DRAFT REPORT VERSION 1

LAKE CATHIE PUBLIC SCHOOL REDEVELOPMENT,
1240 OCEAN DRIVE, LAKE CATHIE NSW,
PORT MACQUARIE HASTINGS LGA

Aboriginal Cultural Heritage Assessment

February 2019

Prepared for:

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CONTENTS

1 INTRODUCTION
   1.1 Assessment purpose and background ........................................... 1
   1.2 Project area location and proposal ........................................... 1

2 LEGISLATIVE CONTEXT AND COMPLIANCE
   2.1 Environmental Planning and Assessment Act 1979 ................................ 4
   2.2 National Parks and Wildlife Act 1974 ........................................ 4
   2.3 Environment Protection and Biodiversity Conservation Act 1999 ............. 4

3 COMPLIANCE WITH THE ABORIGINAL CULTURAL HERITAGE CONSULTATION
   REQUIREMENTS FOR PROPONENTS 2010
   3.1 Stage 1- Notification of the project proposal and registration of interest .... 5
   3.2 Stage 2- Presentation of information about the proposed project .......... 5
   3.3 Stage 3- Gathering information about cultural significance .................. 6
   3.4 Stage 4- Review of draft cultural heritage assessment report ............... 6

4 ENVIRONMENT AND LANDUSE EFFECTS
   4.1 General setting .............................................................................. 6
   4.2 The project area ............................................................................ 6

5 ABORIGINAL CULTURAL HERITAGE CONTEXT
   5.1 Ethno-history ................................................................................. 8
   5.2 Registered Aboriginal sites and places ........................................... 9
      5.2.1 OEH Aboriginal Heritage Information Management System ............... 9
      5.2.2 Other heritage registers ......................................................... 9
   5.3 Past Aboriginal cultural heritage assessments and investigations ............ 11
      5.3.1 The project area ................................................................. 11
      5.3.2 The nearby locality ............................................................. 11
   5.4 Synthesis of available information and archaeological expectations for the
      project area .................................................................................. 12
      5.4.1 Summary and discussion ....................................................... 12
      5.4.2 A predictive model of the nature and location of archaeological sites
            within the project area ............................................................ 13

6 FIELD INSPECTION ............................................................................. 13

7 CONCLUSIONS ................................................................................... 13

8 MANAGEMENT RECOMMENDATIONS .................................................. 14

REFERENCES ...................................................................................... 15
GLOSSARY ......................................................................................... 17

APPENDIX
A Aboriginal consultation log (to date only) ............................................. 19
B Aboriginal cultural heritage requirements for proponents 2010- Copy of letters sent in
   compliance with Stage 1, Step 4.1.2 ...................................................... 21
C Aboriginal cultural heritage requirements for proponents 2010- Responses to letters sent
   in compliance with Stage 1, Step 4.1.2 .................................................... 26
D Aboriginal cultural heritage requirements for proponents 2010- Copy of letters sent and
   newspaper advertisement in compliance with Stage 1, Step 4.1.3 ................. 34
E Aboriginal cultural heritage requirements for proponents 2010- Response to letters sent and
   newspaper advertisement in compliance with Stage 1, Step 4.1.3 (to date only) .... 43
F Aboriginal cultural heritage requirements for proponents 2010- Written project information and draft
   assessment methodology supplied in compliance with Stage 2 and Stage 3, Step 4.3.1 (to date only) .... 44
G Aboriginal cultural heritage requirements for proponents 2010- Written responses to draft
   assessment methodology supplied in compliance with Stage 3, Step 4.3.1 (to be received) ............. 46
H Aboriginal cultural heritage requirements for proponents 2010- Responses received following
   Aboriginal Party review of draft report in compliance with Stage 4 (to be received) ................. 47
I Extensive AHIMS search result for land within 3km of the project area ............ 48
TABLES
1 Types of Aboriginal sites registered on AHIMS within 3km of the project area ........................................... 9
2 Details of Aboriginal sites registered on AHIMS within 3km of the project area ........................................... 9
3 Summary of other past Aboriginal cultural heritage assessments and investigations near the project area .......... 12

FIGURES
1 General location of the Lake Cathie Public School .......................................................................................... 2
2 The existing school buildings and proposed collector road .............................................................................. 2
3 Plan of the proposed school redevelopment ................................................................................................. 3
4 AHIMS registered sites in the Lake Cathie-Bonny Hills locality ................................................................... 10

