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**PRELIMINARY
CULTURAL HERITAGE ASSESSMENT
OF
INDIGENOUS VALUES**

**LOT 1 DP 167380
LOT 1 DP 134787
LOT 2 DP961928 AND PART LOT 4 DP 1054848**

**WALMSLEYS ROAD AND STOTT STREET
BILAMBIL HEIGHTS**

NORTH COAST NEW SOUTH WALES.

by
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for

Darryl Anderson Consulting Pty Ltd

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Report Reference JD336

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
1.1	The Scope of the Study	1
2.0	LOCATION OF THE STUDY AREA.....	3
3.0	THE PROPOSED DEVELOPMENT.....	4
4.0	INDIGENOUS CONSULTATION.....	6
5.0	INDIGENOUS CULTURAL CONTEXT	8
5.1	Language Groups.....	8
5.2	Social Interactions	8
5.3	Settlement Patterns	8
5.4	Economy.....	9
5.5	Material Culture.....	10
5.6	Population Density	10
5.7	Implications for the Archaeological Record.....	11
5.8	Post-Contact History.....	11
5.8.1	Implications for the Cultural and Archaeological Record.....	13
6.0	INDIGENOUS ARCHAEOLOGICAL CONTEXT	14
6.1	Northern New South Wales Archaeological Record	14
6.2	Cultural Heritage Assessments in the Region of the Study Area	16
6.3	Recorded Indigenous Cultural Heritage Sites in the Vicinity of the Study Area.....	18
6.4	Summary of Archaeological Context	19
7.0	DESCRIPTION OF THE STUDY AREA.....	20
7.1	Environment and Resource Background.....	20
7.1.1	Topography	20
7.1.2	Geology and Soils.....	21
7.1.3	Vegetation	21
7.1.4	Fauna	22
7.1.5	Prior Land Use.....	22
7.1.6	Summary Implications.....	22
8.0	THE POTENTIAL CULTURAL HERITAGE RECORD.....	23
8.1	Archaeological Site Types	23
8.2	Cultural Site Types.....	24
8.3	Cultural Landscape	25
9.0	ARCHAEOLOGICAL PREDICTIVE MODELLING.....	26
9.1	Landscape Archaeology Approach.....	26
9.2	Environmental Zones within the Study Area	27
9.3	Predictive Modelling	28
9.3.1	Predictive Model for the Study Area	28
10.0	SOCIAL AND CULTURAL VALUES.....	30
11.0	SUMMARY AND CONCLUSION	31

DAVIES HERITAGE CONSULTANTS PTY LTD
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12.0	REFERENCES.....	32
13.0	APPENDICES.....	39
13.1	Appendix 1: Correspondence.....	39
 LIST OF FIGURES		
1.	The Study Area	2
2.	The Proposed Development	5
 LIST OF TABLES		
1.	Recorded Sites in the Vicinity of the Study Area	18

1.0 INTRODUCTION

This report presents the results of a preliminary assessment to identify whether there are Aboriginal cultural heritage values associated with Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848 (hereafter referred to as the study area), Walmsleys Road and Stott Street, Bilambil Heights, northern New South Wales (Figure 1).

The preliminary assessment was undertaken by Susan Davies (Davies Heritage Consultants Pty Ltd).

1.1 The Scope of the Study

The proposed development application for the above property is to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. The Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation issued by the Department of Environment and Climate Change identifies the important factors of consideration that need to be considered by proponents and consultants when assessing potential impacts on Aboriginal cultural heritage for development applications assessed under Part 3A. The Preliminary Assessment, which is primarily a desktop exercise, is the first step in this process. The main purpose of this step is to identify whether there are Aboriginal cultural heritage values associated with the property. The Department of Environment and Climate Change note that the Preliminary Assessment should include:

1. A description of the location and nature of the proposed development;
2. A description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area has for the present-day Aboriginal community; and
3. An assessment of which of the Aboriginal cultural heritage values that are known or likely to occur are likely to be directly or indirectly affected by the proposal.

Hence the scope of the study includes these three tasks.

2.0 LOCATION OF THE STUDY AREA

The study area is located in the Tweed Local Government Area approximately three kilometres southeast of the New South Wales/Queensland state border and Coolangatta Airport and five kilometres southwest of the Tweed Heads CBD. The southeastern portion is bound by Walmsleys Road and Stott Street unevenly divides the study area in a north-south direction. To the northeast the adjoining land is forested and zoned 7(d) Environmental Protection Scenic Escarpment. To the north part of the adjoining land is used for urban purposes and is zoned residential. The remaining adjoining land to the north is zoned Rural and Environmental Protection and is currently used for grazing. Land to the west of the study area is zoned 1(c) Rural Living and is currently used for cattle grazing. The adjoining land to the south of the study area is zoned part 1(c) Rural Living and is currently used for cattle grazing. Part of the study area itself is used for small cropping.

3.0 THE PROPOSED DEVELOPMENT

Of the approximately 25.32 hectares which comprise the study area, ten (10) hectares is zoned 2(c) Urban Expansion. The developer proposes to establish 84 residential allotments plus one public reserve allotment over that part of the land zoned 2(c) (see Figure 2). That part of the site to the east of the 2(c) zoned land which is predominantly zoned Environmental Protection will be retained in one ownership and is proposed to be back zoned to Environmental Protection by way of exhibited Draft Local Environmental Plan Amendment No. 21.

The proposed development is for a low density residential subdivision, consistent with the existing and desired future character of existing residential areas adjacent to the site. All normal urban infrastructures are proposed to be provided to facilitate development of the allotments including the connection of Walmsleys Road and Stott Street. In summary, the key elements of the proposed development include (DAC 2006:13):

- A collector road connecting Walmsleys Road and Stott Street which has been designed with an 11 metre carriageway to accommodate buses;
- Dedication and embellishment of approximately 3647m² of casual open space (local park). Embellishment will include playground equipment, turfing, landscaping and seating (proposed Lot 13);
- Establishment of a bushfire asset protection zone on the perimeter of the site adjacent to hazard areas;
- Creation of 84 residential lots and public reserve (Lot 13) based on a local street network which achieves connectivity and permeability between neighbourhoods;
- Creation of relatively large lots to provide flexibility in the design and siting of dwellings, improve energy efficiency and facilitate extensive landscaping using native species;
- Retention of existing threatened species of flora in an adjacent to environmental protection zones and erecting suitable protection fencing; and
- Provision of all normal urban infrastructure.

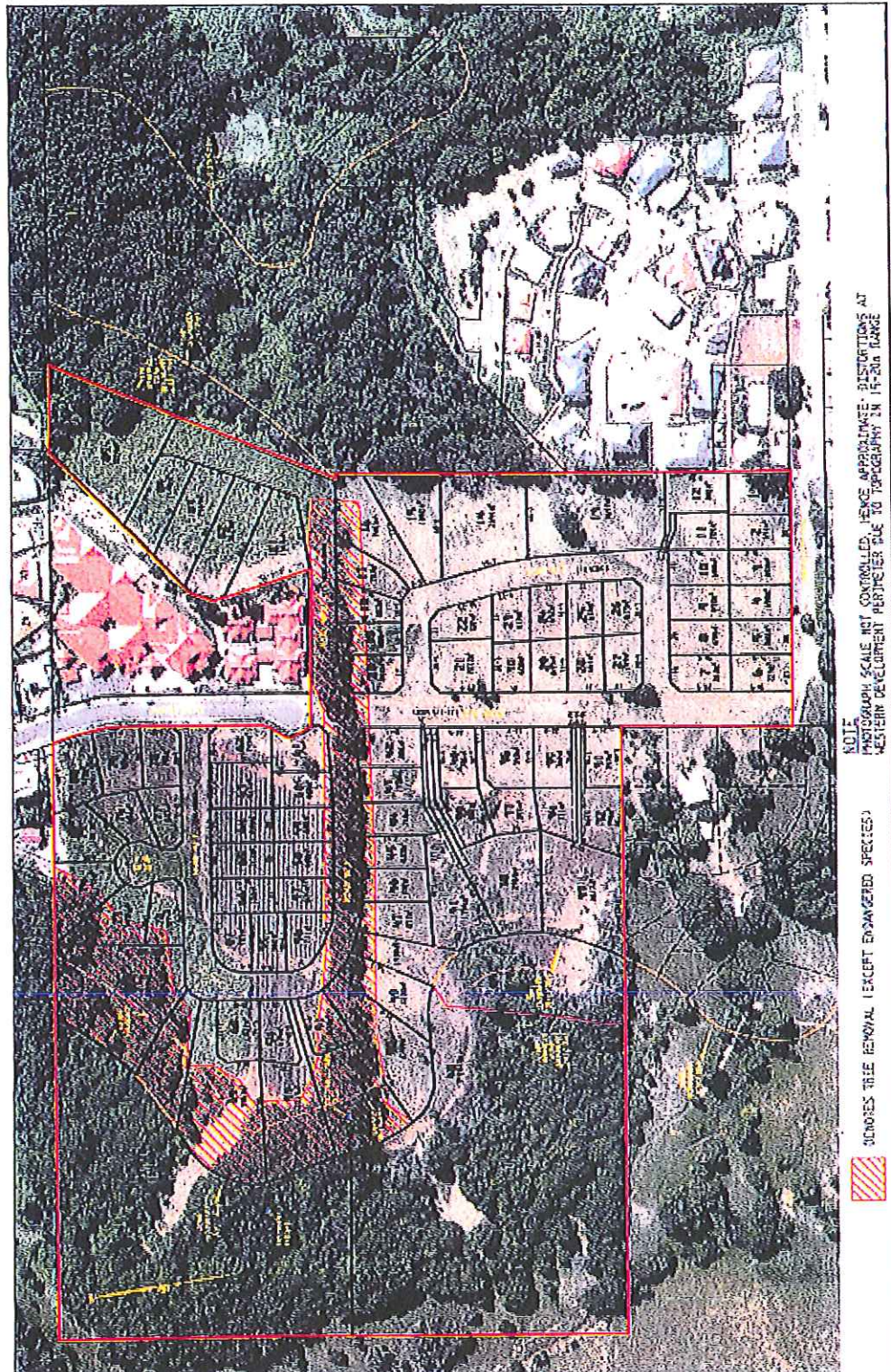


Figure 2. The Proposed Development

4.0 INDIGENOUS CONSULTATION

Indigenous consultation commenced with the proponent seeking to identify stakeholder groups or people wishing to be consulted about the project. The Interim Community Consultation Requirements (Department of Environment and Climate Change) were followed. Hence, written notification was provided to:

- Tweed Byron Local Aboriginal Land Council (LALC);
- Registrar of Aboriginal Owners;
- Native Title Services;
- Tweed Shire Council; and
- Department of Environment and Climate Change.

In addition, the Department of Environment and Climate Change (Diane Crosdale, Acting Manager, Planning and Aboriginal Heritage – North East) provided a list of Aboriginal community groups for the north coast / far north coast of New South Wales. Ms Crosdale advised that a subset of groups for the Tweed area could be selected from this list. Hence, written notification was also provided to Tweed Aboriginal Cooperative Society Ltd.

All the above notification letters were forwarded on the 24th July, 2007. A public notice was inserted in the Daily News on Friday 27th July, 2007.

The notification letters and the advertisement advised that the closing date for registration of interest was Friday 10th August, 2007 (i.e. 10 working days).

The only response received by the closing date was from Jackie McDonald, an Aboriginal person with traditional links to the area.

A letter dated the 10th August, 2007, outlining the terms of reference and providing preliminary information in relation to the study was forwarded to the identified Indigenous stakeholder (Ms Jackie McDonald). A further letter was forwarded on the 26th August, 2007, requesting a fee proposal for undertaking Task 2 (see Sub-section 1.1) of the preliminary assessment by the 31st August and a letter addressing Task 2 by the 7th September, 2007. As a fee proposal was not received by the 31st August, Ms McDonald was contacted by phone. Ms McDonald advised that she had contacted the Gold Coast Native Title Group and requested that they be involved in the process. Ms McDonald was advised that as the Registered Stakeholder she could involve whoever she chooses in the process.

An email was forwarded to Ms McDonald on the 3rd September, reminding her that the fee proposal was overdue and a response was required by Friday 7th September. Additionally, Ms McDonald was advised that once a fee proposal had been received and accepted a draft copy of the report would be forwarded (hopefully on the 7th September) for her review and any comments should be submitted by Friday 21st September, 2007. Another letter dated 7th September, 2007, reiterating the process and requesting a fee proposal and response was also emailed.

A fee proposal was not received and hence the draft report was not forwarded for Ms McDonald's review. In fact no correspondence was received after the 8th September, 2007.

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On either the 13th or 14th September, Wesley Aird (Gold Coast Native Title Group) contacted Su Davies by phone in relation to the process being followed (i.e. Interim Community Consultation Requirements). The process was discussed but when inappropriate remarks were made, Ms Davies advised that this conversation was at an end.

As per the Interim Community Consultation Requirements (Department of Environment and Climate Change), notification of the availability of the draft report for comment was forwarded to the Tweed Byron LALC. A response was not received from the Land Council.

On the 28th September Davies Heritage Consultants Pty Ltd received a faxed copy of a Gold Coast Native Title Group letter dated the 21st September. The addressee, Ms Dianne Miller, is not known to Davies Heritage Consultants. It appears the Gold Coast Native Title Group wishes to meet with the development proponent to discuss their requirements in relation to the assessment process.

The letter also stated that the study area "is known to be a part of the cultural landscape and is of significance to the traditional owners of the area". However, supporting documentation or information was not provided.

Correspondence in relation to consultation undertaken for this project is attached in **Appendix 1**.

5.0 INDIGENOUS CULTURAL CONTEXT

This Section provides a brief outline of the language groups (Sub-section 5.1), social interactions (Sub-section 5.2), settlement patterns (Sub-section 5.3), economy (Sub-section 5.4), material cultural (Sub-section 5.5) and population density (Sub-section 5.6) of the Indigenous people whose traditional land did and still does cover the present study area. Post-contact history is briefly outlined in Sub-section 5.8.

5.1 Language Groups

Generally, the area encompassing the catchments of the Clarence, Richmond and Tweed Rivers is referred to as the Bundjalung speaking area (Crowley 1978). Bundjalung is lexically quite diverse and contains many named local dialects. It is, however, possible to recognise two major grouping of Bundjalung dialects, a coastal grouping and an inland grouping (see Crowley 1978:142; 1991:13). Crowley (1991:16) states that the "extent of this diversity suggests that perhaps both the coastal and inland areas of Bundjalung territory may have been occupied for longer than some of the coastal areas to the south, allowing a large number of local dialects to develop".

5.2 Social Interactions

As is the case in Australia generally, inter-group social gatherings were a feature of Aboriginal life in this region. Coleman (1982) has reviewed the ethnohistorical literature and concluded that movements of large groups of people within the coastal region were made in order to attend social gatherings, rather than to mainly take up residence in another location. Byrne (1981) suggested that arrangements were made for inland groups to enter the territory of coastal groups for seasonal fish runs and ceremonial activities. One example of the extent of social interactions is the attendance by Indigenous people from the Tweed-Richmond region at Bunya gatherings which were held in the Blackall Ranges about 100km north of Brisbane. Such social gatherings facilitated trade and/or exchange between groups; for instance groups from the Tweed-Richmond-Clarence Rivers are reported as returning from Bunya gatherings with Brigalow spears.

5.3 Settlement Patterns

Site location patterns postulated by archaeologists (see Byrne 1985; Godwin 1987) indicate that the major river corridors along the northeastern coast of New south Wales served as a focus of activity in the region. According to Tindale (1974:127) "there was a local abundance of food (in the river basins) and the broken intervening country was such as to discourage travel" and "only about one half of the available area was used by the people of these tribes. The rest represented little-used belts separating more favourable locations".

In contrast, Coleman (1978, 1982) and Belshaw (1978) suggested that coastal populations in northeast New South Wales were semi-sedentary, living in villages or base camps and being dependent on estuarine and littoral resources throughout the

year. The huts within these villages were substantial. In 1882 in the Ballina area, Rous reported seeing huts 30 feet long and six feet high.

It has been postulated that movements of large groups of people appeared to parallel the coast. There is, however, considerable debate about the extent of movement between northern New South Wales coastal and inland Aboriginal groups. McBryde (1976) argued that there was large-scale relocation of people on a seasonal basis, with summers spent on the coast fishing and collecting shellfish and winters spent hunting in the hinterland. McBryde (1976:53) also suggested that this seasonal movement of populations was generally along the main rivers. This suggestion is supported by ethnohistorical records from the Clarence region which document population movement to the coast in spring for fishing, and of winters spent inland hunting (Byrne 1981). Nevertheless, Byrne (1981) suggested that arrangements were made for inland groups to enter the territory of coastal groups for seasonal fish runs and ceremonial activities.

