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FAIRY MEADOW AMBULANCE STATION
ABORIGINAL CULTURAL HERITAGE (DUE DILIGENCE)
ASSESSMENT

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Health Infrastructure





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ABBREVIATIONS

ACHAR	Aboriginal Cultural Heritage Assessment Report
Activity Area	Part of 7 Squires Way, Fairy Meadow NSW (Lot 1 DP1172 135).
AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit
DEECW	Department of Environment, Climate Change and Water (now Heritage NSW)
EIS	Environmental Impact Assessment
EPA	Environmental Planning and Assessment
HI	Health Infrastructure
LALC	Local Aboriginal Land Council
LEP	Local Environment Plan
NPW	National Parks and Wildlife
OEH	Office of Environment and Heritage
PAD	Potential Archaeological Deposit
Proposed Works	Construction of an ambulance station including underground utilities, stormwater detention and vehicle access
REF	Review of Environmental Factors

1 INTRODUCTION

1.1 Project Background

Heritage Management & Planning Pty Ltd has been commissioned by Health Infrastructure to undertake a desktop Aboriginal cultural heritage (Due Diligence) assessment to support the Review of Environmental Factors (REF) for the proposed new ambulance station at 7 Squires Way, Fairy Meadow NSW (the Activity Area, **Figure 1**). The desktop assessment is provided to consider the potential impact of the proposed new ambulance station on Aboriginal archaeological sites and whether the proposed ambulance station can be approved under the Due Diligence approval pathway (section 87 of the National Parks and Wildlife Act NSW (1974)).

The Due Diligence assessment has been commissioned in response to advice from Wollongong City Council to Health Infrastructure, date 2 May 2023, regarding the following matters:

Regarding the Aboriginal heritage issue at the site. Council's Heritage Officer has advised that there are ongoing investigations at Innovation Campus in relation to a potential burial ground associated with the Battle of Fairy Meadow. The broader site has documented cultural significance and the potential for Aboriginal Sites to be present is also being considered as part of other proposals on the site.

If required to address this matter in order to satisfy requirements under Part 5 of the EPA Act 1979 and the SEPP SEPP (Transport and Infrastructure) 2021, an Aboriginal Cultural Heritage Assessment Report should be prepared to support the proposal. This should consider the Kelleher Nightingale work on the broader site and include consultation with the local Aboriginal Community.

You may need to review the implications of this matter regarding the provisions of the SEPP (Transport and Infrastructure) 2021 for Emergency services facilities and any requirements under the National Parks and Wildlife Act 1974 and whether they're applicable. Unfortunately, due to the status of the matter it the implications are not explicitly clear.

Responses to these matters are provided in Section 5.1.7 (below).

1.2 Project Brief & Methodology

The brief for this project was to undertake Aboriginal cultural heritage assessment in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (DEECW 2010). The Due Diligence assessment includes the following:

- a description of the nature of the works with specific consideration of movement of topsoils with the potential to contain Aboriginal objects
- a search of relevant Aboriginal heritage registers, including the Aboriginal Heritage Information Management System
- a review of environmental information to consider the potential that the Activity Area is located in landforms or landscapes with an elevated potential to contain Aboriginal objects or cultural values



- a review of historic ground disturbance to consider factors which might have removed Aboriginal objects from the area of the proposed ambulance station, and
- documentation of the assessment outcomes including:
 - i. a summary of any known Aboriginal archaeological sites within the Activity Area or its immediate vicinity
 - ii. appropriate mitigation measures to avoid known Aboriginal archaeological sites or landforms with the potential to contain Aboriginal archaeological sites, and
 - iii. statements on the adequacy of the assessment including the requirement for additional archaeological investigation and Aboriginal community consultation.

1.3 Report Authorship

The study was undertaken by Tim Hill (BA. Hons. Archaeology and Palaeoanthropology, University of New England (1998)).

1.4 Description of the Proposal

Detailed plans of the proposed Ambulance Station are provided below (see **Figure 2-Figure 3**). Ground disturbing works with the potential to impact on Aboriginal archaeological sites would reasonably include:

- Removal of topsoils for slabs, foundations and footings
- Excavation of trenches for underground utilities
- Excavation for and construction of drains and stormwater detention basins
- Removal of topsoils for contractor offices and parking, and
- Disturbance from temporary material stockpiles.