PLATES
1 General view of the school grounds south of the Ocean Drive entrance ......................................................... 7
2 General view of the school grounds north of the Ocean Drive entrance ......................................................... 7
3 Swamp forest rehabilitation zone near the Ocean Drive boundary ............................................................ 8

ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT
AHD Australian Height Datum
AHIMS Aboriginal Heritage Information Management System
AHIP Aboriginal Heritage Impact Permit
PAD Potential archaeological deposit
BP Years before present, ‘present’ being the 1st of January 1950
CRs Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010
DECCW NSW Department of Climate Change and Water (former)
EIS Environmental Impact Statement
EPA Act Environmental Planning and Assessment Act 1979
ha Hectares
LALC Local Aboriginal Land Council
LGA Local Government Area
m Metres
NPW Act National Parks and Wildlife Act 1974, as amended
NTS Corp Native Title Services Corporation NSW
OEH NSW Office of Environment and Heritage
PAD Potential Archaeological Deposit
RAP Registered Aboriginal Party
SEARs Secretary’s Environmental Assessment Requirements, NSW Department of Planning and Environment
SHAC Schreiber Hamilton Architecture Pty Ltd
SSD State Significant Development
1 INTRODUCTION

1.1 Assessment purpose and background

The NSW Department of Education proposes to redevelop the Lake Cathie Public School to cater for projected student population growth in the Lake Cathie-Bonny Hills area, within the Port Macquarie Hastings LGA on the NSW mid-north coast.

This Aboriginal Cultural Heritage Assessment was prepared for SHAC on behalf of the Department of Education, and provides supporting information for an Environmental Impact Statement (EIS) and associated State Significant Development application (SSD #9491) to be submitted to the Minister for Planning and Environment for project approval. The assessment addresses Key Issue 9 (Aboriginal Heritage) of the Secretary's Environmental Assessment Requirements (SEARs) for the EIS, dated 15th of August 2018. In relation to Aboriginal heritage issues the SEARs require:

- Address Aboriginal Cultural Heritage (ACH) in accordance with the Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW (DECCW, 2011) and Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW);
- The EIS must demonstrate attempts to avoid any impact upon cultural heritage values and identify any conservation outcomes. Where impacts are unavoidable, the EIS must outline measures proposed to mitigate impacts. Any objects recorded as part of the assessment must be documented and notified to OEH."

An Aboriginal archaeological due diligence assessment, consistent with the Due diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010c), was prepared for the project in September 2018 (Virgin 2018). This due diligence assessment included a search of the Aboriginal Heritage Information Management System (AHIMS), background literature review, and a field inspection (see Section 5.3.1 of this report), but did not include Aboriginal consultation or involvement. A review of the due diligence assessment undertaken by the Office of Environment and Heritage (OEH) found that the assessment did not comply with the SEARs. As advised by the OEH, “the report should appropriately address the SEARs and have a title that reflects its actual purpose, which is to assess the environmental impacts of this State Significant Development proposal on Aboriginal heritage” (correspondence from OEH to the Department of Planning and Environment, 19th December 2018).

SHAC then engaged the consultant (Adise Pty Ltd, t/a J.P. Collins Consultant Archaeologist) to address the SEARs and produce a compliant Aboriginal Cultural Heritage Assessment report, on the 14th of January 2019. Implementation of the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010a; the CRs) commenced on this day. Time to date has not been sufficient to complete all required steps of the CRs. These include the registration of interested Aboriginal parties, registered Aboriginal party comment/input to the assessment methodology, a field inspection with the registered Aboriginal parties, and review of the final draft report. This report thus represents a preliminary draft only and is reliant upon existing information. Depending upon the results of Aboriginal consultation and a field inspection, the recommendations presented in Section 8 may change.

1.2 Project area location and proposal

The Lake Cathie Public School is situated at 1240 Ocean Drive, Lake Cathie, approximately 16km south of Port Macquarie on the NSW mid-north coast (Figure 1). The school allotment has an area of 3.96 hectares, legally described as Lot 2 DP 1193553 (the ‘project area’). Lot 2 DP 1193553 sits a minimum of 1.5km inland of Rainbow Beach between the existing villages of Lake Cathie and Bonny Hills and is bounded to the north and west by Ocean Drive, to the east by ‘the proposed collector road’ (under construction) and a soon to be developed residential subdivision, and to the south by vacant land earmarked for future sporting fields.

