

## Appendix 8

Cultural Heritage Assessment  
Lot 2 DP 1074242 and Lot 269 DP 755684



# CULTURAL HERITAGE ASSESSMENT

LOT 2 ON DP I074242  
AND LOT 269 ON DP 755684

RIVEROAKS, PACIFIC HIGHWAY  
VIA BALLINA, NSW

JANUARY 2008



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## EXECUTIVE SUMMARY

The following report presents the outcomes of a Cultural Heritage Assessment over Lot 2 on DP1074242 (“Lot 2”) and a proposed Link Road in Lot 269 on DP 755684 (“Lot 269”), Pacific Highway (“River Oaks”) Ballina northern coastal NSW (“the Subject Lands”). This report is to provide supporting documentation to a Development Application to be lodged in accordance with Part 3A of the *Environment Planning and Assessment Act 1979* (NSW) and the *National Parks and Wildlife Act 1974* (NSW).

The Proponent Rayshield Pty Ltd, is proposing to construct a drainage swale in Lot 2 and construct the Link Road with the portion of Lot 269 nominated as a road corridor. The Development Application will include the proposed minor land re-contouring to facilitate stormwater drainage and flood management on Lot 2. While filling of adjoining Lots 1, 3 and 5 is subject to a previous Council consent (DA 2002/566), the proposed drainage infrastructure will address the requirements of Council following finalisation of the Ballina Flood Study 2007. The land re-contouring will result in a proposed 30-50 metre wide and approximately 0.8m deep drainage swale that diverts storm and flood waters south of the proposed residential subdivision directly into North Creek Canal.

The Aboriginal Community Consultation process was carried out via a newspaper advertisement, mail out and site inspection. A mail out to individuals and organizations was undertaken in the event that persons may not have had an opportunity to see the advertisement. There were two responses. One from the Jali Local Aboriginal Land Council (“Jali LALC”) and second from Ms. Sue and Mr. Doug Anderson who are registered Traditional Owners with the Native Title Tribunal.

A desktop review, including a review of previous archaeological reports over the north and east Ballina area and a review of the Department of Environment and Climate Change (“DECC”), AHIMS register, found there were no registered sites on the subject lands. Two Cultural Heritage Assessments have been conducted on the adjoining land immediately to the north over Lots 1, 3 and 5 on DP 1074242, and part of Lot 269 on DP 755684 in 1997 (Piper 1997) and 2007 (Everick Heritage 2007). No archaeological material was found and no cultural

heritage values identified on this land. It was concluded that there were no constraints to the proposed development on cultural heritage grounds. An Archaeological Assessment was undertaken on an adjoining block (Lot 5 on DP 578476) to the southwest (Robins and Piper 2005). An artefact scatter (AHIMS# 04-5-0211) was identified on this land.

The field inspection of Lot 2 and the proposed Link Road in Lot 269, was carried out by Everick Heritage Consultants with Mr. Marcus Ferguson, Heritage Officer of the Jali Local Aboriginal Land Council (“Jali LALC”) and with Mr. Doug and Mr. Darren Anderson on 3<sup>rd</sup> December 2007. The results of these field inspections and consultation process are as follows:

### ***Cultural Heritage Assessment***

The consultation process and field inspections with the Aboriginal stakeholder respondents and Jali LALC did not result in the identification of any sites or areas to which any cultural heritage significance is attached, that would be destructively impacted by the proposed construction of a drainage swale. A written response from Mr. Doug and Ms. Sue Anderson dated 4<sup>th</sup> December 2007, states that there was no cultural significance attached to the property (Appendix A). The Jali LALC has made a written response to the report dated 18 January 2008, supporting the findings and recommendations of this report (Appendix C).

### ***Archaeological Assessment***

There were no Aboriginal archaeological sites found or areas considered to be, potentially archaeologically significant. No items of European heritage were identified within the subject lands.

The following recommendations are made in accordance with the provisions of the *National Parks and Wildlife Act 1974* (NSW) for the protection of Aboriginal sites, relics and places on crown or public lands. Pursuant to Section 86 of the Act, it is an offence for any person to knowingly destroy, deface or damage or permit the destruction, defacement or damage to a relic or Aboriginal place without first obtaining the written consent of the Director General of the DECC.