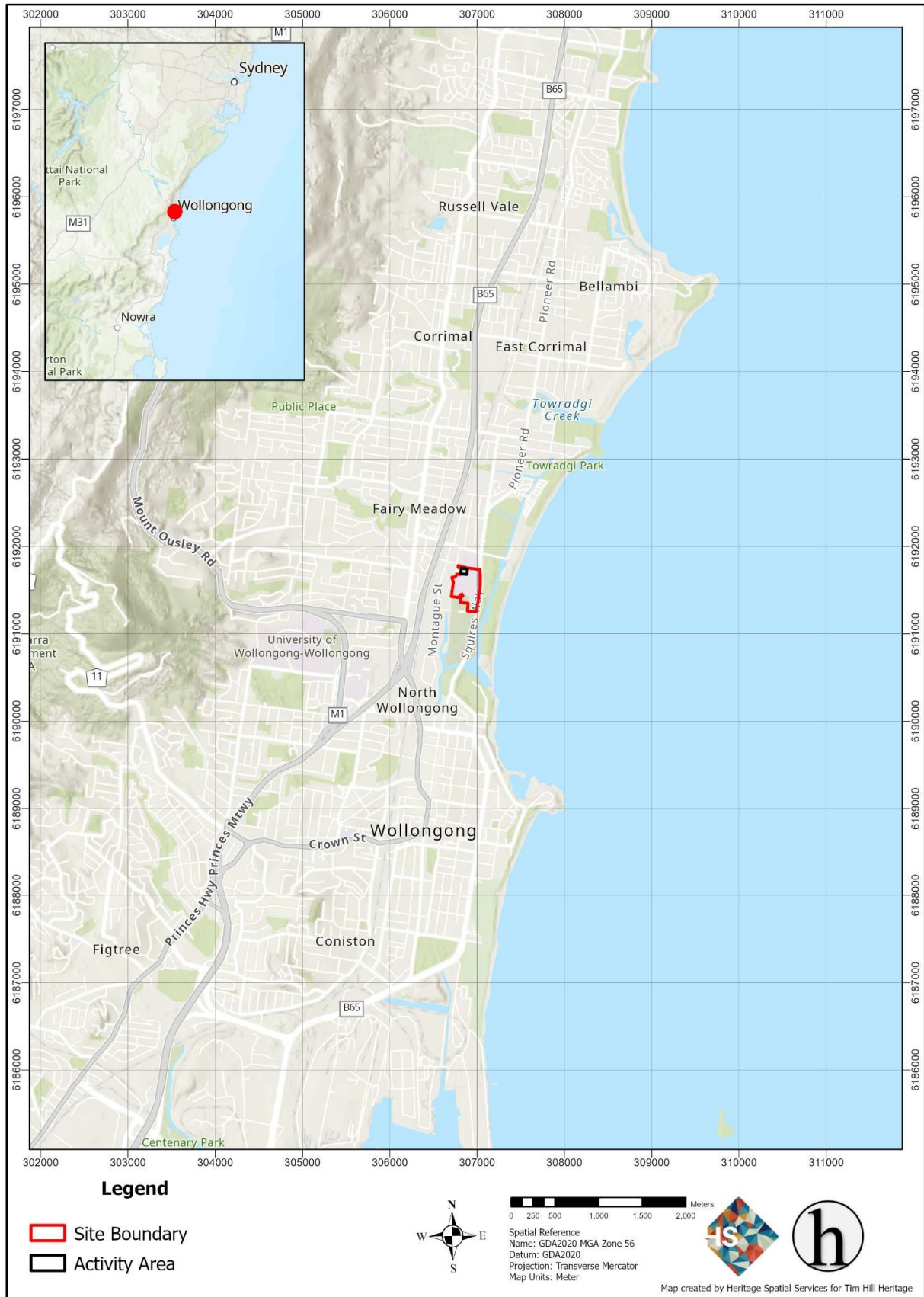
