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Aboriginal Heritage and Archaeological Assessment Huntlee Stage 1

"Huntlee",
NSW



Report to
Huntlee Pty Ltd
Branxton. NSW
Thursday 9th August, 2012

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Myall Coast Archaeological Services

Aboriginal Heritage Assessment

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1. Introduction

1.1 Background

This report has been prepared at the request of Huntlee Pty Ltd, to assess the possible impact the proposed Stage 1 “New Town” Development may have on Aboriginal Cultural Heritage at “Huntlee”, near Branxton, NSW.

In 2004 a concept for a new town within the study area was discussed with Government and a consultation process with various government agencies was also established. This led to numerous scientific studies conducted over the study area along with public consultation, exhibition and feedback towards rezoning. The studies, including Aboriginal Heritage, formed a body of work that was accepted as a solid framework towards rezoning the study area for conservation and various residential and commercial precincts. The proposal was accepted by the then state government but was unable to be implemented because of court proceedings which declared it invalid.

In 2010 the concept was declared a potential State Significant Site (SSS) and as a part 3A project. The original studies formed the documentation for the application. This included the Aboriginal Heritage assessment which was conducted under best practice at the time, including public consultation, development of an Aboriginal stakeholder group and the formation of an ongoing Aboriginal Consultative group which was a recommendation from the initial reports.

The site was rezoned as a SSS in December 2010.

The rezoning was based upon the previous studies which included agreed mitigation measures between the Aboriginal community and the proponent. The known areas of cultural heritage and archaeological significance were set aside and protected from development in appropriately zoned land thus allowing the rezoning of the non-significant lands for development.

This assessment and report is a continuation of the process first established in 2004 and is also an update of that work in light of recent legislative changes to Aboriginal heritage protection. In addition the Heritage assessment has been assessed twice before by the then DECCW, (now OEH) without concerns, however, as concerns have arisen by OEH in 2011 during the exhibition of the Environmental Assessment Report; those concerns have been addressed within this report.

Although this assessment deals with Stage 1 in particular, a wider study area was considered (the total area rezoned in 2010). This is necessary as any Aboriginal heritage management options need to be addressed in context of the entire project. Similarly any assessment of Aboriginal archaeology and heritage cannot be undertaken over individual pockets of land but potential impacts of the proposal on Aboriginal heritage of the entire project must be assessed in a local and regional context.

Figure 1 illustrates the regional location of the study area, Figure 2 shows the entire study area and Figure 3 depicts Stage 1.

References in this document to the “study area” refer to the entire proposal, whilst “Stage 1” refers to that portion of the study area shown at Figure 3.