## Recommendation 1

Prior to any earthworks contractors be advised of the statutory requirements of the *National Parks & Wildlife Act 1974* (NSW) that in regard to Aboriginal sites or relics: it is an offence to knowingly disturb, deface, damage or destroy, or to permit the disturbance, defacement, damage or destruction of a relic without first obtaining written consent to do so from the Director General of the DECC.

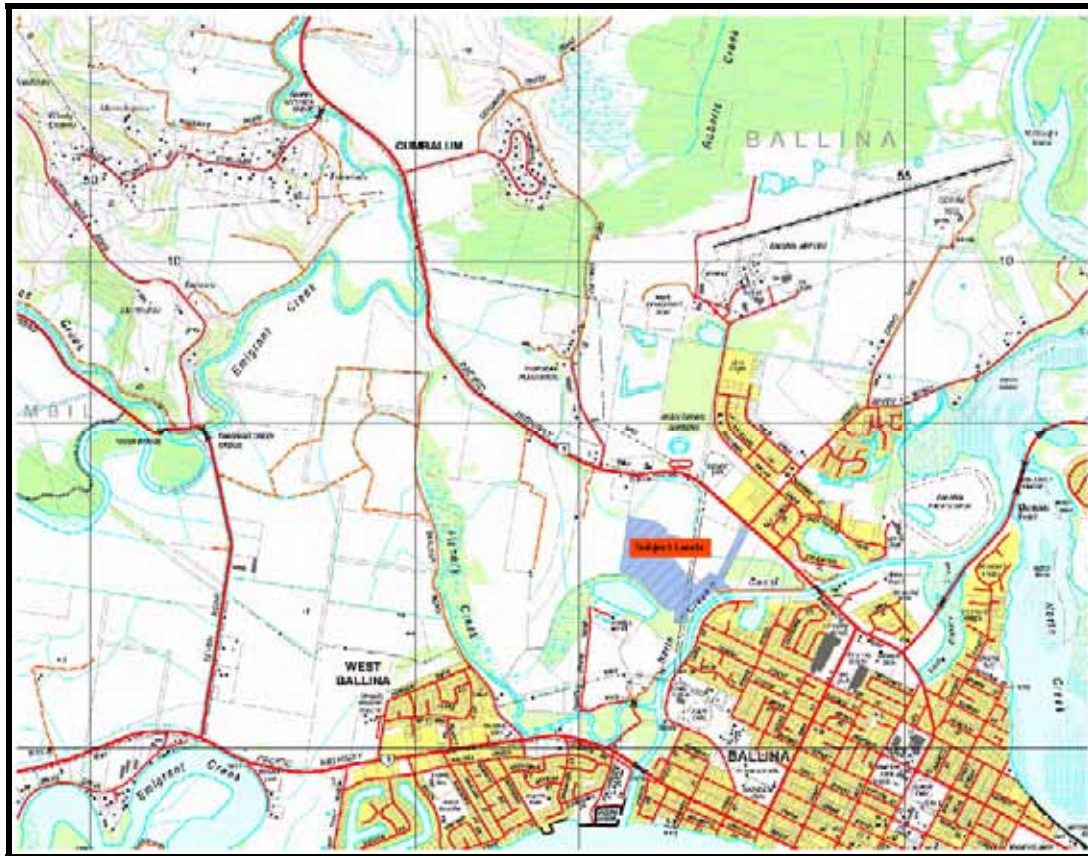
## Recommendation 2

The consultants recommend that if in the process of works in the construction of the drainage swale and proposed Link Road if at any time it is believed materials of an Aboriginal origin are found, works at the location must stop immediately. The DECC Regional Office - Coffs Harbour, Jali LALC and Mr. Doug and Ms. Sue Anderson must be advised and advice sought as to the most appropriate course of action to follow. Jali LALC may also wish to inform other Traditional Owners and seek their views as to how best to mitigate potential impacts. The location and the materials must be fenced from the remainder of the Works until they have been identified by qualified persons and management strategies agreed upon. Works must not proceed in the specific location of the cultural heritage materials without written consent of the DECC, Jali LALC, and Mr. Doug and Ms. Sue Anderson.

