



30 October 2017

Our Ref: EV.618

Jester Magpayo
Manager, Capital Projects
Price Waterhouse Coopers
One International Towers Sydney
BARANGAROO NSW 2000

Dear Jester,

RE: ABORIGINAL HERITAGE DUE DILIGENCE ASSESSMENT- COFFS HARBOUR HEALTH CAMPUS REDEVELOPMENT, COFFS HARBOUR, NSW.

Thank you for the opportunity to provide advice on Aboriginal Heritage for the Coffs Harbour Health Campus Redevelopment, 345 Pacific Highway, Coffs Harbour, NSW (the 'Project Area').

The archaeological site survey was undertaken on 24 October 2017 covering parts of Lots 14 DP261222 and 206 and 205 DP1206854 comprising portions of the hospital site within the footprint of the proposed works (Appendix 1). The survey was undertaken by Senior Archaeologist Tim Hill.

Please find **enclosed**:

- a) Results of the AHIMS and NSW Heritage database search (Appendix 2);
- b) An analysis of relevant landforms the types of disturbance that may affect the nature and distribution of Aboriginal objects (Appendix 3);
- c) A review of relevant legislation (Appendix 4);
- d) Statements addressing the 'Due Diligence Code or Practice' requirements for the project (Appendix 5).
- e) Recommendations (Appendix 6); and
- f) Photos of the site inspection (Appendix 7).

No Aboriginal sites were identified during the site inspection and the Project Area was determined to meet the definition of 'disturbed land' as set out in the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('Due Diligence Code of Practice'). The area of the proposed works has been subject to significant topsoil disturbance, including the installation of a bitumen car park, buildings and underground infrastructure. It is also likely that much of the site consists of fill material. As such we have concluded that



additional archaeological investigation to identify Aboriginal objects is not required prior to commencement of works. We have also included precautionary recommendations if Aboriginal objects are identified during works.

Please contact Senior Archaeologist Tim Hill on 0422 309 822 or t.hill@everick.com.au to further discuss the results of the site inspection and recommendations.