Figure 1 Regional Location

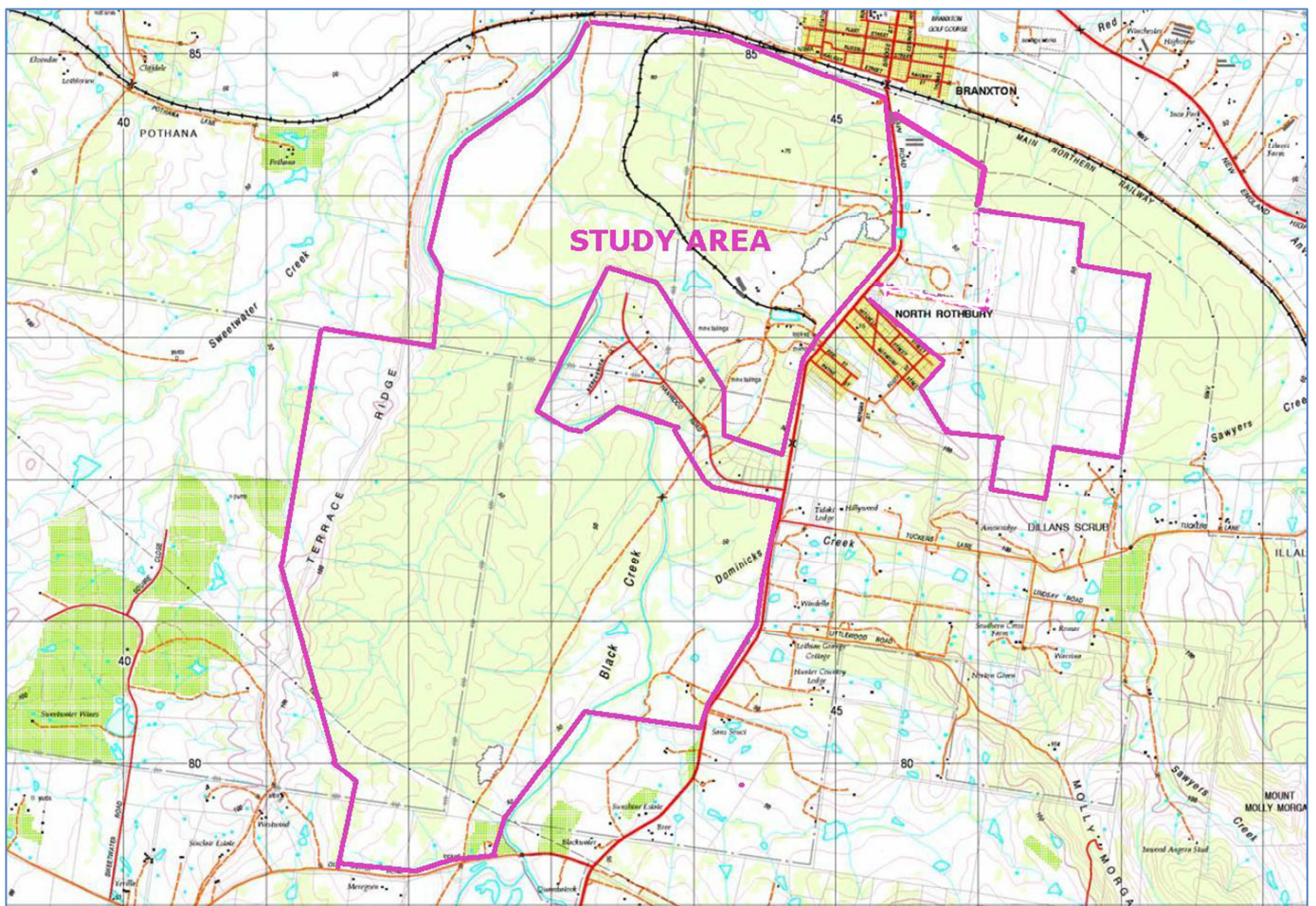


Figure 2 Study Area

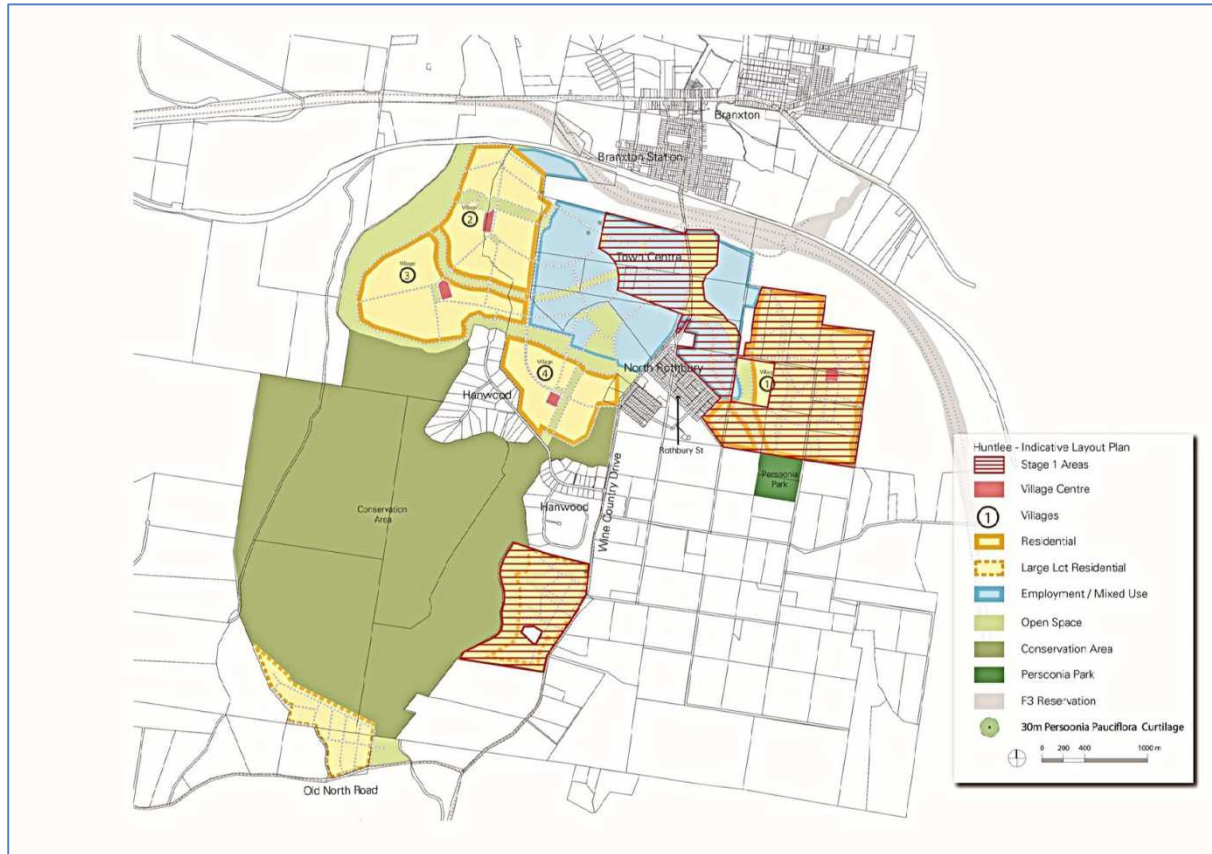


Figure 3 Stage 1 (hatched)

1.2 Legislative Context

The *National Parks and Wildlife Act 1974*, (NPW Act) administered by the Office of Environment and Heritage (OEH), is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. Section 86 of that Act has been amended (2010) and deals with harming and desecrating Aboriginal objects.

'*Aboriginal object* means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.'

Under section 86 of the NPW Act, it is an offence to 'harm' an Aboriginal object. 'Harm' means any act or omission that:

- Destroys, defaces, damages or desecrates the object
- Moves the object from the land on which it had been situated, or
- Causes or permits the object to be harmed.

The NPW Act provides several defences to prosecution for an offence. Where a person either knows or does not know they are harming an Aboriginal object, a person has a defence under section 87 where:

- The harm or desecration concerned was authorised by an Aboriginal heritage impact permit (AHIP), and the conditions to which that Aboriginal heritage impact permit was subject were not contravened.
- Due diligence was undertaken and it was reasonably determined that no Aboriginal object would be harmed.
- Was work on land that has been disturbed for maintenance of existing roads, fire and other trails and tracks, maintenance of existing utilities and other similar services
- Land is disturbed if it has been the subject of human activity that has changed the land's surface, being changes that remain clear and observable.

Harm does not include something that is trivial or negligible.

The regulations under the Act set out a generic “Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales” for initial assessment, as well as, a “Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales” to assess the significance and extent of archaeological evidence (in order to apply for an AHIP), identified as a result of a Due Diligence Assessment.

The regulated code links to other planning processes under the EP&A Act and the applicable section in the code referring to the EP&A Act is as follows:

4.1 Development under Part 4 EP&A Act and activities under Part 5 EP&A Act

Consideration of the potential impacts of development on Aboriginal heritage is a key part of the environmental impact assessment process under the Environmental Planning and Assessment Act 1979 (EP&A Act). The standards in this code can be used or adapted by proponents to inform the initial assessment of the environmental impacts of an activity on Aboriginal heritage. An environmental impact assessment which meets all of the requirements of this code will satisfy the due diligence test. Alternatively, you could adapt the requirements of this code, provided it still meets the ordinary meaning of exercising due diligence (see section 7.7).

If it is found through this initial assessment process that Aboriginal objects will or are likely to be harmed, then further investigation and impact assessment will be required to prepare information about the types of objects and the nature of the harm. This is further explained at step 5 in section 8. If you are going to harm a known Aboriginal object you will need to apply for an AHIP. In this situation, the need to obtain the AHIP is in addition to any approval under the EP&A Act (unless the project is subject to Part 3A EP&A Act).

4.2 Major projects under Part 3A EP&A Act

If your activity is a declared Part 3A project under s.75B of the EP&A Act you should refer to the 2005 (draft) Part 3A EP&A Act Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation (as amended from time to time). These guidelines are available from the Department of Planning (see section 7).

As Stage 1 is a project to which Part 3A applies the 2005 draft DOP guidelines for projects should be considered. The 2005 draft guidelines recognise the importance of a preliminary assessment which is consistent with consideration under Part 4 and 5 of the EP&A Act. The following Figures 4 and 5 outline the two processes in flowchart form.

1 Do you need to use this due diligence code?

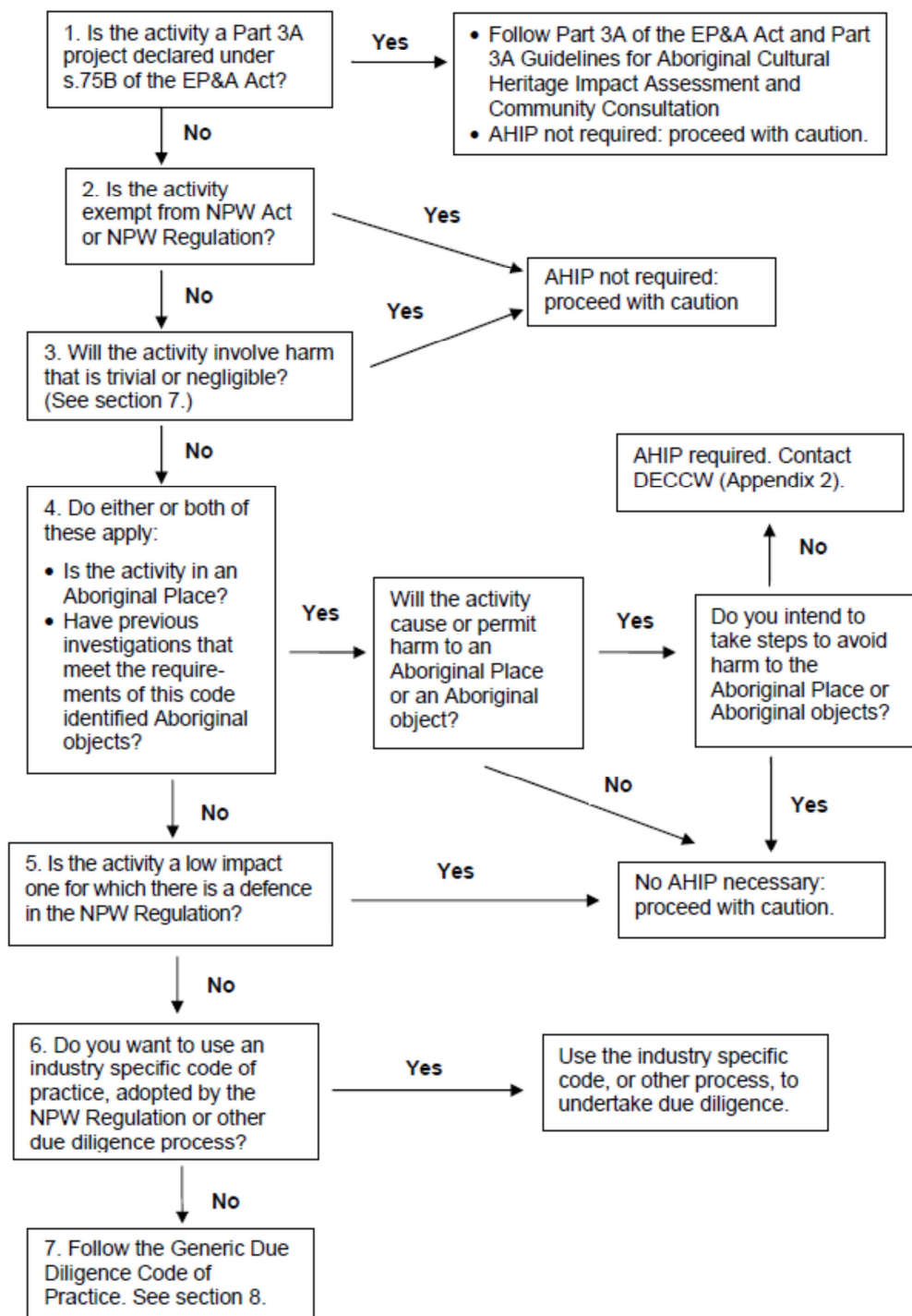


Figure 4 Due Diligence Process Flowchart from Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, published by OEH in September 2010, page 1

