

23 April 2015

Brendan Seage  
Project Manager  
DBL Property Pty Ltd  
Level 6/432 Kent Street  
Sydney NSW 2000

Dear Brendan,

**RE: Preliminary Aboriginal Heritage Appraisal –  
Lots 20 in DP1173483 and Lots 33, 34, 35 and 43 DP2359 Yarrunga Street, Prestons**

This preliminary Aboriginal heritage appraisal has been prepared by MDCA [Mary Dallas Consulting Archaeologists] at the request of DBL Property Pty Ltd, on behalf of Logos Investment Management Pty Ltd. It provides preliminary Aboriginal heritage advice in relation to approximately 19.3 hectares of land known as Lot 20 in DP1173483 and Lots 33, 34, 35 and 43 in DP2359 (the subject land), situated south of Yarrunga Street, west of Bernera Road, and north of Kurrajong Road at Prestons (**Figure 1**). It is largely based on desktop review, with field inspection of Lot 34 only, as indicated in **Figure 1**. We understand that your client is considering purchasing the subject land, and wishes to be appraised of known and potential Aboriginal heritage management issues which may affect future development activity. Specifically, we note that the land is currently zoned to allow industrial development, and that your client is currently considering redevelopment of the land (and surrounding land parcels) into an industrial warehouse complex, with associated landscaping, services and internal roadways.

Lot 34 in DP2359 is listed on the heritage schedule of the Liverpool LEP and the NSW State Heritage Inventory, as the site of the former Benera (also Bernera) Homestead. Though the homestead was destroyed by fire in the 1980s, the heritage listing acknowledges that archaeological remains of the homestead and associated structures may have survived. For this reason, MDCA are currently preparing a similar preliminary heritage appraisal in relation to historic heritage issues relating to future development of this allotment. The findings of that appraisal are of relevance to the current advice and are discussed further below.

***The Subject Land and Investigations Undertaken***

The subject land is situated on the southern Cumberland Plain along a low, rounded ridge forming the watershed between Cabramatta Creek to the west and a tributary of Maxwells Creek to the east, to which it extends. The subject land includes a small, elevated knoll on the northern end of the ridge, upon which the Benera Homestead was located. This knoll forms the highest point in the surrounding landscape, with views that extend a considerable distance beyond the adjacent creek catchments to the lower Blue Mountains in the west and as far as Holsworthy and the Royal National Park to the south-east.



For the current advice, a desktop assessment was undertaken which considered recent land use, topography and documented archaeological evidence. The subject land currently consists primarily of grassed paddocks used mainly for grazing, though several have been market gardens in the recent past. There are two modern brick homes and associated sheds along Yarrunga Street. To the south of the houses is a roughly square paddock about 1.25 hectares in size which includes the site of the former Benera Homestead, while to the east and south-east are the remains of former feedlots. To the south of the knoll along Kurrajong Road is the site of several recently demolished structures. Recent aerial photographs indicate earthworks along the creekline running across the south-eastern corner of the subject land, probably in relation to the installation of stormwater pipes.



**Figure 1. The subject land showing area investigated through field inspection (green shading). The remainder of the subject land was subject to desktop assessment only.**

In preparation of the current advice, the Office of Environment and Heritage ('OEH') Aboriginal Heritage Information Management System ('the AHIMS Register') and Catalogue of Archaeological Reports was consulted. A search of the AHIMS Register of an area 4km x 4km centred on the subject land revealed that a number of Aboriginal sites have been previously recorded in the area (see **Attachment 1**, see also **Figure 2**).<sup>1</sup> All of these sites are known as open campsites, and comprise one or more Aboriginal stone artefacts visible on the ground surface, sometimes in association with areas with the assessed potential to contain further subsurface artefacts (known as Potential Archaeological Deposit or 'PAD'). The sites have been identified as a result of assessments for nearby residential and industrial development, and the western Sydney Orbital motorway (M7). As **Figure 2** shows, no Aboriginal sites are currently registered within, or immediately adjacent to the subject land, however this is likely to reflect the fact that these areas have not been subject to Aboriginal heritage assessment in the last few decades.

<sup>1</sup> AHIMS Search of 9/10/14 of MGA coordinates in Zone 56 E300600-304600, N6240500-6244000.





An inspection of Lot 34 in DP2359 was also undertaken in fine weather on Thursday 16<sup>th</sup> April 2015 by MDCA principal consultant Paul Irish and MDCA archaeologist Tamika Goward, together with Cubbitch Barta Native Title Claimants Aboriginal Corporation representative Glenda Chalker. The remaining four lots comprising the subject land were not subject to field inspection. The field inspection noted the prominent position of the knoll within the Lot 34 and the surrounding landscape. The knoll was covered with pasture grass and afforded little surface visibility, though adjacent areas provided an indication of the likely nature of soil deposits on the knoll. A cutting into the northern slope of the knoll behind the two houses, and another recently excavated deep geotechnical trench to the west of the knoll, indicate that some original topsoil (probably 10-20cm) has survived across the less disturbed parts of the knoll. The knoll is relatively flat and contains little obvious gross disturbance outside of the main site of the former Bennera Homestead (with the exception of two large backfilled trenches to the south of the homestead site). To the north of the knoll, the ground slopes moderately down to Yarrunga Street and has been considerably disturbed by the construction of the two brick houses and associated sheds. To the east of the knoll, the ground also slopes moderately downward and has been disturbed by the construction of feedlots.