As shown on Figure 2, the existing school buildings are confined to the south-eastern section of the allotment. The proposed redevelopment (Figure 3) would include:

- Removal of 14 demountable classrooms and the existing covered outdoor learning area (COLA);
- Construction of 17 additional teaching spaces;
- Construction of a community-focused hall;
- Construction of three COLAs;
- Removal of the current access road from Ocean Drive and relocation of the main entrance and carparks to connect with the collector road now under construction adjacent to the eastern boundary;
- Construction of a new entry plaza, drop-off and bus bay adjacent to the collector road;
- Construction of new outdoor learning spaces and formalised active play space;
- Adjustment of the ‘SEPP 44 Koala Habitat Remediation Management Zone’ and ‘Swamp Forest Rehabilitation’ areas;
- Construction of a rain garden swale supporting site ground and water flow; and
- Ancillary landscaping, signage, services and stormwater drainage works.

Figure 1. General location of the Lake Cathie Public School (Source: whereis.com)

Figure 2. The existing school buildings and proposed collector road (under construction) (Source: Google Maps 2019)
Figure 3. Plan of the proposed school redevelopment (Source: SHAC 2019)
2 LEGISLATIVE CONTEXT AND COMPLIANCE

2.1 Environmental Planning and Assessment Act 1979

The EPA Act requires that environmental impacts, including impacts upon Aboriginal cultural heritage, are duly considered in landuse planning. Part 4 of the Act governs the manner in which consent authorities determine development applications and outlines those that require an EIS.

Under Part 4, Division 4.1 of the EPA Act, a development may be declared a State Significant Development (SSD) if it meets certain criteria. The consent authority for SSD is the Minister for Planning and Environment (DPE), but the Minister may delegate consent authority function to the Planning Assessment Commission, the DPE Secretary, or another public authority. An Aboriginal Heritage Impact Permit (AHIP) under section 90 the National Parks and Wildlife Act 1974 (NPW Act) is not required for SSD that is authorised by a development consent. However, an EIS that fulfills the SEARs needs to be submitted along with the development application. The management of Aboriginal cultural heritage would follow identified mitigation measures and conditions of development approval.

As outlined in Section 1.1, the proposed school redevelopment constitutes SSD and SEARs for the EIS have been issued. As far as currently possible, this report presents information in accordance with the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (DECCW 2011). Aboriginal consultation as per the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (DECCW 2010a) is still in train, such that Aboriginal cultural heritage impacts of the proposal cannot yet be fully assessed.

2.2 National Parks and Wildlife Act 1974

The NPW Act (as amended) is administered by the OEH, and forms the primary basis for the statutory protection and management of Aboriginal cultural heritage in NSW. Part 6 of the Act provides specific protection for Aboriginal objects and declared Aboriginal places by making it an offence to harm them unless authorised by a duly approved Aboriginal Heritage Impact Permit (AHIP).

The NPW Act defines an ‘Aboriginal object’ as-

‘Any deposit, object or material evidence (that is not a handicraft made for sale) relating to Aboriginal habitation of NSW, before or during the occupation of that area by persons of non-Aboriginal extraction (and includes Aboriginal remains).’

The provisions of the Act apply to all Aboriginal objects, regardless of whether or not they have been registered with the OEH, or whether they occur on private or public land. Except where destruction of an Aboriginal object is or will be demonstrably unavoidable it is OEH policy to require conservation in its original location and context.

Places in the landscape of significance to Aboriginal people, which may be devoid of ‘Aboriginal objects’, can only be protected under the Act (section 84) via declaration as an Aboriginal place. For the purposes of the Act, an ‘Aboriginal place’ is defined as a place that-

‘in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture’.

Under section 85A of the Act, the Director General of the Department of Premier and Cabinet may transfer Aboriginal objects to a person or organisation for safekeeping. The subject person or organisation must enter into a formal care agreement with the OEH, which sets out the obligations of the OEH and the person/organisation for the long-term safekeeping of the transferred object(s).

Whilst an AHIP is not required to authorise impacts to Aboriginal objects and places for projects approved under Part 4 of the EPA Act (including the SSD subject of this report), there are other sections of the NPW Act that remain valid. These include the need to obtain a Care Agreement for salvaged objects (section 85A), and the need to report the location of Aboriginal objects to the OEH (section 89A).