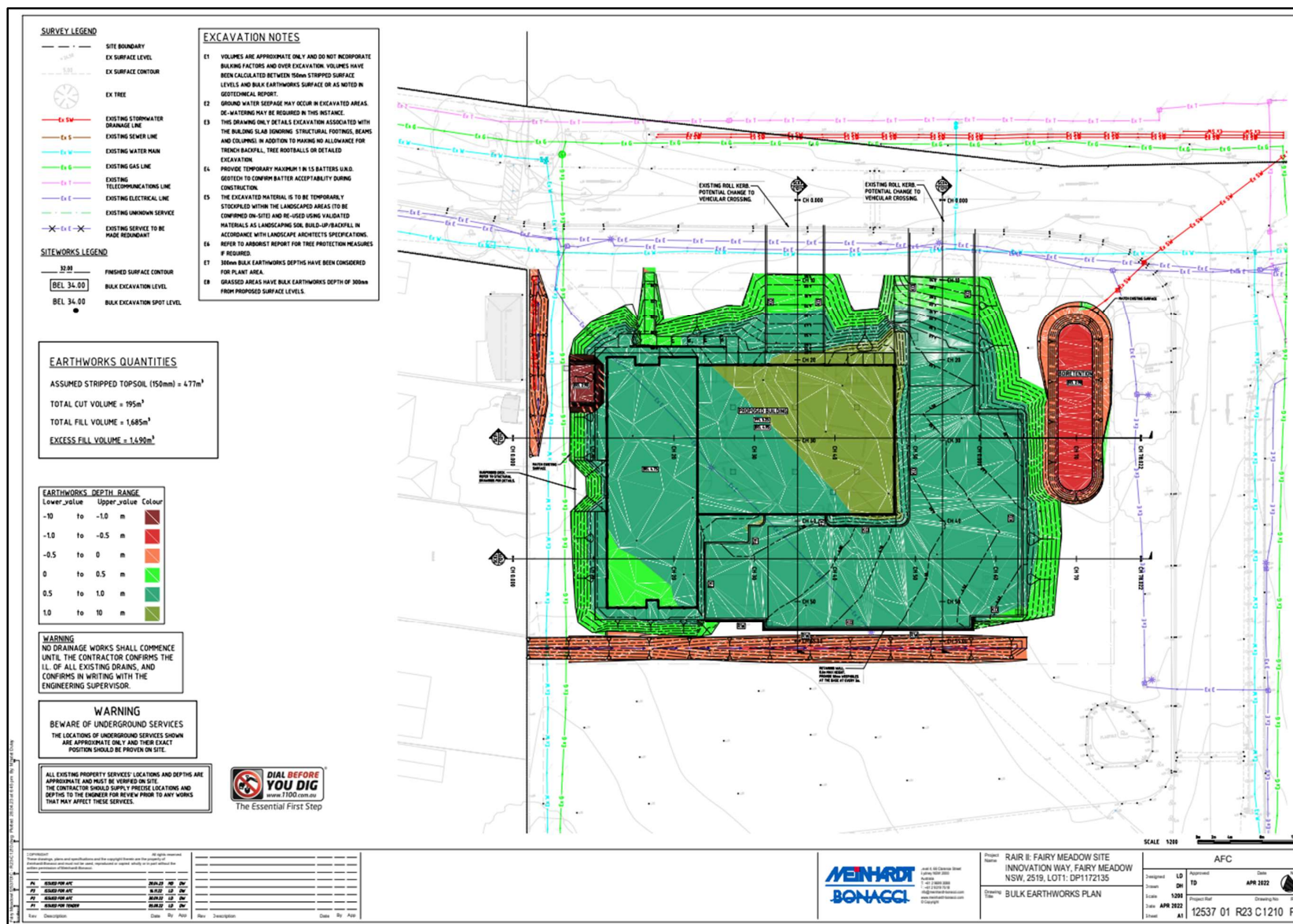