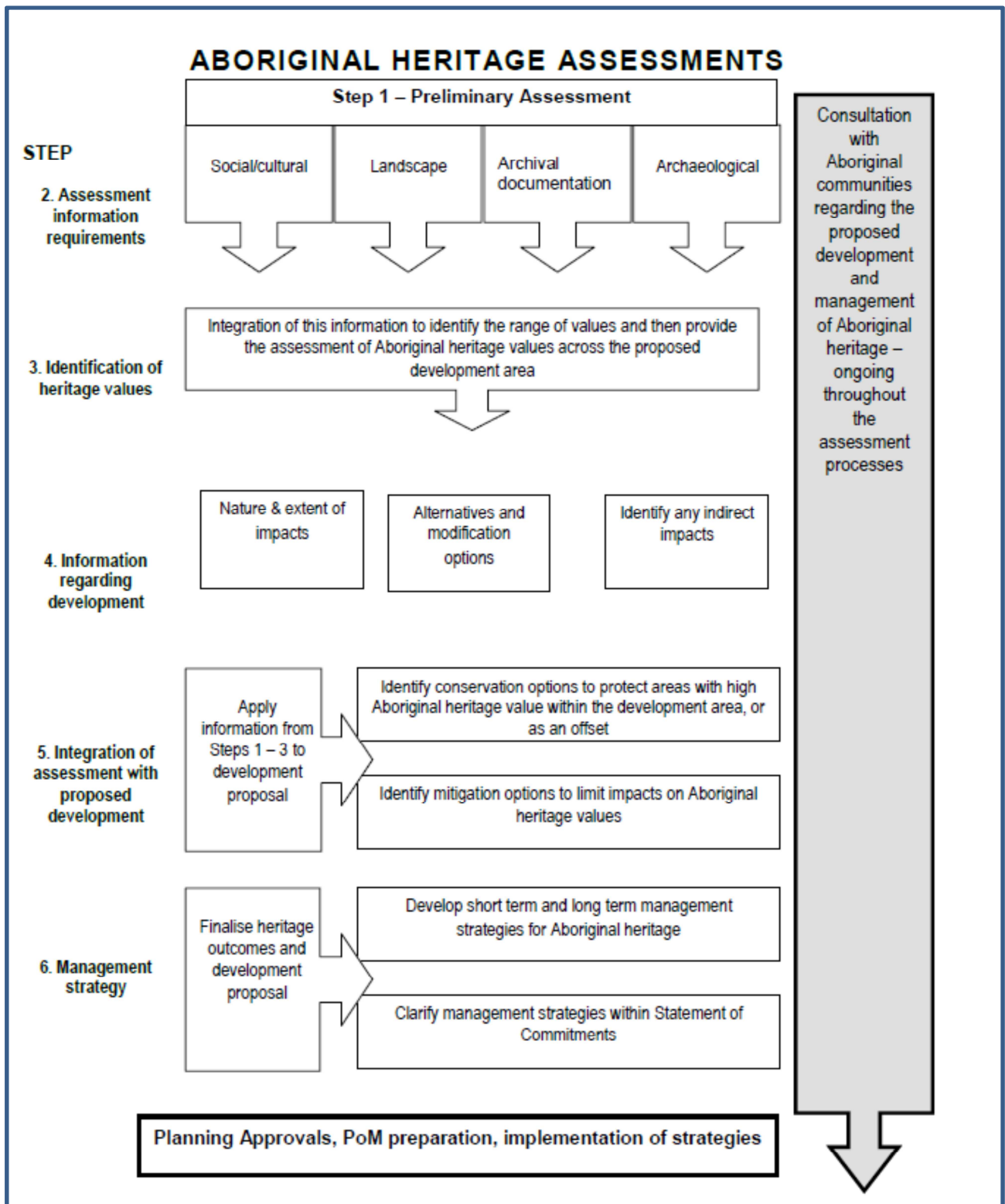


Figure 5 Part 3A Assessment Flowchart (Draft 2005 Guidelines for Aboriginal Cultural Heritage Impact Assessment and community Consultation, page 6)

This Archaeological Assessment follows the 2005 (draft) Part 3A EP&A Act Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation as well as responds to the OEH submissions (Appendix A).

In addition to ensure consistency and standardisation across legislation the Due Diligence Generic Code (OEH) will be used as the basis for the preliminary assessment component under the 2005 draft guidelines.

Rather than only attempting to identify individual sites across the study area, the assessment also takes a landscaped approach to determine any potential Aboriginal archaeological evidence. This will require the identification of the range of landscape units, which are likely to contain Aboriginal archaeological evidence. This will ensure that the landscape context is assessed for significance. The landscape approach as well as previous archaeological work in the area will determine a predictive model of Aboriginal occupation of the study area.

2.0 Assessment Process

The aim of this assessment is to identify the Aboriginal heritage and archaeological values of the Stage 1 site area in particular and the entire study area in totality and the potential impacts on those values as a result of the stage 1 project. This will be achieved through Aboriginal stakeholder consultation, surveys and literature. This assessment also provides recommendations on the management and mitigation of impacts on such heritage and values that are potentially impacted by the Stage 1 project.

2.1 Assessment Personnel

The research, visual assessment and report were undertaken by Len Roberts, (BA [Arch.], Grad. Dip. Comp., Dip Sp. Ed.,) who also holds a certificate in Archaeological fieldwork, from Tel Aviv University, Israel. Len has worked on archaeological projects in Australia and overseas. Len is a member (since 1990) and was Deputy Chairperson (2007 -2011) of Karuah Local Aboriginal Land Council. He was appointed, in 1977, (under S32AV of the Local government Act 1919) as a part time, non- judicial expert (having, special knowledge of and experience in law, local government administration or town planning administration) member of the Local Government Appeals Tribunal from 1977 until it was replaced by the Land and Environment Court in 1980. He has been an expert witness before the Land and Environment court on Aboriginal heritage matters. Len has also taught English and Society (Australiana) at Beifang University, Yinchuan, China as an invited lecturer in second semester 2011.

Len is currently undertaking a Masters in Indigenous Knowledge through Charles Darwin University (traditional Aboriginal law, society and practices).

Len has undertaken archaeological work for various planning and surveying companies, as well as large organizations such as AMP, Department of Public Works, RTA, Local Government Authorities, Energy Australia, Australian Rail and Track Corporation, Rio Tinto, Woolworths and numerous other clients. The projects have ranged from small aquaculture (at sea), industrial and residential projects to large rezoning proposals, as well as linear surveys for sewerage treatment upgrades, pipelines, transmission lines, wind farms, rail line upgrades and highways.

The assessments have included Due Diligence assessments, gateway determinations, as well as assessments under, Parts 3A, 4 and 5 of the EP & A Act

Len has completed various S90 applications, as well as identifying and recording in excess of 1,000 Aboriginal objects and has authored in excess of 120 reports in the last 15 years.

The field work component of this assessment was undertaken by this archaeologist in conjunction with Tracey Skene, a Wonnaruah lady with authority to speak on Country. Tracey is a very experienced field officer having worked on and had oversight of many field assessments (particularly very large mining and transport infrastructure proposal)s on behalf of Aboriginal Land Councils and the Wonnaruah People. Tracey belongs to and represents the Wonnaruah People traditional owners and registered Native Title Claimants.

A follow up visual inspection to independently verify the findings, conclusions and help determine the cultural significance of the study area was undertaken on the 7/8/2012 by this archaeologist and:

- Mick Chenery, representing MLALC. Mick is a very experienced sites officer and senior knowledge holder, a Gringai man of the Wonnarua people, who has a strong connection to country.
- Dean Miller, a Wonnaruah man and representative of the LHWC. Dean is an experienced sites officer who has undertaken many heritage assessments and excavations on behalf of the Wonnarua people and the Land Council.

Neither of the two had inspected the study area before.

To ensure cultural probity and respect to country the follow up inspection was overseen by Tom Miller the senior Elder of the Wonnarua people.

2.2 Aboriginal Community Consultation

In accordance with the then DECCW requirements in 2004 an Aboriginal stake holder group was established to advise, consult and oversee the Aboriginal Cultural Heritage Assessment for the project. The establishment and the determination of the appropriate stakeholders are well documented in the original reports. The Aboriginal Stakeholder group consisted of representatives from the appropriate Local Aboriginal Land Council (Mindaribba), representatives from the Wonnaruah People Registered Native Title Claimants (Traditional Owners).

