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Addendum

Aboriginal Heritage Impact Assessment (AHIA) for the proposed NSW Long Term Train Support Facility (LTTSF) along the Pacific Highway, Hexham

Following the submission of the Environmental Assessment for the proposed NSW Long Term Train Support Facility (LTTSF) along the Pacific Highway, Hexham, the review by Government Departments resulted in additional information being required. This addendum provides that additional information.

More information was required in relation to the following:

- 1) the test excavation undertaken by Australian Museum Business Services (AMBS);
- 2) Aboriginal community stakeholder consultation in relation to the test excavation;
- 3) inclusion of meeting between proponent and Office of Environment and Heritage (OEH) on 18 July 2012;
- 4) update management strategies and recommendations; and
- 5) updated site card.

Archaeological background to the project

MCH (2011) was commissioned by QR National to prepare an Aboriginal Heritage Impact Assessment (AHIA) for the proposed LTTSF along the Pacific Highway, Hexham. Following this, AMBS (2012) undertook an AHIA to address potential impacts to Aboriginal cultural heritage arising from the Hexham Relief Roads Project proposed by the Australian Rail Track Corporation (ARTC).

The study area consists of low lying flats that are constantly water logged in the north and a highly disturbed landscape in the south. MCH (2011) found that as the northern portion of the study area is a low lying water logged area, it was considered unlikely that this landform would have been suitable for occupation due to regular flooding. Elevated landforms surrounding the study area may have been considered more suitable for occupation. However, as the area would have contained resources, it is likely that it was utilised for hunting and gathering. The southern portion of the study area was found to be highly disturbed through past land uses and it was expected that all cultural materials that may have been present no longer exists. MCH identified that while the study area may have been utilised for hunting and gathering, resulting in reduced evidence of occupation, the disturbances in the northern portion would have disturbed that evidence and the disturbances in the southern section would have destroyed any such evidence. The registered Aboriginal groups identified to MCH that the Hexham area is considered highly culturally significant to the local Aboriginal community, given its proximity to Hexham Swamp and the Hunter River and associated resources. It was claimed by the registered Aboriginal groups that these resources were significant and that limited evidence of past Aboriginal land use including occasional camping or travel through the area may be present. Due to the high significance of the Hexham area to the Awabakal people, the northern portion of the study area was identified as a Potential Cultural Deposit (PCD).

AMBS were then commissioned by KMH Environmental (KMH), on behalf of Upper Hunter Valley Alliance (UHVA), to undertake an archaeological assessment associated with the Hexham Relief Roads Project. AMBS (2012) also found that the southern portion of the study area was subject to significant past land uses and impacts that would have resulted in a highly disturbed landscape and therefore have low to no potential for cultural materials. The study area along the rail corridor was also predominantly disturbed and was also considered that the archaeological potential of that part of the study area was negligible. AMBS identified evidence of Aboriginal heritage material (site HSI) in an area recently exposed by vehicle use and disturbance, including shells and stone artefacts. The extent of the exposed Aboriginal heritage material was mapped and included in a PAD which extended along the creek lines around the site and continues outside the study area. AMBS argued that there was evidence of Aboriginal heritage material below the surface in this area on the margins of the swamp, and it was therefore considered to be archaeologically sensitive. It is also worth noting that the low-lying swamp margin/creek line landform of this area was not expected to contain a site, given the predictive model of the area, which has generally considered that the low-lying land of Hexham Swamp would have been unfavorable for camping because of water saturation. AMBS also note the high cultural significance of this Hexham Swamp area to the local Aboriginal community.

AMBS 2012 Archaeological test excavation summary and results

AMBS (2012) was subsequently commissioned KMH, on behalf of UHVA, to undertake archaeological test excavations associated with the Hexham Relief Roads Project. Archaeological test excavations were undertaken in compliance with Section 3.1 of *OEHS Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010) and involved participation from the registered Aboriginal groups. The test excavations were located on an alluvial plain, near the margins of Hexham Swamp and approximately 600m-1500m from the Hunter River. The proposed access road crosses a second order stream, Purgatory Creek which is the reliable water sources in the local area. The area has been cleared and maintained for grazing, and also contains numerous access tracks, pipelines and electrical transmission lines.

Site HSI (AHIMS site #38-4-1478) was found to extend along a constructed track within the disused Hunter Water easement transected by the proposed Hexham Relief Roads corridor. Based on the evidence, AMBS concluded that this site comprises artefact stone material that has been brought to the area during the construction of the track, and is not indicative of the local Aboriginal archaeology. AMBS also state that the artefactual stone material of HSI appears to have been spread across the low-lying alluvial plain, perhaps by vehicles crossing the disused track.

Consultation with Hunter Water confirmed that the shell fragments found in the southern part of the Hexham Relief Roads Project area were brought in with bedding sand dredged from the Swansea Channel, as fill material. As the shells were located at the northern end of HSI near an area of introduced fill associated with the Hunter Water pipeline, they are considered likely to have been introduced into the area in the same way, rather than being associated with the artefactual stone material of HSI. They are therefore not considered to be indicative of the local Aboriginal archaeology.

The results of the subsurface test excavation undertaken by AMBS and the registered Aboriginal stakeholders revealed the disturbed nature of the access track and alluvial plain (swamp). The test pits consisted of dark brown to black clayey/silty topsoil, overlying brown/grey clay at approximately 20-30cm depth that overlay a clay horizon consisted of brown/grey clay with orange/brown mottling, which decreased in plasticity and increased in sand content with depth. The sand content in lower levels was higher in pits to the south/east of Purgatory Creek, with lower soils retaining more clay plasticity in the pits to the north/west of the creek. AMBS stated this was the result of slight variations in the flow area of Purgatory Creek. The water table was generally reached at c.80-92cm and the texture and colour of each of the units in each trench were similar enough to be considered

homogenous across the landform. There was no appreciable difference between the soils in the site compound area compared with the soils along the access road.

