyed area (m ²)	% of surface exposed	% visibility on exposures	Effective coverage (m ²)	No. sites recorded
A	500	50	100	250	0
B	15,250	5	100	763	0
C	47,000	30	100	14,100	0
D	200	50	50	50	0
E	1,500	20	100	300	0
F	15,400	70	100	10,780	0
G	36,500	90	100	32,850	0
H	2,000	30	100	600	0
I	0	0	0	0	0
J	4,000	10	100	400	0
K	0	0	0	0	0
L	41,000	5	50	1,025	0
M	9,200	10	100	920	0
N	1,200	10	100	120	0
TOTAL	173,750			62,158	0

7 SURVEY RESULTS

No artefacts, scarred trees or potential archaeological deposits were identified during the survey.

8 CONCLUSIONS

The majority of the study area comprises extensively disturbed drainage-impeded lowland which is unlikely to have ever been selected for Aboriginal occupation in preference to the nearby coastal dunes and Macleay estuarine system. While it is possible that campsites were established in suitable places along upper Saltwater Creek, the creek channel has been altered and its original banks modified and/or removed in the process.

As the only naturally well-drained and reasonably intact parts of the study landscape, the slightly higher land in the south-west, and the north-east hind dune in particular, were the only elements considered to have any real archaeological potential.

Due to dense vegetation, survey inspection of the south-west rise was primarily restricted to roadsides and a drain cutting, resulting in the effective coverage of a 920m² sample of the remnant woodland. No archaeological evidence was found and while this result suggests a low overall level of sensitivity, the possibility of undetected sites (middens and burials), particularly in proximity to the creek channel, cannot be entirely ruled out. As shown on Figure 2, much of the woodland would be retained under the auspices of the proposed development structure plan. Providing the ground surface is not modified during understorey clearing, conservation of the woodland would concurrently offer protection to potential undetected archaeological sites.

The hind dune on the north-eastern corner of the study area supports a dense Needlebark stringybark and Banksia woodland with a impenetrable shrubby understorey. A 5m wide 50% exposed fire break behind the houses in Waianbar Avenue provided the only survey visibility. However, cleared parts of the same dune to the immediate west have been previously surveyed without success (Section 5.2), and a number of houses have been built on the higher dune crest to the east. In the absence of adequate survey coverage it nevertheless remains possible that undetected Aboriginal sites, especially burials, may occur on the dune. Given the very dense vegetation and small size and unobtrusive nature of burials, the only method likely to reveal the presence of such sites would be the monitoring of land clearing operations.

9 SIGNIFICANCE ASSESSMENT

9.1 Management principles and the concept of significance

Assessments of the significance of cultural heritage sites and places are fundamental to their management. Significance can be assigned to particular sites or places, or to a grouping of sites and/or places within an area. The heritage value of a site or site grouping is taken to include its 'aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians' (Australian Heritage Council Act 2003). With respect to Aboriginal sites and places, the two most important significance criteria are social and scientific.

While sites which are considered to be scientifically significant are usually also of significance to the Aboriginal community, others that may be of outstanding importance to the Aboriginal community may have little or no scientific value.

DEC management policies support the objective of conserving all significant Aboriginal sites/places as resources for research, vehicles for interpreting history and culture, and as elements in landscapes. The National Parks and Wildlife Act (1974) is designed to ensure that the Aboriginal cultural heritage resource is carefully managed, and that unmitigated destruction of archaeological material does not occur.

9.2 Significance of the study area

Aboriginal cultural/social significance

On the basis of advice received from the Kempsey LALC and Dunghutti Elders CAC (Section 4 and Appendix A) and the nil survey result, the study area is not known to contain any surviving sites or places of cultural/social significance to the Aboriginal community.

The Kempsey LALC and Dunghutti Elders CAC have advised that they consider Birrogun's grave natural mythological site (#22-4-35) to be adequately buffered by the South West Rocks Golf Course, and that residential development of the study area would have little further adverse effect on the spiritual qualities of this significant site.

Archaeological/scientific significance

No archaeological sites have been recorded in the study area, nor is there a high expectation that significant undetected sites will occur.

10 STATUTORY OBLIGATIONS

The **National Parks and Wildlife Act 1974** (as amended) provides the primary basis for the statutory protection and management of Aboriginal sites in NSW and the administration of legislation pertaining to sites is currently the responsibility of the Department of Environment and Conservation (DEC).

Under the terms of the National Parks and Wildlife Act an Aboriginal object is defined as-

‘any deposit, object or material evidence, not being a handicraft made for sale, relating to indigenous and non-European habitation of the area that comprises NSW, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction.’