In 2007, as a result of a recommendation from the original cultural assessment process, including public exhibition and agreed cultural impact mitigation measures and part of the statement of commitments for the rezoning application and on advice from the then DECCW (Jill Ruig) an ongoing consultative committee was established for the Huntlee New Town project.

This committee is called the Huntlee Aboriginal Reference Group (HARG) consisting of representatives from Mindaribba Local Aboriginal Land Council and representatives from the registered Native Title Claimants. All appropriate Aboriginal people were given an opportunity to be represented on the committee in accordance with advice from the then DECCW and Native Title Services. Basically, an agreement was entered into by the proponent, the Wonnaruah People Registered Native Title Claimants and the Mindaribba Local Aboriginal Land Council. The Aboriginal People who had proven connectivity to country were represented through the various organisations of the Wonnaruah People, as well as, all Aboriginal people who may or may not have connectivity to country within the Mindaribba Land Council area, in which the study area lay, were represented by the legislated functions of the Mindaribba Land Council. These were the only groups known and recognised at the time. It must be noted that it is according to the OEH Aboriginal cultural heritage consultation requirements for proponents (5.2 p15), *"It is only Aboriginal people who can determine who is accepted by their community as being authorised to speak for Country and its associated cultural heritage. Where there is a dispute about who speaks for Country, it is appropriate for Aboriginal people, not DECCW or the proponent, to resolve this ..."*

HARG was therefore established by the Aboriginal community as an authorised group to speak on country.

HARG met seven times in 2007 and 2008, offered advice and suggestions regarding management and opportunities for involvement by Aboriginal people in the project. The consultation with the committee is further outlined in Appendix B. Although it was initially established for Aboriginal heritage consultation purposes, the proponents enlarged its terms of reference to become a reference group and a guiding body to facilitate a close working relationship between the proponent and the Aboriginal community. The purpose of the group was to enhance opportunities for the advancement of Aboriginal participation in the entire project.

This archaeologist is not a member of the group and was not privy to the discussions or records of the HARG meetings unless requested. The archaeologist attended a meeting on 6th February 2012 to discuss the Aboriginal Cultural Heritage Assessment. At that meeting the attendees agreed to re-advertise the existence of HARG and seek expressions of interest from Aboriginal people who may wish to join HARG.

An advertisement was placed in the Cessnock Advertiser which covers the Huntlee and adjacent areas on the 29/2/2012 (p.26). This paper was chosen as it has had continual coverage of the Huntlee project and often runs stories regarding Huntlee. The Huntlee project mostly falls within the Cessnock LGA. The Department of Planning also use the Advertiser for its announcements regarding Huntlee. Two people responded Tom Miller and Tracey Skene. Even though Tom was already a member of HARG and Tracey was represented on HARG by Tom and Victor they felt obligated to respond. Tracey was also the HARG Sites Officer for the field assessment.

A further meeting was held on 19th March to consider any applications to join the committee and discuss the known significance, historical associations of the study area as well as the personnel, extent of area and methodology for the visual inspection. As the study area had been rezoned in 2010 based on the known Aboriginal and archaeological significance and that the significance would not be impacted, the meeting agreed that:

- MLALC and the Wonnarua people each provide a highly skilled Sites Officer for the visual inspection
- That the additional visual inspection be confined to only that land east of Wine Country Drive. Although the stakeholders knew that the eastern area had been previously surveyed, was not significant archaeologically and highly unlikely to reveal cultural evidence because OEH required further information on that area, it was decided to re-survey that area.
- The methodology and visual inspection process be determined by the personnel including the HARG Sites Officer undertaking the inspection on the day.
- To ensure transparency and independence no sitting member of the HARG committee would be involved in the visual assessment.

The registered stakeholders have provided a report attached as Appendix C which confirms their involvement in and review of this assessment report.

Notices



WILD DOG AND FOX CONTROL BAITING PROGRAM IN POKOLBIN STATE FOREST

Forrest NSW will carry out, from 1st through to 31st March 2012, its annual feral dog and fox control in Pokolbin State Forest. Main access points to the baited areas will display appropriate warning signs during the activity. Pokolbin State forest neighbours and members of the public visiting the forest with their dogs during the baiting are advised to keep their animals under constant control. For further information please contact Central Region office on 6585 3744 between 9.30am and 4pm.

BELLBIRD JUNIOR FOOTBALL CLUB

Still taking registrations for 2012 season
Please phone Kirsty 4998 6478
Team introduction 10th March, see website for times
Players from 4 years of age (must be turning 5 in 2012)
New players need copy of Birth Certificate
-6-7 years \$10 -8-11 years \$35
-12-18 years \$100 -Seniors \$190 (one discount allowed)
New players receive free shorts and socks
All details on website www.bellbirdjuniorfootballclub.com

Hunter Valley Dental Surgery

153 Wolfcreek Road, Cessnock
Telephone: 4990 6646
Our team is dedicated to providing you with the personable, gentle care you deserve. We offer the highest quality, comfortable dental care in a warm friendly environment.
•Complete Dental Care •Smile Makeover
•Teeth Whitening •Cosmetic Dentistry
•Dental Hygienist •Extended Hours
We accept: Emergency Appointments, Teen Dental •Dentists, Veterans Affairs & FPC
We have Disabled Access and off street parking.
Principal Dentist - Dr John Hogg BDS

LEARN HOW TO DANCE

SWING & 1950's STYLE ROCK 'N' ROLL

with ALL SHOOK UP
Telarah Bowling Club - 1st March
Mayfield Bowling Club - 2nd March
Beginners Rock 'n' Roll starts Thurs 8.10pm
Beginners Ballroom Swing starts 8.10pm
4930 1076 or 0412 114 647
www.allshookup.com.au
Level 3 accredited teacher with ARDC.

KURRI MINOR RUGBY LEAGUE

LAST REGISTRATION DAY

Will be held on Wednesday, 7th March, 4pm - 6pm at KURRI MINOR LEAGUE GROUND, Boundary St., Kurri.
All registrations after this date will be by appointment only with the Registrar at his discretion.
STILL NEEDED Under 19s Coach and Coaches for our second season in Under 19s and Under 12s.
We also still seeking a Games Manager.
For further information please call Secretary Rebecca 0432647383 or Registrar Kally 0413260635.

Notices

CESSNOCK GEM AND MINERAL CLUB AGM Sat. 17th March, 2pm. Club rooms. Stephen St. 4990 3837.

DISCOVER YOUR FAMILY HISTORY

Professional Genealogist
Dianne 0409 403 257
diannewilli@gmail.com

Dr TRACY LARKMAN

No longer works at The Novocastrian Skin Cancer Clinic
All skin care is done at General Practice
Unit 14/2 March St
CARLISLE
Ph: 4903 9000

GIFT OF MOTHERHOOD

Living couple wish for a child to complete our family. Seeking a generous woman 25-35 yrs to donate her eggs. Costs covered. Ph: 0421652159
Email: lee_gail@yahoo.com

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Living couple wish for a child to complete our family. Seeking a generous woman 25-35 yrs to donate her eggs. Costs covered. Ph: 0421652159
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GROUP TRAVEL

Agencies specialise in transfers, 19 seat bus, 0450 321 007.

LOSE Weight Right & Lasting

supplying H.L. product for 16yrs 400 487/555, AFM 19800

Notices

CESSNOCK CITY HORNETS FC

Invite applications for the position of U20/21 Coach for the Season 2012/2013
1st Division Competition.
Inquiries to Barry Ross Ph: 041741 8644

Hunter Domestic Violence Support & Advisory Services

VOLUNTEERS NEEDED

To assist with White Ribbon Scuzzies, Raffles, White Ribbon Day, Reclaim the Night etc.
For more information Ph: 49909609

Advertiser

is happy to announce that the winners of the FAMILY PASS (1) complimentary ride passes were: C. Burns, N. Oost, L. Poles, K. Tynes, D. Wicks, J. Rogers, G. Strambler, etc. Congratulations to our winners.