Yours faithfully,

Tim Robins
Director
Everick Heritage Consultants



APPENDIX 1: PROJECT AREA LOCATION

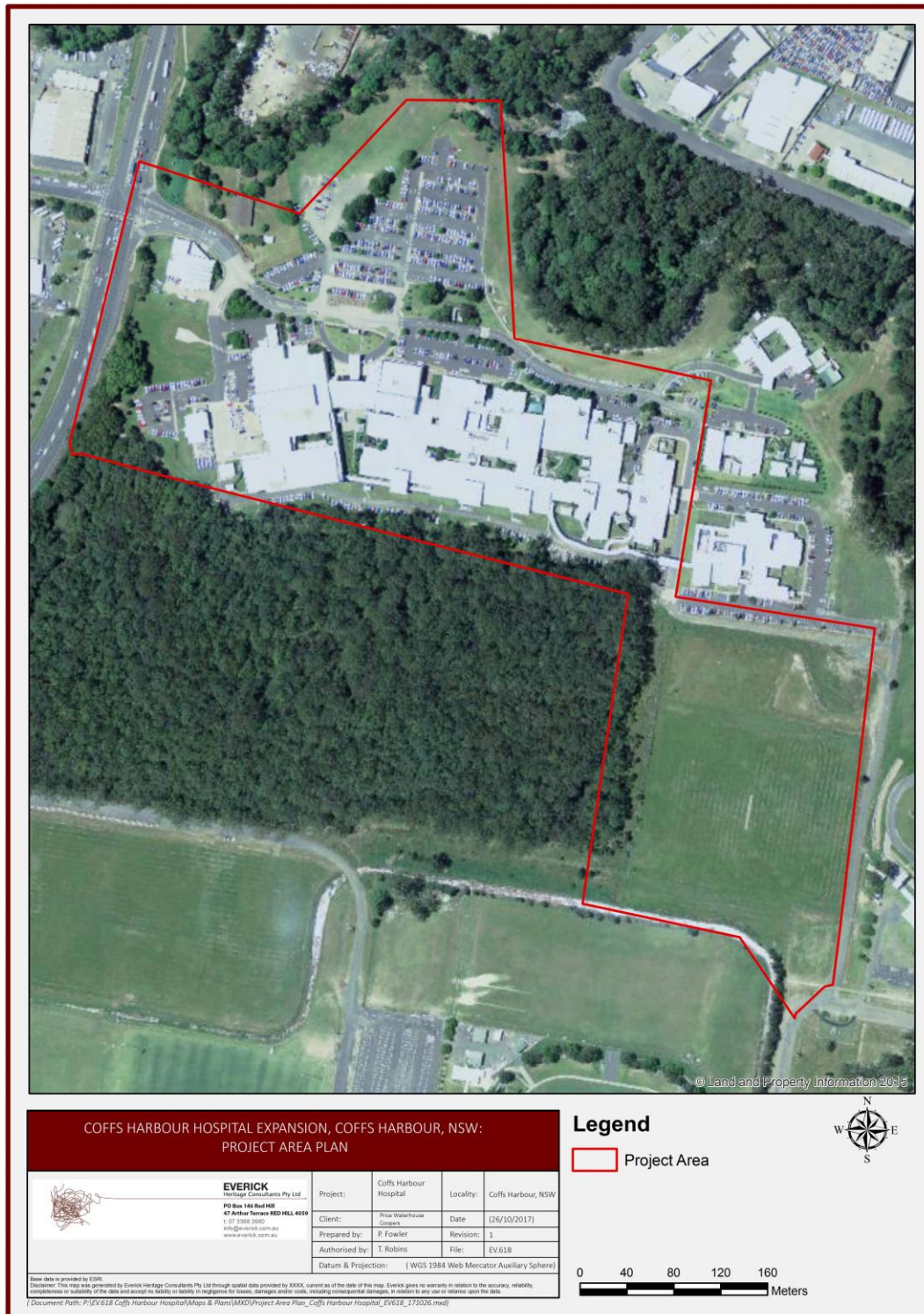


Figure 1: Coffs Harbour Health Campus Redevelopment Project Area Plan

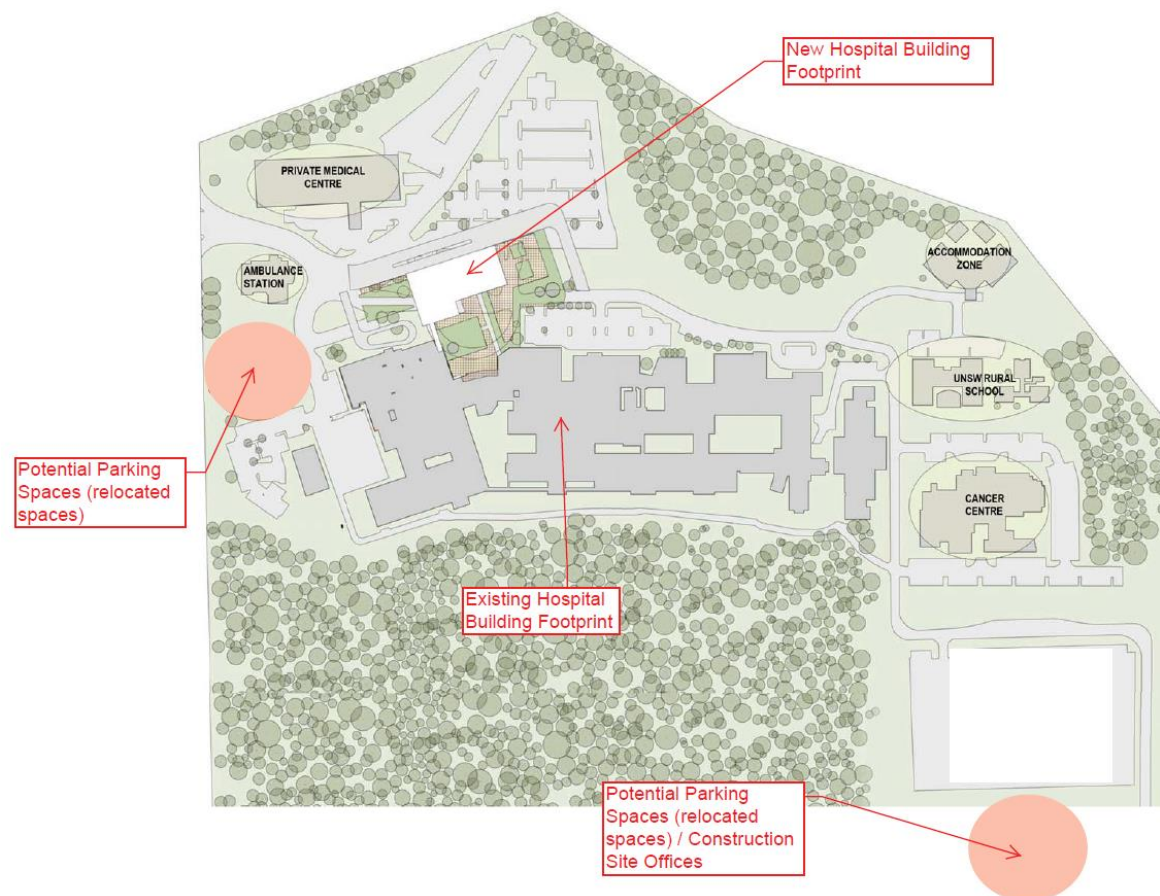


Figure 2: Proposed Coffs Harbour Health Campus Redevelopment Site Plan.



APPENDIX 2: AHIMS SEARCH RESULT



Office of
Environment
& Heritage

AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : EV618

Client Service ID : 308694

Everick Heritage Consultants Pty Ltd

Date: 24 October 2017

47 Arthur Tce

Red Hill Queensland 4059

Attention: Morgan Disspain

Email: morgandisspain@gmail.com

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 14, DP:DP261222 with a Buffer of 200 meters, conducted by Morgan Disspain on 24 October 2017.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *



APPENDIX 3: LANDFORM AND DISTURBANCE ANALYSIS

The Due Diligence Code of Practice (OEH 2010:12) identifies broad types of 'landscape features' which are considered to be consistently associated with Aboriginal Objects. These include areas;

- "within 200m of water, or
- located within a sand dune system, or
- located on a ridge top, ridge line, or headland, or
- located within 200m below or above a cliff face, or
- within 20m of, or in a cave, rock shelter, or cave mouth".

Having consideration for these landforms it is reasonable to conclude that the future works will affect areas of land identified by the Due Diligence Code. The Project Area is immediately south of Newports Creek and is bounded to the south by a wetland/swamp system. The Project Area is relatively flat, and as such, parts of the Project Area would be suitable for Aboriginal occupation, or campsites.

The Project Area is within an area which meets the definition of 'Disturbed' under the Due Diligence Code of Practice. The Due Diligence Code of Practice (OEH 2010) provides the following definition of 'disturbed land';

"Land is disturbed if it has been the subject of human activity that has changed the land surface, being changes that remain clear and observable. Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water and sewerage pipelines, stormwater drainage and other similar infrastructure) and construction of earthworks" (OEH 2010:18)

The Project Area is located within land subject to the following types of disturbance;

- Forest clearing;
- Construction of commercial buildings, including underground utilities and extensive areas of carparking; and
- Introduction of fill and gravels to elevate many of the areas of carpark above the swamp during times of inundation.

None of the soil profiles in the areas of proposed works are considered 'intact'. The only areas which are considered to be intact are immediately adjacent to Newports Creek and the southern swamp.