One artefact was recovered from Unit 2 of HHR29, and two artefacts were recovered from Unit 2 of HHR30 both situated approximately 160-180m from Purgatory Creek. These artefacts were recovered from disturbed contexts, and AMBS determined that they are likely to represent the background archaeology of the local area, rather than long-term cultural activities that would result in extensive in situ archaeological sites. As this Aboriginal heritage material was not associated with the material comprising Aboriginal site HSI, it was designated as site HS2. No other archaeological or cultural materials were uncovered during the test excavation.

These results of the test excavation across the alluvial plain conform to the established local archaeological predictive model originally determined by MCH (2011). That is, the northern portion of the study area is a low lying water logged area, and as such it is unlikely that this landform would have been suitable for occupation due to regular flooding and it is the elevated landforms surrounding the study area may have been more suitable. Whilst the area would have contained resources suitable for hunting and/or gathering thus supporting long term camping on the swamps edges, the swamp plain itself would not contain evidence of occupation beyond isolated finds and possible very low density artefact scatters associated with hunting and/or gathering.

AMBS concluded that although background scatter of stone artefacts may occur across this landscape (as in the case of HS2), long-term cultural activities that would result in extensive in situ archaeological sites are considered unlikely to occur in this landscape. The low-lying swamp area has been assessed as representing an unlikely occupation area.

Additionally, it has been confirmed that the Aboriginal heritage material at HSI had been brought into the area from elsewhere and is therefore not representative of past activity in this area by local Aboriginal people. Therefore, although the area is widely recognised as a culturally sensitive resource area, the PCD is considered not to have evidence of past occupation. The PCD has been identified to have little to no potential for in situ cultural deposits.

Nightingale 2012 Peer Review Assessment

MCH (2012) and AMBS (2012) were subject to a peer review by Nightingale (2012) and the report is attached. The Nightingale (2012) report concludes that the identified archaeological features should not constrain the development project provided that:

- the PCD is upgraded to a cultural area, with no associated Aboriginal objects;
- the potential archaeological deposit is removed from the study area;
- Site HSI is a disturbed deposit with no archaeological significance. Project approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required; and
- Site HS2 is a disturbed deposit with no archaeological significance. Project approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required.

Aboriginal Stakeholder consultation

AMBS overtook all consultation regarding the test excavation works as they were commissioned to undertake these works by UHVA. The consultation record for these test excavation works may be found in the AMBS (2012) report that is attached.

The MCH consultation record has been updated to include the meeting with OEH and is attached. The complete consultation record for the MCH AHIA is provided in Annex A of the AHIA (which was Appendix K of the EAR).

Updated Mitigation Strategies for MCH 2012

Specific strategies, as outlined through the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW and the Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW (DECCW 10011a,b), are considered below for the management of identified Aboriginal objects within the study area. The potential management strategies include conservation and protection of sites, further investigation, obtaining an Aboriginal Heritage Impact Permit (AHIP) to permit impacts to the objects, cultural awareness induction and ongoing consultation with Aboriginal stakeholders. Each of these strategies are considered in further detail below.

One of the most important considerations in selecting the most suitable and appropriate strategy is the recognition that Aboriginal cultural heritage is very important to the local Aboriginal stakeholders. Decisions about the management of sites and potential archaeological deposits should be made in consultation with the appropriate local Aboriginal stakeholders.

- *Conservation/protection*

The OEH is responsible for the conservation/protection of Indigenous sites and therefore OEH require sound reasons for any impact on an indigenous site. Conservation is the first avenue and is suitable for all sites, especially those considered high archaeological significance and/or cultural significance. Conservation includes the processes of looking after an indigenous site or place so as to retain its cultural significance and are managed in a way that is consistent with the nature of peoples' attachment to them.

The northern portion of the study area which was originally identified as a PCD has been subject to further archaeological test excavations with the participation of the registered Aboriginal stakeholders. The test excavation revealed a disturbed landscape that is subject to regular flowing and considered unsuitable for past occupation. The site card for the PCD has been amended to clarify that the PCD is not a site but is instead a cultural area with no associated Aboriginal objects. As the PCD no longer exists, there is no justification for conserving this area.

The PAD identified in association with HSI has also been subject to further archaeological test excavations with the participation of the registered Aboriginal stakeholders. The test excavation revealed a disturbed landscape that is subject to regular flowing and considered unsuitable for past occupation. On this basis the PAD will be removed from the study area.

- Further archaeological investigations have confirmed that sites HSI and HS2 are disturbed deposits with no archaeological significance. As such, no further mitigation for these sites is required.*Further investigation*

Subsurface testing is appropriate when a PAD has been identified, and it can be demonstrated that sub-surface Aboriginal objects with potential conservation value have a high probability of being present, and that the area cannot be substantially avoided by the proposed activity. Subsurface testing can identify whether subsurface cultural deposits exist, their nature, extent, content, integrity and significance. Subsurface test excavations must follow the *Code of Practice for Archaeological Investigation of Aboriginal Objects* in NSW (OEH 2011) and must involve discussions/consultation with the local Aboriginal stakeholders.

As the PCD and PAD have been subject to test excavations identifying the areas as disturbed, flood prone and unsuitable for past occupation, no further investigations are justified. In addition, no further investigation in relation to HSI and HS2 is required.

- *AHIP*

If harm will occur to an Aboriginal object or place, then an AHIP is required from the OEH. An AHIP is required when a site is identified but its extent, the nature of its contents, level of integrity and/or its significance cannot be adequately assessed through a surface survey. However, once approval is granted for the LTTSF pursuant to Part 5.1 of the *Environmental Planning and Assessment Act 1979* (NSW), an AHIP is not required to carry out activities which are in accordance with the approval and environmental assessment. Therefore, an AHIP will not be required to carry out any activities which impact on Aboriginal objects in accordance with the project approval.