Expression of Interest

Myself, Archaeological Service is reviewing an archaeological and cultural assessment previously undertaken on various lands for the Hunter Protection Branch for an archaeological management plan. This plan will be prepared in conjunction with the Aboriginal Land Council and the NSW Government. Registered Native Title Owners as per previous recommendations and consent conditions. Local Aboriginal groups or individuals who wish to be involved in the Aboriginal Cultural Management Plan are invited to register their interest in writing. Respondents will need to clearly demonstrate their skill and experience in cultural knowledge of country and will also need to show why they are not represented by one of the above organisations. Closing date for registration of interest: 5pm 10th March 2012.
To register your interest, please contact: Sue Roberts, Myself, Archaeological Service, 14/2 March St, 4903 9000, 5783 Pacific Highway, Sea View Gardens, 2804. Email: archaeology@hrcat.net.au

Legal Notices

IN THE SUPREME COURT OF NEW SOUTH WALES PROBATE DIVISION

PROBATE LIST
After 14 days from the publication of this notice an application for probate of the Will dated 17th March, 2004 of THELMA COLLINS late of Cessnock in the State of New South Wales, Widow, deceased, will be made by Brian Taino, Willmaker. Creditors are required to send particulars of their claim upon her estate to: HALLAM & LITTLEWOOD Lawyers
125 Vincent Street Cessnock NSW 2325
PO BOX 244 Cessnock NSW 2325
Ph: (02) 4900 5566

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Figure 3 Expressions of interest advertisement

2.3 Response to Previous OEH concerns

During assessment for the previous SSS application concerns were raised by OEH regarding the adequacy of the Aboriginal heritage study and formalised in letters from OEH on 19/4/11 and 4/11/10 (Appendix A). The concerns outlined in those letters are summarised and expressed as dot points below and a response is given.

- *Non registration of previously identified Aboriginal sites as required by the NPW Act 1974.*

Registration of Aboriginal objects is a matter for the department concerned with responsibility for the Aboriginal Heritage Information Management System (AHIMS). It is the responsibility of a person who becomes aware of an Aboriginal object to notify the Director-general responsible for that department. An excerpt from the legislation is cited below which details the responsibility.

89A Notification of sites of Aboriginal objects

A person who is aware of the location of an Aboriginal object that is the property of the Crown or, not being the property of the Crown, is real property, and does not, in the prescribed manner, notify the Director-General thereof within a reasonable time after the person first becomes aware of that location is guilty of an offence against this Act unless the person believes on reasonable grounds that the Director-General is aware of the location of that Aboriginal object.

The Aboriginal objects were notified appropriately to the then DECCW, prior to 2006, not only by the relevant “finders” in the prescribed manner, but also by this archaeologist in submission of the proposed management options for Aboriginal heritage with the initial reports. In addition the conservation zones were established in consultation with the then DECCW and as a direct response to the known and identified objects.

Many site recordings forwarded by archaeologists in years past never made it onto the database due to various constraints within the department. This archaeologist in order to overcome some of the problem personally took copies of all reports and site record cards to Hurstville Office to ensure lodgement. The initial report for this study area was one of those.

The AHIMS is well aware of the shortfalls and is undertaking procedures and processes to ensure accurate registration. Electronic recording and receipting is being tested. This archaeologist has been asked to trial and discusses some of the new options.

Notwithstanding the above, a new site card has been issued for the conservation area listing it as a Potential Archaeological Deposit with the coordinates and description of the known objects within that area (Appendix D).

- *Incomplete Aboriginal Cultural heritage assessment of potential impact and cultural association of known aboriginal sites in the immediate vicinity of the stage 1 area*

At the time of the field study and assessment in 2004/5 all known Objects in the immediate vicinity were assessed and informed the predictive model for the entire study area (Fig. 2) In addition the information was also used to highlight the significance of the study area and recommend that conservation areas be set aside. A large proportion of the western side of the study area was set aside as a conservation area. The initial assessment and in consultation with officers of the then

DECCW (OEH) identified that whilst no Objects were visible or likely to be observed within the Stage 1 area due to survey constraints and destruction from previous landuse, it was possible (albeit unlikely) that subsurface artefacts could exist within the landscape. Accordingly, some of the landscape on the eastern side was similarly set aside which would be representative of landscape and that may have the potential (although slight) to contain archaeological material. In consultation with OEH (then DECCW) it was agreed that as the general landscape types of the Stage 1 area would be preserved in the Persoonia Park conservation area, the need to undertake additional archaeological work within the Stage 1 area would not be warranted.

Nonetheless a further database search was undertaken for this updated report and the search revealed that 3 surveys had been undertaken since the original Huntlee assessment in 2004/5. One for the Branxton freeway was undertaken contemporaneously with the Huntlee survey and the results not registered until well after the completion of the Huntlee assessment and therefore not known. Another was for the rail corridor and it was undertaken a couple of years later. The final survey which included Huntlee Land was for the electricity easement and was conducted in 2009. Such reports could not have been included in the Huntlee assessment.

It must be noted that these subsequent reports are considered and discussed in the body of this report. It must also be stressed that these subsequent reports do not contradict the findings of the Huntlee assessment but add to and support the initial recommendations. Each of the subsequent reports obtained permits to harm objects, unlike the Huntlee assessment which sought to protect and conserve the Objects.

- *Incomplete assessment of Stage 1 area. Entire field assessment of the stage 1 area required.*

The entire State Significant Site area including Stage 1 was surveyed and as a consequence conservation zones to protect Aboriginal Heritage established. Separate surveys for various parts of the study area were undertaken prior to the "Huntlee" concept. The entire Huntlee study area was surveyed by this archaeologist in conjunction with experienced sites officers from the Aboriginal community and then followed up with a field assessment of the finds and landscape assessment with all the registered stakeholders.

None the less an additional assessment and visual inspection of the eastern Stage 1 area was undertaken for this report generally in accordance with the Archaeological Code for Archaeological Investigations and as outlined in Section 5 of this report. No Objects were observed or considered likely within the Stage 1 development area (Fig. 3).

- *Local Aboriginal community consultation process incomplete*

It is difficult to understand this comment as not only was it best practice at the time it was used to identify Aboriginal stakeholders in an ongoing consultation process, but it was innovative and forward thinking. So much so, that what was seen as a ground breaking process at the time, has become the norm. The consultation process was established in close discussion with the then DECCW and was a mutually agreed process.

An ongoing consultative committee was established; The Huntlee Aboriginal Reference Group (HARG) consisted of representatives of Mindaribba Land Council and registered Native Title

Claimants identified as the descendants of Sarah Madoo. All Aboriginal people with an attachment to the local area were given an opportunity to register an interest in being part of the committee through the appropriate and legislated functions of MLALC and the Wonnaruah People as discussed previously and see Appendix B for the discussion on the composition and history of HARG. It met on 7 occasions, offered advice and suggestions regarding management and opportunities for involvement by Aboriginal people in the project. The archaeologist did not attend the meetings unless invited.

The registered stakeholders have regularly and consistently guided and supported the Aboriginal heritage assessment and provided a report at Appendix C. The measures as negotiated with the Aboriginal community were included in the Statement of Commitments for the SSS, as part of the original application in 2007.

The Aboriginal Community response consultation logs are attached for this assessment at Appendix B.

2.4 Assessment Methodology

Various models have been proposed by archaeologists to explain Aboriginal occupation and use of the landscape environments in NSW.

The predictive or contextual model for the archaeological assessment of the site forms the basis for developing a picture of Aboriginal occupation.

The assessment of the data enables a prediction of what form of Aboriginal occupation was likely to have existed on the study area and would show the potential for finding Aboriginal Sites. A field survey is then able to evaluate the prediction and to extrapolate reasons as to why the survey did or did not match the prediction.

The study methodology was based on data research, field survey of the site and report compilation. The analysis and assessment of the study area's archaeological potential and the impact of the proposal required the completion of the following;

- Research

This involved a review of primary and secondary sources including written material, maps, plans, AHIMS database and other reports as outlined in the reference section (10) of this report..

- Predictive modelling;

This involved an analysis of the research to produce a model of possible archaeological deposits within the study area. In order to conduct the analysis of the research material in an effective and consistent manner the following aspects were examined:

1. Aboriginal heritage values
2. Archaeological record
3. Previous Studies
4. Landscape

- 5. Soils
- 6. Geological Features
- 7. Past land use

- Visual Inspection

This involved the “ground truthing” of the above research with the study area’s potential to reveal/conceal archaeological evidence. The visual inspection was generally conducted in accordance with the Archaeological Code of Practice, even though the Code is specifically used to undertake test excavations and to apply for an AHIP. The details of the visual inspection are contained within section 4 of this report.