APPENDIX 4: LEGISLATIVE AND PLANNING CONTEXT

The following legislation provides the context for cultural heritage in NSW: The *National Parks and Wildlife Act 1974* (NSW), the *Environmental Planning and Assessment Act 1979* (NSW) and the *Heritage Act 1977* (NSW) and local council Environmental Plans and Development Control Plans. The Commonwealth also has a role in the protection of nationally significant cultural heritage through the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), *The Protection of Movable Cultural Heritage Act 1986* (Cth) and the *Historic Shipwrecks Act 1976* (Cth).

For the purposes of this assessment it is the State and local legislation that are most relevant. Approval from the OEH will only be required should the Project impact on identified Aboriginal Objects. The information below lists the legislative and policy framework within which this assessment is set.

The National Parks and Wildlife Act 1974 (NSW) and the National Parks and Wildlife Regulations 2009 (NSW)

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) is the primary legislation concerning the identification and protection of Aboriginal cultural heritage. It provides for the management of both Aboriginal Objects and Aboriginal Places. Under the NPW Act, an Aboriginal Object is any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area, regardless of whether the evidence of habitation occurred before or after non-Aboriginal settlement of the land. This means that every Aboriginal Object – regardless of its size or seeming isolation from other Objects – is protected under the Act.

An Aboriginal Place is an area of significance to Aboriginal people which has been *declared* an Aboriginal Place by the Minister. The drafting of this legislation reflects the traditional focus on Objects, rather than on areas of significance such as story places and ceremonial grounds. However, a gradual shift in cultural heritage management practices is occurring towards recognising the value of identifying the significance of areas to Indigenous peoples beyond their physical attributes. With the introduction of the *National Parks and Wildlife Amendment Act 2010* (NSW) the former offence provisions under Section 86 of ‘disturbing’, ‘moving’, ‘removing’ or ‘taking possession’ of Aboriginal Objects or Places have been replaced by the new offence of ‘harming or desecrating’. The definition of ‘harm’ is ‘destroying, defacing or damaging an Object’. Importantly in the context of the management recommendations in this assessment, harm to an Object that is ‘trivial or negligible’ will not constitute an offence.



The new amendments also significantly strengthen the penalty provisions. The issue of intent to harm Aboriginal cultural heritage has been formally addressed by separating it from inadvertent harm. The penalty for individuals who inadvertently harm Aboriginal Objects has been set at up to \$55,000, while for corporations it is \$220,000. Also introduced is the concept of '*circumstances of aggravation*' which allows for harsher penalties (up to \$110,000) for individuals who inadvertently harm Aboriginal heritage in the course of undertaking a commercial activity or have a record for committing similar offences. For those who knowingly harm Aboriginal cultural heritage, the penalty will rise substantially. The maximum penalty will be set at \$275,000 or one-year imprisonment for individuals, while for corporations it will rise to \$1,100,000.

Where a land user has or is likely to undertake activities that will harm Aboriginal Objects, the Director General (OEH) has a range of enforcement powers, including stop work orders, interim protection orders and remediation orders. The amended regulations also allow for a number of penalties in support of these provisions. The NPWA also now includes a range of defense provisions for unintentionally harming Aboriginal Objects:

- a) undertaking activities that are prescribed as '*Low Impact*';
- b) acting in accordance with the new Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010) ('Due Diligence Code');
- c) using a consulting archaeologist who correctly applies the OEH *Code of Practice for Archaeological Conduct in New South Wales* (2010) ("Archaeological Code of Practice") (see Appendix A); and
- d) acting in accordance with an Aboriginal Heritage Impact Permit (AHIP).

'Low Impact Activities'

The new regulations allow for a range of low impact activities to be undertaken without the need to consult the OEH or a consulting archaeologist. Generally, those who undertake activities of this nature will not be committing an offence, even if they inadvertently harm Aboriginal Objects. These activities include:

- a) Maintenance – For example on existing roads and tracks, or on existing utilities such as underground power cables and sewage lines.
- b) Farming and Land Management – for land previously disturbed, activities such as cropping, grazing, bores, fencing, erosions control etc. *
- c) Removal of dead or dying vegetation - only if there is minimal ground disturbance.
- d) Environmental rehabilitation – weed removal, bush regeneration.