**Figure 2. Registered Aboriginal sites in the vicinity of the subject land (red dotted line), with heritage listed property marked as solid red line.**



### **Preliminary Aboriginal Heritage Appraisal**

Based on a desktop consideration of past Aboriginal heritage recordings in the region, recent land use and local topography, and a visual assessment of past ground disturbance within Lot 34 in DP2359, the following preliminary advice can be made in relation to the subject land:

- The most likely area within the subject land to have been used by Aboriginal people in the past is the knoll area that comprises the central portion of the subject land. As a prominent point in the local and regional landscape, the knoll may have been used for camping, to access the resources of the nearby creeks, including freshwater. It is noted that the homestead collected water to a cistern via its roof, indicating that spring water or surface water was not available in this locality. It is also possible that the knoll may have had some cultural significance to Aboriginal people as a prominent point in the local landscape. Parts of the knoll area have been disturbed in the past through the construction and use of the Benera Homestead, residential use of the area to the north in recent decades, and two recent, backfilled 2m x 5m trenches. No stone artefacts or other evidence of past Aboriginal use of the knoll area were located during the inspection, though grass cover afforded little surface visibility. Adjacent cuttings show that the knoll retains some original topsoil deposits, perhaps up to 10-20cm in thickness in relatively undisturbed areas. This topsoil may retain evidence of past Aboriginal use in the form of stone artefacts or hearths. For this reason an approximately 100m x 100m area encompassing the knoll should be considered as comprising Potential Archaeological Deposit (PAD), as shown in **Figure 3**.
- Areas to the immediate north and east of this knoll are moderately sloping and are unlikely to have been used for camping by Aboriginal people in the past, though may have been used to access the creeks to the west, east and north. Archaeological evidence of past Aboriginal use of these areas is likely to be relatively scant, and to have been considerably impacted by recent land use. No stone artefacts or other evidence of past Aboriginal use was noted during the site inspection, and it is considered unlikely that intact, extensive or *in situ* archaeological remains will be present in these areas.
- Areas to the west and south of the knoll (Lots 35 and 43 in DP2359 respectively) also represent ground sloping down from the knoll. These areas were not inspected but the majority of Lot 43 and the western portion of Lot 35 have been subject to market gardening in recent decades which is likely to have significantly disturbed any Aboriginal archaeological remains that were formerly present. The eastern portion of Lot 35 however retains moderate Aboriginal archaeological sensitivity due to its position adjacent to the knoll and apparent relatively low level of past disturbance. The extent of this assessed Aboriginal archaeological sensitivity is shown in **Figure 3**. The extent to which Potential Archaeological Deposit is present which may require archaeological test excavation, is not currently known but could be determined through field inspection.
- The immediate banks of the minor tributary of Maxwells Creek present in the south-eastern portion of the subject land may also retain some Aboriginal archaeological sensitivity, as a type of topographic location (creekbank) in which Aboriginal people are known to have camped in the region. In the current case, the creek is minor, the ground is in parts moderately sloping and localised impacts from recent earthworks and the installation of high voltage powerline towers suggests that any Aboriginal archaeological remains in these locations is unlikely to be intact or extensive, but cannot be discounted. These creekbank areas should therefore be considered to retain moderate Aboriginal archaeological sensitivity as indicated in **Figure 3**. The extent to which Potential Archaeological Deposit is present which may require archaeological test excavation, is not currently known but could be determined through field inspection.





**Figure 3. Area of identified Potential Archaeological Deposit (red shading) and maximum estimated extent of Aboriginal archaeological sensitivity (blue shading) within the subject land.**

### ***Implications and Recommendations***

The National Parks & Wildlife Act (1974), administered by the Office of Environment & Heritage (OEH), provides statutory protection for all Aboriginal 'objects' and 'places' where an object is defined as:

*"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" [Section 5(1)]*

An Aboriginal place must be declared under Section 84 of the Act and be a place that:

*in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of this Act." [Section 84].*

Amendments to the NPW Act in 2010 have retained an offence to knowingly harm an Aboriginal object [s86(1)] but greatly increased penalties for such offences. The amendments have also introduced a strict liability offence for any harm (i.e. knowingly or unknowingly) to Aboriginal objects [s86(2)] or Aboriginal places [s86(4)] without a valid and applicable Aboriginal Heritage Impact Permit under Section 90 of the Act. Harm is defined as:

*"any act or omission that:  
(a) destroys, defaces or damages the object or place, or*



- (b) in relation to an object—moves the object from the land on which it had been situated, or*
- (c) is specified by the regulations, or*
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c)” [Section 5(1)]*

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object [s87(2)]. Due Diligence assessment can take a number of forms, including a generic process developed by the OEH or one of an equivalent standard. The purpose of a Due Diligence Aboriginal heritage assessment is to determine whether further archaeological investigation may be required in relation to particular proposed activities. A Due Diligence assessment of the subject land is not only a legal defence to strict liability, but will likely be required by Liverpool Council to accompany any future development application.