# 1. INTRODUCTION

## 1.1 Cultural Heritage Background

The following report presents the results and outcomes of a Cultural Heritage Assessment over Lot 2 (“Lot 2”) and a proposed Link Road in Lot 269 (“Lot 269”) (“Subject Lands”), Pacific Highway (River Oaks Development) Ballina northern coastal NSW. This report is to provide supporting documentation to a Development Application to be lodged in accordance with Part 3A of the *Environment Planning and Assessment Act 1979* (NSW) and the *National Parks and Wildlife Act 1974* (NSW). The site is located on the northern outskirts of Ballina (Figure 1).



**Figure 1: Location of Subject Lands**

## 1.2 The Proposed Works

The Proponent, Rayshield Pty Ltd, is proposing to construct a drainage swale in Lot 2 and construct the Link Road within that portion of Lot 269 nominated as a road corridor. The application will include the proposed minor land re-contouring to facilitate storm water drainage and flood management on Lot 2. While filling of adjoining Lots 1, 3 and 5 is subject to the previous Council consent (DA 2002/566), the proposed drainage infrastructure will address the requirements of Council following finalisation of the Ballina Flood Study 2007. The land re-contouring will result in a 30-50 metre wide and approximately 0.8m deep drainage swale that diverts storm and flood waters south of the proposed residential subdivision directly into North Creek Canal (Figure 2).

The drainage corridor will enter Lot 2 in the north western corner, follow the western boundary to within approximately 50 m of the southern boundary and swing parallel to the southern boundary and enter the wetland that will carry flow to the North Creek Canal.



## 2. ABORIGINAL COMMUNITY CONSULTATION

As the 'River Oaks' development is designated a State Significant Development, Aboriginal Cultural Heritage matters pertaining to the proposed construction of a drainage swale and Link Road are required to conform with the DECC Interim Community Consultation Requirements for Applicants ("ICCR Guidelines") for Aboriginal Cultural Heritage December 2004. In order to comply with the legislative requirements of the *Environment Planning and Assessment Act 1979* (NSW) and the *National Parks and Wildlife Act 1974* (NSW), the following actions have been undertaken.

### 2.1 Newspaper Advertisement

In accordance with the DECC ICCR Guidelines, an advertisement was placed in the Northern Star newspaper on 9, 10 and 12 November 2007 in the Public Notices section (Appendix B). The advertisement, headed Aboriginal Cultural Heritage, invited Aboriginal persons with an interest in the planned earthworks in the subject lands to participate in the consultation process. The advertisement identified the location of the development and detailed the type of development that would be undertaken on the land.

In the advertisement, potential applicants were advised that they had 14 days to respond in writing. Provision was made for the inclusion of applicants after that time if necessary.

### 2.2 Mail out

In the event that Aboriginal Community organisations and individuals had not had the opportunity to see the advertisement, a letter from Everick Heritage Consultants inviting Aboriginal stakeholder participation was sent to the prominent Aboriginal organizations and individuals in the region. Invitations to participate in the process of developing a Cultural Heritage Assessment Plan for the proposed earthworks were sent to the following:

Bundjalung Elders Aboriginal Corporation

Bunjum Aboriginal Co-operative

Jali LALC

Ms. S Anderson

Mr. D Anderson

Mr. Lewis Cook

Nunbahging

Bundjalung Tribal Society

The Arakwal Aboriginal Corporation

Cudawee Aboriginal Corporation

Jarjum Centre Incorporated

Nunger Aboriginal Corporation

Wai-Bai Aboriginal Corporation

Shared Vision Aboriginal Corporation

Notifications were also sent to Statutory Authorities, (DECC Planning and Aboriginal Heritage Unit), Ballina Shire Council, and NSW Native Title Services. There were two responses. One from the Jali Local Aboriginal Land Council (“Jali LALC”) and a second from Ms. Sue and Mr. Doug Anderson who are registered Traditional Owners with the Native Title Tribunal.

## 2.3 Methodology and Fieldwork

Due to the fact that there were only two respondents, we contacted them by telephone where it was agreed that each party would participate in a field inspection of the site and provide a letter giving their recommendations.