5.4 Economy

The Aboriginal groups in this region lived in an environment where "they were able to exploit, within a comparatively small area, a coastal and estuarine or riverine environment, bordered by sub-tropical rainforest, swamps and lightly timbered country. This environmental diversity resulted in a very favourable food supply, which was plentiful, varied and dependable" (Sullivan 1978:104). Marine and freshwater fish and shellfish, reptiles, mammals, birds and plant food provided a diverse diet. For example, plant species included the rhizomes of bracken (*Pteridium esculentum*) and the roots of the Gynea Lily (*Doryanthes excelsa*), Milkmaids (*Burchardia umbellata*) and Yams (*Dioscorea transversa*).

The fruit of many species of plants were eaten including Fig (*Ficus* spp.), Native Guava (*Eupomatia laurina*), Pigeon Berry (*Monotoca elliptica*), Rough Tree Fern (*Cyathea australis*), Apple-berry (*Billardiera scandens*), Lance Leaf Geebung (*Persoonia lanceolata*), Lillipilli (*Acmena smithii*), wild grapes (*Vitis hyperglauca*) and wild cherries (*Excarpua cupressiformis*). The nuts of the Moreton Bay Chestnut (*Castanospermum australe*), Bush Nuts (*Macadamia ternifolia*) and Buyna (*Araucaria bidwillii*) were also eaten. Ainsworth (1987:43) notes that:

"A very appetising bread was made from a nut flour. These nuts grew on the coastal headlands, and in season when ripe were ground up between heavy stones. The pulp was then placed in running water for six weeks or so and the resultant paste when cooked made a very splendid bread. It resembles arrowroot in smell and was eagerly sought after by the whites when rations ran short."

Animal species exploited included possum, koala, bandicoot, pademelon, wallaby, kangaroo, flying fox, turkey, snake, lizard, echidna and turtle. Birds, fish and many varieties of shellfish were also part of the diet. Shellfish species gathered included cockle (*Anadara trapezia*), club whelk (*Pyrazus ebeninus*), rock oyster (*Crassostrea commercialia*), mud oyster (*Ostrea angasi*), hairy mussel (*Trichomya hirsute*) and pipi (*Plebidonax deltoides*).

5.5 Material Culture

Material culture for the northeastern region of New South Wales is generally similar (see McBryde 1978). This similarity is manifested in the characteristic unbarbed spears and wooden shields (McBryde 1978:178). Sullivan (1978:107) notes that "no barbed, pronged, or bone or shell tipped spears were used for fishing in this area though they were quite common elsewhere on the east coast". Other items included many artefacts made of wood or bark obtained from various trees. For example, shields were made from the wood of the Ironbark or Mangrove (*Avicennia officinalis*) trees and tea tree bark (*Melaleuca quinquenervia*) was used for the construction of huts. The bark from the Kurrajong (*Brachychiton populneus*) was used to make cord for the manufacture of fishing lines and nets. Ainsworth (1987:43) describes the types of nets used:

"In catching fish they used what they called a "tow-row" – that is a finely meshed net attached to a stick of bamboo bent in the shape of a bow about eight feet across between the two ends. This gave a bag effect to the net and with a tow-row in each hand the blacks could surround the fish schools in narrow and shallow waters and catch them by the hundreds. The cordage of these nets, which were very strong and beautifully woven, was made from the inside fibre of the stinging tree and from the bark of the currajong. They used a similar net in hunting. This was made of the same fibre in long sections of four feet in width. These sections when joined together for the purposes of the chase would extend sometimes to a half-mile in length. Where game was plentiful in the forest or scrub the blacks would run the net after the manner of a fence in the shape of a semi-circle. Then the whole tribe with the dogs would beat up the neighbourhood for a mile or two and drive all game – everything – towards the open end of the enveloping net"

Cordage was also used for tying up the ends of canoes. Canoes were generally made from a sheet of stringy bark which was gathered and bound at the ends and had thwarts jammed across the centre to hold the bark apart.

Maintenance tools included stone adzes and chisels, abrasive stones, bone awls and sharpened shell knives and scrapers. Boomerangs, clubs, spearthrowers and hafted axes were also manufactured. Ground-edge stone axes were generally manufactured from river pebbles. These pebbles were ground into shape on sandstone boulders which were generally situated in the bed of a watercourse as water is necessary for the grinding process. Vines were used to assist in climbing trees to capture possums or collect honey. The vine was used to support the climber and, if necessary, an axe was used to cut footholds.

5.6 Population Density

The northern New South Wales coastal zone was one of the most densely settled before the non-indigenous invasion of their lands. The population density has been estimated at 1.5 people/km² (Brayshaw 1986). After Non-indigenous incursion into the region, the Aboriginal population was decimated by smallpox and other introduced diseases as well as through armed resistance to the takeover of their lands.

5.7 Implications for the Indigenous Archaeological Record

As Hall (1996:17) notes:

Given such a range of tasks and activities at a number of levels, it is obvious that people would have left traces pertaining to most of them over much of the landscape; and when the temporal dimension is added, there would be very few localities that would not have been visited in the past. However, when one considers the kinds of material used and their preservational qualities, only a few physical traces would be expected to last the ravages of time...Thus, after hundreds of years, apart from localities which were most heavily used and which witnessed the accumulation of material in heaps (such as middens) only stone (in a form ranging from single artefacts to fish traps), some bone (including burials) and shell and fragments of charcoal (from cooking fires) remain distributed across the landscape.

In this article Hall (1996), however, did not address the possibility of sub-surface material. Also over time, items may be covered as a result of natural processes; this is especially applicable in sandy or aggrading environments. Hence, items may not only be distributed across the landscape but also below the present ground surface.

5.8 Post-Contact History

It was with the invasion of pastoralists, who came to take the land and stay, rather than the non-indigenous explorers or early timber getters, that contact became more extensive. Subsequent to this scale of contact are associated changes in the archaeological record. In this case, the most obvious effect is a change in Aboriginal demographic patterns and as a result site distribution and frequency. Associated with the non-indigenous settlement are a number of other changes such as the cessation of seasonal movement and the establishment of fringe camps. Contact places (e.g. massacre sites, fringe camps, missions, reserves, etc.) can in themselves be considered by members of the Aboriginal community as sites and places of cultural heritage significance. The aim of this Sub-section is to provide both a social and cultural context to these changes.

The typical pattern of initial friendly contact, followed by Aboriginal population decline through open conflict and diseases, was repeated time and time again as the frontier spread across the continent (ATSIC 1990). As settlement spread beyond the government-established areas, random shootings and premeditated massacres of groups of women, children and men were undertaken by squatters in an effort to clear their selections of Aborigines. Sometimes Aboriginal waterholes were poisoned, or Aboriginal people given flour, sugar or damper mixed with arsenic.

Native Mounted Police operated in northern New South Wales from around the late 1840s. Consisting of armed, mounted Aboriginal troopers under the command of white officers, their mission was to reduce Aboriginal resistance to the intrusion and activities of the early non-indigenous settlers. This Force was used throughout the entire region to 'disperse' local Aborigines. 'Dispersal', a euphemistic term for murder, was an official Government policy for dealing with Aboriginal people (Cato 1982:4). Elder (1988:106) notes that "everyone on the frontier knew of the real brutality of the native police but the

official records portrayed this band of licensed murderers as models of probity and conservatism". Elder (1988:106) quotes from a book on the native police:

A young 'sub', new in the force...used the word 'killed' instead of the official 'dispersed' in speaking of the unfortunate natives left *horse de combat* on the field. The report was returned to him for correction with a severe reprimand for his careless working...The 'sub' being rather a wag corrected his report so that the faulty portion now read as follows. 'We successfully surrounded the said party of aborigines and dispersed fifteen, the remainder, some half dozen, succeeded in escaping....

Rowley (1981:86) also notes that the use of the Native Police for 'dispersal' amounted in practice to 'shoot-on-sight' against groups thought to threaten settlers and stock.

Walker of the Native Police Force noted:

The blacks...were in a manner outlawed in their own country, being hunted from the river and creek frontages and thus deprived of means of lawfully obtaining food. Driven to desperation, they carried out a constant war of retaliation with the whites and lived solely on cattle...It is the hostile bearing of the settlers that causes the blacks to keep in such large numbers, for they cannot continue the assemblies customary to them for more than a few days on account of the want of food...They supply this want from the herds of the settlers...

At Shaws Bay, near Ballina, Haglund (1991) notes that a massacre occurred around 1853-54. Ainsworth (1987:45) states that between 200 and 300 Aboriginal people were camping on a "slope of the hill facing the valley reaching over towards Black Head". As a result of an attack by Native Mounted Police at least 30 and 40 people are believed to have been "killed outright and many who got away were badly wounded" (Ainsworth 1987:45).

As Aboriginal people were dispossessed of their land many became dependant fringe-dwellers around the new settlements. Some were employed as stockmen, domestic servants and shepherds. Within the study region, the Aborigines were of great assistance to the colonisers in mustering bullocks before fences were erected; finding cedar trees, cutting the undergrowth for them and also for clearing undergrowth and vines before a selection was cleared of its trees. They also assisted with hauling timber. Aborigines became skilful in breeding in horses and as police trackers and were often on the staff at police stations. The women often took on jobs with households. However, wages were not always given for this work (England and Walker 1976: 17, 46).

Other Aborigines were forced into government reserves or church missions, where they had to rely on non-indigenous people for handouts of food and clothing. In the 1870s churches again became interested in the welfare of the Aborigines and set up more missions. In 1882 the Aborigines Protection Board of New South Wales was formed and the first reserves were established. For almost the next 100 years - until the 1960s - Aborigines were increasingly institutionalised and their rights restricted by legislation (ATSIC 1990).

In 1909 the *New South Wales Aborigines Protection Act* was passed (ATSIC 1990). The Board established by this Act owned all the improvements on reserves, had the power to move Aboriginal people out of towns, appoint police as local guardians for reserves and to control all aspects of the lives of Aboriginal people living on reserves. Amendments to the Act in 1915 and 1918 allowed the Board to remove children from their parents for training, and to force "half-castes" to leave the reserves. These actions led to a considerable loss of traditional knowledge from being passed on between

generations, and the break up of families. The practise of traditional lifestyles, including language and religion, were actively discouraged or prohibited. From the 1920s the official government policy changed from blanket 'protectionism' to forced assimilation for 'part-Aborigines' and in 1940 this assimilation policy was extended to all Aborigines. An implication of this policy was the eventual closure of all reserves. However, the Commonwealth policy of 'self-determination' for Aboriginal people was presented in 1972.

In 1983 the *Aboriginal Land Rights Act* was passed in New South Wales. This Act recognises that the State of New South Wales was traditionally owned and occupied by Aboriginal peoples and acknowledges the vital importance of land in Aboriginal culture. Under this Act, a system of Land Councils - at State, regional and local levels - were set up. Aboriginal culture in New South Wales is thus being revitalised. An important issue is the management and protection of Aboriginal sites and heritage items. Land Councils and other organisations (e.g. Aboriginal Corporations) provide advice to the National Parks and Wildlife Service, museums and consulting archaeologists on community wishes on these matters.

In the case of the northern coast of New South Wales, Byrne (1986) notes that many of the mission communities were able to maintain close links with their former lands. Many of the older initiated people kept alive the traditions associated with sacred places and the communities have maintained a unique attitude to the land which is possibly more spiritual than economic (also see Sub-section 8.2). The impact of non-indigenous settlement has been marked, but despite the assimilationist policies of past Governments, Indigenous people have not lost their Aboriginality. There is a demonstrable continuity of Aboriginal culture, and it has adapted rather than perished (see Godwin and Creamer 1984).

5.8.1 Implications for the Cultural and Archaeological Record

With the invasion of the area by non-indigenous people, the traditional lifeways of the local Aborigines were severely disrupted. Although some Aboriginal site types may have persisted into the post-invasion period (e.g. occupational camps), they generally ceased to be formed.

In the initial phase of this period non-traditional items were incorporated into subsistence activities. For example, steel axes replaced the traditional stone axe and glass and electricity insulators were sometimes flaked to obtain sharp cutting implements. Hence, the archaeological record may reflect the use of such non-traditional items.

6.0 INDIGENOUS ARCHAEOLOGICAL CONTEXT

The aim of this Section is to provide a general understanding regarding Indigenous archaeological site potential within the study area. The purpose of presenting this data is to provide background information so that sound predictions regarding the archaeological potential of the study area can be formulated. In Sub-section 6.1 an outline of the results of archaeological research for the broader study region is provided. Further Sub-sections review archaeological consultancies undertaken in the vicinity of the study area (Sub-section 6.2) and discuss previously recorded sites (Sub-section 6.3).

6.1 Northern New South Wales Archaeological Record

Although Aboriginal occupation of Australia is dated to around 60,000 years ago, the oldest dated site in the region (northern New South Wales/southern Queensland) dates to at least 22,000 years (Neal and Stock 1986). This site is located at Wallen Wallen Creek, North Stradbroke Island. There is also a relatively good archaeological record for the past 6,000 years.

Current theory holds that, as Pleistocene glacial ice melted and the seas rose, coastal people were forced to adjust to the changing landscape (Hall and Hiscock 1988). Seas reached their present levels sometime around 6,000 years ago. Through time regionally isolated settlement-subsistence systems and associated socio-political entities developed (McNiven 1991). Some groups fissioned and may have annexed territory from groups further west of the coast. By about 2,500 years ago, the region was populated by numerous named groups with diverging languages, similar to those recorded historically. These diverse groups were far from isolated entities and a great deal of social interaction (trade, marriage and other ceremonies) took place during the year. Thus, rather than taking the form of a patchwork quilt over the landscape, these different societies were more like a living interwoven mosaic due to extensive social ties through intermarriage and other socially-linking mechanisms.

Several locations within this region of Australia have been the subject of archaeological research, especially during the past decade (see Hall and Hiscock 1988). Archaeological excavations have revealed a long and interesting prehistory. For example, to the north of the Tweed River, excavation was carried out at Bushrangers Cave, an Aboriginal camping place located at the base of a high cliff in the McPherson Range at the headwaters of the Nerang River. Analysis of excavated material revealed that occupation of this campsite commenced sometime around 10,000 years ago (Hall 1986; Hall 1999). The remains of food animals found at this site do not change throughout this long span of occupation. These remains indicated not only that Aboriginal people using this site enjoyed a diet of wallaby, possum, turkey egg, fish and other animals but also that the local environment had remained quite similar for at least the last six millennia. It is noteworthy that Bushrangers Cave is located on the eastern side of a historically recorded Aboriginal pathway running from the coast to the mountains and river valleys to the west. It is thought that this pathway, which permitted travel and social interaction between the various clans of the region, has been in existence for thousands of years.

Appleton (1993) excavated an estuarine midden site at Sexton's Hill on the Tweed River. The midden was comprised predominantly of oyster although fish (mainly bream and snapper) and some macropod bone were also present. Thirty stone artefacts were recovered including bone points. The time span for the use of the site is probably from 4,700 BP (Before Present) to 4,200 BP (Appleton 1993).

Barz (1980) excavated National Parks and Wildlife Service (NSW) site number 04-6-0006 at Terranora (4kms south of Fingal). This shell midden, which overlies basalt bedrock, is one of two excavated middens on the Tweed and is the only undisturbed midden investigated in this area. The base of the midden has been dated to 605 years BP and analysis of the excavated material showed an apparent change from reliance on fish resources to a greater use of shellfish over time. However, the lack of comparable investigations precludes statements regarding the site's representativeness or importance (Dallas 1988). Burials associated with this site were removed and re-interred at the Tweed River Aborigine memorial (see Piper 1994).

In the 1960s Dr. Laila Haglund undertook the salvage excavation of the well-known Aboriginal burial ground at Broadbeach (Haglund 1976). Some 150 individuals were buried at this site. None of the remains dated prior to c. 1,200 years ago. From her analysis, Haglund (1976:87) suggested that "burial rites were apparently prolonged and complicated, consisting of many separate features which could be combined in different ways on different occasions". Given a fairly universal rule that cemeteries are an intra-rather than inter-community phenomenon (Pardoe 1988), the evidence suggests that Aboriginal groups in the region became established as separate socio-political entities within the past 1,500 years or so.