- *Cultural awareness induction*

Part of the site induction should include an induction on the cultural heritage of the study area. All personnel on site must be inducted and as such are made aware of the cultural heritage across the study area. The induction package can be included in the Environmental Management Plan and/or Aboriginal Heritage Management Plan.

- *Procedures for ongoing Aboriginal consultation & involvement*

Procedures should be in place for the continued consultation and involvement with the Aboriginal stakeholders. This procedure can be included in the Aboriginal Heritage Management Plan.

Updated Recommendations for MCH 2012

- 1) The persons responsible for the management of works on site will ensure that all staff, contractors and others involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the *National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010*, under the *National Parks and Wildlife Act 1974*;
- 2) The involvement of the registered Aboriginal stakeholders in the ongoing management of the Aboriginal cultural materials within the project study should be promoted and included in the Environmental Management Plan and the Aboriginal Heritage Management Plan;
- 3) A cultural awareness program should be included as part of the site induction program and developed with the registered Aboriginal stakeholders and form part of the Environmental Management Plan and/or the Aboriginal Heritage Management Plan;
- 4) As the test excavation undertaken by AMBS has revealed that there is no potential for in situ cultural materials to be present, MCH have submitted a Site Card as requested by OEH to clarify this position

Sites HS1 and HS2 are disturbed deposits with no archaeological significance. Investigations confirmed that these sites comprise artefact stone material that has been brought to the area during the construction of the track, and is not indicative of the local Aboriginal archaeology. Therefore, no further mitigation or management measures are required before impacting on these sites.

Site card V site impact card

MCH was instructed that OEH had informed QR National that a new Site Card for the PCD is required, not a Site Impact Card. This is attached.



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3 December 2012

Brett Peterkin
Engenicom
On behalf of QR National
161 King Street
NEWCASTLE NSW 2300

Dear Brett,

**RE. HEXHAM REDEVELOPMENT PROJECT
 QR NATIONAL OPERATIONS NSW LONG TERM TRAIN SUPPORT FACILITY
 ABORIGINAL ARCHAEOLOGICAL HERITAGE REVIEW**

This letter details an archaeological review of the Aboriginal heritage assessment report and related information pertaining to the QR National Operations NSW Long Term Train Support Facility at Hexham, NSW, namely:

McCardle Cultural Heritage Pty Ltd (MCH), QR National Hexham Train Support Facility:
Aboriginal Heritage Impact Assessment, August 2012 (Revised report) (referred to here as the
MCH report)

Additional reports and information to assist the review were also considered.

The MCH report was commissioned by QR National to meet the Director-General's Requirements (DGRs) for the Hexham Redevelopment Project. Kelleher Nightingale Consulting has subsequently been engaged by Engenicom on behalf of QR National to undertake a review of the MCH report and associated documents.

BACKGROUND

QR National proposes the development of a Long Term Train Support Facility (LTTSF) as part of the Hexham Redevelopment Project. Aboriginal heritage was identified in the DGRs as a key issue to be addressed in the Environmental Assessment (EA) for the project.

The Aboriginal heritage of the project area was assessed to meet the DGRs. As part of the assessment, a survey of the project area was undertaken by a MCH archaeologist and representatives of two of the three registered Aboriginal stakeholders on the project: Awabakal Traditional Owners Aboriginal Corporation and Awabakal Descendants Traditional Owners Aboriginal Corporation.

MCH in consultation with Aboriginal stakeholders identified a potential cultural deposit (PCD) on the Hexham LTTSF site. Following the initial survey and assessment of the project area, an Aboriginal heritage investigation, including survey, was undertaken of a portion of the LTTSF site by Australian Museum Business Services (AMBS). AMBS identified an archaeological site (designated HS1) and an associated area of potential archaeological deposit (PAD) on the LTTSF site. The MCH report was updated to include the AMBS findings on the project area.

The MCH report concluded that the archaeological potential of the LTTSF project area was limited, however based on the identified cultural significance of Hexham Swamp, the northern portion of the project area was considered to have some potential to retain Aboriginal objects, albeit in a disturbed context (i.e. non-archaeological context). The assessment recommended that before any works occur within the PCD, further archaeological investigation (test excavation) was required. It was subsequently concluded that the proposed access road corridor through the PCD and PAD be investigated and a methodology for such investigation was formulated.

SCOPE OF PEER REVIEW

As part of the EA adequacy review, the Department of Planning and Infrastructure (DP&I) raised some concerns with the MCH report and the proposed approach to further archaeological investigations of the subject site.

QR National sought a peer review of the MCH report and associated information to:

1. consider the assessment of the PCD and PAD in light of existing conditions and landform assessment;
2. evaluate the reports in relation to meeting the DGRs for the project regarding Aboriginal heritage;
3. consider the relevant statutory requirements; and
4. provide advice on the findings and recommendations of the existing reports.

The scope of this review is limited to address these four issues.

ARCHAEOLOGICAL REVIEW

The stated purpose of the MCH archaeological assessment was to 'assess any archaeological constraints to support the QR National Hexham Project'. The MCH archaeological assessment included seven parts: landscape context, ethno-historic background, archaeological context, survey, assessment of significance, assessment of impacts and mitigation and management strategies.