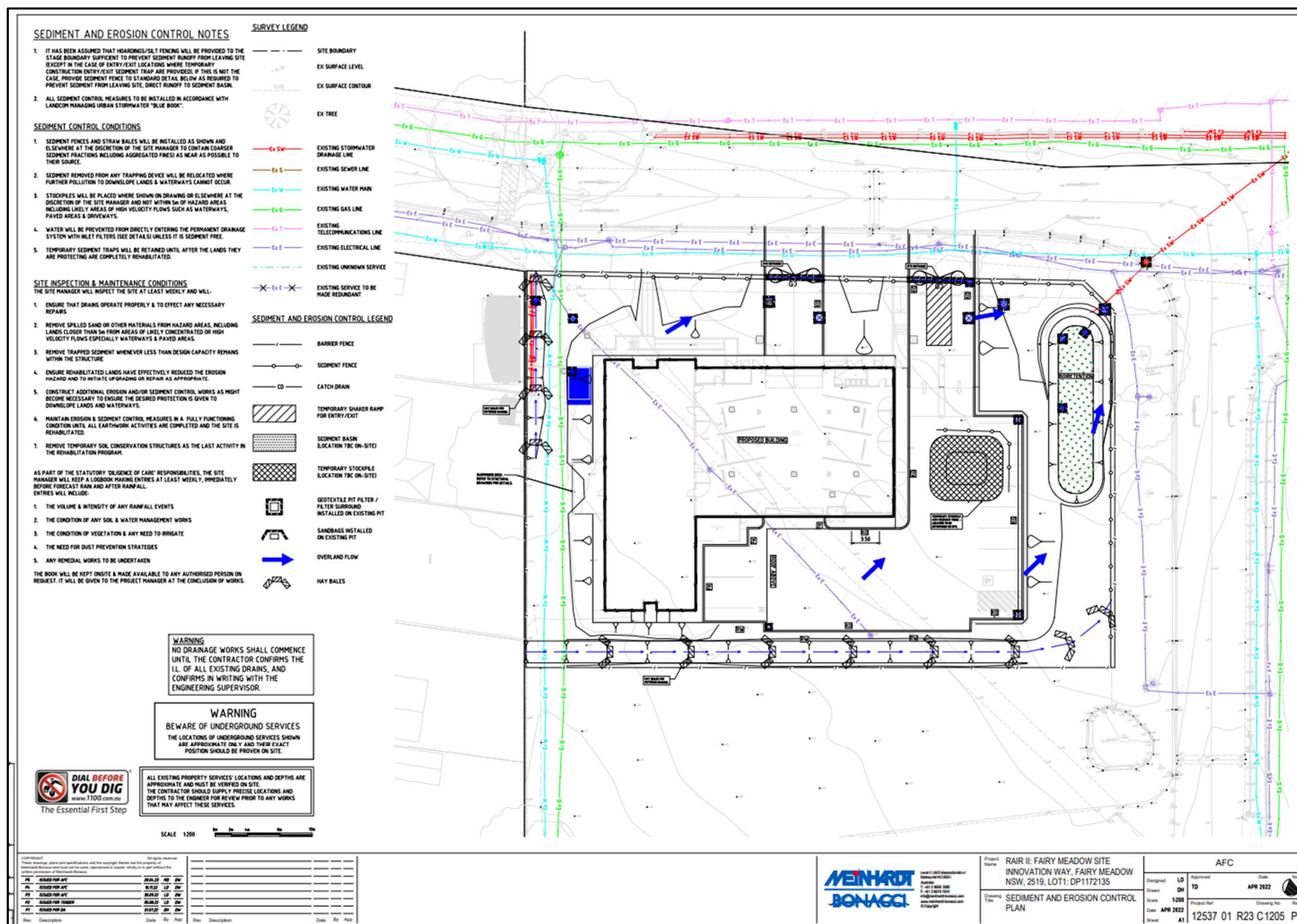