One of the most interesting features of the Bushrangers Cave evidence is that the deposition rate (i.e. the amount of material left at the site per each 100 years) of Aboriginal cultural items increases significantly after about 2,500 years ago (Hall 1986; Hiscock and Hall 1988; Mowatt 1989). This finding is consistent with results from other sites outside this local area and is interpreted as evidence of not only a general increase in Aboriginal population during the last few thousand years but also an increase in the number of named Aboriginal groups. It is postulated that the increase in the number of groups is due to their splitting into separate units and spreading further west from the coast to occupy less densely populated country (for details of this model refer to Hall and Hiscock 1988). On linguistic grounds it is possible that a split occurred within a larger Bundjalung group with new dialects forming through time to produce those of the modern communities. From the linguistic work of Crowley (1978) and Sharpe (1978), it would appear that the Bundjalung languages have spread from south to north, and that the latest spread may have been well within the past 2,000 years. This sort of explanation is consistent with evidence gathered about numerous Aboriginal societies during the past 200 years. For example, based on linguistic and archaeological evidence, it has been argued that the Gnugi people of Moreton Island, had begun to diverge from a larger group on Stradbroke Island by at least 500 (and possibly 1,000) years ago (see Bowen 1989; Hall and Hiscock 1988). This gradual process of fission eventually produced the numerous Aboriginal groups as well as the diverse (although related) set of languages and dialects in the region that were recorded by early non-indigenous people into this part of Australia.

6.2 Cultural Heritage Assessments in the Region of the Study Area

Numerous archaeological surveys have been conducted in the study region (e.g. Barker 1990; Barz 1980, 1982; Barz and Piper 1980; Bonhomme 1988; Border 1991, 1992; Dallas 1988; Davies 1991a, 1991b, 1992a, 1992b, 1992c, 1993, 1994, 1998; Hall 1980, 1990a, 1990b, 1991a, 1991b; Higgins 1990; Koettig 1988; Lilley 1981, 1982; Navin 1990; Piper 1983, 1990, 1994a, 1994b, 1997, 2000, 2001). A large number of these surveys, however, did not locate archaeological sites (e.g. Dallas 1988; Davies 1992a, 1992b; Hall 1980, 1990b, 1991b; Koettig 1988; Lilley 1981, 1982; Piper 1983, 1990). As a result of his survey of a proposed housing development at Cudgera Creek, Hastings Point, Lilley (1982b) suggests that poor ground surface visibility and large-scale disturbance are the main factors for a lack of archaeological sites in these areas (also see Hall 1990a, Lilley 1981 and Koettig 1988).

In 1990 Hall was involved in the assessment of Aboriginal sites at the Coolangatta airport. Hall (1990a) located two site complexes and "occasional stone artefacts and shellfish remains in isolated spots in the more elevated parts". Due to visibility constraints in the swamp area bordering the Cobaki Broadwater, Hall (1990a) stated that "the evidence for Aboriginal occupation was restricted to the slightly higher ground surrounding the swamps". Within the two site complexes, shellfish remains were located at varying densities with evidence suggesting that subsurface remains were also present. Stone artefacts were also located over the area. Hall (1990a) noted the common presence of "bevelled pounders", large wedge-shaped artefacts that are found throughout the coastal zone between Cooloola and the Tweed River, that have been identified as tools used in the processing of the rhizome of the fern *Blechnum indicum* (Gillieson and Hall 1982; Higgins 1988).

In 1990 Hall completed a survey of the Cobaki Lakes Project. The Cobaki Lakes Project site was initially surveyed in 1981 by Lilley, but due to visibility constraints a second archaeological survey was undertaken by Hall (1990b). Despite the Cobaki Lakes Project site being situated just to the west of the site complexes located on the northern margin of Cobaki Broadwater, no archaeological remains were located. Hall (1990b) suggests that the negative results may be related to factors such as sand mining, ploughing and erosion. Poor ground surface visibility in the swamp areas also placed constraints on the survey.

Davies (1991a) surveyed the Telstra Optic Fibre Cable route between Anderson's Ridge and Banora Point and recorded shell middens in the dunes adjacent to Crabbes Creek Beach and a contact site on the banks of the Tweed River. The terrain adjacent to and behind the foredunes of Crabbes Creek Beach was also surveyed by Barz (1982) and Navin (1990).

Hall (1991a) and Davies (1992b) have undertaken surveys to the east of Chinderah. Both surveys were of low-lying coastal heath with a sand dune extending along the margin. This dune originated as a sand bar on a surface which dates some 220,000 BP. As a result of subsequent episodes of deposition and erosion some parts of this dune are Pleistocene (before 10,000 BP) while others are late Holocene (2,000 to 3,000 BP). Hall (1991a) located two low density sites on this dune and noted that the archaeological material at one of the sites was eroding from below the present surface suggesting that "more material may be present over a more extensive area". Hall (1991a) stated that "given the considerable antiquity of the sand ridge...it is quite

possible that similar materials exist undetected below its surface (especially along the top of the ridge)", and noted that the lack of high density scatters (and other archaeological remains) "may be more a function of poor ground surface visibility plus sand deposition over such remains than a reflection of absence". Although the dune has high archaeological potential, no Aboriginal archaeological material was located during Davies' (1992b) survey of the southern extent of the dune. Davies (1992b) suggested that factors contributing to the negative result included restrictions imposed by poor ground surface visibility, natural erosion and deposition as well as cultural factors such as sand removal and disturbance.

Hall (1991b) conducted an archaeological survey of the Chinderah Bypass road without locating archaeological material. An archaeological survey of a residential development area located on hilly terrain between Cudgera and Christies Creeks was undertaken by Collins (1993 - see Rich and Ahoy 1993). Four isolated finds and four low density stone artefact scatters (two of which were associated with shellfish fragments) were located. Of these only one stone artefact was located on low-lying terrain.

A quarry site was located near Cudgen Lake during an archaeological survey of the Cudgen Lake Nature Reserve Proposal. The site was found at the base of a small hill which extended down to the Lake (see Rich and Ahoy 1993).

During a survey conducted in 1980, Piper reported some 20 Indigenous archaeological sites in this general locality including 10 shell middens, four stone arrangements and six isolated occurrences of stone artefacts (Piper 1980 cited in Rich and Ahoy 1993). Piper (1976 cited in Rich and Ahoy 1993) has also located two sites on elevated terrain in the Tweed River floodplain. Both were low density artefact scatters located on elevated areas about two metres above the floodplain beyond the swamp and flood level (see Rich and Ahoy 1993).

Davies (1994) undertook an archaeological assessment of the Billinudgel to Chinderah bypass with representatives from the Tweed Byron Local Aboriginal Land Council (LALC). The present study area is located to the west of this bypass (now the Pacific Highway). Indigenous archaeological material was not located during this survey. Davies (1994) noted that the result may have been due to factors such as poor ground surface visibility and ground surface disturbance. As a result of this study, Davies (1998) identified three areas for further archaeological work. These areas included the crest of a spur line, the high bank of Cudgera Creek and the crest of a major ridge line. Archaeological test excavations were undertaken at these three locations without uncovering Indigenous cultural material.

Collins (1999 cited in Department Transport and Regional Services 2004) undertook an assessment of the route options for the Tugun Bypass. As a result of a field reconnaissance three low-density stone scatters and a single isolated artefact were recorded. All were in disturbed contexts. Although these sites were assessed as having a low level of archaeological (scientific) significance, the Indigenous group involved in the assessment considered that the sites had high social and/or cultural significance values and that the cultural landscape of which they were part was worthy of preservation (Collins 1999 cited in Department Transport and Regional Services 2004).

Davies (2004) and representatives from the Tweed Byron LALC undertook a cultural heritage assessment of a parcel of land a Cudgen to the south of the present study area. The terrain was low-lying and planted with sugar cane. No archaeological or cultural sites / places were identified.

Cultural heritage assessments (including sub-surface testing) were undertaken for the Tugan bypass, which is located to the north of the present study area. Although the location of previously recorded sites was noted, no new sites were recorded (Department Transport and Regional Services 2004).

6.3 Recorded Indigenous Cultural Heritage Sites in the Vicinity of the Study Area

A search of the New South Wales Department of Environment and Climate Change Aboriginal Heritage Information Management System (AHIMS) has shown that although no recorded sites appear to be located specifically within, three sites are located in the vicinity of the study area. These sites are listed in Table 1. None of the sites are under threat of impact from the proposed development.

Table 1. Recorded Sites in the Vicinity of the Study Area.

SITE NUMBER	SITE NAME	SITE TYPE	INFORMATION
04-1-0147	Bingam Bay BMP-05-0133	Information not provided	Site recorded by Fox
04-2-0087	Cobaki Broadwater 2	Midden	Site recorded by Piper
04-2-0148	Cabaki Broadwater Intet BMP-05-0150	Information not provided	Site recorded by Fox

The coordinates provided for site #04-2-0087 places the site to the east of the study area. Coordinates were not provided for sites #04-1-0147 and #04-2-0148. These sites were recorded by Ian Fox during his PhD project: Bundjalung Mapping Project. This Project which was undertaken with the cooperation of Indigenous groups, has resulted in the recording of sites of cultural significance in the Bundjalung area, particularly the northern Bundjalung area.

Recorded sites to the north of the study area include:

- #4-2-39 which is located on a low rise on the foreshore of Cobaki Broadwater within the boundaries of Gold Coast Airport. The site is listed on the Register of the National Estate. The site is a complex of stratified middens with stone artefacts and deposits to a depth of up to 75 cm. The National Estate midden complex has outstanding value to the local Aboriginal community as an educational resource and has intact cultural deposits that have considerable archaeological research potential. It is also the only estuarine midden complex that still retains much of its former environmental context (Department Transport and Regional Services 2004).
- #4-1-31 which is a midden recorded near Cobaki Broadwater immediately west of the Gold Coast airport boundary. The site is in poor condition and consists of a surface scatter of pipi, whelk and cockle shells, with a few small stone artefacts, extending for 120 to 150 m along a section of vehicle track (Department Transport and Regional Services 2004).

Recorded sites to the south of the study area include:

- #4-1-0021 which is a midden located at Chinderah. It comprises an earth mound, shell and stone artefacts (Davies 2004).

- > #4-2-0022 which is an open camp site located at Terranora (Terranora 10) (Davies 2004).
- > #4-2-0023 which is a midden located at Terranora (Terranora 11). The site features include an earth mound, shell and artefacts (Davies 2004).
- > #4-2-0035 which is a midden located at Chinderah. The site comprises an earth mound, shell and artefacts (Davies 2004).
- > #4-2-0109. The site which is named Crescent Street 1 comprises stone artefacts (Davies 2004).

6.4 Summary of Archaeological Context

Based on the information provided within this Section of the report, it is considered that archaeological knowledge regarding possible site types and potential areas for site location can be proposed. Based substantially on the information contained within this Section with additional information from Section 9.2, a predictive model of site location for the study area can be proposed (see Sub-section 9.3.1).

7.0 DESCRIPTION OF THE STUDY AREA

This Section of the report outlines the environment and natural resources of the study area (Sub-section 7.1). These are discussed in terms of their possible implications for the archaeological and cultural record. Following this discussion, and based on information contained in all the preceding sections of this report, a predictive model for the study area will be proposed (Sub-section 9.3.1).

7.1 Environment and Resource Background

The following sections outline the topography, geology, vegetation, and fauna patterns within the study area. These aspects of the environment are indicators for archaeologically sensitive areas. For example, the archaeological implications for these related factors include:

➤ **Topography**

This factor relates specifically to access and available camping locations.

➤ **Geology and Soils**

An understanding of the geology of the region provides information related to the types of lithic materials available for exploitation by Aboriginal people. Soils are derived from the underlying geology or from fluvial or alluvial processes which have the potential to conceal or expose sites. In areas where a deep soil profile is present the potential for stratified archaeological sites is greater. Soils can also influence vegetation patterns.

➤ **Vegetation**

The type of vegetation communities present in the region relate directly to the types of plant species available for exploitation and indirectly to the faunal species supported by the available plant species.

➤ **Fauna**

The type of faunal species present relates to various factors including vegetation type and water availability. Additionally, terrain types (e.g. open coast, estuarine, valleys, ranges, etc) also affect the presence/absence of particular species.

All these factors affected the types of exploitation strategies employed by Aboriginal people and hence the formation of the archaeological record. Additionally, these factors also affect the survival and present detectability of sites (see Sub-section 9.1).

7.1.1 Topography

The terrain within the study area primarily comprises a north-south ridge crest and associated slopes. Site elevations range from approximately RL 80m AHD at the south western and northern parts of the site to RL 50m AHD in the western part of the site. Falling away from the ridge towards the western boundary of the study area, the slope increases from a moderate (10° – 18°) to steep (26° – 30°) incline. The slopes to the east are generally moderate.

➤ **Archaeological Implications**

The main element within the above mentioned topographic areas that may have been utilised by Aboriginal people would have been relatively flat sections of the ridge line (see sub-section 9.3.1). Evidence of the use of different topographic features would be in the form of one or more of the potentially occurring archaeological site types (see Sub-section 8.1). Although not always evident from the archaeological record, cultural factors may have affected the placement of camps within the study area.

7.1.2 Geology and Soils

The geology present within the area is comprised of Tertiary deposits of Lamington Volcanics (basalt with members of rhyolite, trachyte, tuff, agglomerate, conglomerate) and Palaeozoic deposits of Neranleigh-Fernvale Group (greywacke, slate phyllite quartzite).

The predominant soil type across the majority of the study area is Ferrosols (Gilbert and Sutherland 2003) with a relatively deep soil profile. Bedrock is generally from around 1.4 to over 3.6 metres below the ground surface (Maiden Geotechnics 2004a, 2004b).

➤ **Archaeological Implications**

Although lithic raw materials within the bedrock (e.g. basalt, rhyolite, greywacke) are suitable for the manufacture of stone artefacts, such materials may not be exposed on the ground surface. As noted above soil profiles are generally deep and bedrock is around 1.4 to 3.6 metres below the ground surface. Hence, it is unlikely that lithic raw material suitable for the manufacture of stone artefacts was available specifically within the study area.

7.1.3 Vegetation

The majority of the study area has been previously cleared of vegetation. More recent clearing has occurred on steep land in the south west of the study area. Tree vegetation now present is heavily disturbed and / or regenerating vegetation communities. The majority of the area proposed for development is dominated by grass cover. The area highlighted on Figure 2 where trees are proposed to be removed comprises tall open forest dominated by Turpentine (*Syncarpia glomulifera*). This is an introduced community originally planted for the purposes of providing a windbreak. To the west (and outside of the area proposed for development) below the existing cleared area, the site drops steeply and the resulting escarpment supports tall woodland dominated by Camphor Laurel, Brush Box (*Lophostemon confertus*) and Grey Gum (*Eucalyptus propinqua*) (Biolink 2005).

➤ **Archaeological Implications**

Vegetation types once present within the study area may have provided a variety of resources for exploitation (food and material culture items) (see Sub-sections 5.4 and 5.5). For example, the bark from some tree species were used for material culture items (e.g. containers, roof sheeting; see Sub-section 5.5). Honey and fauna (e.g. possum) were also removed from trees. The physical indications of these activities are likely to be visible as scarred trees (e.g. container scars, footholds, etc.). The implication of vegetation clearance that has occurred is that this site type would now not be present specifically within the area proposed for development. It should be stressed, however, that as a result of the significant modification to the vegetation

pattern since non-indigenous settlement, it is difficult to draw inferences between current patterns and past Indigenous use.

7.1.4 Fauna

As mentioned above (Sub-section 7.1), the appearance and distribution of fauna within an area relates to factors such as vegetation communities, water availability and terrain types. It is considered that prior to non-indigenous settlement the study area would have contained a diverse range of faunal species. Non-indigenous settlement and associated economic activities have disrupted the area's original faunal communities.

> Archaeological Implications

Numerous faunal species were utilised by Aboriginal people and indicators of this activity may be present in the form of bone and shellfish remains. Shellfish remains may occur as both surface and sub-surface (or stratified) deposits, whereas generally bone remains are most likely to occur within stratified archaeological deposits or in a sub-surface context.

7.1.5 Prior Land Use

It is understood that the site has previously been used for banana plantation and other cash crop farming activities. As a result of these activities, the ground surface and immediate sub-surface would have been disturbed.

7.1.6 Summary Implications

It is considered that, given the environment and resources (primarily flora and fauna) available, the terrain within the study area may have been exploited by Aboriginal people. The exploitation strategies would have left visible markers in the landscape (i.e. specific site types - see Sub-section 9.1). However, the detection and survival of such visible markers is often conditional upon natural (e.g. sheet wash, erosion, deposition) and cultural processes (e.g. non-indigenous land use). As a result of prior land use activities, it is unlikely that any surface archaeological material located would be *in situ*.

8.0 THE POTENTIAL CULTURAL HERITAGE RECORD

Although Aboriginal people may have exploited all parts of the terrain present within the study area, their activities will only be reflected in the archaeological record if there are physical remains. However, many sites of significance to Aboriginal people do not contain such remains (cultural sites). In the following Sub-sections and based on information provided in the previous sections of this report, the most likely archaeological (Sub-section 8.1) and cultural (Sub-Section 8.2) site types that may be found within or immediately adjacent to the study area are discussed. The notion of Cultural Landscape is discussed in Sub-section 8.3.