The Part 3A Assessment guidelines set out a series of 6 steps to be followed:

STEP 1 Preliminary assessment

The main purpose of a preliminary assessment is to identify whether there are Aboriginal cultural heritage values associated with the subject site.

This study will use the OEH Due Diligence process for the preliminary assessment. The due diligence process is a standardised process which enables transparency and can be used for all activities across all environments.

The code sets out the reasonable and practicable steps which individuals and organisations need to take in order to:

identify whether or not Aboriginal objects are, or are likely to be, present in an area and determine whether or not their activities are likely to harm Aboriginal objects (if present).

STEP 2 Information Requirements

Aboriginal heritage assessment requires a “multi-value” approach which includes a range of methods to satisfy data/information/reporting needs. The information required for understanding Cultural Landscape includes a range of data sets detailing the physical setting (landscape); the history of the peoples living on that land (documentation from archival and oral sources, as well archaeological information)

STEP 3 Integration of information and identification of heritage values

The synthesis and integration of the information collected will provide the description of the Cultural Landscape to provide the basis for identifying the range of heritage values present. It will also provide the basis for development of criteria to clearly support the identification of areas/places/landscapes/features and sites of high heritage value to be considered as candidates for conservation/protection and/or the consideration of suitable off-set strategies eg community enhancement projects. This assessment will then also support the decisions regarding which areas/places/landscapes/features and sites will be impacted and any appropriate short and long-term mitigation requirements.

STEP 4 Information regarding the proposed development

This step will identify the nature and extent of the development and impacts on the Aboriginal heritage values across the development area. The extent of impact will include both direct and indirect impacts and their effect on Aboriginal heritage needs to be quantified to ensure that appropriate management in the context of the assessed values can be determined. Indirect impacts may affect sites or features located immediately beyond the development area or within the development area.

STEP 5 Integration of assessment with proposed development

This involves using the above information as the basis for assessing the cultural values against the impacts from any proposed development to identify specific outcomes.

This will include consideration of the following:

- justification for any likely impact(s), including any alternatives considered for the proposal;
- Any measures which will be implemented to avoid, mitigate or offset the likely impact(s).
 - demonstration that the input by affected Aboriginal communities has been considered when determining and assessing impacts, developing options, and making final recommendations to ensure that Aboriginal cultural heritage outcomes can be met by the proposed development.

STEP 6 Management strategy for Aboriginal heritage

This section will set out the specific management outcomes arising from the above assessment stages agreed to by the developer for management of the Aboriginal heritage values. This is to include identification of the final development impacts and the places, sites and landscape areas to be avoided and protected or conserved.

It is also to include the nature of and location of any offsets, requirements for further work such as archaeological salvage or community collection for objects of high archaeological or community value; specific on-going management protocols for both physical conservation outcomes and specific Aboriginal community requirements. This would include a contingency plan that details the measures to be taken in the event that Aboriginal objects of significance or a nature not anticipated, such as burials or ceremonial items are discovered during the course of works on the development site.

These measures as negotiated with the Aboriginal community are to be included in the Statement of Commitments as part of the Preferred Project Report.

3.0 Step 1 Preliminary Assessment

The preliminary assessment follows the numerical sequencing and headings of the OEH Due Diligence Code.

3.1 Description of Land and Activity

The study area can generally be described as the land bounded by Old north Road on the south, Terrace Ridge to the west, the great north railway on the north and Wine Country Drive on the east. In addition, it also includes an area of land to the east of Wine Country Drive surrounding the village of North Rothbury.

The proposal is to establish a staged development of a New town, Huntlee, on the site. The new town will have a mix of zonings which includes, conservation, residential and commercial zonings. The proposed concept for the SSS area is shown at Figure 6.

Although a staged development, the entire study area was assessed. There are specific landscape features associated with the study area including creek flats, slopes, pasture and disturbed mining land. The study area is associated with significant transport infrastructure corridors including the Main Northern Rail line and the F3 freeway extension.

The main catchment of the study area consists of several small creeks and drainage channels that flow through the property and make their way to Black Creek.

The Due Diligence code generally requires the same information outlined in the 2005 (draft) Part 3A EP&A Act Guidelines but not necessarily in the same order. Before commencing the preliminary assessment it is important to show the relationship between the 2 documents by identifying the requirements of the 2005 Draft Guidelines and where the information is found in the Due Diligence Assessment.

The 2005 Draft Guidelines preliminary assessment should include:

- a description of the location and nature of the proposed development (**DD 3.1 – 3.4 and 3.7**)
- a description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area has for the present-day Aboriginal community (**DD 3.11**)
- an assessment of which of the Aboriginal cultural heritage objects and places of significance that are known or likely to occur on or near the site that are likely to be directly or indirectly affected by the proposal (**DD 3.5 and 3.7 - 3.11**)
- a description of previous land uses and any previous development on the site(**DD 3.1 – 3.2**)
- a search of existing data bases such as the Aboriginal Heritage Information Management System (AHIMS), Commonwealth and state heritage registers. (**DD 3.8**)

It is also noted in the 2005 Draft Guidelines that there may be situations where an Aboriginal heritage Assessment is not required or can be modified to account for past land uses. The Due Diligence Code has been used to determine the likelihood of heritage values and the further assessment required.

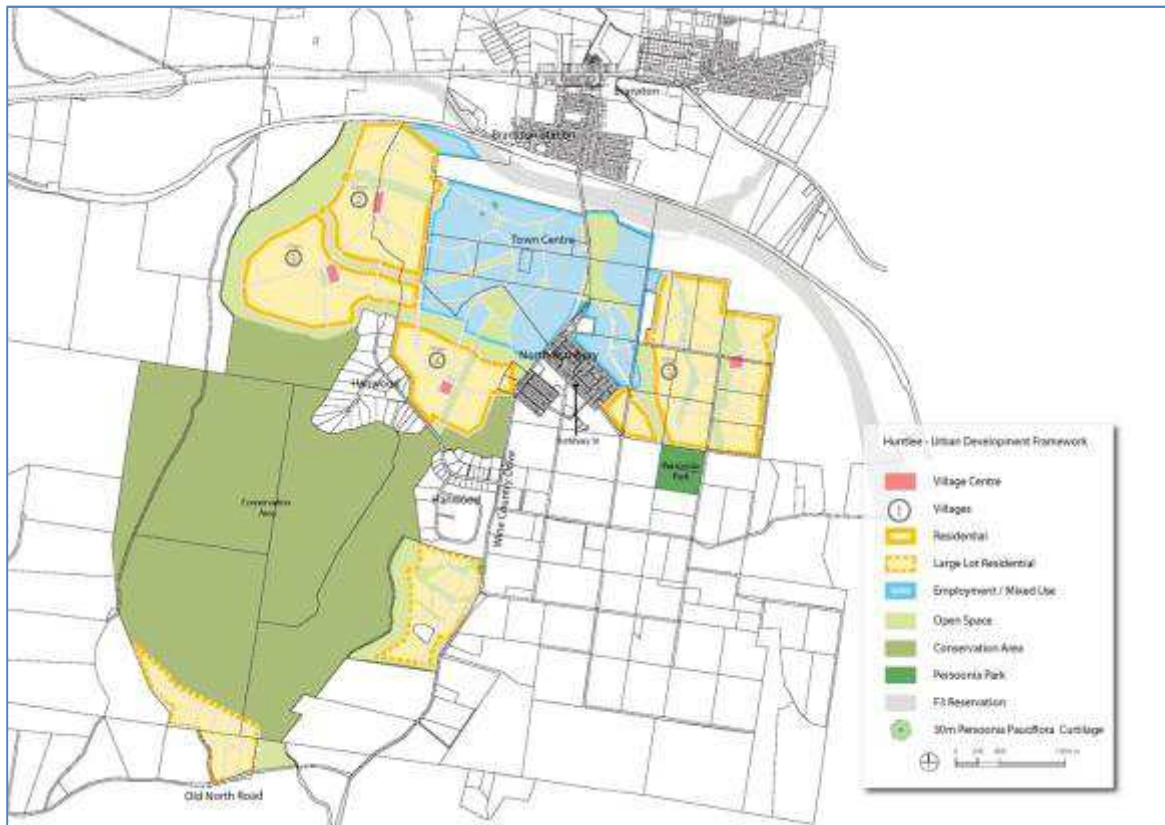


Figure 6 Concept for SSS Area

3.2 Is the Land defined as “Disturbed Land” or an exempt or complying development?

Probably the greater proportion of the land (which is all that land on the western side of Wine Country Drive) can be classified as disturbed in that there have been clear and observable changes to the land surface. This is particularly so for the area disturbed by mining, quarrying and infrastructure. However, whilst most of the area east of Wine Country Drive has been subject to agricultural and rural use, it could not be considered disturbed.