Figure 1: Fairy Meadow Ambulance Station: Project location



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2 LEGISLATIVE AND PLANNING CONTEXT

2.1 Environmental Planning and Assessment Act (1979)

The Environmental Planning and Assessment Act (NSW) (1979) (EPA Act) provides a framework for environmental assessment and approvals in NSW. The EPA Act includes three parts relevant to Aboriginal cultural heritage assessments:

- Part 3- Planning instruments which include Local Environment Plans (LEPs), Development Control Plans (DCPs) and other strategic planning controls.
- Part 4- Development assessment and consent controls including approvals by local Councils and Regional Planning Panels.
- Part 5- Self assessment and approvals by a government agency or Determining Authorities, for infrastructure and environmental proposals, and for the approval of State Significant Infrastructure by the Planning Minister.

The proposed Ambulance Station is being determined by a REF under Part 5 of the EPA Act. The Due Diligence Code of Practice is an appropriate approval pathway for works approved by a REF.

2.2 National Parks and Wildlife Act 1974 (NSW) and Regulations 2019 (NSW)

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) is the primary legislation concerning the identification and protection of Aboriginal cultural heritage in New South Wales. Three key definitions in the NPW Act which are relevant to this assessment include:

- **Aboriginal object** means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises 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.
- **Aboriginal remains** means the body or the remains of the body of a deceased Aboriginal person, but does not include—
 - (a) a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried, or
 - (b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons.
- **Harm** an object or place includes any act or omission that—
 - (a) destroys, defaces or damages the object or place, or
 - (b) in relation to an object—moves the object from the land on which it had been situated, or

- (c) is specified by the regulations, or
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that—

- (e) desecrates the object or place, or
- (f) is trivial or negligible, or
- (g) is excluded from this definition by the regulations.

Section 86 of the NPW Act provides offence provisions for Aboriginal objects, Aboriginal skeletal remains and Aboriginal places in NSW (see the definition of ‘Harm’ above). **Section 87** of the NPW Act outlines defences against prosecution relating to Aboriginal objects, skeletal remains and Aboriginal places. These include:

- Acting in accordance with an Aboriginal Heritage Impact Permit (AHIP) issued under **Section 90** of the NPW Act
- Demonstrating that the “defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed”
- The activity was prescribed as a “low Impact” activity or an “omission” under the NPW Regulations (2019), and
- Was undertaken in compliance with a Code of Practice adopted or prescribed by the NPW Regulations (2019).

The application of the Due Diligence Code of Practice is considered an appropriate approval pathway as the proposed ambulance station does not meet the criteria of ‘low impact activities’ as defined by the NPW Act and Regulations.

2.3 Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW

The Due Diligence assessment has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (DEECW 2010A). The purpose of this Due Diligence Code of Practice “is to establish a defence against prosecution in the event that Aboriginal objects may be inadvertently harmed during an activity” (DEECW 2010A: 1 & 2). The Due Diligence Code of Practice:

...sets out the reasonable and practicable steps which individuals and organisations need to take in order to:

1. identify whether or not Aboriginal objects are, or are likely to be, present in an area
2. determine whether or not their activities are likely to harm Aboriginal objects (if present)
3. determine whether an AHIP application is required (DEECW 2010A:2).

The Due Diligence Code of Practice makes the following statement on the requirement for an AHIP (DEECW 2010A:2):

If Aboriginal objects are present or likely to be present and an activity will harm those objects, then an AHIP application will be required.

However, the practical application of the Due Diligence Code of Practice is that it is a process of establishing whether additional assessment is required. In the event that the Due Diligence assessment concludes that harm to Aboriginal objects is likely, additional archaeological investigation, including Aboriginal community consultation, in accordance with the *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW* (DEECW 2010 B) (CoPAI) is required.

A key limitation of the Due Diligence Code of Practice is that they do not clearly define the thresholds of “likely” or “highly likely”. To assist the assessment, the Merriam Webster dictionary definition (www.merriam-webster.com/dictionary) of “likely” is:

“Having a high probability of occurring or being true: very probable”.

2.4 Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW

The *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW* (DEECW 2010B) (CoPAI) provides the following statement on the application of the Code:

“This Code has been developed to support the process of investigating and assessing Aboriginal cultural heritage by specifying the minimum standards for archaeological investigation undertaken in NSW under the NPW Act. Where an Aboriginal cultural heritage assessment requires an archaeological investigation to be undertaken, this must be done in accordance with the requirements of this Code.” (DEECW 2010B:2).

