

Senior Development Manager
Corporate Property
Woolworths Limited

8th August 2011

Re: Warnervale Town Centre: Archaeological Investigation Report, March 2004.

Director-General's Requirements.

Dear Sir

Further to your email of 7th July, the following is provided to address the Director-General's Requirements with regard to the guidelines used for my report of March 2004:

"The archaeological investigation for sites of Indigenous cultural significance on the site of the proposed Warnervale District Town Centre & sewerage infrastructure, Warnervale, Central Coast, NSW". Unpublished report for Landcom.

Since 1974 when the "**National Parks & Wildlife Act**" was enacted, and again in 1979 when the "**Environmental Planning & Assessment Act**" was enacted it had become "best practice" for Consultant Archaeologists engaged to undertake archaeological investigations on behalf of developers, local government councils and for National Parks & Wildlife Service, etc., to consult with the relevant Local Aboriginal Land Council (LALC) and Initiated Elders and Knowledge Holders on all aspects of Indigenous culture relevant to the survey area.

For the Warnervale project which was undertaken in March 2004 that meant consulting with Darkinjung LALC. There were no surviving Initiated Elders with an association with the area in which the Project Site occurred and the Land Council was not aware of any surviving Knowledge Holders and so the Land Council represented the Indigenous interests of the Aboriginal community.

Accordingly pre-investigation consultation took place with Darkinjung LALC, and the subsequent fieldwork was undertaken with the participation of the Darkinjung LALC Sites Officer. Following the field investigation Darkinjung LALC provided a letter confirming its participation in the consultation process, and confirming the recommendations that had been discussed in the field and later ratified by the Land Council.

In December 2004 DEC introduced the “**Interim Community Consultation Requirements for Applicants**” (Dec 2004). The primary thrust of the new guidelines was that, “Aboriginal *people* are the primary determinants of the significance of their heritage”, and that the proponent (or the consultant archaeologist acting on the proponent’s behalf) should consult with the Aboriginal community.

The next change to the procedures was the introduction of **Part 3A – Major Projects**, Section 6 of the NP&WS Act (for projects budgeted to cost 50 million dollars or more). Approval for a Part 3A project negated any protection that might otherwise have existed under any other State Acts including the NP&WS Act of 1974. Issues such as cultural and/or scientific significance, endangered or rare fauna and flora, water management, soil conservation, noise emissions, air and water pollution, traffic, subsidence, aesthetics, etc., etc., were to be addressed but the findings arising from those issues were to be set aside to allow Part 3A development. Consultation for Projects subject to Part 3A included all Aboriginal stakeholders.

Many of the procedures and in particular the procedures for Aboriginal consultation that had been introduced in “Part 3A” were carried forward into:

- “NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects” (NSW Minerals Council 2010);

- “Aboriginal Cultural Heritage Consultation requirements for proponents” (DECCW 2010);
- “Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales” (Department of Environment, Climate Change & Water [DECCW] 2010);
- “NSW Draft Code of Conduct for Archaeological Practice in NSW” (DECCW 2010);
- “Draft Code of Practice for Archaeological Investigation in NSW” (DECCW 2010);
- “National Parks and Wildlife Amendment (Archaeological Investigations) Regulation 2010” (DECCW 2010); and
- “Guide to investigating, assessing and reporting on Aboriginal Cultural heritage in NSW” (Office of Environment & Heritage [OE&H – formerly DECCW], 2011).

Returning to my report of 2004, the report was written at a time when the only consultation necessary under the NPWS Act 1974, and *applied* NPWS policy was with the Local Aboriginal Land Council and in a few cases with Initiated Elders and Knowledge Holders if there were any in the area of proposed development. But as referred to above, there were no surviving Initiated Elders or Knowledge Holders in the Wyong area in 2004.

The changes to the “rules” that came into operation in December 2004 were after the Warnervale study of March 2004 had been completed and the reports finalised.

Later investigations of the larger Warnervale area such as “Precinct 17A” surveyed and reported in June 2009, included consultation with the wider Aboriginal community and registered Aboriginal stakeholders in addition to Darkinjung LALC.

The assessment criteria used in the investigation of March 2004 fully complied with the requirements of the “National Parks & Wildlife Act 1974 (as amended)”; and the “Environmental Planning & Assessment Act 1979” that were current at the time. No sites

were recorded in the proposed Project Site and the Land Council, representing the interests of the Aboriginal community, was directly involved in all aspects of the consultation process.

In the absence of any cultural association with, or any artefactual material in the Project Site it is my professional opinion, having undertaken over 520 archaeological investigations, over a period of twenty years, that no further investigation of the Project Site is necessary, nor is there a necessity for additional Aboriginal consultation.

Regards

A handwritten signature in dark ink, consisting of a long horizontal stroke with a small loop at the end.