3.3 Is the activity exempt?

No

3.4 Will the activity involve harm that is trivial or negligible?

No

3.5 Is the activity in an Aboriginal Place or are you already aware of Aboriginal objects on the land?

Yes, Aboriginal objects have been identified on the land west of Wine Country Drive and have been set aside into a conservation landuse zone to avoid harm

3.6 Is the activity a low impact activity for which there is a defence in the regulation?

No

3.7 Will the activity disturb the ground surface?

Not the rezoning per se, however the clearing, infrastructure works and erection of buildings for Stage 1 will. However this activity is limited to the disturbed areas of the study area or areas considered to have no or extremely low likelihood of archaeological evidence

3.8 Does the Aboriginal Heritage Information Management System suggest potential?

Yes, for the areas associated with water resources.

3.9 Is there archaeological potential because the proposal is:

- **within 200m of waters;**
Yes, parts of the study area are within 200m of Black Creek and associated tributaries
- **located within a sand dune;**
No
- **located on a ridge top, ridge line, or headland;**
Yes, a ridgeline exists on the western edge of the study area
- **located within 200m below or above a cliff face;**
No
- **within 20m of or in a cave, rock shelter, or a cave mouth;**
No

3.10 Can harm be avoided to the object or disturbance of the landscape feature?

Yes, the known Objects and areas of potential sensitivity have been set aside and zoned conservation to avoid harm to known objects and potential areas of archaeological and cultural sensitivity.

3.11 Is Desktop assessment and visual inspection required?

Yes. Desktop assessment and visual inspection is within sections 4.0 and 5.0 (Step 2)

3.12 Are Further investigations and impact assessment required?

No. Discussion and reasons are contained within section 6.(Step 3)

4.0 STEP 2A Information Requirements (desktop study)

An understanding of environmental factors within the local landscape provides a context for analysing past human occupation and history of an area. The analysis of environmental factors contributes to the development of the predictive modelling of archaeological sites, as well as providing a basis to contextualise the archaeological material and to interpret patterns of past human behaviour.

In particular, the nature of the local landscape including topography, geology, soils, hydrology and vegetation are factors which affect patterns of past human occupation.

Aboriginal occupation of the landscape and land use practices changed over time. Land use has the potential to affect the visibility of archaeological material; they may obscure, or expose archaeological sites. In addition, previous disturbances may have exposed archaeological material, such as excavation for dams or other ground disturbing works. It is important that such factors are also considered when making assessments of archaeological resources in an area and understanding the distribution of observed sites.

Whilst this report is primarily focussed on the archaeological aspects of Aboriginal heritage, it is important to acknowledge and assess the importance of Aboriginal cultural context regarding places and landscapes.

4.1 Aboriginal Cultural Context

The estimated minimum viable population of about five hundred was the average size of a so-called tribe in Australia. Several anthropologists feel that 'tribe' does not accurately reflect the interaction and make-up of Aboriginal Australia, preferring the term 'band' to be the most appropriate term to describe the basic social and economic unit of Aboriginal society. It is described as a small-scale population, comprising between 2 to 6 extended family units, who together occupied and exploited a specific area.

The band was by no means a social or cultural isolate but, rather, interacted with other bands in a variety of ways. Typically these interactions involved visits, marriage, ceremonies and trade. As a result of these interactions, clusters of bands were formed; wherein there was a sense of collective identity, often expressed in terms of common and distinctive language.

In recent times the territories of Aboriginal bands generally encompassed the drainage basin of one river and stretched from the shoreline up to the top of an escarpment, another river or prominent landform feature.

The bands developed into regional groupings or cultural areas of interacting Aboriginal societies possessing broadly similar languages, social organisation and customs, material culture and art styles, ways of life and environment. According to the work by Peterson (1986), there is a general correlation between culture areas and major drainage basins, which has been explained on the grounds that a drainage basin is unified by its river system and bounded by its catchment. Water supply determines plant cover and therefore the availability of food and consequently, Aboriginal population density.

According to Horton (1994), the Band that would be of interest to this survey, would be the family groupings of the Wonnaruah, although early accounts mention other various names all of whom may have been a family grouping of the Wonnaruah. They had various base camps along tributaries of the Hunter. The camps would have been near reliable watercourses. The pathways to other bands or to food, shelter or ceremonial resources were generally along creeks and associated watercourses or ridgelines. The Wonnaruah had extensive relationships with the Awabakal, Gringai, Darkinjung and Worimi and particular travel routes are obvious from the landscape in the Hunter valley.

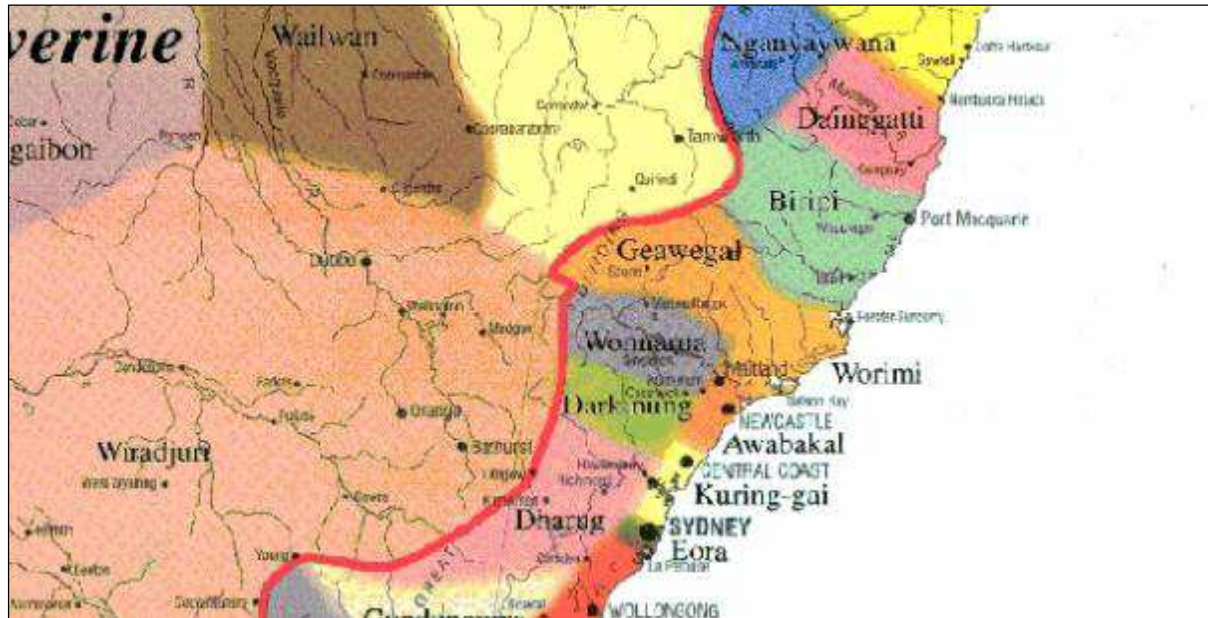


Figure 7 Horton's Map of Aboriginal Territorial Organisation

JW Fawcett (1898, p.152), stated of the Wonnaruah "in choosing their site [camp] proximity to freshwater was one essential, some food supply a second, whilst a vantage ground in case of attack from an enemy was a third. Pearson (1981), made similar observations of the Wiradjuri (Western Plains, NSW) for suitable camp site location: accessibility to water; Level ground with good drainage; Elevation above cold air currents and lingering frost prone valley systems often with good views of the river flats and water courses; Sheltered from cold winter winds and with adequate summer cooling breezes; and, Adequate fuel supplies.

Each family grouping of the Wonnaruah would be about 8 miles (12-15km) apart (Bennett, 1926). They were not nomadic in the clinical sense, however they did move from campsite to campsite on a rotational basis, mainly for reasons of hygiene (Bennett, 1926). Extensive use was made of fire as a hunting tool, modifying the Australian vegetation. There was regular contact with other bands for social and economic purposes. Many of the paths followed would be along watercourses or from one water source to another.