8.1 Archaeological Site Types

There are potentially at least three archaeological site types that may be located within the study area:

> Stone Artefact Scatters

Stone Artefact Scatters are the remains of activity sites and contain evidence of Aboriginal activities such as the manufacture of stone artefacts. These sites may represent periods of variable duration and may reflect a variety of activities. Due to the resilient nature of stone material, Stone Artefact Scatters are also the most common archaeological site type.

Aboriginal people fractured fine-grained isotropic rocks to produce sharp cutting and scraping instruments. The raw material and form of stone tool artefacts can be quite varied, although fine-grained isotropic rocks, such as quartz, chert and silcrete, were preferred where sharp cutting and scraping edges were required. Crystalline volcanic rocks such as basalt, or pebbles of raw material such as argillite or greywacke, were flaked and then ground to form hatchet-heads for a variety of chopping and cutting tasks. The results of such activities as well as stone artefacts themselves, occur as scatters of modified stone (e.g. cores, flakes, flaked pieces, hammerstones, and anvils). Owing to site frequency and artefact density, Stone Artefact Scatters provide valuable information relating to past Aboriginal settlement and culture.

Stone Artefact Scatters often indicate the remains of occupational camp sites where other associated organic material has decayed, but they can also reflect the results of a specific activity (e.g. stone knapping site or food processing site). Sometimes Stone Artefact Scatters are recorded as Knapping Sites where only that specific activity is present. Knapping Sites and Stone Artefact Scatters, along with other site types such as hearths (fireplaces), shell middens, burials, shelters, etc., are often called Site Complexes.

Stone Artefact Scatters have been found in various locations, although the majority tend to be located on reasonably level ground. Higher density artefact scatters will generally be located closer to permanent water, whereas lower density and background scatters may be found some distance from permanent water.

Scatters of stone artefacts can be found in varying concentrations either in open terrain, or in rockshelter settings. The designation "site" is most commonly applied to high-

density concentrations of archaeological material, whilst the surrounding intermittent, low-density material is referred to as "background scatter". This "background scatter" often occurs in the form of isolated artefacts. Researchers often assume that all significant cultural information occurs within high-density concentrations of artefacts and areas of low artefact density or isolated items (background scatter) are of no value. A more accurate approach is to view the archaeological record as a more or less continuous artefact distribution of variable density across the landscape (see Dancey 1981; Dunnell and Dancey 1983:272; Dunnell 1992:34).

Stone artefact scatters and isolated artefacts have previously been recorded in the region of the study area (see Sub-sections 6.2 and 6.3).

➤ **Shell Middens**

In essence, Shell Middens are prehistoric food refuse heaps. They are deposits of shells of marine or freshwater molluscs that formed part of the Aboriginal diet. Midden sites can range considerably in size from large mounds to small, superficial scatters of shell. Middens may also contain the bones of terrestrial animals exploited for food as well as artefacts of stone, bone or shell (Bell 1986:28). These sites can occur close in inland lakes, swamps or rivers. Burials are sometimes located in middens (Bell 1986:30).

Shell middens have been recorded in the vicinity of the study area (see Sub-sections 6.2 and 6.3).

➤ **Contact and Post-Contact Period Sites**

Aboriginal settlement patterns and lifestyles changed significantly as non-indigenous people moved into local areas. Destruction of major portions of the natural landscape forced Aboriginal groups into a dependent relationship with the non-indigenous settlers. Locations where violent and non-violent contact occurred, fringe encampments which began to develop after contact and places of work (e.g. pastoral stations), are often remembered by Aboriginal people living today (Goulding 1993). Because of the close and personal historic contact Aborigines may have with these camps and locations, they regard them as significant and part of their history to be documented and, in some cases, preserved. While some of these sites still have visible remains, other sites often have no physical alterations to the landscape (e.g. massacre sites). Although there is often no documentation in relation to some of these sites, sometimes records do exist (e.g. station records, diaries, newspaper articles, etc.). Additionally, consultation with local and Indigenous informants assists in the identification of such sites.

8.2 Cultural Site Types

The following site types generally do not have physical indicators of their presence:

➤ **Mythological Sites and Places of Significance to Aboriginal People**

Mythological Sites usually involve no alteration to the natural landscape. As such they are archaeologically invisible and can only be identified with the aid of Aboriginal consultants. Such sites hold particular cultural significance to Aboriginal people.

Despite assumptions to the contrary, there exists a vital knowledge of 'sites of significance' amongst Aboriginal people. The Aboriginal Sites of Significance Survey conducted in New South Wales during the 1970s resulted in the recording of over 500 sites of Aboriginal significance. A large proportion of these were mythological or

ceremonial sites (Godwin and Creamer 1984). A case study by Godwin and Creamer (1984) at Yamba, at the mouth of the Clarence River, yielded numerous places of significance to Aboriginal people which were classified under a number of categories as follows:

Good Food Places

These were places from which good supplies of fish, yams, birds' eggs, and so on, can be obtained.

Recent Camping Places

These consisted of two kinds of places. First were those associated with the location of Aboriginal missions and reserves in the area over the past 100 years. Second were those associated with getting away from town, and these often served as base camps for food-gathering activities.

Dangerous Places

These were identified as being where there had been a manifestation of a spirit, or where such manifestation might occur. Usually it involved a person being physically harassed by a spirit.

Mythological Sites

These were identified by the presence of a feature central to a myth or that is explained by a myth. Mountains, rocks, swamps, and other natural places may be mythological places.

Ancestral Camping Places

These were usually identified by spirit harassment.

Archaeologists generally cannot predict the presence of Cultural Sites. However, from background research and Aboriginal consultation the presence of such sites may be revealed.

8.3 Cultural Landscape

Although all the above mentioned site types are described in isolation of each other the pattern of distribution of such sites in the landscape should be viewed as providing information regarding the cultural landscape. That is, sites do not occur in isolation from other sites but are linked by various overlapping and interconnected relationships. Aboriginal people also managed the landscape in various ways (e.g. firing, deliberate plantings, fish traps, etc.) for resource utilisation. Thus, to Aboriginal people the landscape is part of the cultural heritage. As Ross (1996:9) notes:

Generally speaking, Aboriginal people view landscapes differently from non-Aboriginal people. To most Aboriginal people a landscape is an entity in its own right. And it is more than the land alone, as the concept incorporates relationships between place and people, both in a spiritual sense and from the perspective of the resources which the landscape supplies. Although different components of the landscape may be recognised and named, the whole is more than the sum of its parts.

9.0 ARCHAEOLOGICAL PREDICTIVE MODELLING

This Section outlines the landscape archaeology approach employed in this study as well as archaeological site location predictions.

9.1 Landscape Archaeology Approach

One useful approach to generating predictive models for Aboriginal archaeological site location employs the notion of landscape archaeology (see Rossignol and Wandsnider 1992). This approach follows the tenets of predictive modelling in hunter-gatherer archaeology whereby different environmental zones are seen to have provided distinctive sets of constraints on land-use patterns, particularly in terms of foraging behaviour and camp placement. Predictions are based on the known pattern of site distribution in similar land systems. The division into environmental zones relies on factors such as landforms, soils, vegetation, etc. These factors are assumed to have provided distinctive sets of constraints, which influenced prehistoric land use patterns in each zone. Hence, site types and their distribution should differ between zones. However, the detection of sites in each zone often depends on the following factors:

➤ **Ground surface Visibility**

This factor is determined by the nature and extent of the ground cover (e.g. vegetation).

➤ **Burial of Original Land Surfaces** (e.g. by aggrading flood alluvium or slope wash).

➤ **Exposure of Prior Land Surfaces** (e.g. surfaces eroded by water or wind erosion forming features such as gullies and sheet-eroded surfaces or washouts along vehicle tracks).

Exposure can also be enhanced by activities which disturb the ground surface (and at the same time disturb the site). Ploughing and logging are two examples of this form of disturbance. Research has demonstrated that ploughing / cultivation does not destroy artefacts but rather results in horizontal and / or vertical displacement, changes in the condition and preservation of artefact assemblages, changes in type frequencies and in the destruction or alteration of features and layers (see Boismier 1991:17). Horizontal displacement of artefact patterning is largely related to size, cultivation equipment type and slope. In general, studies have indicated that for all types of cultivation equipment, artefacts larger than 4 cm are moved the greatest horizontal distance, with artefacts smaller than 4 cm tending to be subjected to less horizontal displacement. Vertical displacement generally results in the segregation of artefacts by size. The results of vertical segregation is that artefacts greater than 4 cm tend to occur in higher proportions on the surface relative to the total plough zone artefact population. The most severe frequency changes occur among large artefact types, where the sorting action of plough implements causes them to be proportionally over-represented on the surface. Segregation effects on small artefacts result in them being either more evenly distributed throughout the plough zone or sorted to low levels within it. Both result in lower frequencies of small artefact types on the surface relative to the total plough zone population. Large artefact types have been shown by archaeological and experimental studies to be subjected to a greater amount of pattern disturbance and plough damage than smaller artefact types (Boismier 1991:18; also see Schofield 1991). That is, the

patterning of large artefact types are more suitable for recognising plough-induced patterning with small artefact types being better indicators of archaeological patterning.

The depth of the cultivation zone is also relevant. Stratified archaeological deposits in alluvial areas have the potential to extend undisturbed below the disturbed cultivation zone (around 30 - 40cm).

➤ **Site Obtrusiveness**

Some sites such as stone arrangements are easier to detect than (for example) sparse scatters of flaked stone artefacts, especially where the latter occur on well-vegetated surfaces.

➤ **Archaeological Visibility**

This factor relates to how observable archaeological material is on a given land surface. For example, stone artefacts will be easily observed on gravel free soils, where as on stony terrain these artefacts will be less easily detected.

9.2 Environmental Zones within the Study Area

Environmental Zones and their individual factors (e.g. topography, geology, soils, vegetation) have a direct relationship to land use patterns, and as a result Aboriginal site locations. These various factors will also influence site preservation (see Sub-section 7.1). In order to gain a better understanding of the relationship of land use patterns, Davies (1994) divided the terrain through which the Billinudgel to Chinderah Bypass was located into two different Land Zones: Hilly Terrain and Low-lying Terrain Zones. The division was based on a combination of factors including topography, geology, soils and vegetation. Each Zone incorporated a particular type of land form, irrespective of its particular placement within the region. The environmental characteristics of each Zone were then assessed in relation to assumed patterns of site distribution and land use within each Zone.

The environment of the present study area mirrors the environment of the Hill Terrain Zone as described by Davies (1994):

➤ **Hilly Terrain Zone**

This Zone consists of low hilly terrain with elevations from 10m a.s.l. to around 80m a.s.l. The Zone has generally been extensively cleared although limited areas of regrowth dry and wet sclerophyll forest are present. Most of the ridgelines in this zone have been disturbed as a result of roadworks, the construction of houses and associated farm buildings, and cultivation. As a result of banana plantations, the sides of many of the ridgelines have also been disturbed.

The nature of the topography in this Zone would generally restrict the location of archaeological sites to level terrain such as saddles and crests on the ridge and spur lines, with sites occurring less frequently on slopes. Higher density artefact scatters would most likely be located along the lower end of the ridgeline or spur before this feature flattens into the surrounding low-lying terrain. It is most likely that background scatter will be found throughout this Zone especially on terrain adjacent to areas of high archaeological potential (i.e. crests of ridge and spur lines). It is unlikely that archaeological site types other than open sites (artefact scatters and isolated finds)

would be located in this Zone, although Scarred Trees and quarries may also be present.

This Zone is considered to be an aggrading land surface. Hence, site detectability may be restricted. Also, poor ground surface visibility as a result of the presence of pasture grasses and disturbance (cultivation, construction) place constraints on detecting archaeological sites.

9.3 Predictive Modelling

A predictive model is defined as "hypotheses or sets of hypotheses which simplify complex observations whilst offering a largely accurate predictive framework for structuring these observations" (Sebastian and Judge 1988:1). Before discussing the Predictive Site Location Model for this study, some caution is offered regarding this approach to site location. Location modelling is based on the results of archaeological surveys in similar and adjacent regions. Therefore, restricted survey strategies based on such prior distributions may only tend to confirm an already biased pattern. The accuracy of predictive models is reliant upon the standards of data from which they are derived. Given the constraints under which the major body of data are often collected (i.e. through limited field surveys), the level of understanding required to achieve the sort of heuristic, higher level framework, defined above is rarely achieved. Due to the fact that these surveys usually examine non-probabilistic samples and are restricted by variables such as topography and ground surface visibility, it is unavoidable that certain areas are not sampled. Therefore, although we may learn more about the nature of the record in certain areas of specific terrain, we learn little about the record that exists in areas that were under-represented in field surveys due to the constraints noted above. While techniques built into data collections such as testing of initial hypotheses and collection of independent data sets are avenues to address these problems, any study conducted with a low percentage sample coverage for a large area over a comparatively short time period will contain biases and inaccuracies which can become amplified when extrapolated. Thus, the identification of certain 'archaeologically sensitive' areas does not necessarily rule out the possibility that other areas also have archaeological potential. While recognising this in-built bias in the data base which provides the basis for predictive models of site location, they are employed for reasons of practicality.

9.3.1 Predictive Model for the Study Area

It is considered that the main site type that could be located within the study area would be stone artefact scatters, isolated stone artefacts and / or background scatter. There is a very low potential that shell scatters would be present; most shell scatters / middens are located adjacent on slightly elevated terrain adjacent to the coast, estuary, watercourses and / or swamps. The area with the highest potential for such site types to be present would be the relatively flat portions of the ridge line. Sites are generally not located on slopes over 10° and will most likely be located on slopes less than 5°. These areas would have been the preferred location for the placement of short term or intermittent camp sites and flat sections of the ridgeline may have also provided a line of access through the terrain. The potential of locating sites on these topographical features would be higher if these features were adjacent to permanent or reliable water sources. However, such sources are not present specifically within the study area.

As this area has been previously heavily impacted by prior land use activities, it is unlikely that, if any archaeological material is present, it would be *in situ*.

Based on these factors, it is considered that the study area has a generally low potential for the presence of archaeological material and particularly *in situ* archaeological material.

10.0 SOCIAL AND CULTURAL VALUES

Generally this report has addressed the archaeological potential but not the cultural significance of the study area to the Registered Stakeholder. It is important to note that archaeological sites (e.g. stone artefact scatters, scarred trees, rock shelters, etc.) generally have cultural significance as such sites constitute evidence of prior occupation of the area by Indigenous people and for this reason alone can be considered to have significance value. These values are irrespective of whether the site is *in situ*, disturbed or displaced. However, the likelihood of cultural sites being present has not been addressed. Besides topographical features there are other site types that are considered to have cultural significance. For example, some cultural site types relate to good food places or recent camping places (see Sub-section 8.2). Although places of particular significance have not been recorded within, it is unlikely that there are good food places specifically within the study area. Additionally, as cultural sites were not recorded specifically within the study area during the Bundjalung Mapping Project (see Sub-section 6.3), it could be assumed that cultural sites are not present. Generally, however, cultural significance values cannot be fully dismissed without consultation with the relevant Traditional Owners. As noted by Bowdler (1983:30), "identification of sacred sites and sites of significance to Aboriginal people is of necessity a matter for Aboriginal people. No-one else can decide whether the fact of significance or the degree of that significance to an Aboriginal community, except members of that community".

The aim of this section of the report was to document information in relation to the social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the study area may have for the Registered Stakeholder. However, information in relation to this task was not received from the Registered Stakeholder. Nevertheless, the Gold Coast Native Title Group has claimed in a letter dated 21st September that the area "is known to be a part of the cultural landscape and is of significance to the traditional owners of the area". However, supporting documentation or information was not provided.

Hence, unequivocal assurance that sites with social and cultural values would not be present within the proposed study area cannot be provided.

11.0 SUMMARY AND CONCLUSION

Based on the above discussion, full assurance that cultural heritage will not be harmed by the proposed development cannot be provided. However, although there is a undocumented potential for the area to have cultural values, there is only a low potential for archaeological sites to be present. If such sites were present they would not be *in situ*. Nevertheless, under the *National Parks and Wildlife Act, 1974* (as amended)(Section 90) it is an offence to destroy, deface, damage or desecrate, or cause or permit the destruction, defacement, damage or desecration of, an Aboriginal object or Aboriginal place.

12.0 REFERENCES

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Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP 961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

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13.0 APPENDICES

13.1 Appendix 1: Correspondence

DAVIES HERITAGE CONSULTANTS PTY LTD
Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

MESSAGE DISPLAY

Message number 1



* 1 *

[TRASH] [Move]

Date: 8/8/2007 13:17:55 +1000
From: "Jackie McDonald" <mcdogo@australnet.com.au>
To: <sudavies@comcon.com.au>
Subject: Walmsleys Rd Bilambil
This is a multi-part message in MIME format.