- e) Development in accordance with a Development Certificate issued under the EPA Act 1979 (provided the land is previously disturbed). *
- f) Downhole logging, sampling and coring using hand held equipment.
- g) Geochemical surveying, seismic surveying, costeaning or drilling. *

* This defense is only available where the land has been disturbed by previous activity. Disturbance is defined as a clear and observable change to the land's surface, including but not limited to land disturbed by the following: soil ploughing; urban development; rural infrastructure (such as dams and fences); roads, trails and walking tracks; pipelines, transmission lines; and storm water drainage and other similar infrastructure.

Due Diligence Code of Practice for the Protection of Aboriginal Objects

The Due Diligence Code has been applied in Section 8 of this assessment. It operates by posing a series of questions for land users before they commence development. These questions are based around assessing previous ground disturbance. An activity will generally be unlikely to harm Aboriginal Objects where the activity is in an area where there is no known Aboriginal heritage and Aboriginal heritage is not reasonably likely to occur and:

- a) will cause no additional ground disturbance; or
- b) is in a developed area; or
- c) is in a significantly disturbed area.

Where these criteria are not fulfilled, further assessment for Aboriginal cultural heritage will typically be required prior to commencing the activity.

The ACHCRP (2010)

The OEH has recently published the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010) (ACHCRP). The ACHCRP provide an acceptable framework for conducting Aboriginal community consultation in preparation for Aboriginal Heritage Impact Permits. Proponents are also required to follow the ACHCRP where undertaking a project that is likely to impact on cultural heritage and/or where required by the consent authority. AS The proposed maintenance works will not impact on Aboriginal cultural heritage, following the ACHCRP is not required. For planning purposes, it should be noted that completion of the ACHCRP can take between 3 and 6 months.



The Coffs Harbour Local Environmental Plan 2013

The Coffs Harbour Valley Local Environment Plan ('LEP') 2013 provides statutory protection for items already listed as being of heritage significance (Schedule 5), items that fall under the ambit of the Heritage Act 1977 (NSW) and Aboriginal Objects under the National Parks and Wildlife Act 1974 (NSW). It aims to ensure best practice components of the heritage decision making process are followed.

In regard to Aboriginal heritage significance (Part 5.10.8) the consent authority must, before granting consent under this clause to the carrying out of development in a place of Aboriginal heritage significance:

- a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place, and
- b) notify the local Aboriginal communities (in such way as it thinks appropriate) about the application and take into consideration any response received within 28 days after the notice is sent.

The Project Area is not identified as an item of environmental heritage (Schedule 5) under the Coffs Harbour LEP 2013.



APPENDIX 5: DUE DILIGENCE STATEMENTS.

The purpose of the Due Diligence Assessment is to determine if there are areas that have a particular potential to contain Aboriginal cultural heritage and to assess whether the proposed development will destructively impact upon known and or concealed heritage sites. The Due Diligence Code of Practice recommends a staged analysis of cultural and archaeological factors. This section discusses the analysis of the Project Area when compared against these guidelines.

5.1 Step 1: Will the activity disturb the ground surface?

Yes, the proposed works will disturb the ground surface. The nature of this disturbance will include excavation (cutting and filling) of footings, excavation of trenches for essential infrastructure required to build the new hospital wing, and the introduction of fill and gravels to elevate areas from the swamp.

5.2 Step 2a: Search of AHIMS Database

A search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken (Client Service ID 308694) with a buffer of 200m. The search revealed that no (0) Aboriginal Sites have been recorded within the Hospital grounds or neighbouring lands.

5.3 Step 2b: Is the activity in an area where landscape features indicate the presence of Aboriginal cultural heritage?

Having regard to:

- a) the nature of Aboriginal occupation in the region;
- b) the Project Area's proximity to resources; and
- c) the Project Area's original vegetation, soils and topography.

Having consideration for these landforms it is reasonable to conclude that the future works will affect areas of land identified by the Due Diligence Code. The Project Area is immediately south of Newports Creek and is bounded to the south by a wetland/swamp system. The Project Area is relatively flat and as such parts of it would be suitable for Aboriginal occupation or campsites.