A Due Diligence Aboriginal heritage assessment of the subject land is likely to conclude that the area of Potential Archaeological Deposit identified in this preliminary advice (as shown in **Figure 3**), will require archaeological test excavation to determine the presence/absence, extent and significance of any Aboriginal archaeological remains that may be present within this area. This will provide the basis for final management recommendations to be made in relation to this area. This assessment would also determine the extent to which the areas currently identified from desktop review as retaining Aboriginal archaeological sensitivity (as shown in **Figure 3**), contain Potential Archaeological Deposit. It is likely that field inspection will confirm that some of these areas do not retain Potential Archaeological Deposit and therefore do not require further investigation. However those areas currently identified as archaeological sensitive, which are found to retain Potential Archaeological Deposit, would most likely recommend archaeological testing to determine the presence/absence, extent and significance of any Aboriginal archaeological remains that may be present within these areas.

Aboriginal archaeological test excavations could be undertaken following the Office of Environment & Heritage (OEH) 2010 *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*. This allows for archaeological excavations to be undertaken without an Aboriginal Heritage Impact Permit (AHIP), provided that the investigations are preceded by Aboriginal community consultation in accordance with the requirements outlined in subclause 80C(6) of the National Parks and Wildlife Regulation 2009, and that a specific excavation methodology is followed.

In the current case, the Aboriginal archaeological investigations will need to be undertaken in conjunction with historical archaeological investigations of the Benara Homestead area, which comprises a portion of the area of Potential Archaeological Deposit (see MDCA 2015 Historic Heritage Appraisal). The historical archaeological investigations would most likely involve stripping existing grass to detect any remains of historic structures. As this process would effectively disturb the deposit with Aboriginal archaeological potential, the Aboriginal archaeological investigations would need to take place under a joint excavation methodology which allowed for recording of any historical archaeological material located during the excavation of Aboriginal archaeological test pits, and which met applicable regulation and policy for both historical and Aboriginal heritage investigations.

Currently it is not possible to determine what the final recommendations may be, as the Aboriginal heritage significance of the subject land is not known. It can be reasonably concluded however that most of the Aboriginal archaeological remains found within areas subject to archaeological test excavation will be unlikely to be intact (due to past historical land use). Several possible scenarios can be envisaged:



1. The Aboriginal archaeological test excavations reveal no Aboriginal archaeological remains. In this case there would be no further *archaeological* requirements for further investigations of the area/s of Potential Archaeological Deposit.
2. Aboriginal archaeological remains are found, but are localised in extent or disturbed in nature, and therefore do not warrant preservation on archaeological grounds. In this case, an Aboriginal Heritage Impact Permit under s90 of the National Parks & Wildlife Act may be appropriate to allow impact to the remains with or without further archaeological salvage excavation.
3. Aboriginal archaeological remains are found, and are determined to be significant in terms of quantity and density or range of artefacts, and in the case of the knoll area, in combination with topographic location. It is unlikely that these remains will be intact, but there may be a strong argument for preservation of a portion of sites in the context of future development, or impact may be allowed providing detailed salvage excavation is undertaken to ensure that the site is adequately recorded prior to future development. Any further salvage excavation would be carried out under an Aboriginal Heritage Impact Permit under s90 of the National Parks & Wildlife Act.

To develop appropriate Aboriginal heritage management recommendations in relation to the subject land, archaeological test excavation will need to be undertaken. In addition, Aboriginal community consultation will be required to determine the cultural significance of the subject land and any Aboriginal archaeological remains which it may contain.

### **Summary**

The following can be concluded in relation to potential Aboriginal heritage issues in relation to future development of the subject land:

1. A portion of the knoll area, as shown in **Figure 3**, should be regarded as containing Potential Archaeological Deposit. This area requires archaeological test excavation to determine the presence/absence, extent and significance of any archaeological evidence of prior Aboriginal use of the subject land.
2. Several areas of Aboriginal archaeological sensitivity, as shown in **Figure 3**, have been identified on the basis of desktop assessment. Some or all of this combined area may prove, on more detailed assessment and field inspection, to retain Potential Archaeological Deposit. Any such areas will require archaeological test excavation to determine the presence/absence, extent and significance of any archaeological evidence of prior Aboriginal use of the subject land.
3. The remainder of the subject land, including any areas currently identified as retain Aboriginal archaeological sensitivity, but which are subsequently found through more detailed assessment and field inspection NOT to contain Potential Archaeological Deposit, is unlikely to have any Aboriginal heritage issues in relation to future development.
4. Final recommendations for any Aboriginal archaeological sites within the subject land can only be determined on completion of archaeological test excavations and associated Aboriginal community consultation.
5. The timing implications of archaeological test excavation should be factored in to future planning so as not to cause undue delay. This should also consider any Historical Archaeological heritage requirements and their associated timing.



If you require clarification on any aspect of this advice please don't hesitate to contact us.

Yours sincerely,

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23.4.15

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