The field inspection of Lot 2 and the proposed Link Road in Lot 269, was carried out by Everick Heritage Consultants with Mr. Marcus Ferguson, Heritage Officer of the Jali Local Aboriginal Land Council (“Jali LALC”) and with Mr. Doug and Mr. Darren Anderson on 3<sup>rd</sup> December 2007. This inspection did not result in the identification of any sites or areas to which any cultural heritage significance is attached that would be destructively impacted by



the proposed construction of a drainage swale. Nor were any archaeological sites of significance identified.

## 2.4 Draft Report

A copy of our Draft Report was then sent to the respondents for comment on 17 January 2008. In a commendably quick response – by way of a letter dated 18 January 2008 (Appendix C) – the Jali LALC affirmed that they were the recognised Local Aboriginal Land Council for the survey area and agreed with the findings and recommendations contained in the Draft Report. They included a request that any alterations to the proposed works be communicated to the Jali LALC. They also supported the recommendation of Everick contained in this report that where any artifacts are located, work should stop immediately and they should be contacted for a further assessment with the area.

## 3. ENVIRONMENT

### 3.1 The Drainage Swale – Lot 2

Lot 2 is floodplain comprised of a mixture of sediments of estuarine and aeolian origin. The Topography is undulating, with a maximum elevation c. 3 m and slope of about 1% (Morand 1994:160). Tree growth is restricted to sheoaks on the south western boundary and a small area of mangrove in the south eastern corner of the floodplain. Ground cover is pasture grasses for cattle grazing.

The site has been highly disturbed. It has been extensively cleared and levelled (Figure 3). Sugar cane has been grown on the site involving the excavation of numerous drains, and the regular cultivation of the land. A large drain (3-5 m wide and 3 m deep) runs down the western side of Lot 2 (Figure 4). A central drain extends from this drain westward to a dam near the eastern boundary. A series of smaller drains run at right angles to this (Figures 5). A small plot of irrigated Ti Tree is located in the southern portion of the block (Figure 6). A powerline runs north-south through the block.

The original contour of the southern boundary has been extensively modified. Fill from the adjacent sewage plant and canal has been mounded in the adjacent lot and extends up to 40 m into Lot 2. Large amounts of rubbish have then been piled on top (Figure 7). Fill has been used over the surface of much of the Lot evidenced by numerous concrete blocks, posts, and low mounds of rubble (Figure 8).



**Figure 3 – General view of study area of Lot 2**





**Figure 4 - Major Drainage Channel on western end of Lot 2**



**Figure 5 – Drainage Channel on Lot 2**



**Figure 6 - Small Plot of Irrigated Ti Tree on Lot 2**



**Figure 7 - Large amounts of rubbish on embankment at southern end of Lot 2**





**Figure 8 - Concrete slab used for fill in the centre of Lot 2**

### 3.2 The Link Road – Lot 269

The northern part of the proposed Link Road of Lot 269 has been extensively cleared, formally cultivated and is now heavily grassed (Figures 9). The central part is heavily vegetated (Figure 10). A shallow floodway intersects the proposed road route. The southern portion of the route is cleared of tree growth and densely grassed (Figure 11).



**Figure 9 - View of cleared land on the Lot 269 proposed link road easement looking south from highway**



**Figure 10 - Cleared area on the Lot 269 proposed link road easement looking north**



**Figure 11 - The southern portion of the Lot 269 route is cleared of tree growth and densely grassed**

## 4. CULTURAL BACKGROUND

### 4.1 Settlement and movement

The Aboriginal people of the lower Richmond region were part of a larger linguistic group, the Bundjalung, which inhabited the area between the Clarence and Logan Rivers extending west to Tenterfield. Dialect groups composed of interlinked family groups occupied distinct areas within the wider Bundjalung association. Land belonged to individual clans whose territorial boundaries had been established in mythology (Creamer 1974). The study area is located within the territory of the Arakwal people, with the Bundjalung to the west and the coastal Minjanbal to the north of Byron Bay (Tindale 1974; Crowley 1978). Contact between local clans and more distant groups took place for the purposes of exchange, inter-marriage, armed conflict and during times of seasonally abundant food supply. Population numbers on the coastal plain were high, possibly reflecting the wide variety and high productivity of coastal ecologies. Ainsworth (1922) is the most detailed of early sources for this area, writing specifically of the Aboriginal people of east and west Ballina. Ainsworth (1922:43) recorded

‘In 1847 there were between 400 and 500 in the native tribes belonging to East and West Ballina ...’ Bray records that Ballina people often mixed with the Coodjimburra a coastal clan group extending from the Tweed to the Brunswick Rivers (Bray 1901:9).