2.3 Environment Protection and Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act 1999 (as amended) is the Federal Government’s central piece of environmental legislation, and protects heritage places of national significance as well as those under commonwealth ownership. This Act also offers protection to properties included on the World Heritage List. More recent amendments created the Commonwealth Heritage List and National Heritage List. Any actions likely to have a significant impact upon any listed items must be referred to the Department of Sustainability, Environment, Water, Population and Communities for consideration.
On-line searches undertaken on the 25th of January 2019 revealed that the project area does not contain or encroach upon sites, places or land listed on the World Heritage List, Commonwealth Heritage List or the National Heritage List.

3 COMPLIANCE WITH THE ABORIGINAL CULTURAL HERITAGE CONSULTATION REQUIREMENTS FOR PROPONENTS 2010

Consistent with the SEARs, the Aboriginal Cultural Heritage Consultation Requirements for PropONENTS 2010 (DECCW 2010a; the CRs) are being implemented for this assessment, but are not yet complete due to time constraints. A record of the consultation undertaken to date is presented in Appendix A. Consultation will continue throughout the development application phase until such time as full compliance with the CRs is attained.

3.1 Stage 1 – Notification of the project proposal and registration of interest

In accordance with Stage 1, Step 4.1.2 of the CRs (DECCW 2010a:10), letters and/or a search request were sent to the following organisations, requesting the names and contact details of any known Aboriginal parties who may have an interest in the project locality, and hold knowledge relevant to determining the cultural significance of Aboriginal objects and/or places that might occur (Appendix B):

- Office of Environment and Heritage (OEH)
- Birpai LALC
- The Registrar, Aboriginal Land Rights Act 1983
- National Native Title Tribunal
- Native Title Services Corporation Ltd (NTS Corp)
- Port Macquarie Hastings Council

Responses/search results are reproduced in Appendix C.

In the absence of any relevant entries in relation to Native Title or any Registered Aboriginal Owners pursuant to Division 3 of the Aboriginal Land Rights Act 1983, letters inviting registration of interest, including all required project information (as per Stage 1, Step 4.1.3 of the CRs), were mailed to the following potential knowledge-holders advised by the OEH (and Port Macquarie Hastings Council) (Appendix D):

- Birpai LALC
- Saltwater Tribal Council
- Ghinni Ghinni Youth and Culture Aboriginal Corporation
- Bindi Aboriginal Heritage and Culture Centre Inc.
- Birpai Traditional Owners Indigenous Corporation
- Lakkari NTGC
- Norm Archibald
- Yanggaay

On the 23rd of January 2019, a newspaper notice was published in the Port Macquarie Express and the Camden Haven Courier, inviting interested Aboriginal parties with cultural knowledge of Lake Cathie-Bonny Hills to contact the consultant to formally register their interest in the assessment, to be received by the 6th of February 2019 (Appendix D). An expression of interest has so far been received from the Birpai LALC (Appendix E). Stages 2, 3 and 4 of the CRs will be followed in the event that any other Aboriginal parties register an interest in the assessment.

3.2 Stage 2 – Presentation of information about the proposed project

Upon registration of interest, a letter presenting project details and the purpose, scope and draft methodology of this assessment was emailed to the Birpai LALC for consideration at an upcoming Board meeting scheduled for the 5th of February 2019 (Appendix F).

3.3 Stage 3 – Gathering information about cultural significance

The draft methodology for this assessment was emailed to the Birpai LALC on the 29th of January 2019, requesting feedback following the Board meeting scheduled for the 5th of February (Appendix F). The assessment methodology will be modified in line with comments received, and attached at Appendix G.

In addition to a field inspection with representatives of the Registered Aboriginal Parties (RAPs) for the purposes of recording Aboriginal objects, the draft assessment methodology includes consultation with these representatives to determine:
Lake Cathie Public School Redevelopment, 1240 Ocean Drive, Lake Cathie NSW-
Aboriginal Cultural Heritage Assessment- Draft 1

- whether any sites/places of special attachment or cultural heritage value occur in or near the project area;
- the level of socio-cultural significance attributed to any identified sites/places (including Aboriginal objects);
- whether the divulged cultural information is suitable for general public access. If not, what aspects of this information should be withheld, and/or not shared with other Aboriginal parties, administrative authorities/others; and
- management strategies to be implemented in relation to the proposed school redevelopment.