In accordance with the Act an Aboriginal object may not be knowingly disturbed, defaced, damaged or destroyed without written authority from the DEC. The provisions apply to all Indigenous archaeological sites regardless of whether or not they have been registered with the DEC. If any proposed development will or is likely to damage, deface, desecrate or destroy an Aboriginal object, a Section 90 Heritage Impact Permit must first be granted by the DEC Director-General. Such a permit is normally only issued following review of a specialist report, consideration of the object’s significance, advice from the local Aboriginal community and consideration of all alternative conservation options. Except where destruction of an object/group of objects is or will be demonstrably unavoidable, DEC policy is to require conservation in its original location and context.

11 MANAGEMENT RECOMMENDATIONS

The management recommendations presented in this section are designed to minimise future development impacts on Aboriginal heritage resources, and are based on-

- The provisions of the National Parks and Wildlife Act 1974, which states that it is an offence to knowingly disturb, deface, damage or destroy an Aboriginal object without an appropriate DEC permit;
 - Advice from Kempsey Local Aboriginal Land Council and Dunghutti Elders Council Aboriginal Corporation representatives;
 - Results of the DEC register search and background research into the history and archaeology of the South West Rocks area;
 - Results of the field survey;
 - The assessed significance of the study area;
 - A consideration of the potential impact of the proposed future development on Aboriginal sites and values.
-

11.1 Potential undetected site locations

Although isolated artefacts lost or discarded during itinerant resource-gathering activities may occur in any part of the study area, any substantial undetected archaeological evidence is likely to be restricted in its distribution to the remnant Scribbly gum woodland south and south-east of the Sewage Treatment Plant, and the hind dune adjacent to Phillip Drive in the north-east. Both these areas are well vegetated, offer very little survey exposure, and have some potential to contain undisturbed archaeological sites. Aboriginal occupation sites are also possible on the low sand rise edging Saltwater Lagoon in Hat Head National Park.

Conservation of woodland vegetation in these potentially sensitive areas would concurrently offer protection to any undetected archaeological sites, and it is recommended that this factor be taken into account when development control measures are established for the study area.

11.2 Further archaeological assessments

The densely vegetated hind dune adjacent to Phillip Drive on the north-eastern corner is considered to have a higher level of archaeological potential than any other part of the study area, and provides no survey exposure off the narrow fire break behind the existing houses. Further survey or sub-surface investigation is highly unlikely to be effective and is not recommended.

To ensure that archaeological sites, and burials in particular, are not destroyed in the event that this dune is to be developed, it is instead recommended that Sites Officers from the Kempsey LALC and Dunghutti Elders CAC be engaged to monitor all initial construction-related earthworks (including vegetation clearing) on the vegetated section of dune.

Although only 15.6% of the study area was covered in the field, the survey included all substantial exposures likely to contain significant evidence. Due to the perceived low density of the archaeological resource and poor detection conditions in undisturbed areas, further survey work at Development Application stage would be unlikely to produce positive results. Providing the recommendations of this report are implemented and the legislative requirements of the National Parks and Wildlife Act (1974) are upheld, no further surface survey work is recommended in the study area.

11.3 Aboriginal concerns

The Kempsey LALC and Dunghutti Elders CAC have advised that they have no fundamental objections to future development of the study area providing: the existing Needlebark stringybark woodland fringing Saltwater Lagoon is retained in its current condition (given that the Lagoon margin may contain undisturbed occupation sites); and Aboriginal representatives are engaged to monitor initial earthworks (including vegetation clearing) on the north-eastern hind dune adjacent to Phillip Drive to ensure that burials are not accidentally destroyed (Appendix A).

11.4 General recommendations

Prior to the commencement of any vegetation clearing or construction activities associated with residential development of the study area, it is recommended that all construction contractors and their employees be advised of their legal obligations with regard to Aboriginal cultural materials. This advice should be given in writing and a copy forwarded to the DEC Northern Aboriginal Heritage Unit (Coffs Harbour) for its records.

Should any material evidence thought to be of Aboriginal origin be discovered or exposed during any stage of the development, work must immediately cease in that locality. The DEC, Kempsey LALC and Dunghutti Elders CAC should then be contacted for management advice and clearance given by these organisations before work resumes in the subject area

PLATE 1: General visibility across cleared lowland, SU F. View south-east to Big Smoky



PLATE 2: General visibility across cleared lowland, SU H. View west to golf course



PLATE 3: General visibility in south-west lowland open woodland, SU M



PLATE 4: General visibility across swampy lowland heath on southern boundary, SU N



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GLOSSARY

ARCHAEOLOGICAL SITE

A place containing cultural materials of sufficient quality and quantity to allow inferences about human behaviour at that location (Plog *et al* 1978:383).

ARTEFACT

Any object having attributes as a consequence of human activity (Dunnell 1971).