All
headers

Hello Su, I am advised by about a project in this vicinity and I would like to register my interest. I am an Aboriginal person with traditional links to this area and would like more information sent to me about the extent of the project and any other information that is relevant. Thank you for getting in touch with us. Jackie McDonald, Ph 55368628

Attachment 1

Type: text/html
Filename: Unknown.html Download
Encoding: quoted-printable

NeoMail version 1.25

DAVIES HERITAGE CONSULTANTS PTY LTD

PO Box 208, RED HILL, Qld 4059
ACN 079943678

10th August, 2007

Jackie McDonald
mctogo@austarnet.com.au

Dear Jackie

**Re: Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848,
Walmsleys Road and Stott Street, Bilambil Heights.**

Thank you for your email advising that you wish to be involved in the preliminary Aboriginal heritage assessment of the above property.

As the proposed development application for the above property is to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*, the Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation issued by the Department of Environment and Climate Change will be followed.

The Preliminary Assessment, which is primarily a desktop exercise, is the first step in this process. The main purpose of this step is to identify whether there are Aboriginal cultural heritage values associated with the property. The Department of Environment and Climate Change note that the Preliminary Assessment should include:

1. A description of the location and nature of the proposed development;
2. A description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area has for the present-day Aboriginal community; and
3. An assessment of which of the Aboriginal cultural heritage values that are known or likely to occur are likely to be directly or indirectly affected by the proposal.

If, as a result of the desktop study, it is considered that Aboriginal cultural heritage values are likely to be affected by the proposal, then the next step in the process will be undertaken (i.e. archaeological survey).

A map showing the location of the property is attached. This is the only map of the property I have at the moment. However, it provides you with information on the location of the property so that you may place it in context in relation to any cultural sites / places that may be located in the vicinity.

I am undertaking field surveys in Central Queensland until Friday 17th August; if mobile coverage is adequate you may be able to contact me on 0419700 424. I will, however, phone you on Monday 20th August, so we can discuss the project.

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Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

I look forward to working with you and anticipate a positive partnership in addressing all cultural heritage issues in relation to this project.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Su Davies', with a stylized flourish at the end.

Su Davies
Director

DAVIES HERITAGE CONSULTANTS PTY LTD

PO Box 208, RED HILL, Qld 4059
ACN 079943878

26th August, 2007

Jackie McDonald,
63 Tringa Street
TWEED HEADS WEST
NSW 2485

Dear Jackie

**Re: Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848,
Walmsleys Road and Stott Street, Bilambil Heights.**

Further to my correspondence of the 10th August and subsequent phone conversation, attached please find further information in relation to the above project. As noted in my letter of the 10th August, the Preliminary Assessment is a desktop study to document the following three tasks:

1. A description of the location and nature of the proposed development;
2. A description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area has for the present-day Aboriginal community; and
3. An assessment of which of the Aboriginal cultural heritage values that are known or likely to occur are likely to be directly or indirectly affected by the proposal.

As the Registered Stakeholder for this project it would be appreciated if you could provide us with a fee proposal to undertake Task 2. This proposal should be provided by Friday 31st August and your input, in the form of a letter addressing Task 2, is required by the 7th September, 2007.

A search of the AHIMS database for the project area and immediate surrounds has identified three sites, none of which appear to be specifically within the project area. These three sites include:

1. Bingham Bay BMP-05-0133 (#4-1-0147) (recorded by Fox) (coordinates not provided);
2. Cobaki Broadwater 2 (#4-2-0087) (recorded by Piper); and
3. Cobaki Broadwater inlet BMP-05-0150 (#4-2-0148) (recorded by Fox) (coordinates not provided).

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Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

I will contact you later this week to discuss and answer any questions you may have regarding the project.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Su Davies', with a stylized flourish at the end.

Su Davies
Director

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Bilambil Heights

MESSAGE DISPLAY

Message number 1



TRASH Move

Date: 9/3/2007 17:12:45 -0500
From: "Susan Davies" <sudavies@comcen.com.au>
To: "Jackie McDonald" <nictogo@austarnet.com.au>
Subject: Re: Bilambil development

All
headers

Thanks Jackie,
Just a reminder that the costing is overdue and the response is
required by the 7th September. A draft copy of the report will be
forwarded on the 7th September for your review and any comments will
need to be submitted by Friday 21st September, 2007.

Regards
Su

> This is a multi-part message in MIME format.

> Dear Su, Further to your phonecall to me last Friday, I wish to
advise that I have contacted Gold Coast Native Title Group (GCNTS) and
requested that they be involved in this process, in order to work out
the best way traditional owners will be engaged, to determine the
significance of the development area.
> Thank you, Jackie McDonald

Davies Heritage Consultants Pty Ltd
PO Box 208
RED HILL
QLD 4059

Ph: (07) 3352 6905
Fax: (07) 3352 7870
Mobile: 0419 700 424
Satellite Phone: 0145 115 454

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Bilambil Heights

MESSAGE DISPLAY

Message number 1



TRASH

Date: 9/6/2007 22:18:54 -0500
From: "Susan Davies" <sudavles@comcen.com.au>
To: "Jackie McDonald" <mctogo@austernet.com.au>
Subject: Re: Bilambil development

All
headers

Jackie,

The process outlined in the Department of Environment and Climate Change (NSW) Interim Community Consultation Requirements is being followed for this project. As you were the only person to register an interest in the project I am required to consult with you as the Registered Stakeholder. You may choose to discuss the project or to call on any person of your choice to seek information. The Requirements note that any comments should be provided in writing and documented in the report.

Regards
Su

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Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

MESSAGE DISPLAY

Message number 12



* 12 *

TRASH Move

Date: 9/8/2007 18:28:14 +1000
From: "Jackie McDonald" <mctogo@austarnet.com.au>
To: "Susan Davies" <sudavies@comcen.com.au>
Subject: Re: Bilambil development

All
headers

And please tell me how any of those notifications would have reached the Gold Coast Native Title Group? especially if you are only obliged to give 10 days response time?

----- Original Message -----

From: "Susan Davies" <sudavies@comcen.com.au>
To: "Jackie McDonald" <mctogo@austarnet.com.au>
Sent: Friday, September 07, 2007 9:49 PM
Subject: Re: Bilambil development

> Jackie
> Please see attached letter
>
> Regard
> Su Davies
>
>> And Su this is exactly how you get out of engaging the traditional
> owners in
>> this process. Where is the moral obligation to involve all of us? I
> will be
>> in touch...Jackie
>> ----- Original Message -----
>> From: "Susan Davies" <sudavies@comcen.com.au>
>> To: "Jackie McDonald" <mctogo@austarnet.com.au>
>> Sent: Thursday, September 06, 2007 10:18 PM
>> Subject: Re: Bilambil development
>>
>>
>>> Jackie,
>>> The process outlined in the Department of Environment and Climate
>>> Change (NSW) Interim Community Consultation Requirements is being
>>> followed for this project. As you were the only person to register
>> an
>>> interest in the project I am required to consult with you as the
>>> Registered Stakeholder. You may choose to discuss the project or to
>>> call on any person of your choice to seek information. The
>> Requirements
>>> note that any comments should be provided in writing and documented
>> in
>>> the report.
>>>
>>> Regards
>>> Su

DAVIES HERITAGE CONSULTANTS PTY LTD

PO Box 208, RED HILL, Qld 4059
ACN 079943978

7th September, 2007

Jackie McDonald
mctogo@austranet.com.au

Dear Jackie,

**Re: Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848,
Walmsleys Road and Stott Street, Bilambil Heights.**

As clearly outlined in all previous correspondence, the proposed development application for the above property is to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. The Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation issued by the Department of Environment and Climate Change identifies the important factors and / or heads of consideration that need to be considered by proponents and consultants when assessing potential impacts on Aboriginal cultural heritage for development applications assessed under Part 3A. The Preliminary Assessment, which is primarily a desktop exercise, is the first step in this process. The main purpose of this step is to identify whether there are Aboriginal cultural heritage values associated with the property. The Guidelines also note that guidance on consultation with Aboriginal people and communities can be found in the Interim Aboriginal Community Consultation Guidelines.

The Interim Aboriginal Community Consultation Guidelines have also been followed for this project. Indigenous consultation commenced with the proponent seeking to identify stakeholder groups or people wishing to be consulted about the project. Hence, written notification was provided to:

- Tweed Byron Local Aboriginal Land Council (LALC);
- Registrar of Aboriginal Owners;
- Native Title Services;
- Tweed Shire Council; and
- Department of Environment and Climate Change.

In addition, the Department of Environment and Climate Change (Diane Crosdale, Acting Manager, Planning and Aboriginal Heritage – North East) provided a list of Aboriginal community groups for the north coast / far north coast of New South Wales. Ms Crosdale advised that a subset of groups for the Tweed area could be selected from this list. Hence, written notification was also provided to Tweed Aboriginal Cooperative Society Ltd.

All the above notification letters were forwarded on the 24th July, 2007. A public notice was inserted in the Daily News on Friday 27th July, 2007. The notification letters and the advertisement advised that the closing date for registration of interest was Friday 10th August, 2007 (i.e. 10 working days as stated in the Guidelines).

DAVIES HERITAGE CONSULTANTS PTY LTD
Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

As a result of the process followed, Indigenous groups and / or individuals with an interest in the project could have registered their interest and become a Registered Stakeholder for the project. However, you were the only person who responded to the notifications; hence you are the only Registered Stakeholder for the project. I reiterate: no other Indigenous group and / or individual responded to the notification letters or advertisement.

Under the Guidelines the Local Aboriginal Land Council (even if not registered) is to be advised of the availability of the draft report. If they wish to review the report, it is forwarded and their comments are taken into consideration when finalizing the report.

As the Registered Stakeholder for this project we requested a fee proposal from you to undertake Task 2 of the Preliminary Assessment. Task 2 is:

A description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area (i.e. Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848, Walmsleys Road and Stott Street, Bilambil Heights) has for the present-day Aboriginal community;

Although you were advised on the 26th August that this proposal was required by Friday 31st August and your input, in the form of a letter addressing Task 2, was required by the 7th September, 2007, we have not received either a fee proposal or letter addressing Task 2.

A report, not including your input, has been drafted. As soon as your fee proposal is received and accepted by the client, the draft report will be forwarded for you to review and provide information in relation to Task 2. After your fee proposal has been accepted your review and input must be received by close of business on the 21st September. The submission date for this project cannot be extended further; the final report has to be produced in the early morning of Monday 24th September.

Yours faithfully,



Su Davies
Director

DAVIES HERITAGE CONSULTANTS PTY LTD

PO Box 208, RED HILL, Qld 4059
ACN 079943678

24th September, 2007

Coordinator,
Tweed Byron Local Aboriginal Land Council
PO Box 1410
KINGSCLIFF NSW 2487

Dear Sir / Madam

**Re: Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848,
Walmsleys Road and Stott Street, Bilambil Heights.**

Further to the notification letter forwarded on the 24th July to which the Tweed Byron LALC did not respond (and hence become a Registered Stakeholder for the project), this letter is to advise that the draft report for the Preliminary Assessment is available for your review.

The proposed development application for the above property is to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. The Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation issued by the Department of Environment and Climate Change identifies the important factors and / or heads of consideration that need to be considered by proponents and consultants when assessing potential impacts on Aboriginal cultural heritage for development applications assessed under Part 3A. The Preliminary Assessment, which is primarily a desktop exercise, is the first step in this process. The main purpose of this step is to document the following three tasks:

1. A description of the location and nature of the proposed development;
2. A description of any social and cultural values including the spiritual, traditional, historical or contemporary associations and attachments which the place or area has for the present-day Aboriginal community; and
3. An assessment of which of the Aboriginal cultural heritage values that are known or likely to occur are likely to be directly or indirectly affected by the proposal.

Hence, the draft report has addressed all three tasks.

DAVIES HERITAGE CONSULTANTS PTY LTD
Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

Please advise by Friday 28th September, 2007, if you require a copy of the draft report to be forwarded for your review and comment.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Su Davies', with a stylized flourish at the end.

Su Davies
Director

DAVIES HERITAGE CONSULTANTS PTY LTD
Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

25/09/2007 17:33 FAX 0755306676
25/09/2007 18:37 FAX 0755306676

PRESTIGE PROP 0733527870
DIANNE MILLAR

201
0001

A group maintaining customary laws, traditions and connection to country.



Gold Coast
Native Title Group

21 September 2007

Ms Dianne Millar
22 Warringa Drive
Bilambil Heights NSW 2486

Dear Ms Millar

Development at Walmsleys Road and Stott Street, Bilambil Heights

This letter is in regard to Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848, Walmsleys Road and Stott Street, Bilambil Heights. Of particular concern is that the manner in which the developer's heritage consultant is conducting an assessment of the sites prospective cultural heritage values.

It is our understanding that you are associated with these properties and we therefore seek to bring to your attention our concerns regarding the manner in which the contracted heritage consultant is conducting an assessment of the site's prospective cultural heritage values.

The development site is known to be a part of the cultural landscape and is of significance to the traditional owners of the area.

The following background is relevant to the development and its cultural heritage assessment.

- The heritage consultant is Ms Su Davies of Davies Heritage Consultants Pty Ltd.
- Public notification for interested parties has been conducted and Ms Jacqueline McDonald is the only registered stakeholder for the purpose of the Interim Aboriginal Community Consultation Requirements.
- Ms Davies has requested from Ms McDonald information regarding the cultural values of the site. However, Ms Davies has insisted that Ms McDonald can only be involved in the assessment after the developer accepts Ms McDonald's fee proposal. It is problematic that Ms Davies is not prepared to discuss a scope of work in order for Ms McDonald to provide a fee proposal and ultimately undertake an assessment of the heritage values of the site.
- Ms Davies has written to Ms McDonald confirming that Ms McDonald is not able to view the draft assessment report until the developer

070221 D:\M\B\J\Doc

PO Box 1233 Coopers Gap Qld. 4161 Ph. 07 3391 3066 Fax. 07 3391 0388

DAVIES HERITAGE CONSULTANTS PTY LTD
Preliminary Cultural Heritage Assessment
Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848
Walmsleys Road and Stott Street
Bilambil Heights

13/02/2007 17:33 FAX 0753360578
24/02/2007 18:38 FAX 0753360578

PRESTIGE PROP
DANIEL MILLAR

002

accepts her fee proposal (even though there is no prospect of one being agreed to).

The conduct of Ms Davies, may at least to some, give the slight appearance of consultation, however, in practice it has the effect of denying involvement by the only registered stakeholder.

It is arguable that the conduct of the heritage consultant, Ms Davies has frustrated the operation of a proper cultural heritage assessment. We make no comment as to whether this is by a conscious decision.

We seek to bring to your attention what we perceive as a failure in this regard and we request an opportunity to meet with a representative of the development at the earliest convenience. Our aim in meeting would be to instigate a proper assessment process.

For your information we have raised our concerns with the regulatory agencies and we are writing to other individuals with an interest in the development.

Yours sincerely


for Kym Yuka

070721_Davies_L0002



NSW GOVERNMENT
Department of Planning

11 OCT 2007

Contact: Sally Laing
Phone: 02 9228 6498
Fax: 02 9228 6540
Email: sally.laing@planning.nsw.gov.au

Mr Darryl Anderson
Darryl Anderson Consulting Pty Limited
Suite 7, Corporate House
8 Corporation Circuit
Tweed Heads South NSW 2486

Our ref: MP05_0198

Dear Mr Anderson

Subject: Proposed Residential Subdivision at Walmsley Road and Stott Street Bilambil Heights, 85 lot residential subdivision – MP05_0198

I refer to the Aboriginal heritage assessment being undertaken for the proposed residential subdivision at the above-mentioned location in Bilambil Heights, Tweed Shire. On 24 September 2007, the Department received a letter from Ms Kym Yuke of the Gold Coast Native Title Group regarding the assessment. A copy of this letter has been attached for your review.

Ms Yuke has raised concern that there have been some difficulties associated with the extent of involvement of the only registered stakeholder, Ms Jacqueline McDonald, in the Aboriginal cultural heritage assessment process.

Your attention is drawn to the *Interim Community Consultation Requirements for Applicants* (DEC 2004). Input from the Aboriginal community is an essential part of assessing both Aboriginal cultural heritage and archaeological significance of a site. Hence the Department requires proponents to undertake consultation with the Aboriginal community as an integral part of the assessment.

In addition to providing feedback on the proposed methodology, registered stakeholders may lodge offers to provide Aboriginal assessment and advisory services to the proponent for the cultural assessment and/or the archaeological assessment. The Department does not have or seek a role in the determination of fees or other terms of engagement for service providers. This is a contractual matter between the proponent and service providers. Part C of the *Interim Community Consultation Requirements* provides further detail on this matter.