There is an assumption that prior to European settlement the land was heavily forested. However, according to early settler's accounts and the Aboriginal oral history, this was not so as regular, light burning was the pattern all over Australia at the time of first European contact. The fires were of low intensity, which meant that they consumed the litter of leaves and branches on the forest floors but did not burn down the trees. Walsh, (p26), cites extracts from the accounts of early explorers,

"The extracts from letters, diaries and journals of early European settlers, explorers and government officials describe a parklike landscape of grasslands and grassed open forest lands with very few areas of thick forest. The cessation of regular burning following European settlement allowed a growth of thick forest of young trees that, together with an increasing understorey, choked out the grasses."

Other uses of fire were for longer term hunting strategies. After firing, the Bush would regenerate; new grass would spring up and attract kangaroos and other animals, on which the hunters could prey. Likewise, fire encouraged the regrowth of eucalyptus trees and of edible plant roots. The ashes acted like manure, and sweet, new green shoots would spring up after the first hard rain following the burn.

The term 'fire-stick farming' has been applied to this aspect of hunting. Aborigines never put out their fires. Campfires were left burning, as were signal fires, including those lit in a sequence to indicate the direction of travel of humans or game.

The food resources available controlled the Aboriginal population, which in turn were related to water resources: the areas with the highest rainfall were generally richest in food. When food was difficult to obtain, the food quest simply required more time and effort rather than new strategies. Thus when times were hard, the people could simply move more often and further afield.

The typical Australian Bands economy is flexible with a wide variety of foods being sought and advantages being taken of seasonal abundance or chance events, such as the stranding of a whale. Aboriginal Australia was not vulnerable to famine through the failure of one crop.

The simplicity and self-sufficiency of Aboriginal society was observed by Captain Cook in 1770, and cited in Beaglehole, 1955 (p.399).

"From what I have said of the natives of New Holland they may appear to some to be the most wretched people on earth, but in reality they are far more happier than we Europeans. They live in a tranquillity which is not disturbed by the inequality of condition: the air and sea of their own accord furnishes them with all things necessary for life, they covet not magnificent houses, household stuff etc., they lie in a warm and fine climate and enjoy a very wholesome air, so that they have very little need of clothing and this may seem to be fully sensible of, for many to whom we gave cloth etc. to, left it carelessly upon the sea beach and in the Woods as a thing they had no matter of use for. In short they seemed to set no value upon any thing we gave them, nor would they ever part with anything of their own for any one article we could offer them; this in my opinion argues that they think themselves provided with all the necessary's of life and that they have no superfluities."

The above comment is probably the first recorded by a European with respect to Aboriginal society and culture. It sets the background or the context in which to assess the cultural significance of an area. From a first contact European perspective it appears that items of value were carried and kept whereas, items of little value discarded. Permanent dwellings were of no interest, nor European belongings. They were not wretched but happy and content. The environment and landscape provided for their needs.

According to the Aboriginal knowledge holders, many of the artefacts found across the landscape today were generally discards and of little importance, yet they are protected by law, whilst the real value lies in the landscape and the sense of place which provided "all the necessary's of life" is not.

It is important in assessing the cultural significance of a place that one does not focus on the discards but on the connection to land. Whilst all land and all objects are significant to the Aboriginal community as they tell a story of place; past and present, not all objects are seen as "valuable". According to the Aboriginal knowledge holders, stone flakes (for instance) in Aboriginal society are superfluous but grinding grooves, hearths, rock shelters, carved trees and ceremonial grounds indicate a sense of connection to the past and present and valued. Cultural assessment should be seen in the context of "home" not through the nebulous value of stone discards that are generally found at the lowest point in a landscape and from not whence they originated.

The social structure, land use and occupation as outlined above are supported by HARG in their report at Appendix C.

4.2 Archaeological Record

There are over 300 individual Object sites listed on the AHIMS database search area centred on a 10km radius of the study area as shown at Figure 8. The AHIMS database search area covers some 400km² and places the study area in a very broad archaeological context in which to assess archaeological potential. That is all known Aboriginal Objects adjacent to and within a 10km radius of the study area have been identified and plotted. It is not appropriate for cultural reasons to identify the Objects other than show their approximate location. These individual sites may contain 1 or many artefacts. The majority of which are isolated artefacts or artefact scatters. There are also grinding grooves recorded which tend to indicate intensive occupation near the grooves. The search results of the Aboriginal Heritage Management System are found at Appendix E.

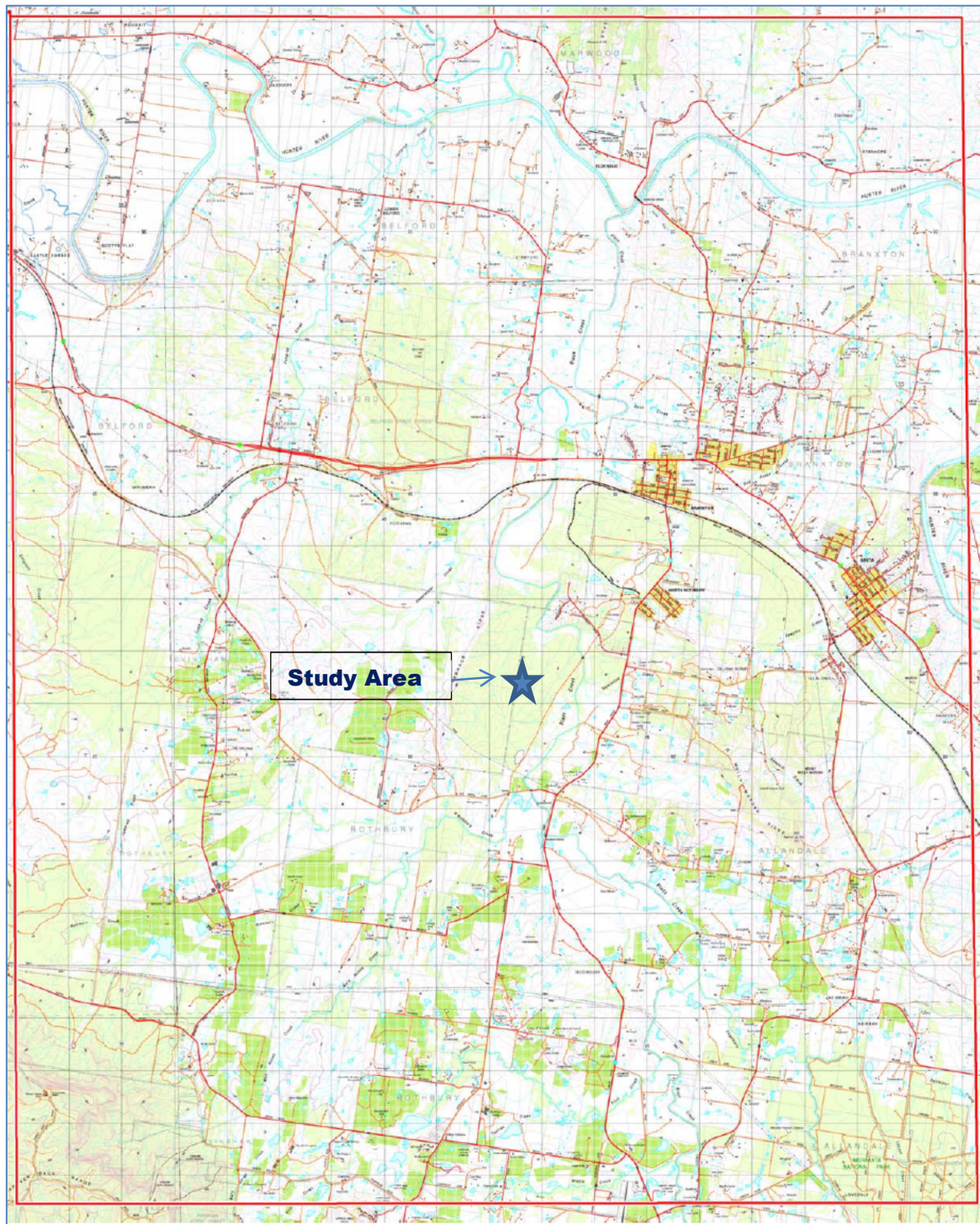


Figure 8 AHIMS Search Area (within red border as downloaded from AHIMS)

The following figure illustrates the approximate location of the known Aboriginal Objects within the database search area plotted onto the map from the coordinates supplied from the AHIMS search results at Appendix E. The majority of objects were located during specific cultural assessments and tend to skew results to only that land which has been investigated. However patterns of Aboriginal land use can be postulated from that information.