The purpose of this CoPAI is to (DEECW 2010B:1):

1. establish the requirements for undertaking test excavation as a part of archaeological investigation without an AHIP. If you comply with these requirements and you harm an Aboriginal object when undertaking test excavations, your actions will be excluded from the definition of harm and as such you will not be committing an offence of harm to an Aboriginal object.
2. establish the requirements that must be followed when carrying out archaeological investigation in NSW where an application for an AHIP is likely to be made. Under the NPW Act, the Director General can require that certain information accompany an application for an AHIP. This Code explains what that information is in relation to archaeological investigations.

Compliance with the CoPAI is a minimum requirement for archaeological test excavation or archaeological investigation which results in harm to Aboriginal objects. However, where the CoPAI investigation concludes that test excavations or an AHIP is not required the reporting requirements are considered a guideline for investigation and reporting.

2.5 Guide to Investigating, Assessing and Reporting on Aboriginal cultural Heritage in NSW (OEH 2011)

The *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011) provides the following statement on the role of the Aboriginal Cultural Heritage Assessment Report in the management of Aboriginal heritage in NSW:

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose. The investigation and assessment of Aboriginal cultural heritage is undertaken to explore the harm of a proposed activity on Aboriginal objects and declared Aboriginal places and to clearly set out which impacts are avoidable and which are not. Harm to significant Aboriginal objects and declared Aboriginal places should always be avoided wherever possible. Where harm to Aboriginal objects and declared Aboriginal places cannot be avoided, proposals that reduce the extent and severity of harm to significant Aboriginal objects and declared Aboriginal places should be developed.

An Aboriginal cultural heritage assessment report is a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment.

Compliance with the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011) is a minimum requirement for a AHIP application. It is additionally a useful guide for all Aboriginal cultural heritage assessments irrespective of the approval pathway. As a rule, the level of assessment should be proportionate to the scale of the proposed impacts and the nature, extent and significance of Aboriginal cultural values that are potentially affected by an activity.

3 HERITAGE DATABASES AND DESKTOP ASSESSMENT

3.1 Aboriginal Heritage Information Management System

The Aboriginal Heritage Information Management System (AHIMS) provides a list of previously recorded Aboriginal sites in NSW. A search of the AHIMS database is a condition of compliance with the Due Diligence Code of Practice and provides information on the types of sites which are, or may be, located within and around the Activity Area.

A search (AHIMS #779378) was undertaken on 6 May 2023 for Lot 1 DP1172135 with a buffer of 1000 metres,” (Table 1 and Figure 4). It is noted that 4 sites were recorded in the vicinity of the Activity Area and include stone artefacts, a shell midden and a burial. The sites are consistent with coastal landscapes on the NSW south coast. None of the sites are located within the Activity Area and all of the site coordinates have a high degree of accuracy as they are recent site records.

Table 1: Summary of AHIMS search results by site type

SITE ID	SITE NAME	EASTING	NORTHING	SITE STATUS	SITE FEATURES
52-2-2195	Thomas Dalton Park	307250	6191680	Destroyed	Artefact : -
52-2-2189	Lagoon Restaurant 1	306900	6190275	Valid	Artefact : -, Shell : -
52-2-2194	Squires Way	306820	6190580	Valid	Artefact : -
52-2-2067	Stuart Park	306901	6190340	Partially Destroyed	Burial : -, Potential Archaeological Deposit (PAD) : -

3.2 NSW Aboriginal Place Register

The Subject Site is not listed on the NSW Aboriginal Place register as an area of special significance to the Aboriginal community.