Landscape context

The overall landscape assessment was good showing adroit archaeological insight. The assessment correctly included a detailed review of the geomorphology. The geomorphic assessment was very good and clearly established the pertinent aspects of the Hexham swamp/floodplain. The study area was divided into two portions: northern and southern. The southern area was shown to be highly disturbed by previous land use. The geoarchaeological implication of the landscape assessment of the northern portion was clear and concise: 'no evidence of past occupation is expected within the swamp/floodplain areas within the specific study area but rather on the surrounding elevated landforms' (p23). Furthermore the flow dynamics outlined also correctly show a fluctuating depositional environment with no archaeologically significant soil integrity. In short the study area was correctly identified by MCH as a highly active environment void of archaeological integrity.

Ethno-historic background

Unfortunately no direct ethno-historic information exists for the study area. The assessment patches together pieces of ethnographic information, but the assessment is lacking any definitive insight. This is a common problem faced by Aboriginal cultural assessments and reflects the paucity of information. The contemporary cultural accounts indicate the study area exhibits a generalised level of cultural value as a resource base.

Archaeological context

An exhaustive review of the previous archaeological assessment was undertaken to form the basis for a predictive model. The review is overly detailed and while the presented information is correct, it deviates from the crux of the report in an attempt to establish a paradigm, already well-established within archaeology, concerning the statistical nature of archaeological site occurrence. A more concise review of

previous assessment would improve the overall flow of the report and assist to underscore the findings as opposed to highlighting the process. The results would remain the same, but the reader would be assisted by some brevity.

With this said the predictive model is direct, although the rationale behind the model rest mainly with geomorphic factors as opposed to previous archaeological studies. The solid findings are as follows:

- archaeology exists on the margins of the Hexham Swamp
- northern portion of the study area being a low lying water logged area (swamp/floodplain) is unlikely to be suitable for occupation and can be expected to be highly disturbed by fluvial processes
- southern portion of the study area is highly disturbed through past land use. No significant archaeology will exist in this location.

Survey

The pedestrian survey outlined in the report was adequate for the assessment and complies with relevant guidelines and archaeological best practice. No new archaeological sites were identified during the survey. Three archaeological features were noted in the study area: one potential cultural deposit (identified by MCH), one potential archaeological deposit and one archaeological site (both identified by AMBS 2012a, Hexham Relief Roads Project: Aboriginal heritage impact assessment, prepared for KMH Environmental, Final Report, June 2012).

Potential cultural deposit

No scientific data support the identification of a potential cultural deposit. However, a purely cultural identification of place, based on knowledge not objects, is acceptable in cultural heritage management. Purely culturally identified places should not pose a constraint to the development of land provided appropriate consultation is undertaken with the relevant knowledge holders. Culturally identified places, without Aboriginal objects, are protected under NSW legislation when they are gazetted by the State as Aboriginal Places. The Department of Planning and Infrastructure will also consider cultural places when making determinations regarding development.

Rather than identify a potential cultural deposit, it would be more appropriate to have identified a Cultural Area without reference to objects. In this manner the cultural value of the area would be identified, without the reference to archaeological objects.

Potential archaeological deposit

The MCH assessment correctly stated no in situ archaeological deposit is likely to exist in the study area. Unfortunately a potential archaeological deposit was erroneously identified with the northern portion of the study area (AMBS 2012a). The potential archaeological deposit was linked to a surface scatter of artefacts contained in imported road fill, identified as archaeological site HS1. The identification of the potential archaeological deposit within the study area is incorrect. No scientific data supports the identification of a potential archaeological deposit in the study area.

The MCH assessment would be improved by demonstrating the false basis for the potential archaeological deposit, rather than accept the identification. The site card related to the potential archaeological deposit should be updated, thereby negating it from the study area. Likewise the clearly disturbed nature of the imported archaeological material identified as site HS1 should be clearly stated in the MCH assessment.

Assessment of significance

The assessed scientific significance could be improved to better reflect the nature of the three identified archaeological features. The MCH assessment contained sufficient archaeological information to determine that the potential cultural deposit, potential archaeological deposit and site HS1 should not influence the archaeological significance of the study area. Rather than accept unsubstantiated opinions and poor identifications, the MCH assessment should have stuck by its own correct determination regarding the archaeological significance of the study area: a highly disturbed environment influenced by long term, high energy fluvial processes.

The potential cultural deposit has no significant archaeological basis and is located in an active environment suffering from high energy fluvial forces. In archaeological terms the area has no integrity, no research potential and no significance. Cultural areas important to Aboriginal people are not rare, within the scientific understanding of the term. It is possible for an area to exhibit no scientific significance but still be imbued with high cultural value. Cultural and scientific values are not mutually exclusive.

The potential archaeological deposit has no scientific archaeological basis and should never have been identified. In archaeological terms the area has no integrity, no research potential no significance and is not rare.

The identified site HS1 exhibits no scientific value, although some cultural value may be attached to the Aboriginal objects. In archaeological terms the clearly disturbed deposit has no integrity, no research potential no significance and is not rare.

Assessment of impacts

No significant archaeological objects exist in the study area. All impacts to archaeological objects will be low (e.g. objects contained in the fill associated with HS1 or in the disturbed fluvial deposit may be impacted).

Mitigation and management strategies

No mitigation or further assessment is necessary or warranted. The study area is a highly disturbed environment influenced by long term, high energy fluvial processes.

No archaeological test excavations are required for the study area. The geomorphic history of the land is clearly documented, summarised well in the MCH assessment, showing no rationale for subsurface investigations. Archaeologically it is not possible to conclude that intact archaeological deposit will exist within the floodplain of the study area.

Recommendations

Aboriginal stakeholders should be involved in the development project in relation to Aboriginal cultural heritage, as stated in the MCH assessment.

The three identified archaeological features should not constrain the development project provided:

- The potential cultural deposit be upgraded to an amorphous cultural area, with no associated Aboriginal objects.
- The potential archaeological deposit should be removed from the study area and updates to the site card issued to OEH. Any archaeological objects occurring with the potential archaeological deposit should be identified as discrete objects within a highly disturbed context. Project Approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required.
- Site HS1 is a disturbed deposit with no archaeological significance. Project Approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required.