A number of models have been proposed to account for the systematic use of the hunter gatherer environment of northern New South Wales and southern Queensland. Movement took place within territories in response to the availability of food supplies and across group territories for purposes of ceremonial occasions and tribal conflicts in addition to exploiting the seasonal abundance of particular food sources. However, it has been suggested that movement in the coastal river valleys does not seem to have been caused by food shortages as such, but rather to take advantage of different food types (Belshaw 1978:75).

A review of sightings of Aboriginal coastal groups in Coleman’s review of ethno historical sources led her to a conclusion that in the initial stages of European contact, observers of coastal groups describe, ‘...consistently high, semi sedentary local populations on the coast with a highly sophisticated organic material culture which vanished almost overnight with European contact’ (Coleman 1982: 7). (McBryde 1974) argues for a seasonal movement of people between the coast in summer exploiting marine foods and hunting inland in winter. On the ethno-historical evidence McBryde suggested that some seasonal movement was usual and that the basic subsistence economy of hunting, fishing and gathering was neither static, nor completely migratory, but characterised by movement between the coast and the foothills (McBryde 1974:337). A number of early references refer to seasonal movement on a limited scale including Ainsworth (1922) on the Richmond River, and Dawson (1935) and McFarlane on the Clarence River. Bray (1923) states that the Lismore ‘tribe’ used to go to Ballina at the mouth of the river. Sullivan (1964:20) recorded that inland groups were allowed to come to the Tweed coast for a time. The archaeological evidence for movement in the coastal river valleys is less conclusive (McBryde 1974: 338).

Movement within a clan territory in response to local conditions or availability of different food sources also occurred. Aborigines at Byron Bay often shifted camps but seldom moved far from a flying fox camp (Sullivan 1980). Bundock noted that on the upper Richmond flying fox were taken more easily in wet weather (Bundock 1898:4-5). Davey on the Tweed suggests



that movement may have been frequent (Davey 1948). Moehead recorded that near Lismore the Richmond Aborigines, ‘...camped on the river flats until the rain set in and would then retire to the hills’ (Moehead, nd: 1).

At Ballina, Ainsworth describes movement over the short distance between the beaches and the 'big scrub', a distance of only a few kilometres. He suggests that Aborigines of east and west Ballina were scattered in small groups combining at times of abundant food resources:

‘... the tribe usually camped in divisions at different places except during the oyster season when they assembled unitedly at Chickiba, on North Creek ... The blacks in the month of September each year flocked to the beaches for salmon fishing’ (Ainsworth 1922:44).

An exception to normal movement practices across tribal boundaries was that documented by Petrie (1975) and Bundock (1898). Bundock recorded the movement of the upper Richmond River Aborigines in the Wyangarie area to the Bunya Mountain, ‘... every third year or so ... under a sort of "Truce of God"... for the blacks went through each other territories unharmed’ (Bundock 1898). These gatherings occurred every fourth year, attracting groups to their own traditionally defined camping areas and served to promote trade and strengthen kinship networks across a vast area of western Queensland, south-east Queensland, and north-east N.S.W.

## 4.2 Economy

According to Ainsworth (1922:43-44) the coastal people between Ballina and Byron Bay relied on ‘... fish and oysters and the varied products of the chase ...’ He refers to the spearing of salmon on the beaches and the netting of estuarine fish by means of ‘... a “tow-row”-a finely meshed net attached to a stick of bamboo bent in the shape of a bow ...’. He is not specific about which estuarine fish were caught by this method, although an excavation of a North Creek shell midden did indicate the exploitation of flathead and bream (Bailey 1975:55). Ainsworth places an emphasis on the consumption of oyster to the exclusion of other estuarine, coastal rock platform and open shore molluscs, all of which are recorded in local

shell middens (Bailey 1975; Campbell 1982; Hughes 1991). Modern research supports Ainsworth's assessment as to the prominence of oyster at least for certain periods, in the diet of the Ballina group to the extent that this species comprises the greatest volume of estuarine shellfish represented in Aboriginal middens (Hughes 1991).