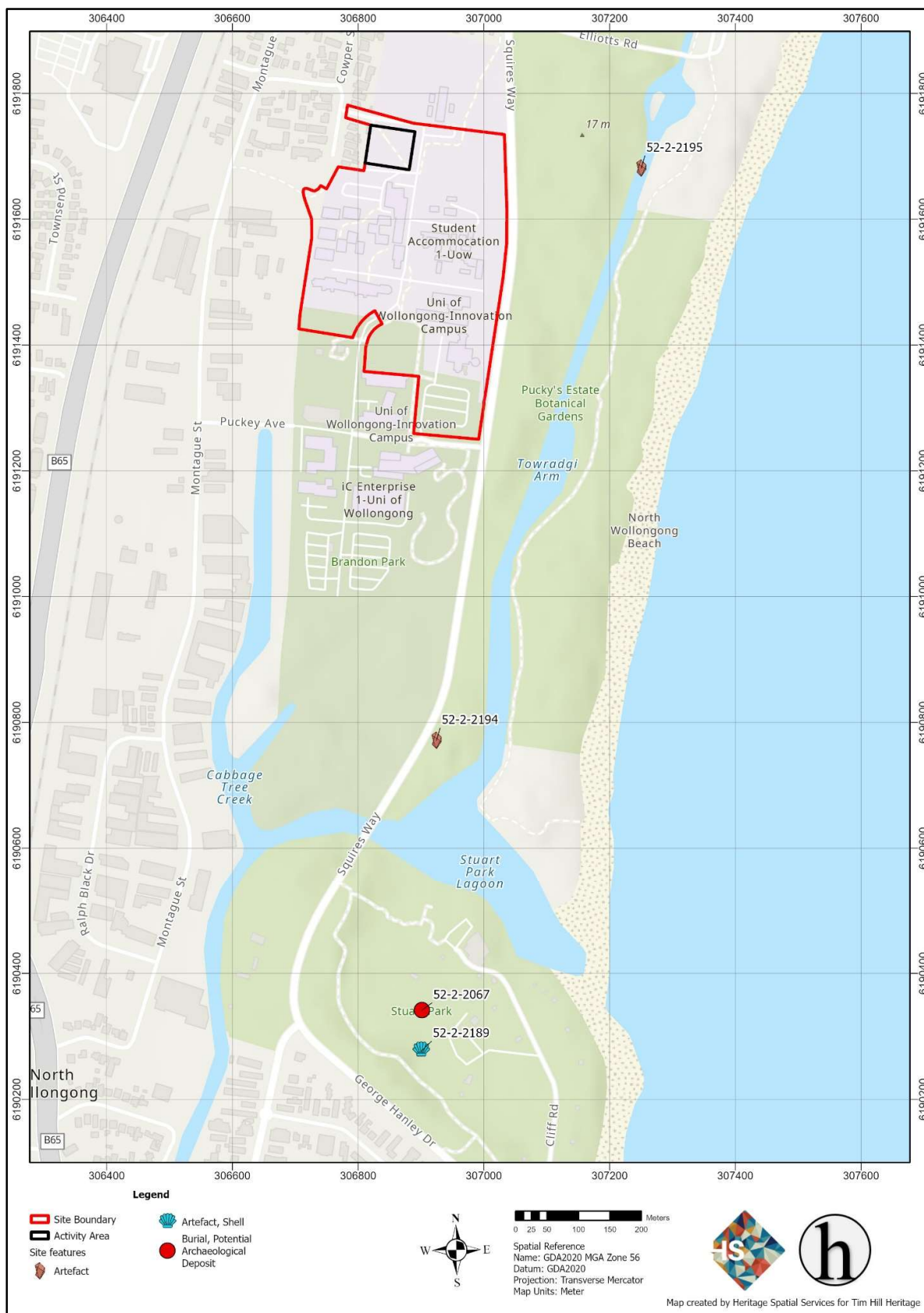


Figure 4: AHIMS search results (#779378)

3.3 Wollongong LEP (2019)

The following items of local heritage significance are listed on Schedule 5 of the Wollongong LEP (2009):

- Balgownie Migrant Workers Hostel (Lot 2, DP 1172135/State/61075)
- House (Lot 2, DP 508798/Local/6218)
- Former North Illawarra council chambers (Lot 1, DP 79280/Local/61031)
- Warrenda and curtilage (Lot 101, DP 628238; Lot A, DP 157592 and Lots 6,7 and 9, DP 252601/Local/61072)

3.4 The ‘Battle of Fairy Meadow’ (1830)

The ‘Battle of Fairy Meadow’ is a significant historic event involving a documented tribal battle between Aboriginal people of the Illawarra district and the Bong Bong tribe as documented by Martin Lynch in 1897 who was a witness to the battle as a child. The author provides the following description for the location of the battle (Organ 2014)

Mr Lynch explained that the dead of both parties were buried along the northwest bank of Fairy Creek, east of the North Illawarra Council Chamber. About 70 men were killed in the battle, including both sides, and all the corpses were buried by the victorious Illawarra tribe.