Summary

MCH archaeological assessment was a detailed report satisfying the requirements of archaeological assessment in New South Wales. The report contained the relevant information required to make an informed assessment of the archaeology within the study area. At times, especially related to understanding the geomorphic background the MCH report displayed clear archaeological insight. The report could have benefited from a narrowing of the archaeological contextual information, which detracted from an otherwise well thought-out desktop assessment. The strength in the report was let down by an uncritical appraisal of cultural information (potential cultural deposit) and the addition of erroneous archaeological information (potential archaeological deposit and archaeological site HS1) identified by others. While the MCH report clearly found a tenuous basis for the three identified

archaeological features, the MCH report also accepted the features and thereby gave them a tacit existence. It would have been appropriate and served the MCH report better to stick with the desktop assessment and survey results to demonstrate the weakness of the three identified archaeological features: the potential cultural deposit should be interpreted as a cultural area (as opposed to a deposit) because the landform was highly active, the potential archaeological deposit should not be accepted due to the highly active landform, and the archaeological site HS1 should be identified as a disturbed deposit. A more critical assessment of these external opinions would have dramatically strengthened an otherwise solid archaeological report.

Unnecessary management and mitigation measures followed the uncritical acceptance of the three archaeological features. By not demonstrating the baseless nature of the three archaeological features, the MCH report was forced to recommend a series of mitigation measures.

The MCH archaeological assessment was a report at odds with itself. The report contained good solid archaeological information, but was too cautious in its acceptance of external opinions and information, rather than relying on its own strengths of insights. The recommendations in the report should be reviewed to correspond more closely with the geoarchaeological information.

AMBS Hexham Relief Roads Project

The Hexham Relief Roads Project Aboriginal heritage impact assessment (AMBS 2012a) and results of subsequent test excavation (AMBS 2012b, Hexham Relief Roads Project: Test excavation report, prepared for KMH Environmental, Draft report, November 2012) were also generally considered as they relate to the MCH report.

The Aboriginal heritage impact assessment report (AMBS 2012a) was lacking crucial information which led to erroneous conclusions and recommendations. The key information gap was that the assessment did not consider the geomorphic context related to the study area. Assessment of site integrity, for example only referred to current land use practices, leading to the false conclusion that the soil deposits within the northern portion of the MCH project area may not be disturbed (AMBS 2012a:30). The area is in archaeological terms an active geomorphic context, incapable of exhibiting integrity.

Archaeological site HS1 identified during the survey is without doubt related to the importation of fill material. The stone material is foreign to the local soil matrix. The AMBS assessment of HS1 is misleading in its assertions and not based on a clear archaeological understanding of the environment. The assessment of high archaeological significance for this site is unsupported. The potential archaeological deposit associated with site HS1 is incorrect and not based on the best available scientific information. A basic geomorphic assessment indicates that the identified potential archaeological deposit is a highly disturbed geomorphic deposit, part of an at-times high energy and large volume fluvial environment. Any archaeological material contained in the disturbed deposit will exhibit no significant archaeological value.

AMBS concluded the assessment with a set of recommendations (pertinent to the MCH report) which should be revised as follows:

No Aboriginal heritage management plan is required, because no significant Aboriginal archaeology exists within the study area.

No test excavation is required for HS1 or the associated potential archaeological deposit, because the site HS1 is clearly part of imported fill material and the potential archaeological deposit has no scientific basis. Archaeologically significant Aboriginal objects will not exist in this location.

No test excavation is necessary or warranted for the MCH potential cultural deposit as the area is a disturbed deposit. Archaeologically significant Aboriginal objects would not exist in this location due to prolonged and continuous disturbance of the soils.

The rationale behind the subsequent test excavation (AMBS 2012b) was founded on false assumptions. No test excavation was warranted on archaeological grounds.

Nonetheless the test excavation program was undertaken by AMBS. The results of the test program confirm the MCH findings that the Hexham Swamp is a highly disturbed deposit. The recovered archaeological material is characteristic of a disturbed, moderate energy fluvial context. The potential archaeological deposit no longer exists. The three objects recovered, from a discrete area, have been designated HS2 by AMBS.

MEETING DGRS RELATED TO ABORIGINAL HERITAGE

The DGRs issued on 22 March 2010 for the Environmental Assessment for the project included heritage as a key issue, with the specific requirement relating to Aboriginal heritage being that the EA must include:

- Indigenous heritage including objects, places, archaeological sites; and landscape, natural and cultural values of the site and surrounding area; taking into account of the *Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation (DEC)*

The EA incorporated an assessment of Aboriginal heritage (section 9.12), based on the MCH report, with the MCH report attached as Appendix K. The Aboriginal heritage assessment generally complies with the Draft Guidelines applicable to the assessment, as outlined in the archaeological review above, with the key exceptions being that further information was required regarding the management strategy for Aboriginal heritage, specifically:

- the management strategies to be implemented for Aboriginal objects; and
- the procedures to be followed relating to unexpected finds, including human remains, or changes to the project, including the requirement for ongoing consultation.

The EA and MCH report relied on this information being included in a management plan to be prepared post-approval, however, the management strategies and procedures should be included in the EA to allow an informed approval process.

Associated with this was the EA/MCH report recommendation for test excavation post-approval. Any required test excavation should have been undertaken as part of the EA. This point, however, is now immaterial as results of test excavation over part of the project area prove that there is no real archaeological potential within the project area. Further test excavation of the project area cannot be supported archaeologically.

It is understood further information relating to gaps identified in the Adequacy Review has been provided and the revised EA, including the revised MCH report (Appendix K), is currently on exhibition.