3.4 Stage 4 – Review of draft cultural heritage assessment report

Once completed to final draft stage, the draft report will be sent to the registered Aboriginal parties for review and comment. All comments will be duly addressed and incorporated into the final report. Correspondence received will be reproduced in Appendix H.

4 ENVIRONMENT AND LANDUSE EFFECTS

4.1 General setting

The eastern part of the Port Macquarie Hastings LGA experiences a humid sub-tropical climate, characterised by relatively high summer and low winter/spring rainfalls. Average daily temperatures range from a maximum of 25.8° to a minimum of 17.0° Celsius in summer, and 17.8° to 7.1° Celsius in winter (ERM Mitchell McCotter 1999). Despite climatic fluctuations, the Lake Cathie-Bonny Hills locality would have been conducive to year-round Aboriginal occupation throughout the Holocene period, although landuse was no doubt constrained by the inundation of very low-lying coastal terrain during the last sea highstand (+1.0 to +1.5m), which lasted until sometime after 2,000 years ago (Lewis et al 2008; Lewis et al 2012). Data collected from Valla Headland further north suggests that the sea may have only fallen to its present level since 1,780 BP (Flood and Frankel 1989).

The project area sits within the Duchess Gully drainage basin, which is defined by a series of low undulating hills and ridges that stretch seaward from the Jolly Nose escarpment, situated approximately 4km inland of fronting Rainbow Beach. The broad northern ridge is followed by Ocean Drive east of its intersection with Houston Mitchell Drive, and separates the Duchess Gully catchment from the Lake Cathie estuarine system. The ridge crest is fringed by low gradient slopes that fall gradually south to meet an extensive alluvial flat sandwiched between Ocean Drive and the northern limit of the township of Bonny Hills. The hills and ridges are based on metamorphic bedrock comprising schist, phyllite, greywacke and slate (Tamworth-Hastings 1:250,000 metallogenic mapsheet). These same materials as well as siltstone, chert, jasper, quartz and assorted volcanics are represented in inter-tidal pebble beds along Rainbow Beach. The pebble beds are believed to have been the source of raw stone materials used for the manufacture of traditional Aboriginal stone tools recorded in the locality (Collins 2007:22).

Duchess Gully is a small, lightly incised permanent watercourse that rises on the alluvial flat around 1km east of the project area. The gully runs south behind and within degraded inner barrier dunes to discharge into the ocean at Bonny Hills, on the southern end of Rainbow Beach. Although tidal towards Bonny Hills, the upper reach of Duchess Gully is fresh. In addition to two intermittent creeks that traverse the alluvial flat south of the project area, artificial drainage channels and lakes now divert rain run-off into Duchess Gully. Before this intervention, much of the flat may well have been covered in swamp.

4.2 The project area

The project area encompasses a small part of the terminal toe of the ridge that defines the northern limit of the Duchess Gully basin. The topography is relatively flat, ranging in elevation from 10m AHD in the north to 8m AHD on the southern boundary. Boreholes dug by JK Geotechnics show the soil profile to generally consist of a 10-50cm deep topsoil layer of dark grey and dark brown silty clay of medium plasticity, overlying stiff silty clay (JK Geotechnics 2013, cited in Virgin 2018:4). The area is devoid of rock outcrops that might have been used for Aboriginal occupation, art production, the construction of stone arrangements, tool grinding or quarrying.

The project area appears to have been initially cleared to accommodate a then proposed resort development, which commenced but did not eventuate (cf Staniland Mounser 1994). Prior to clearing, the natural vegetation likely comprised Forest Red Gums underlain by a mixed Swamp Oak swamp forest (Darkheart Eco Consultancy 2013, cited in Virgin 2018:4). The area was afterward used for cattle grazing up until the Lake Cathie Public School was built in 2014 (KDC 2018:1). The existing school development has added further substantial landscape modification via the construction of buildings, driveways, carparking, play areas, fences etc., landscaping, drainage and the installation of underground services. Apart from some mature trees in the south-western corner, current vegetation is restricted to open (mown) grassland, cultivated gardens, and planted (juvenile) trees and shrubs (Plates 1 and 2). The plantings include a dense vegetation buffer (Swamp forest
rehabilitation zone) that extends close to the Ocean Drive boundary north of the school entrance (Plate 3).

Due to past vegetation clearing, landscaping, services installation, and construction of the existing school buildings, sports/play grounds, entrance road and carpark, the project area constitutes ‘disturbed land’, as defined under the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (DECCW 2010c:7-8).