It is critical that all interested parties are involved in the Aboriginal heritage assessment to ensure that the Department is satisfied that the significance of the site has been adequately recognised, the impact of the proposed development assessed and where necessary, appropriate mitigation and management measures are proposed.

We therefore request that you contact Ms McDonald to negotiate a written agreement or contract for involvement in the assessment of Aboriginal heritage significance of this site.

Should you wish to discuss this matter further, please contact Sally Laing, Senior Environmental Planner, on 02 9228 6498 or by email at sally.laing@planning.nsw.gov.au.

Yours sincerely

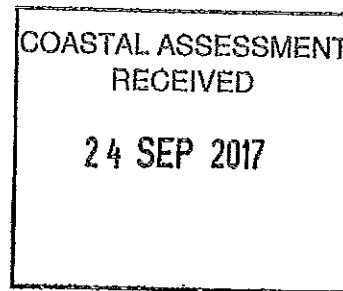
Heather Warton
Director - Coastal Assessments

cc. Ms Kym Yuke, Gold Coast Native Title Group



21 September 2007

Ms Heather Warton
Director Coastal Assessment
Department of Planning
P.O. Box 39
Sydney NSW 2001



HC HW
24/9/07
To Sally Lang
Sally - please
send a letter to
the proponent, as
directed.

Dear Ms Warton

Development at Walmsleys Road and Stott Street, Bilambil Heights

This letter is in regard to Lot 1 DP 167380, Lot 1 DP 134787, Lot 2 DP961928 and Part Lot 4 DP 1054848; Walmsleys Road and Stott Street, Bilambil Heights. Of particular concern is that the manner in which the developer's heritage consultant is conducting an assessment of the sites prospective cultural heritage values.

The development site is known to be a part of the cultural landscape and is of significance to the traditional owners of the area.

The following background is relevant to the development and its cultural heritage assessment.

- The developer's heritage consultant is Ms Su Davies of Davies Heritage Consultants Pty Ltd.
- Public notification for interested parties has been conducted and Ms Jacqueline McDonald is the only registered stakeholder for the purpose of the Interim Aboriginal Community Consultation Requirements.
- Ms Davies has requested from Ms McDonald information regarding the cultural values of the site. However, Ms Davies has insisted that Ms McDonald can only be involved in the assessment after the developer accepts Ms McDonald's fee proposal. It is problematic that Ms Davies is not prepared to discuss a scope of work in order for Ms McDonald to provide a fee proposal and ultimately undertake an assessment of the heritage values of the site.
- Ms Davies has written to Ms McDonald confirming that Ms McDonald is not able to view the draft assessment report until the developer accepts her fee proposal (even though there is no prospect of one being agreed to).

The conduct of Ms Davies, may at least to some, give the slight appearance of consultation, however, in practice it has the effect of denying involvement by the only registered stakeholder.

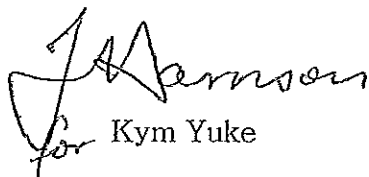
It is our assertion that the conduct of the developer (through its heritage consultant, Ms Davies) has frustrated the operation of a proper cultural heritage assessment. We make no comment as to whether this is by a conscious decision on the part of the developer.

We seek to bring to your attention the developer's failure in this regard and we request your advice as to how we can instigate a proper assessment process.

We are also writing to the Tweed Shire Council for its advice.

If there is any aspect of this letter you wish to discuss please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kym Yuke', with a stylized flourish at the end.

Copy to: Ms Sally Laing
By email: Sally.laing@planning.nsw.gov.au

**Cultural Heritage Processes
for the
Bilambil Heights Subdivision**

Prepared for Darryl Anderson Consulting Pty Ltd

Submitted by Eastern Yugambah Limited

February 2008

Summary

This report presents the findings of a study of the prospective Cultural Heritage values and management processes for the "Bilambil Heights development." The development area is a 25 hectare site, approximately 3km southeast of New South Wales/Queensland state border and Coolangatta airport.

In line with the *National Parks and Wildlife Act 1974*, Darryl Anderson Consulting contracted Eastern Yugambeh Limited (EYL) in November 2007 to carry out a desktop study to determine the prospective cultural heritage values of the project site.

This report has been compiled on the basis of reports and knowledge held by members of the Gold Coast Native Title Group, as represented by EYL. EYL have conducted a desktop assessment of the land form of the project site as well as the nature and extent of proposed works.

Owing to the site's location and proximity to recorded sites of Aboriginal significance, it can be assumed the area will reveal cultural material. While this site forms an important part of the cultural landscape, it is lacking in geographical features that are commonly associated with sites of cultural significance. Therefore we conclude that it is not necessary to further investigate the site through a detailed field assessment.

There are no recommendations for further on-site activity by the Gold Coast Native Title Group in the lead up to or during construction.

As a contingency measure, it is recommended the developer and the Gold Coast Native Title Group enter into an agreement for the management of cultural heritage material in the event of an unusual or significant during construction.

Features of the Study Area

On 27 November 2007, representatives of the developers accompanied representatives of the Gold Coast Native Title Group, Wesley Aird, Jackie McDonald and Jessica Harrison to a visit of the project area as a preliminary inspection and to gain an understanding of the project site.

The study area sits high upon a ridge crest and includes the western and southern slopes. To the west, the land is extremely sloped and contains environmentally protected land; this area has not been designated for development. Site elevations range from approximately RL 80m AHD at the south western and northern parts of the site to RL 50m AHD in the western part of the site. Slope gradients reach 33% in some areas of the site.

10 hectares of site will be developed. This incorporates the areas that are zoned 2(c) urban expansion. Development will include 84 residential allotments and a public reserve allotment.

According to Peter Walmsley, the area has been used for banana plantations since early 1900s. It is currently being rented for use as horse paddocks.

Regional Context

Evidence of Aboriginal occupation in the sub-coastal region of the Gold Coast Hinterland extends back 10,000 years. For the nearby coastal areas of Moreton Bay, the time frame is even greater with evidence recorded from 20,000 years before the present.¹ At this time, evidence shows that Aboriginal people occupied Wallen Wallen Creek on the mid-west coast of what is now North Stradbroke Island, some 80km northeast of the study area.

There is a lack of documentation of such historical sites within the Border Ranges region. However, there are a number of significant sites within the greater Gold Coast and Tweed regions that deserve recognition and contribute to the overall picture of Aboriginal inhabitancy within the area. The most relevant sites are set out below:

¹ Neale, R. and Stock, E. 1986. Pleistocene occupation in the south-east Queensland coastal region. *Nature* 323:618-621

- Bushrangers Cave on the Eastern edge of the Lamington Plateau has a basal age of 9,270 \pm 100 cal BP (calibrated years Before the Present).²
- Excavation of a disturbed shell midden at Hope Island, on the Coomera River provides evidence of aboriginal occupation extending back 4,300 years to the present.³
- A burial ground dating from 450 years before the present to 1,400 BP is located at Broadbeach. Excavations of this significant site revealed the remains of around 200 individuals as well as animal bones, shellfish, stone artefacts, bone points, pigment and pebbles.⁴

Knowledge of Aboriginal inhabitancy of the Terranora Broadwater area has been documented since first European contact. The Bundjalung mapping project database (as explained below) contains source documents siting regular large gatherings of traditional Aboriginal people along the Broadwater shorelines. The articles include excerpts of the diaries of Joseph Banks (1770) during the period in which the *Endeavour* was sailing along the Tweed coast, north of Point Danger. Banks noted seeing "*many fires on an extensive plain in which we supposed there be a lagoon*" and this is thought to be indicative of a large aboriginal camp. Some fifty years later, John Oxley (1823) recorded sighting "*natives collecting along the shore in great numbers*" near Point Danger. In 1840, while completing a survey from the South Passage to the Richmond River, Robert Dixon wrote about corroboree by "*a very large encampment of natives... whose numbers must be above 300*". At the time of writing, Dixon was travelling between Tallebudgera Creek and Point Danger, near to the Cobaki Broadwater.

Oral history also proves to be an important source of historical information. The Tweed regional museum holds transcripts of interviews with old time residents describing their contact and associations with the traditional Aboriginal people of the area. One such interview with Teddy Telford, recorded in June 1999, describes an important Aboriginal ceremonial site, Campbell's Hill, situated north east of the project site.

Community member Ms Jacqueline McDonald provided information regarding a bora ring at Currumbin. The oral history about this site was also recorded in a Daily News article on 6 August 1926. The article read as follows:

² Ulm S. and Hall, J. 1996. Radiocarbon and Cultural Chronologies in southeast Queensland prehistory. In S. Ulm, I. Lilley, and A. Ross (eds) *Australian Archaeology '95': Proceedings of the 1995 Australian Archaeological Association Annual Conference* Tempus 6: 45-62

³ Walters, I. Lauer, P. Nolan, A. Dillon, G. and Aird, M. 1987 Hope Island: Salvage Excavation of a Kombumerri site. *Queensland Archaeological Research* 4:80-95

⁴ Haglund, L. 1976. *The Broadbeach Aboriginal Burial Ground: An Archaeological Analysis*. University of Queensland Press, Brisbane.

The three rings that Mr Thompson can locate are situated: the first close to Ugarebar creek, on the mainland, on a selection known as J King's, now Whittaker's; the second is at Tugun close to Mr Stanford's cottage, and the third at Currumbin on the northern side, and about one hundred yards west of the railway line.

Bundjalung Mapping Project

The Bundjalung Mapping Project (BMP) is a collaborative initiative between the Bundjalung Community and Southern Cross University to audit, assess, and map sites and places of cultural significance. Funding is provided from the National Heritage Trust through the NSW State Government and the Catchment Management Authority. An electronic database containing cultural site details and related information has been developed by the University but the cultural content is owned, maintained, and managed by local groups including traditional owner descendants and members of Aboriginal Land Councils. The purpose of the Project is to assist in the identification, management and protection of the region's Aboriginal sites and places.

Researcher Mr Ian Fox, has been responsible for the identification, collection, and mapping of cultural information in the Tweed and Byron Shires with some overlap into neighbouring districts when deemed appropriate, or so directed by local community groups.

The following information is based on a search of the BMP for cultural heritage sites within the vicinity of the project site.

The closest recorded site is on the summit of a topographic feature known as Campbell's Hill. The site contains a ceremonial ground and cultural materials.

A stone arrangement was located on a hill summit overlooking what is now the Coolangatta Airport. The area is now a residential subdivision and there is no evidence of the stone arrangement.

Oral history and historical documentation suggest that the NSW/QLD Border, within the Piggabeen/Currumbin Valley area, would have a likelihood of containing sites along the ridge-saddle areas between the named peaks, in this case Mt Moolamba and Mt Bilinga. This information indicates the border ridge-line provided an important access route (or pathway) from the Springbrook Plateau to the Coast and that many sites are likely to be identified along the saddle areas of that route as further cultural heritage investigations are undertaken.

Further west along the border route near Carool and up on the Springbrook Plateau toward Numinbah Valley many more sites of significance have been documented.

Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan

(Ref – Fox, I. 2006. “Cobaki and Terranora Broadwater Aboriginal Cultural Heritage management plan.” Prepared for Tweed Shire Council. August 2006)

The Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan, was an initiative of the Tweed Shire Council to ensure the inclusion of Aboriginal culture in the catchment management activities. In August 2006, Mr Ian Fox published the Management Plan in which he had mapped areas within the Cobaki and Terranora Broadwater region, which contained registered sites of cultural significance as well as locations with a higher probability of containing sites of cultural significance.

The Bilambil Heights site is in proximity to two areas containing registered sites. These include Campbell’s Hill mentioned previously in this report and the elevated sand ridges adjacent to Birds Bay and Bingam Bay.

The project site is adjacent to areas marked as ‘Locations with a higher probability of containing sites of Cultural Significance’ These sites have been identified through investigation of common landscape elements of known Aboriginal sites throughout the Tweed Valley. Most commonly these sites are located on flat areas on spurs and saddles in proximity to exploitable environments, provide good vantage points and which provide effective thorough access across the surrounding landscape.

Previous Cultural Heritage Assessments within the region carried out by EYL

A survey of previous cultural heritage assessments provides a good picture of the likely cultural heritage significance of the surrounding area. Thus, set out in the following section are the findings of key cultural heritage assessments carried out by EYL within proximity to the Bilambil Heights development site

Of primary interest is the report of significance from the cultural heritage assessment carried out by EYL in 2006 of the residential development now known as Hideaway to the north west of the Bilambil Height project, in an area boarded by Currumbin Creek road to the North and Piggabeen Road to the west. The work was undertaken for the property which at the time was held by Devine Ltd. In this project, EYL undertook the recording of the findings of 24 test pit sites containing one hundred and eighty-five stone artefacts. In addition, a further 12 isolated artefact finds were recorded. The study found that the site was rich in indigenous

history and cultural heritage. Most of the cultural heritage was uncovered from the high ridgeline near the boarder fence. The site provided a good cross section of environments, such as the low lying saltwater creek and swamp areas through to high forested ridges. The proximity and some environmental similarities between the Hideaway property and the Bilambil Heights development suggests that similar findings may be recorded across both sites.

In June 2007, EYL undertook an Aboriginal Cultural Heritage assessment on behalf of Environmental Resources Management Australia covering a section of the Terranora Inlet, Tweed Heads. The proposed development was for an electrical pipeline running underground from the depot at Holden Street, west along Dry Dock Rd and crossing the river to the reserve at the end of Shearwater Parade. The southern bank of the river is known to contain registered sites including a burial ground and a chain of middens. Recommendations for subsurface investigations of the southern area were made, however, as yet these have not been approved.

The remains of a midden were identified in a 30m section between Holden Street and Dry Dock Road. Aboriginal community knowledge confirmed that the Terranora Inlet foreshore was used as a traditional campsite location that provided access to shellfish and other estuarine resources. The investigation identified three additional midden sites and an Aboriginal burial area (Philip Road) (Ref – Tweed Daily 5/10/1918 “Old Tweed History”) as listed on BMP database. In addition, the topographic feature, Razorback Lookout, north east of the project area is noted as an Aboriginal spiritual place and the location of a Butherun (Dreamtime Story) (Ref – Joongurranahreean – “Place where the pelican played” Daily News 22/5/1958).

In 2005, EYL in conjunction with the Tweed Byron Local Aboriginal Land Council carried out a Cultural Heritage survey of the proposed C4 route for the Tugun Bypass. The report was prepared for the Queensland Department of Main Roads, South Coast Hinterland District. The C4 route of the Tugun Bypass linked Stewart Road in Currumbin to the north with Kennedy Drive, Tweed Heads. The results of the survey supported the previous research completed by Hall (1990), Collins (1999) and Bonhomme Craib and Associates (2001). Remnants of an artefact scatter were located in area proximal to the Cobaki Broadwater. The artefacts collected by EYL included stone artefacts and an oyster shell.

All the listed project areas are within easy walking distance to the Bilambil Heights project area. It becomes evident that Bilambil Heights is located within an important landscape for the local Aboriginal communities.

Department of Natural Resources and Water Database Search

The project falls within a landscape which extends into Queensland and, for the sake of completeness a search was conducted of the Queensland Government's information.

The Queensland Department of Natural Resources and Water maintain a list of Aboriginal and non-Aboriginal sites of significant cultural heritage discovered around Queensland. These are managed through the 'Cultural Heritage Database' and the 'Cultural Heritage Register'. Both sites include findings of government-funded surveys and independent consultancies.

Searches of the Database and Register did not reveal any recorded sites directly associated with the development area. Further, investigation, however showed that the register had listed sites in proximity to the development area. Three sites including a scarred tree and two artefact scatters were located north west of the project site in the Currumbin Valley.

Legislative Framework

Background

Darryl Anderson Consulting have commissioned a desktop assessment of the cultural heritage values of the project site.

In New South Wales, Aboriginal cultural heritage is legislated by the *National Parks and Wildlife Act 1974*.

National Parks and Wildlife Act 1974 (NSW)

In accordance with Section 3 of the Act, This Act binds the Crown, not only New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

The Act has numerous objects not limited to Aboriginal cultural heritage. These objects include:⁵

- The conservation of nature;

⁵ Section 2A, *National Parks and Wildlife Act 1974 (NSW)*

- The conservation of objects, places or features of cultural value (including places, objects and features of significance to Aboriginal people);
- Fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation; and
- Providing for the management of land reserved under the Act in accordance with the management principles applicable for each type of reservation.

The Director-General of the Act, and therefore the New South Wales government, is responsible for the proper care, preservation and protection of any Aboriginal object in New South Wales.⁶

"Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area in 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.⁷

It is an offence to destroy, deface or damage, or knowingly cause or permit the destruction or defacement of or damage to, an Aboriginal object.⁸

In accordance with Section 86 of the Act, it is an offence to disturb, move or excavate any land, or cause any land to be disturbed or excavated, for the purpose of discovering an Aboriginal object without obtaining a permit from the Director General of National Parks and Wildlife. Permit is obtained subject to section 87 of the Act.