STATUTORY REQUIREMENTS

It is understood the project has been lodged under Part 3A of the *Environmental Planning and Assessment Act 1979* (now repealed), with the Minister for Planning and Infrastructure to make the decision as to whether it will be transitioned to a Part 5.1 State significant infrastructure project. The review has been carried out on the understanding that the project is being assessed under these requirements.

Part 3A (now Part 5.1) suspends the need for an Aboriginal heritage impact permit (AHIP) application under the *National Parks and Wildlife Act 1974* (NPW Act). Part 6 offences related to those provisions do not apply.

Proponents of Part 3A major project applications are required to follow the assessment and consultation process set out in the *Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC 2005). These guidelines were specified by the DGRs as being applicable to the Aboriginal heritage investigations for the environmental assessment for the project.

In sum, as a Part 3A (Part 5.1) project there is no need to apply for an AHIP to harm Aboriginal objects under the NPW Act provided the DGRs and any conditions of approval are followed.

The EA should clearly identify any potential impact to Aboriginal heritage as a result of the project application and provision for the impact should be included in the project approval.

CONCLUSIONS

Aboriginal stakeholders should be involved in the development project in relation to Aboriginal cultural heritage, as stated in the MCH assessment.

The identified archaeological features should not constrain the development project provided:

- The potential cultural deposit is upgraded to a cultural area, with no associated Aboriginal objects.
- The potential archaeological deposit is removed from the study area.
- Site HS1 is a disturbed deposit with no archaeological significance. Project Approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required.
- Site HS2 is a disturbed deposit with no archaeological significance. Project Approval will need to be obtained from the Department of Planning and Infrastructure prior to impacting on these objects. No further mitigation is required.

If you have any questions or require further information, please don't hesitate to contact us on 02 9232 5373.

Yours sincerely



Dr Matthew Kelleher
Director/Archaeologist



Alison Nightingale
Director/Archaeologist

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
1 st	13 December 2010	MCH contacted the required Government departments requesting a list of Aboriginal groups to contact for registration and consultation	DECCW, LALC, Registrar of Aboriginal Owners, Native Title Tribunal, NTSCORP Limited, local Council, Catchment Authority	Requirement under the DECCW ACHCR's (2010)	Letter contained; - Details of the project area (location) and proponent details - Request for assistance in identifying Aboriginal stakeholder groups or persons interested and to provide a list of these groups/people MCH stated this was an urgent project and requested a response by 20 December 2010.	See attached
2 nd	15 December 2010	NNT contacted MCH		List of groups	Provided a response to the request for groups to consult. No groups were listed.	See attached
3 rd	20 December 2010	DECCW contacted MCH		List of groups	Provided a response to the request for groups to consult. 40 groups were listed.	See attached
17 December 2010 Request for groups to consult with closed						
4 th	20 December 2010	MCH contacted all groups listed in responses from Government departments listed above	See attached	Requirement under the DECCW ACHCR's (2010)	Letter contained; - Proponent details - Details of the project area (location) - Details of the proposed development - statement of the purpose of community consultation with Aboriginal people - statement that this is an invitation for Aboriginal people who hold cultural knowledge relevant to the proposed project area and who can determine the significance of Aboriginal object(s) and/or place(s) in the area of the proposed project to register an interest in a process of community consultation - advised that, unless otherwise specified, details will be provided to DECCW & LALC - that individuals must be nominated if a group or organization registers - Request for Aboriginal stakeholder groups or persons interested to register in writing to MCH no later than 5 January 2011 (additional week added due to Christmas and New Year holidays) - nominate your preferred option to receive the initial information. You may wish to have a non paid meeting and receive an information pack, or receive information packet through the mail, fax or e-mail.	See attached

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
5 th	16 December 2010	Add in Newcastle Star Mercury Newspaper placed by client.	NA	Requirement under the DECCW ACHCR's (2010)	Add contained; - Proponent details - Details of the project area (location: map) - Details of the proposed development - Statement of the purpose of community consultation with Aboriginal people - statement that this is an invitation for Aboriginal people who hold cultural knowledge relevant to the proposed project area and who can determine the significance of Aboriginal object(s) and/or place(s) in the area of the proposed project to register an interest in a process of community consultation - advised that, unless otherwise specified, your details will be provided to DECCW and the LALC - that individuals must be nominated if a group or organization registers - Request for Aboriginal stakeholder groups or persons interested to register in writing to MCH no later than 5 January 2011 (additional week added due to Christmas and New Year holidays) - nominate your preferred option to receive the initial information. You may wish to have a non paid meeting and receive an information pack, or receive information packet through the mail, fax or e-mail.	See attached
6 th	16 December 2010	ALALC contacted MCH	David Ahoy (ALALC) rang Penny McCardle (MCH)	Registration	David rang Penny to register for the project.	See attached phone log
7 th	21 December 2010	CMA Hunter Central Rivers contacted MCH		List of groups	Stated they did not have or provide a list of groups to contact DECCW.	See attached
8 th	30 December 2010	Awabakal Descendants Traditional Owners (ADTO) contacted MCH	Shane Frost (ADTO) contacted Penny McCardle (MCH)	Registration	Shane rang Penny to register for the project and said he would send through a registration letter also. Shane also mentioned another group who may register.	See attached phone log