When considering the broader landscape, it is likely that landforms closer to the Newports Creek estuary would have provided greater advantage as campsites and would more likely contain Aboriginal objects.

5.4 Step 2c: Is there evidence of past ground disturbance?

Yes. It is reasonable to form the conclusion that the entire area of proposed works is disturbed. Based on the site inspection to following disturbance was observed;

- Forest clearing;
- Construction of commercial buildings including underground utilities and extensive areas of carparking; and
- Introduction of fill and gravels to elevate many of the areas of carpark above the swamp during times of inundation.

None of the soil profiles in the areas of proposed works are considered 'intact'. The only areas which are considered to be intact are immediately adjacent to Newports Creek and the southern swamp.

5.5 Additional Steps

The Project Area has undergone land uses constituting 'disturbance' under the meaning of the Due Diligence Code and has a low potential to contain Aboriginal objects. As such it is reasonable to conclude that the proposed works will not impact on Aboriginal objects. Based on the results of the Due Diligence assessment further archaeological investigation is not considered necessary.

A site inspection was undertaken with Coffs Harbour and District Local Aboriginal Land Council ('CHDLALC') senior Site Officer, Ian Brown, on 24 October 2017. This inspection primarily focused on the areas identified in the proposed works plan that were not already covered with bitumen or concrete, and that were in close proximity to Newport Creek and the southern swampland. The survey was constrained by grass cover; however, it was considered that there was sufficient ground surface visibility to identify Aboriginal sites, should they have existed. Ian Brown indicated that he had previously been involved, as an Aboriginal site monitor, for ground disturbing works in the north-west portion of the Project Area (Private Medical Centre) and that no sites had been identified in the topsoil in that area. No sites were identified during this survey, and it was not considered that additional archaeological investigation would be required prior to commencement of ground disturbing works.



APPENDIX 6: RECOMMENDATIONS

The Consultant is of the opinion that given the extent of existing disturbance and the overall Project footprint, the proposed extension of the Coffs Harbour Hospital is unlikely to result in further significant harm to Aboriginal Heritage. However, as a precautionary measure the following recommendations should be considered.

Recommendation 1: Cultural Heritage Induction

It is recommended that a cultural heritage induction is provided to all contractors who are engaged as site supervisors or act in senior operational roles. The purpose of the cultural heritage induction is to;

- Make staff aware of the survey effort to date and potential for the Project Area to contain Aboriginal sites;
- Provide sufficient training for staff to identify Aboriginal objects should they be impacted during construction works; and
- Ensure that staff are aware of response procedures in the event of any harm to Aboriginal sites during construction works.

It is recommended that the cultural heritage induction is provided by a suitably experienced member of the Aboriginal community or a qualified archaeologist.

Recommendation 2: Aboriginal Objects Find Procedure

It is recommended that if suspected Aboriginal material has been uncovered as a result of development activities within the Project Area:

- a) work in the surrounding area is to stop immediately;
- b) a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;
- c) an appropriately qualified archaeological consultant is to be engaged to identify the material; and
- d) if the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).

Recommendation 3: Aboriginal Human Remains

Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station (Coffs Harbour), the Coffs Harbour and District LALC and the OEH Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal



origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.

Recommendation 4: Notifying the OEH

It is recommended that if Aboriginal cultural materials are uncovered as a result of development activities within the Project Area, they are to be registered as Sites on the AHIMS, managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.

Recommendation 5: Conservation Principles

It is recommended that all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the Proponent, OEH and the Aboriginal community.



APPENDIX 7. FIELD PHOTOGRAPHS



Figure 4: Raised grass are behind Ambulance Station (Helipad).



Figure 5: Typical bitumen carpark surface against turf lawn.



Figure 6: Typical landform and clearing under Swamp Mahogany at southern swampland.



Figure 7: Survey or swamp margin south of hospital.



Figure 8: Survey of bank south of Newports Creek.