BORA/CEREMONIAL GROUND

While there are a number of different types of Bora ground, most common on the north coast is that composed of one or a pair of raised earth circles ranging in size from two to 40m in diameter. The Bora ground functioned as a stage for various initiation rites (Byrne 1989:18).

DUNE

A moderately inclined to very steep ridge or hillock built up by the wind (Speight 1990:30).

ESTUARY

A stream channel close to its junction with the sea, where the action of channelled stream flow is modified by tides and waves (Speight 1990:30).

HOLOCENE

The most recent epoch of geological time; the upper division of the Quaternary Period (Lapidus 1987:274).

PLAIN

A large very gently inclined or level element, of unspecified geomorphological agent or mode of activity (Speight 1990:32).

SWAMP

An almost level, closed, or almost closed depression with a seasonal or permanent water table at or above the surface, commonly aggraded by overbank stream flow (Speight 1990:33).

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APPENDIX A:

Correspondence from the Kempsey Local Aboriginal Land Council
and Dunghutti Elders Council Aboriginal Corporation

Recommendations:

The Kampeey Local Aboriginal Land Council has no objections to future residential development of the Local Environmental Study area providing-

- 1) The existing forest along the edge of Saltwater Lagoon is left undisturbed;
- 2) A Land Council representative is engaged to monitor initial ground disturbance (including vegetation clearing) on the sand dune adjacent to Phillip Drive in the north-east part of the property to ensure that burials are not accidentally destroyed;
- 3) Development work stops immediately and the Land Council is contacted in the event that any Aboriginal cultural material is discovered at any stage.

Yours Sincerely,



Tracy Edwards

Coordinator, Kampeey Local Aboriginal Land Council



P.O. Box 540,
Kempsey, N.S.W. 2440
Phone (02) 6562-8888
Fax (02) 6563-1293

KEMPSEY LOCAL ABORIGINAL LAND COUNCIL

10th June 2004

Jacqueline Collins
Consultant Archaeologist
11 Camden Head Road
DUNBOGAN 2443

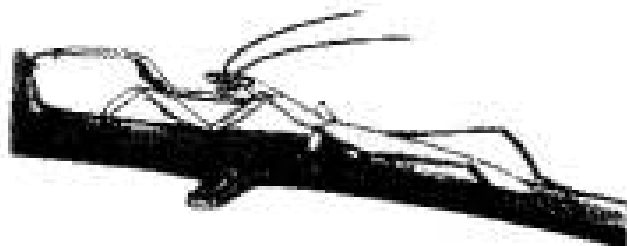
Dear Jacqui,

**RE: LOCAL ENVIRONMENTAL STUDY FOR LOTS 509 AND 19 DP 850963 AND
LOT 52 DP 831384, PHILLIP DRIVE, SOUTH WEST ROCKS**

I wish to verify that your field survey of the above property was undertaken with the assistance of Kempsey Local Aboriginal Land Council Sites Officer and Dhungutti Elder Harold Smith and Fijtree Aboriginal Community representative Greg Blair on the 18th of May 2004.

No evidence of Aboriginal occupation was found during the survey and the area is assessed to have little archaeological potential. Both Harold Smith and Greg Blair have inspected various parts of the property in the past with the same nil result. The property is mainly flat and swampy, with large parts cleared, drained and ploughed. If any archaeological evidence is present, it will most likely occur along the uncleared edge of Saltwater Lagoon, or on the low sand dune in the north-east.

As you are aware, Birrogun's Grave mythological site is located in the centre of the South West Rocks Golf Course 250 metres west of the property. The site is marked by boulders which were unfortunately moved from their original location during golf course development. The site's spiritual qualities have already been compromised by relocation of the boulders, development of the golf course, a sports ground to the north and housing estates to the south and west, and by construction of the sewage treatment works to the east. Because the site no longer occurs in a natural environment, residential development of the Local Environmental Study area would be unlikely to detract further from its present Aboriginal cultural values.



**Dunghutti Elders Council
(Aboriginal Corporation)**

P O Box 179
Kempsey 2440
Phone: 02 65622855
Fax: 02-65622574

ABN 80075449308

29th June 2004

**Jackie Collins
11 Camden Head Road
Dunbogan NSW 2443**

RE: South West Rocks Local Environment Study Area
25th June 2004

There are not any artefacts, relics or any sites in the study area "see map" that can be seen.

Birrigan's Grave:

This is situated outside the study area. The grave is on the south west rocks golf course and is protected by a buffer zone.

Bora Ring:

This has been destroyed by early development and can not be seen.

No objections to development in this area.