The Act requires people to seek permission from the Department of Environment and Conservation (DEC) if they are proposing activities which will:

- Disturb or excavate land to discover an Aboriginal object, or disturb or move an Aboriginal object
- Do something that is likely to destroy, damage or deface an Aboriginal object or Aboriginal place.

The Department states that input from the Aboriginal community is an essential part of assessing the significance of those Aboriginal objects likely to be impacted by an activity. Hence the Department requires proponents to undertake consultation with the Aboriginal community as an integral part of the impact assessment.

⁶ Section 85, *ibid*

⁷ Section 5(1), *ibid*

⁸ Section 90, *ibid*

To that end, the Department has published 'Interim Community Consultation Requirements for Applicants'.

The guidelines note that "Members of the Aboriginal community are the primary determinants of the significance of their heritage. They may participate in the process through comment on the assessment methodology, contributing cultural knowledge and commenting on cultural significance of potential impacts and/or mitigation measures. These comments are provided through the assessment process conducted by the proponent".⁹

The guidelines set out numerous requirements regarding notification, registration of interest, preparation for assessment and drafting and review of cultural heritage reports.

As stated, Permits are required for persons proposing activities to: disturb or excavate land to discover an Aboriginal object; disturb or move an Aboriginal object; or do something that is likely to destroy, damage or deface an Aboriginal object or Aboriginal place.

✓ The field work for this assessment involved a surface survey of the area. Land was neither disturbed nor excavated. Aboriginal cultural heritage was not identified. Consequently, it was not considered necessary to obtain a permit subject to section 87 of this Act.

NSW Heritage Act 1977

The purpose of the *NSW Heritage Act 1997* is to ensure that the non-Aboriginal cultural heritage of NSW is adequately identified and conserved. The Act is concerned with all aspects of conservation, including protection against damage and destruction, to restoration and enhancement. Some key provisions of the Act are the establishment and functions of the Heritage Council, criteria for Interim Heritage Orders, maintaining the State Heritage Register, and environmental planning instruments.

This Act specifically provides protection for any item classed as a relic, and some aspects of Aboriginal sites which relate to occupation following European colonisation may fall under the relic category. This Act also requires that the discovery of a previously unknown relic be reported to the Heritage Council within a reasonable time of its discovery.

Environment Planning and Assessment Act 1979

Under the Environment Planning and Assessment Act 1979 the Minister responsible for planning may make planning instruments such

⁹ Department of Environment and Conservation (NSW), *Interim Community Consultation Requirements for Applicants*, p.4

as Regional Environmental Plans (REPs) and Local Environment Plans (LEPs). In addition, the Director of Planning or a Council may prepare a Development Control Plan (DCP), where it is considered that more detailed provisions are required over any part of land covered by a REP, LEP or their drafts.

These planning instruments may identify places and features of cultural heritage significance and define various statutory requirements regarding the potential development, modification and conservation of these items. Places of identified significance, or places requiring further assessment, should be listed in the heritage schedules of the LEP and REP and are then protected from certain defined activities, unless consent has been gained from a consent authority, usually a local government authority. In determining a Development Application (DA), a consent authority, such as a local government authority, must take into consideration a range of protection issues as defined in Section 79C(1).

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The Act binds the Crown, including each State.¹⁰

The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.¹¹

The significance of an area, object or class of objects means particular significance to Aboriginals in accordance with Aboriginal tradition. "Aboriginal tradition" means the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.¹²

It appears that the Act does not provide procedures or frameworks through which to conduct cultural heritage assessments. Rather, it details measures that can be taken to protect Aboriginal cultural heritage that has already been identified.

Upon receipt of an application made by or on behalf of an Aboriginal or group of Aboriginals, the Federal Minister for the Department of

¹⁰ Section 6, *Aboriginal and Torres Strait Islander Protection Act 1984 (Cth)*

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Environment and Heritage may, if satisfied that the area, object or class of objects are significant and under threat of injury or desecration, make a declaration in relation to the area, object or class of objects.¹³

The Minister may also make an emergency declaration for an area if satisfied there is a serious and immediate threat.¹⁴

There is also provision in certain cases for authorised officers to make declarations where there is a serious and immediate threat of injury or desecration.¹⁵

It is an offence to engage in conduct which contravenes a provision of a declaration.¹⁶

Community Consultation

Internal community consultation is as important to the Gold Coast Native Title Group as consultation that may occur between a proponent and a member of our community. The importance of consultation is twofold. Firstly, it provides the Traditional Owners with the opportunity to voice their opinions on the Cultural Heritage significance, if any, of a particular site. Secondly, if the particular site is of significance, it allows the Traditional Owners to make suggestions on how that site may be managed.

The process of consultation allows a range of views to be collected. Those views may differ between individuals or families but the crucial issue is that the consultation must be widespread and documented in order to be effective and to reduce the risk of opposition at a more progressed stage of development. This programme gives greater certainty of process to the proponent with less exposure to disruption at a later stage of development.

The Traditional Owner community of the Gold Coast comprises of a number of families within the known genealogy together with corporate entities with specific interests.

There are currently fifteen people sitting on the Gold Coast Native Title Group Management Committee. The committee meets from time to time and also receives information (in the form of updates, newsletters, factsheets and summaries of cultural heritage reports and management

¹³ Section 10, *ibid*

¹⁴ Section 9, *ibid*

¹⁵ Section 18, *ibid*

¹⁶ Section 22, *ibid*

plans) on cultural heritage and native title matters. Newsletters and factsheets are sent more broadly to the Gold Coast Native Title Group community which currently includes approximately four hundred families.

In addition to committee members, there are a number of interested community members who have requested to be kept informed on committee matters. These people (known as 'corresponding members') receive the same information as committee members. There are currently one hundred and two corresponding members.

To date, the map of the proposed development area has been shown to community members who have been involved in cultural heritage assessment in surrounding regions. Their input has been incorporated into the contents of this report. This report will be circulated to interested parties and feedback will be provided if necessary.

Conclusions

The project area falls within a landscape of particular significance to the local indigenous community.

Its proximity to the Cobaki and Terranora Broadwaters is of great significance.

Also need to consider its proximity to Campbell's Hill - geographical feature known to be of great cultural significance. While it can not be seen from the property, its proximity suggests that the Bilambil Heights site may have been in a path that was used to travel between Bingam Bay/ Birds Bay and Campbell's Hill.

However, the site does not possess many of the geographical features commonly associated with sites of aboriginal cultural significance. While the flat ridge crest is the most likely place of occupation, the steep slopes of the property are very unlikely to have been used as campsites. There are a large number of surrounding ridgelines, spurs and saddles that have better access to water and views of culturally significant features such as Campbells Hill or towards Bingam Bay.

Recommendations

There are no recommendations for further on-site activity by the Gold Coast Native Title Group in the lead up to or during construction. Where EYL has been involved during the preliminary stages of project development and a detailed site inspection has been carried out it is most likely there will be no involvement by EYL on site during construction.

The developer anticipates the NSW Department of Planning will include a condition on the project approval to the affect that if any cultural heritage material is discovered during construction the Department of Environment and Conservation must be notified and appropriate approvals/studies must be undertaken. If this condition is included in the approval and also the developer agrees to contact EYL and the GCNTG in the first instance in the event of cultural heritage finds; then EYL accepts this as acceptable to cover contingencies during construction.

In the event such a condition is not included, the developer and the Gold Coast Native Title Group may enter into an agreement for the management of cultural heritage material in the event of an unusual or significant find during construction. The cultural heritage management plan is to reflect contingencies for significant and substantial finds.



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13 February 2008

Our ref: DAC10

Mr Darryl Anderson
Darryl Anderson Consulting Pty Ltd
8 Corporation Circuit
Tweed Heads South NSW 2486

Dear Mr Anderson
Cultural Heritage
Bilambil Heights Subdivision

Please find enclosed a copy of our report on *Cultural Heritage Processes for the Bilambil Heights Subdivision*.

The report has been prepared in collaboration with Ms Jacqueline McDonald, the registered stakeholder for this project under the terms of the *National Parks and Wildlife Act 1974*.

Yours sincerely



Wesley Aird

080213_DAC_lr

**Cultural Heritage Processes
for the
Bilambil Heights Subdivision**

Prepared for Darryl Anderson Consulting Pty Ltd

Submitted by Eastern Yugambeh Limited

April 2008

Summary

This report presents the findings of a study of the prospective Cultural Heritage values and management processes for the "Bilambil Heights development." The development area is a 25 hectare site, approximately 3km southeast of New South Wales/Queensland state border and Coolangatta airport.

In line with the *National Parks and Wildlife Act 1974*, Darryl Anderson Consulting contracted Eastern Yugambeh Limited (EYL) in November 2007 to carry out a desktop study to determine the prospective cultural heritage values of the project site.

A public notice was inserted by in the *Daily News*, a publication with broad readership in the project area, on Friday 27 July, 2007. The only response received by the closing date was from Ms Jacqueline McDonald, an Aboriginal person with traditional links to the area. Ms McDonald was involved in initial discussions with the proponent and also was closely involved in the preparation of this report.

A search of the Aboriginal Heritage Information Management System (AHIMS) was conducted for this project and returned no recorded sites located specifically within the project site. Although three sites are located in the vicinity of the study area no sites are under threat of impact from the proposed development.

This report has been compiled on the basis of reports and knowledge held by members of the Gold Coast Native Title Group, as represented by EYL. EYL have conducted a desktop assessment of the land form of the project site as well as the nature and extent of proposed works.

Owing to the site's location and proximity to recorded sites of Aboriginal significance, it can be assumed the area will reveal cultural material. While this site forms an important part of the cultural landscape, it is lacking in geographical features that are commonly associated with sites of cultural significance. Therefore we conclude that it is not necessary to further investigate the site through a detailed field assessment.

There are no recommendations for further on-site activity by the Gold Coast Native Title Group in the lead up to or during construction.

The developer anticipates the NSW Department of Planning will include a condition on the project approval to the affect that if any cultural heritage material is discovered during construction the Department of Environment and Conservation must be notified and appropriate approvals/studies must be undertaken. If this condition is included in the approval and also the developer agrees to contact EYL and the GCNTG

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In the event such a condition is not included, the developer and the Gold Coast Native Title Group may enter into an agreement for the management of cultural heritage material in the event of an unusual or significant find during construction. The cultural heritage management plan is to reflect contingencies for significant and substantial finds.

Features of the Study Area

On 27 November 2007, representatives of the developers accompanied representatives of the Gold Coast Native Title Group, Wesley Aird, Jackie McDonald and Jessica Harrison to a visit of the project area as a preliminary inspection and to gain an understanding of the project site.

The study area sits high upon a ridge crest and includes the western and southern slopes. To the west, the land is extremely sloped and contains environmentally protected land; this area has not been designated for development. Site elevations range from approximately RL 80m AHD at the south western and northern parts of the site to RL 50m AHD in the western part of the site. Slope gradients reach 33% in some areas of the site.

10 hectares of site will be developed. This incorporates the areas that are zoned 2(c) urban expansion. Development will include 84 residential allotments and a public reserve allotment.

According to Peter Walmsley, the area has been used for banana plantations since early 1900s. It is currently being rented for use as horse paddocks.

Regional Context

Evidence of Aboriginal occupation in the sub-coastal region of the Gold Coast Hinterland extends back 10,000 years. For the nearby coastal areas of Moreton Bay, the time frame is even greater with evidence recorded from 20,000 years before the present.¹ At this time, evidence shows that Aboriginal people occupied Wallen Wallen Creek on the mid-west coast of what is now North Stradbroke Island, some 80km northeast of the study area.

There is a lack of documentation of such historical sites within the Border Ranges region. However, there are a number of significant sites within the greater Gold Coast and Tweed regions that deserve recognition and contribute to the overall picture of Aboriginal inhabitancy within the area. The most relevant sites are set out below:

¹ Neale, R. and Stock, E. 1986. Pleistocene occupation in the south-east Queensland coastal region. *Nature* 323:618-621

- Bushrangers Cave on the Eastern edge of the Lamington Plateau has a basal age of 9,270 \pm 100 cal BP (calibrated years Before the Present).²
- Excavation of a disturbed shell midden at Hope Island, on the Coomera River provides evidence of aboriginal occupation extending back 4,300 years to the present.³
- A burial ground dating from 450 years before the present to 1,400 BP is located at Broadbeach. Excavations of this significant site revealed the remains of around 200 individuals as well as animal bones, shellfish, stone artefacts, bone points, pigment and pebbles.⁴

Knowledge of Aboriginal inhabitancy of the Terranora Broadwater area has been documented since first European contact. The Bundjalung mapping project database (as explained below) contains source documents siting regular large gatherings of traditional Aboriginal people along the Broadwater shorelines. The articles include excerpts of the diaries of Joseph Banks (1770) during the period in which the *Endeavour* was sailing along the Tweed coast, north of Point Danger. Banks noted seeing “*many fires on an extensive plain in which we supposed there be a lagoon*” and this is thought to be indicative of a large aboriginal camp. Some fifty years later, John Oxley (1823) recorded sighting “*natives collecting along the shore in great numbers*” near Point Danger. In 1840, while completing a survey from the South Passage to the Richmond River, Robert Dixon wrote about corroboree by “*a very large encampment of natives... whose numbers must be above 300*”. At the time of writing, Dixon was travelling between Tallebudgera Creek and Point Danger, near to the Cobaki Broadwater.

Oral history also proves to be an important source of historical information. The Tweed regional museum holds transcripts of interviews with old time residents describing their contact and associations with the traditional Aboriginal people of the area. One such interview with Teddy Telford, recorded in June 1999, describes an important Aboriginal ceremonial site, Campbell’s Hill, situated north east of the project site.

Community member Ms Jacqueline McDonald provided information regarding a bora ring at Currumbin. The oral history about this site was also recorded in a Daily News article on 6 August 1926. The article read as follows:

² Ulm S. and Hall, J. 1996. Radiocarbon and Cultural Chronologies in southeast Queensland prehistory. In S. Ulm, I. Lilley, and A. Ross (eds) *Australian Archaeology ‘95’: Proceedings of the 1995 Australian Archaeological Association Annual Conference* Tempus 6: 45-62

³ Walters, I. Lauer, P. Nolan, A. Dillon, G. and Aird, M. 1987 Hope Island: Salvage Excavation of a Kombumerri site. *Queensland Archaeological Research* 4:80-95

⁴ Haglund, L. 1976. *The Broadbeach Aboriginal Burial Ground: An Archaeological Analysis*. University of Queensland Press. Brisbane.

The three rings that Mr Thompson can locate are situated: the first close to Ugarebar creek, on the mainland, on a selection known as J King's, now Whittaker's; the second is at Tugun close to Mr Stanford's cottage, and the third at Currumbin on the northern side, and about one hundred yards west of the railway line.

Bundjalung Mapping Project

The Bundjalung Mapping Project (BMP) is a collaborative initiative between the Bundjalung Community and Southern Cross University to audit, assess, and map sites and places of cultural significance. Funding is provided from the National Heritage Trust through the NSW State Government and the Catchment Management Authority. An electronic database containing cultural site details and related information has been developed by the University but the cultural content is owned, maintained, and managed by local groups including traditional owner descendants and members of Aboriginal Land Councils. The purpose of the Project is to assist in the identification, management and protection of the region's Aboriginal sites and places.

Researcher Mr Ian Fox, has been responsible for the identification, collection, and mapping of cultural information in the Tweed and Byron Shires with some overlap into neighbouring districts when deemed appropriate, or so directed by local community groups.

The following information is based on a search of the BMP for cultural heritage sites within the vicinity of the project site.

The closest recorded site is on the summit of a topographic feature known as Campbell's Hill. The site contains a ceremonial ground and cultural materials.

A stone arrangement was located on a hill summit overlooking what is now the Coolangatta Airport. The area is now a residential subdivision and there is no evidence of the stone arrangement.

Oral history and historical documentation suggest that the NSW/QLD Border, within the Piggabeen/Currumbin Valley area, would have a likelihood of containing sites along the ridge-saddle areas between the named peaks, in this case Mt Moolamba and Mt Bilinga. This information indicates the border ridge-line provided an important access route (or pathway) from the Springbrook Plateau to the Coast and that many sites are likely to be identified along the saddle areas of that route as further cultural heritage investigations are undertaken.

Further west along the border route near Carool and up on the Springbrook Plateau toward Numinbah Valley many more sites of significance have been documented.

Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan

(Ref – Fox, I. 2006. “Cobaki and Terranora Broadwater Aboriginal Cultural Heritage management plan.” Prepared for Tweed Shire Council. August 2006)

The Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan, was an initiative of the Tweed Shire Council to ensure the inclusion of Aboriginal culture in the catchment management activities. In August 2006, Mr Ian Fox published the Management Plan in which he had mapped areas within the Cobaki and Terranora Broadwater region, which contained registered sites of cultural significance as well as locations with a higher probability of containing sites of cultural significance.

The Bilambil Heights site is in proximity to two areas containing registered sites. These include Campbell’s Hill mentioned previously in this report and the elevated sand ridges adjacent to Birds Bay and Bingam Bay.

The project site is adjacent to areas marked as ‘Locations with a higher probability of containing sites of Cultural Significance’ These sites have been identified through investigation of common landscape elements of known Aboriginal sites throughout the Tweed Valley. Most commonly these sites are located on flat areas on spurs and saddles in proximity to exploitable environments, provide good vantage points and which provide effective thorough access across the surrounding landscape.

Previous Cultural Heritage Assessments within the region carried out by EYL

A survey of previous cultural heritage assessments provides a good picture of the likely cultural heritage significance of the surrounding area. Thus, set out in the following section are the findings of key cultural heritage assessments carried out by EYL within proximity to the Bilambil Heights development site

Of primary interest is the report of significance from the cultural heritage assessment carried out by EYL in 2006 of the residential development now known as Hideaway to the north west of the Bilambil Height project, in an area boarded by Currumbin Creek road to the North and Piggabeen Road to the west. The work was undertaken for the property which at the time was held by Devine Ltd. In this project, EYL undertook the recording of the findings of 24 test pit sites containing one hundred and eighty-five stone artefacts. In addition, a further 12 isolated artefact finds were recorded. The study found that the site was rich in indigenous

history and cultural heritage. Most of the cultural heritage was uncovered from the high ridgeline near the boarder fence. The site provided a good cross section of environments, such as the low lying saltwater creek and swamp areas through to high forested ridges. The proximity and some environmental similarities between the Hideaway property and the Bilambil Heights development suggests that similar findings may be recorded across both sites.

In June 2007, EYL undertook an Aboriginal Cultural Heritage assessment on behalf of Environmental Resources Management Australia covering a section of the Terranora Inlet, Tweed Heads. The proposed development was for an electrical pipeline running underground from the depot at Holden Street, west along Dry Dock Rd and crossing the river to the reserve at the end of Shearwater Parade. The southern bank of the river is known to contain registered sites including a burial ground and a chain of middens. Recommendations for subsurface investigations of the southern area were made, however, as yet these have not been approved.

The remains of a midden were identified in a 30m section between Holden Street and Dry Dock Road. Aboriginal community knowledge confirmed that the Terranora Inlet foreshore was used as a traditional campsite location that provided access to shellfish and other estuarine resources. The investigation identified three additional midden sites and an Aboriginal burial area (Philip Road) (Ref – Tweed Daily 5/10/1918 “Old Tweed History”) as listed on BMP database. In addition, the topographic feature, Razorback Lookout, north east of the project area is noted as an Aboriginal spiritual place and the location of a Butherun (Dreamtime Story) (Ref – Joongurranahreean – “Place where the pelican played” Daily News 22/5/1958).

In 2005, EYL in conjunction with the Tweed Byron Local Aboriginal Land Council carried out a Cultural Heritage survey of the proposed C4 route for the Tugun Bypass. The report was prepared for the Queensland Department of Main Roads, South Coast Hinterland District. The C4 route of the Tugun Bypass linked Stewart Road in Currumbin to the north with Kennedy Drive, Tweed Heads. The results of the survey supported the previous research completed by Hall (1990), Collins (1999) and Bonhomme Craib and Associates (2001). Remnants of an artefact scatter were located in area proximal to the Cobaki Broadwater. The artefacts collected by EYL included stone artefacts and an oyster shell.

All the listed project areas are within easy walking distance to the Bilambil Heights project area. It becomes evident that Bilambil Heights is located within an important landscape for the local Aboriginal communities.

Database Searches

A search of the New South Wales Department of Environment and Climate Change Aboriginal Heritage Information Management System (AHIMS) was conducted by Ms Su Davies of Davies Heritage Consultants Pty Ltd. The search returned no recorded sites located specifically within the project site. However, three sites are located in the vicinity of the study area. These sites are listed in the table below. None of the sites are under threat of impact from the proposed development.

Recorded Sites in the Vicinity of the Study Area.

Site Number	Site Name	Site Type	Information
04-1-0147	Bingam Bay BMP- 05-0133	Information not provided	Site recorded by Fox
04-2-0087	Cobaki Broadwater 2	Midden Site	recorded by Piper
04-2-0148	Cobaki Broadwater Intet BMP-05-0150	Information not provided	Site recorded by Fox

The coordinates provided for site #04-2-0087 places the site to the east of the study area. Coordinates were not provided for sites #04-1-0147 and #04-2-0148. These sites were recorded by Ian Fox for his doctoral studies; the Bundjalung Mapping Project (refer to the section *Bundjalung Mapping Project* on page 6, above).

The Bilambil Heights development falls within a landscape which extends into Queensland and, for the sake of completeness a search was conducted of the Queensland Government's information.

The Queensland Department of Natural Resources and Water maintain a list of Aboriginal and non-Aboriginal sites of significant cultural heritage discovered around Queensland. These are managed through the 'Cultural Heritage Database' and the 'Cultural Heritage Register'. Both sites include findings of government-funded surveys and independent consultancies.

Searches of the Database and Register did not reveal any recorded sites directly associated with the development area. Further, investigation, however showed that the register had listed sites in proximity to the development area. Three sites including a scarred tree and two artefact scatters were located north west of the project site in the Currumbin Valley.

Legislative Framework

Background

Darryl Anderson Consulting have commissioned a desktop assessment of the cultural heritage values of the project site.

In New South Wales, Aboriginal cultural heritage is legislated by the *National Parks and Wildlife Act 1974*.

National Parks and Wildlife Act 1974 (NSW)

In accordance with Section 3 of the Act, This Act binds the Crown, not only New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

The Act has numerous objects not limited to Aboriginal cultural heritage. These objects include:⁵

- The conservation of nature;
- The conservation of objects, places or features of cultural value (including places, objects and features of significance to Aboriginal people);
- Fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation; and
- Providing for the management of land reserved under the Act in accordance with the management principles applicable for each type of reservation.

The Director-General of the Act, and therefore the New South Wales government, is responsible for the proper care, preservation and protection of any Aboriginal object in New South Wales.⁶

"Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area in 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.⁷

⁵ Section 2A, *National Parks and Wildlife Act 1974 (NSW)*

⁶ Section 85, *ibid*

⁷ Section 5(1), *ibid*

It is an offence to destroy, deface or damage, or knowingly cause or permit the destruction or defacement of or damage to, an Aboriginal object.⁸

In accordance with Section 86 of the Act, it is an offence to disturb, move or excavate any land, or cause any land to be disturbed or excavated, for the purpose of discovering an Aboriginal object without obtaining a permit from the Director General of National Parks and Wildlife. Permit is obtained subject to section 87 of the Act.

The Act requires people to seek permission from the Department of Environment and Conservation (DEC) if they are proposing activities which will:

- Disturb or excavate land to discover an Aboriginal object, or disturb or move an Aboriginal object
- Do something that is likely to destroy, damage or deface an Aboriginal object or Aboriginal place.

The Department states that input from the Aboriginal community is an essential part of assessing the significance of those Aboriginal objects likely to be impacted by an activity. Hence the Department requires proponents to undertake consultation with the Aboriginal community as an integral part of the impact assessment.

To that end, the Department has published 'Interim Community Consultation Requirements for Applicants'.

The guidelines note that "Members of the Aboriginal community are the primary determinants of the significance of their heritage. They may participate in the process through comment on the assessment methodology, contributing cultural knowledge and commenting on cultural significance of potential impacts and/or mitigation measures. These comments are provided through the assessment process conducted by the proponent".⁹

The guidelines set out numerous requirements regarding notification, registration of interest, preparation for assessment and drafting and review of cultural heritage reports.

As stated, Permits are required for persons proposing activities to: disturb or excavate land to discover an Aboriginal object; disturb or move an Aboriginal object; or do something that is likely to destroy, damage or deface an Aboriginal object or Aboriginal place.

⁸ Section 90, *ibid*

⁹ Department of Environment and Conservation (NSW), *Interim Community Consultation Requirements for Applicants*, p.4

The field work for this assessment involved a surface survey of the area. Land was neither disturbed nor excavated. Aboriginal cultural heritage was not identified. Consequently, it was not considered necessary to obtain a permit subject to section 87 of this Act.

NSW Heritage Act 1977

The purpose of the *NSW Heritage Act 1997* is to ensure that the non-Aboriginal cultural heritage of NSW is adequately identified and conserved. The Act is concerned with all aspects of conservation, including protection against damage and destruction, to restoration and enhancement. Some key provisions of the Act are the establishment and functions of the Heritage Council, criteria for Interim Heritage Orders, maintaining the State Heritage Register, and environmental planning instruments.

This Act specifically provides protection for any item classed as a relic, and some aspects of Aboriginal sites which relate to occupation following European colonisation may fall under the relic category. This Act also requires that the discovery of a previously unknown relic be reported to the Heritage Council within a reasonable time of its discovery.

Environment Planning and Assessment Act 1979

Under the Environment Planning and Assessment Act 1979 the Minister responsible for planning may make planning instruments such as Regional Environmental Plans (REPs) and Local Environment Plans (LEPs). In addition, the Director of Planning or a Council may prepare a Development Control Plan (DCP), where it is considered that more detailed provisions are required over any part of land covered by a REP, LEP or their drafts.

These planning instruments may identify places and features of cultural heritage significance and define various statutory requirements regarding the potential development, modification and conservation of these items. Places of identified significance, or places requiring further assessment, should be listed in the heritage schedules of the LEP and REP and are then protected from certain defined activities, unless consent has been gained from a consent authority, usually a local government authority. In determining a Development Application (DA), a consent authority, such as a local government authority, must take into consideration a range of protection issues as defined in Section 79C(1).

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The significance of an area, object or class of objects means particular significance to Aboriginals in accordance with Aboriginal tradition. "Aboriginal tradition" means the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.¹²

It appears that the Act does not provide procedures or frameworks through which to conduct cultural heritage assessments. Rather, it details measures that can be taken to protect Aboriginal cultural heritage that has already been identified.

Upon receipt of an application made by or on behalf of an Aboriginal or group of Aboriginals, the Federal Minister for the Department of Environment and Heritage may, if satisfied that the area, object or class of objects are significant and under threat of injury or desecration, make a declaration in relation to the area, object or class of objects.¹³

The Minister may also make an emergency declaration for an area if satisfied there is a serious and immediate threat.¹⁴

There is also provision in certain cases for authorised officers to make declarations where there is a serious and immediate threat of injury or desecration.¹⁵

It is an offence to engage in conduct which contravenes a provision of a declaration.¹⁶

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¹⁵ Section 18, *ibid*

¹⁶ Section 22, *ibid*

Community Consultation

The NSW Interim Guidelines

Indigenous consultation was initiated by Ms Su Davies of Davies Heritage Consultants Pty Ltd. On behalf of the proponent, Ms Davies sought to identify stakeholder groups and people wishing to be consulted about the project.

Written notices

In keeping with the Interim Community Consultation guidelines (issued by the Department of Environment and Climate Change) written notification was provided by Ms Davies to the following organisations:

- Tweed Byron Local Aboriginal Land Council (LALC);
- Registrar of Aboriginal Owners;
- Native Title Services;
- Tweed Shire Council; and
- Department of Environment and Climate Change.

In addition, Ms Davies received from the Department of Environment and Climate Change (Diane Crosdale, Acting Manager, Planning and Aboriginal Heritage – North East) a list of Aboriginal community groups for the north coast / far north coast of New South Wales. Ms Crosdale advised that a subset of groups for the Tweed area could be selected from the list and written notification was then provided to Tweed Aboriginal Cooperative Society Ltd. All the above notification letters were forwarded on 24 July, 2007.

Public Notice

A public notice was inserted by Davies Heritage Consultants in the *Daily News*, a publication with broad readership in the project area, on Friday 27 July, 2007. The public notice (notification letters and the *advertisement*) advised that the closing date for registration of interest was Friday 10 August, 2007 being ten working days from that date.

The only response received by the closing date was from Ms Jacqueline McDonald, an Aboriginal person with traditional links to the area. Ms McDonald was involved in initial discussions with the proponent and also was closely involved in the preparation of this report.

Gold Coast Native Title Group

Internal community consultation is as important to the Gold Coast Native Title Group as consultation that may occur between a proponent and a member of our community. The importance of consultation is twofold. Firstly, it provides the Traditional Owners with the opportunity to voice their opinions on the Cultural Heritage significance, if any, of a particular site. Secondly, if the particular site is of significance, it allows the Traditional Owners to make suggestions on how that site may be managed.

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There are currently fifteen people sitting on the Gold Coast Native Title Group Management Committee. The committee meets from time to time and also receives information (in the form of updates, newsletters, factsheets and summaries of cultural heritage reports and management plans) on cultural heritage and native title matters. Newsletters and factsheets are sent more broadly to the Gold Coast Native Title Group community which currently includes approximately four hundred families.

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To date, the map of the proposed development area has been shown to community members who have been involved in cultural heritage assessment in surrounding regions. Their input has been incorporated into the contents of this report. This report will be circulated to interested parties and feedback will be provided if necessary.

Conclusions

The project area falls within a landscape of particular significance to the local indigenous community.

Its proximity to the Cobaki and Terranora Broadwaters is of great significance.

Also need to consider its proximity to Campbell's Hill - geographical feature known to be of great cultural significance. While it can not be seen from the property, its proximity suggests that the Bilambil Heights site may have been in a path that was used to travel between Bingam Bay/ Birds Bay and Campbell's Hill.

However, the site does not possess many of the geographical features commonly associated with sites of aboriginal cultural significance. While the flat ridge crest is the most likely place of occupation, the steep slopes of the property are very unlikely to have been used as campsites. There are a large number of surrounding ridgelines, spurs and saddles that have better access to water and views of culturally significant features such as Campbells Hill or towards Bingam Bay.

Recommendations

There are no recommendations for further on-site activity by the Gold Coast Native Title Group in the lead up to or during construction. Where EYL has been involved during the preliminary stages of project development and a detailed site inspection has been carried out it is most likely there will be no involvement by EYL on site during construction.

The developer anticipates the NSW Department of Planning will include a condition on the project approval to the affect that if any cultural heritage material is discovered during construction the Department of Environment and Conservation must be notified and appropriate approvals/studies must be undertaken. If this condition is included in the approval and also the developer agrees to contact EYL and the GCNTG in the first instance in the event of cultural heritage finds; then EYL accepts this as acceptable to cover contingencies during construction.

In the event such a condition is not included, the developer and the Gold Coast Native Title Group may enter into an agreement for the management of cultural heritage material in the event of an unusual or significant find during construction. The cultural heritage management plan is to reflect contingencies for significant and substantial finds.

18 August 2008

Our ref:

Mr Les Dickinson
PO Box 1361
Kingscliff NSW 2487

Dear Mr Dickinson

Bilambil Heights Project – Cultural Heritage.

I refer to previous correspondence regarding cultural heritage and the proposed development of a site being Major Project Application No. 05-0198 – Proposed 84 Lot Residential Subdivision at Walmsleys Road and Stott Street, Bilambil Heights (Shire of Tweed).

It is apparent the report submitted by Eastern Yugambeh Ltd ('EYL') on 4 April 2008 to Darryl Anderson Consulting requires further amendments in addition to the ones made previously. It is also apparent the Department of Environment and Climate Change may impose conditions on the development with regard to cultural heritage, however, at this stage any such conditions are not known and therefore the registered stakeholder, Ms Jacqueline McDonald, is unable to support the project application.

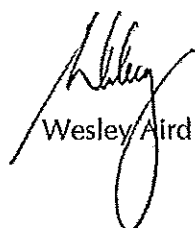
On behalf of the registered stakeholder it is proposed by EYL that the report be amended as suggested by the Department of Environment and Climate Change and also that the developer and registered stakeholder voluntarily reach agreement on a cultural heritage management plan. With an agreed cultural heritage management plan both the developer and registered stakeholder will be provided with certainty of process even if the approval conditions remain unknown.

Under this proposal there are two products and fees. The first is the amendment to the EYL report of April 2008. EYL requires the outstanding amount of \$3,500 to be deposited and cleared before commencing work on this. The second is the drafting of a cultural heritage management plan. The fee for this is an additional \$3,500 payable immediately on the parties signing the management plan.

It is suggested that prior to entering into any arrangement the developer puts the proposal to the approving authority to ensure validity.

If there is any aspect of this letter you wish to discuss please do not hesitate to contact me.

Yours sincerely



Wesley Aird

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