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
9 th	4 January 2011	Awabakal Descendants Traditional Owners (ADTO) contacted MCH	Shane Frost (ADTO) contacted Penny McCardle (MCH)	Registration	Shane provided MCH with their written registration. Shane also provided MCH with their rates of pay and insurance details and requested they remain confidential.	See attached
10 th	4 January 2011	MCH contacted ADTO	Penny McCardle (MCH) contacted Shane Frost (ADTO)	registration	Penny thanked Shane for his registration and stated that the rates of pay and insurance details would remain confidential and that the rates of pay would only go to the proponent.	See attached
11 th	5 January 2011	Awabakal Traditional Owners Aboriginal Corporation (ATOAC) contacted MCH	Kerrie Brauer (ATOAC) contacted penny McCardle (MCH)	registration	Kerrie provided MCH with their written registration.	See attached
12 th	5 January 2011	MCH contacted ATOAC	Penny McCardle (MCH) contacted Kerrie Brauer (ATOAC)	registration	Penny thanked Kerrie for her registration and stated that an information pack would be sent in a few days	See attached
5 January 2011 Registration closed						
13 th	6 January 2011	MCH contacted all registered groups: sent an information pack for the project	See attached	Requirement under the DECCW ACHCR's (2010) Posted Information package	Information package contained; - Cover letter - Project overview - Details of the project area and maps - Roles and responsibilities of all parties - Methods of gathering information on cultural knowledge and the archaeological assessment - Defined consultation and employment - Critical time lines - Pro forma for response Response due date was also included (27 January 2011)	See attached
14 th	18 January 2011	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	Response to info pack	Kerry provided MCH with a copy of their fees and charges and also requested the information pack to be e-mailed in a word document.	See attached
15 th	18 January 2011	MCH contacted ATOAC	Penny McCardle (MCH) contacted Kerrie Brauer (ATOAC)	Response to e-mail	Penny sent Kerry the information pack in word documents via e-mail	See attached

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
16 th	21 January 2011	ADTOAC contacted MCH	Shane Frost (ADTOAC) e-mailed Penny McCardle (MCH)	Response to info pack	Shane provided MCH with their response to the information pack	See attached
17 th	24 January 2011	Newcastle City Council (NCC) contacted MCH		List of groups	Stated that MCH should contact Awabakal LALC.	See attached
18 th	27 January 2011	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	Response to info pack	Kerry provided MCH with a response to the information pack	See attached
19 th	1 February 2011	MCH contacted all registered groups		Survey invitation	MCH sent a letter of invitation to the survey on 9 March 2011	See attached
20 th	1 February 2011	MCH contacted all registered groups		Survey invitation	MCH sent a letter of invitation to the survey on 9 February 2011	See attached
21 st	1 February 2011	ADTOAC e-mailed MCH	Shane Frost (ADTOAC) e-mailed Penny McCardle (MCH)	survey	Shane confirmed he will be attending the survey	See attached
22 nd	1 February 2011	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	survey	Kerry confirmed she will be attending the survey	See attached
23 rd	1 February 2011	MCH contacted ATAOC	Penny McCardle (MCH) e-mailed Kerrie Brauer (ATAOC)	survey	Penny reminded Kerry to sign and return the required paperwork before the survey	See attached
24 th	2 February 2011	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	survey	Kerry returned signed paperwork for the survey	See attached
25 th	3 February 2011	MCH contacted ATAOC	Penny McCardle (MCH) e-mailed Kerrie Brauer (ATAOC)	Info pack questions	Penny responded to Kerrys questions and comments on the information pack	See attached
26 th	9 February 2011	survey				
27 th	11 March 2011	MCH contacted all groups	See attached	Draft report	Penny sent all groups a copy of the draft report for their review and asked if they had any comments or wished to provide MCH with a letter/report to do so no later than 31 March 2011.	See attached
28 th	22 March 2011	MCH contacted all groups	See attached	Draft report	Penny sent all groups a reminder that their letter/report was due no later than 31 March 2011.	See attached
29 th	23 March 2011	ADTOAC contacted MCH	Shane Frost (ADTOAC) e-mailed Penny McCardle (MCH)	Response to draft report	Shane provided MCH with their response to the draft report. Shane raised a number of points	See attached

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
30 th	29 March 2011	MCH contacted ADTO	Penny McCardle (MCH) contacted Shane Frost (ADTO)	report	Penny thanked Shane for providing his report and that his comments will be include din the report. Penny also brought to his attention that test excavations were not warranted as the are of less disturbance will be designated environmental land and as such conserved. Penny also invited Shane to revise his report in light of this if he wished to.	See attached
31 st	29 March 2011	MCH contacted ATAOC	Penny McCardle (MCH) e-mailed Kerrie Brauer (ATAOC)	report	Penny sent Kerry a reminder that their letter/report was due no later than 31 March 2011.	See attached
32 nd	29 March 2011	MCH contacted ALALC	Penny McCardle (MCH) e-mailed David Ahoy (ALALC)	report	Penny sent David a reminder that their letter/report was due no later than 31 March 2011.	See attached
33 rd	31 March 2011	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	report	Kerry provide MCH with their report	See attached
34 th	31 March 2011	MCH contacted ATAOC	Penny McCardle (MCH) e-mailed Kerrie Brauer (ATAOC)	report	Penny thanked Kerrie for her report and stated that her comments and everyone else's would be reflected in the revised report	See attached
35 th	31 March 2011	ALALC contacted MCH	ALALC contacted Penny McCardle (MCH)	report	Provide MCH with their report	See attached
36 th	15 July 2011	MCH contacted all groups	See attached	Final report	Penny sent all groups a copy of the final report	See attached
37 th	26 March 2012	MCH contacted all groups	See attached	Site visit	Penny sent all groups an invitation to a site meeting on 2 April 2012 to discuss the site identified by AMBS	See attached
38 th	Site meeting: no stakeholders attended. The site was not re-located and MCH discussed the possibility of the site being transported in with fill as the site location was raised, fill included to cross a creek and road gravels were present throughout. It was discussed that the best way forward would be to hold another site meeting with the registered stakeholders and AMBS and MCH archaeologist to discuss the site.					
39 th	2 April 2012	MCH contacted all groups	See attached	Site visit	Penny sent all groups an e-mail outlining the site visit and the possibility of another site visit	See attached
40 th	2 April 2012	ADTOAC contacted MCH	Shane Frost (ADTOAC) e-mailed Penny McCardle (MCH)	Site visit	Rang Penny and apologized for not attending the site visit as he only received the letter that day. Penny explained the site visit and that there may be another site visit organized and she will be in touch.	
41 st	2 April 2012	ATAOC contacted MCH	Kerrie Brauer (ATAOC) e-mailed Penny McCardle (MCH)	Site visit	Kerry e-mailed Penny to apologise for not attending the site visit due to other commitments	See attached