Yours truly,

**Ruth Campbell
Chairperson
D.E.C.A.C.**

APPENDIX B:

Field survey report from Figtree Aboriginal community representative Greg Blair

Owen Gregory Blair
7 Mayra Moran Ct.
South West Rocks

Attention:

Jackie Collins

7/6/08

Ref: Aboriginal Heritage Assessment
Lot 19 & 52 Phillip Ridge
South West Rocks

Report from Owen Gregory Blair South West Rocks
surveyed Lot 19 & 52. My observation on the
above lots is that all the high ground there wasn't
no significant of any artefacts on the top surface.
The low ground being wet land. If any recognition
of any artefacts of any significant would of been
identified on the high ground.

My recommendation that a Aboriginal monitor should
be on site at all time when any disturbance of
machinery work should be enforced for burial remains
and artefacts. Hours worked 18/5/2008
9.00 A.M. - 4.00 P.M. = 7 HRS

Yours truly Owen Blair

6th August 2009

**Dunghutti Elders Council
(Aboriginal Corporation)
Attention: The Chairperson
PO Box 179
Kempsey NSW 2440**

Level 5, 280 George Street
Sydney NSW 2000
GPO Box 2641
Sydney NSW 2001
T +61 2 9233 4144
F +61 2 9233 3282
www.malbec.com.au

Dear Chairperson,

**Re: Proposed Residential Subdivision (MP 08 0167),
South West Rocks, NSW**

We write to advise that Malbec Properties Pty Ltd and Saltwater Developments Pty Ltd are proposing a residential subdivision of land at South West Rocks, under Part 3a of the EP&A Act.

The land comprises Part Lot 2 in Deposited Plan 1128633, Lot 1 in Deposited Plan 1128633 and Lot 2 in Deposited Plan 792945 at South West Rocks. The site is indicated on the attached plan.

In 2004 Kempsey Council commissioned Jacqui Collins & Associates to prepare an Aboriginal Cultural Heritage Assessment for this land and consultation occurred with Kempsey LALC and the Dunghutti Elders Council Aboriginal Corporation. Field surveys were also undertaken and no archaeological evidence was found during site investigations.

The application is to be shortly placed on public exhibition by the NSW Department of Planning (DOP) and should you be interested we suggest that you view the Environmental Assessment (EA) undertaken by EDAW on the DOP website at www.planning.nsw.gov.au (MP08_0167).

A full copy of the Collins 2004 report is included as part of the exhibition documents.

Relevant comments should be directed to:

The NSW Department of Planning
GPO Box 39, Sydney NSW 2001

Yours sincerely,

MALBEC PROPERTIES



IAN COLEMAN
Director

Land Ownership Map



- Subject Site Boundary
- LES Site Boundary



6th August 2009

Kempsey Local Aboriginal Land Council
Attention: Wendy Cowan
PO Box 540
Kempsey NSW 2440

Level 5, 280 George Street
Sydney NSW 2000
GPO Box 2641
Sydney NSW 2001
T: +61 2 9233 4144
F: +61 2 9233 3282
www.malbec.com.au

Dear Ms Cowan,

Re: Proposed Residential Subdivision (MP 08 0167),
South West Rocks, NSW

We write to advise that Malbec Properties Pty Ltd and Saltwater Developments Pty Ltd are proposing a residential subdivision of land at South West Rocks, under Part 3a of the EP&A Act.

The land comprises Part Lot 2 in Deposited Plan 1128633, Lot 1 in Deposited Plan 1128633 and Lot 2 in Deposited Plan 792945 at South West Rocks. The site is indicated on the attached plan.

In 2004 Kempsey Council commissioned Jacqui Collins & Associates to prepare an Aboriginal Cultural Heritage Assessment for this land and consultation occurred with Kempsey LALC and the Dughutti Elders Council Aboriginal Corporation. Field surveys were also undertaken and no archaeological evidence was found during site investigations.

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Relevant comments should be directed to:

The NSW Department of Planning
GPO Box 39, Sydney NSW 2001

Yours sincerely,

MALBEC PROPERTIES



IAN COLEMAN

Director

Land Ownership Map



- Subject Site Boundary
- LES Site Boundary



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Public Notice

"Malbec Properties Pty Ltd and Saltwater Developments Pty Ltd are proposing a residential subdivision of land at South West Rocks, under Part 3a of the EP&A Act. The land comprises Part Lot 2 in Deposited Plan 1128633, Lot 1 in Deposited Plan 1128633 and Lot 2 in Deposited Plan 792345. In 2004 Kempsey Council commissioned Jacqui Collins and Associates to prepare an Aboriginal Cultural Heritage Assessment for this land and no archaeological evidence was found during site investigations. Malbec & Saltwater requests a registration of interest from local Aboriginal stakeholders to comment on the public exhibition of the EA. Relevant local Aboriginal stakeholders should write to The Director, Malbec Properties, GPO Box 2641, Sydney, NSW, 2001, quoting "SWR Registration of Interest". Registrations should be received 10 days from the date of this advertisement".

PM190238