Terrestrial animal foods mentioned by Ainsworth (1922:43) include pademelons, wallabies, bandicoots, and iguanas (sic). He reports that flying foxes provided a source of food and were easily brought down with the boomerang and pademelon stick. Bundock also records the hunting of flying fox '... by going into the camps where they sleep during the day, when it is raining heavily, as they will not fly...' (Bundock: 1898). At Byron Bay flying fox were so prolific and reliable that the natives though often shifting camp, seldom went far away on account of this source of food supply (Anon. n.d., b:1 in Sullivan1978:107).

Ethnohistorical records are largely directed towards descriptions of hunting techniques which employed large groups of people and obvious types of technology requiring demonstrable physical skills-the use of spears, clubs, boomerangs, the 'tow-row' (net) etc. As a result, the role of plant foods in the local economy is often understated or overlooked entirely. Certainly, vegetable foods are given no particular prominence in Ainsworth's recollections at Ballina. He refers to yams obtainable in the scrubs, and to bread made from nuts which grew on the coastal headland (Ainsworth 1922:43). McFarlane (1934) writing of the Clarence River placed greater emphasis on the role of vegetable foods '... the woods supply much variety in the shape of fruit or berries but every description of vegetable contributed to the digestive requirements of the collector of food necessities'.

The most detailed analysis of material culture has been that undertaken by McBryde (1978). The region of the Tweed, Richmond and Clarence Rivers would seem to form a distinct unit. This is particularly so in the case of fishing technology. The multi-pronged fishing spear and the shellfish hook are both absent from this region. Fish were caught in nets or speared in the shallows (McBryde 1978:187). Spears were single pointed fire hardened weapons (Dawson 1935:22), of both a lighter and heavier variety (Byrne 1946:3). Neither the woomera nor the spear throwing stick were used in this region (Dawson *ibid*). The range of materials is considered wider than central Australian tribes, with fewer all purpose items, few composite



tools and a number of specialised ones. This may reflect a more sedentary life style in a rich environment requiring fewer specialised tools (McBryde 1978:187). The stone tool element in the material culture was small and unspecialised. The archaeological evidence suggests changes to a simpler stone technology took place only centuries before European settlement. The stone tools in use immediately prior to European settlement, ‘... show little typological sophistication and did not demand highly skilled craftsmanship’ (McBryde 1978:198).

The resources of sub-tropical rainforest were used extensively in the technology of the Richmond, which is heavily dependent on wood and bark fibre (McBryde 1978:197). Her sources refer to shields (McFarlane 1934; Dawson 1935), single point fire-hardened spears, three types of boomerang (Dawson 1935), clubs-nulla nulla and pademelon sticks, bark and palm leaf bags, wooden water vessels, possum rugs, cane and shell necklaces and stone knives (Bundock 1898). Bark was used for containers and shelter. Stone axes are referred to by Dawson (1935:22) and Byrne (1946:2). Fishing nets and rope was made from twine spun from the flame tree (Byrne *ibid*). Fishing nets were made a couple of yards long with a stick at each end used individually or in combination with many of the same (Seymour 1976). Bundock (1898) and Ainsworth (1922) described the same type of nets used for game drives in rainforests.

## 5. ARCHAEOLOGICAL BACKGROUND

### 5.1 Prehistory

Coastal sites in northern N.S.W. date to within the Holocene period. The earliest of these is a shell midden at the base of Sexton Hill on the lower Tweed River where an occupation phase was dated between 4,700 BP and 4,200 BP (Appleton 1993:34).

At Ballina a shell midden on Chickiba Creek was found to have accumulated between 1,750 BP and c.100 BP (Bailey 1975:52). Shell samples from the Angels Beach area are dated between 800 BP and 530 BP, with one sample at 900-1,000 BP (Rich 1994:195). Stone artefacts were assessed on technological grounds to date to within the past 2,000 years