Contact made	Date	Who contacted Whom	Contacts	Purpose	Phone conversation/ notes	Outcomes
42 nd	18 July 2012	Roger Mehr (OEH), Penny McCardle (MCH), Darren Pritchard (Leicon), Stuart Piggott (KMH), Darren Green (KMH)		meeting to discuss project	Discussions focused around an overview of projects, an overview of status of Aboriginal investigations, the use of one Archaeologist for both projects and general business regarding the project.	To continue as planned, MCH to commence draft methods, continue consultation

Open Site

SF 1

General Site Information

Closed Site

Shelter/Cave Formation

- ☐ Boulder
- ☐ Wind erosion
- ☐ Water erosion
- ☐ Rock collapse

Rock Surface Condition

- ☐ Boulder
- ☐ Sandstone platform
- ☐ Silica gloss
- ☐ Tessellated
- ☐ Weathered
- ☐ Other platform

Open Site

Site Orientation

- ☐ N-S
- ☐ NE-SW
- ☐ E-W
- ☐ SE-NW
- ☐ N/A

Condition of Ceiling

- ☐ Boulder
- ☐ Sandstone platform
- ☐ Silica gloss
- ☐ Tessellated
- ☐ Weathered
- ☐ Other platform

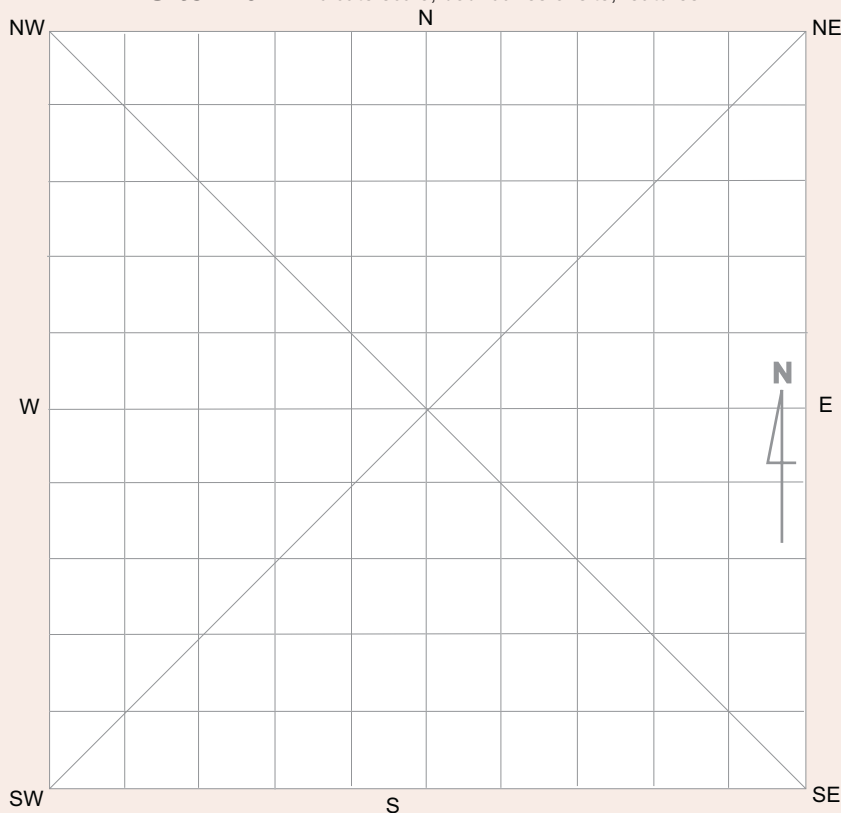
Shelter Aspect

- ☐ North
- ☐ North East
- ☐ East
- ☐ South East
- ☐ South
- ☐ South West
- ☐ West
- ☐ North West

Features

- ☐ 1. Aboriginal Ceremony & Dreaming
- ☐ 2. Aboriginal Resource & Gathering
- ☐ 3. Art
- ☐ 4. Artefact
- ☐ 5. Burial
- ☐ 6. Ceremonial Ring
- ☐ 7. Conflict
- ☐ 8. Earth Mound
- ☐ 9. Fish Trap
- ☐ 10. Grinding Groove
- ☐ 11. Habitation Structure
- ☐ 12. Hearth
- ☐ 13. Non Human Bone & Organic Material
- ☐ 14. Ochre quarry
- ☐ 15. Potential Archaeological Deposit
- ☐ 16. Stone Quarry
- ☐ 17. Shell
- ☐ 18. Stone Arrangement
- ☐ 19. Modified Tree
- ☐ 20. Water Hole

Site Plan Indicate scale, boundaries of site, features



Site Dimensions

Closed Site Dimensions (m)

- Internal length
- Internal width
- Shelter height
- Shelter floor area

Open Site Dimensions (m)

- Total length of visible site
- Average width of visible site
- Estimated area of visible site
- Length of assessed site area

not a PCD

not a PCD

Title

Surname

First Name

Initials

Organisation

Address

Phone number

Fax

☐ A4 location map

☐ B/W photographs

☐ Colour photographs

☐ Slides

☐ Aerial photographs

☐ Site plans, drawings

☐ Recording tables

☐ Other

☐ Feature inserts-No.

[illegible]