The battle took place in a naturally clear spot - the real Fairy Meadow - situated immediately on the north and east of what is now the junction of the Main Road and Mt Ousley Road. Mr Lynch declares that several hundred men on each side took part in the battle, which consisted of a series of intermittent onslaughts, which extended over three days and nights.

He (Mr Lynch) witnessed the burial of several of the men killed in the battle. The place of the burial was not the usual locality for interment by the blacks - the slain in battle only being placed there. The usual burial place in that quarter was in the sandy bush land on the south side of Fairy Creek - now Stuart Park - east and west of the Pavilion. The sand banks, near Tom Thumb Lagoon, Bellambi, and Towradgi, were likewise burial places, where many bodies were interred from time to time. He had witnessed nearly twenty blacks buried in the spot near Fairy Creek already mentioned. As a rule they did not desire white people to know where they (the blacks) buried their dead, but after the district became somewhat settled their burials could not be kept secret.

The Subject Site does not meet the description of either burial location, being:

- ...the dead of both parties were buried along the northwest bank of Fairy Creek, east of the North Illawarra Council Chamber, and
- ...in the sandy bush land on the south side of Fairy Creek - now Stuart Park - east and west of the Pavilion.

Irrespective of the differences in the recorded locations, the descriptions note that the burial locations were on the creek banks and/or in sandy ground which does not describe the location or environment of the Subject Site, which is located on alluvial clays and silts. The burial is consistent with a known record within Stuart Park

and with Aboriginal burials generally which survive much longer in sandy soils, as opposed to the more acid and wet silty-clay soils of the floodplain which are typical of the Activity Area.

3.5 University of Wollongong Innovation Campus Investigations

3.5.1 (*GML Heritage 2023*)

GML Heritage (2023) were engaged to undertake a comprehensive historical assessment of the Battle of Fairy Meadow for the University of Wollongong Innovation Campus, located approximately 750 metres south of the proposed Fairy Meadow Ambulance Station. The study relies heavily on the oral history of Mr. Martin Lynch who was six at the time of the Battle of Fairy Meadow (see above) and who provides the primary account of the event. The study concludes that the actual battle site was located on the western bank of Fairy Creek, east of the current Princes Highway, near the site of the old Council Chambers. With respect to the burial of Aboriginal people from the fight, the GML Heritage (2023:26) study makes the following comment:

If this information is accurate, which is uncertain given his age and the lapse of time since the event, it suggests that Aboriginal people may have been buried in the general vicinity of the study area. The location is difficult to confirm as Cabbage Tree Creek, not Fairy Creek, is directly east of the North Illawarra Council Chambers. Notwithstanding Lynch's geographical references, both creeks are altered from their original alignment and small tributaries of Fairy Creek have disappeared in the vicinity of the study area.

The GML Heritage study makes the following comment on the post-battle burials:

Lynch clearly states that the deceased men of both tribes were buried 'in the tea tree scrub between the site of the battle and the sea (between two arms of Fairy Creek)'. He states the graves were dug along the bank of the creek, which was somewhat sandy on the northwest bank of Fairy Creek east of the 1897 North Illawarra Council Chamber. Documentation evidence located the Council Chamber at the present corner of Princes Highway and Collaery Avenue. This site is generally in the vicinity of Cabbage Tree Creek, which Lynch may have misnamed Fairy Creek in his accounts of the event.

As identified through the research, the positions, use of names, and general understanding of creeks is significantly limited in terms of accuracy. There is a significant dichotomy between the potential locations for burial when the various statements are taken literally. Application of the precautionary principal, an understanding of Aboriginal traditions connected with burial practices in this region, the requirements and practicalities of needing to bury a large number of people in a relatively short period, means that a burial region can be identified. The reality is that burials probably occurred throughout the period of the battle, over a wide landscape area. It is entirely likely that Lynch did not witness the majority of burial occurring, and that as a child below the age of 10, would have little memory on the precise location of burial. (GML heritage 2023:43)

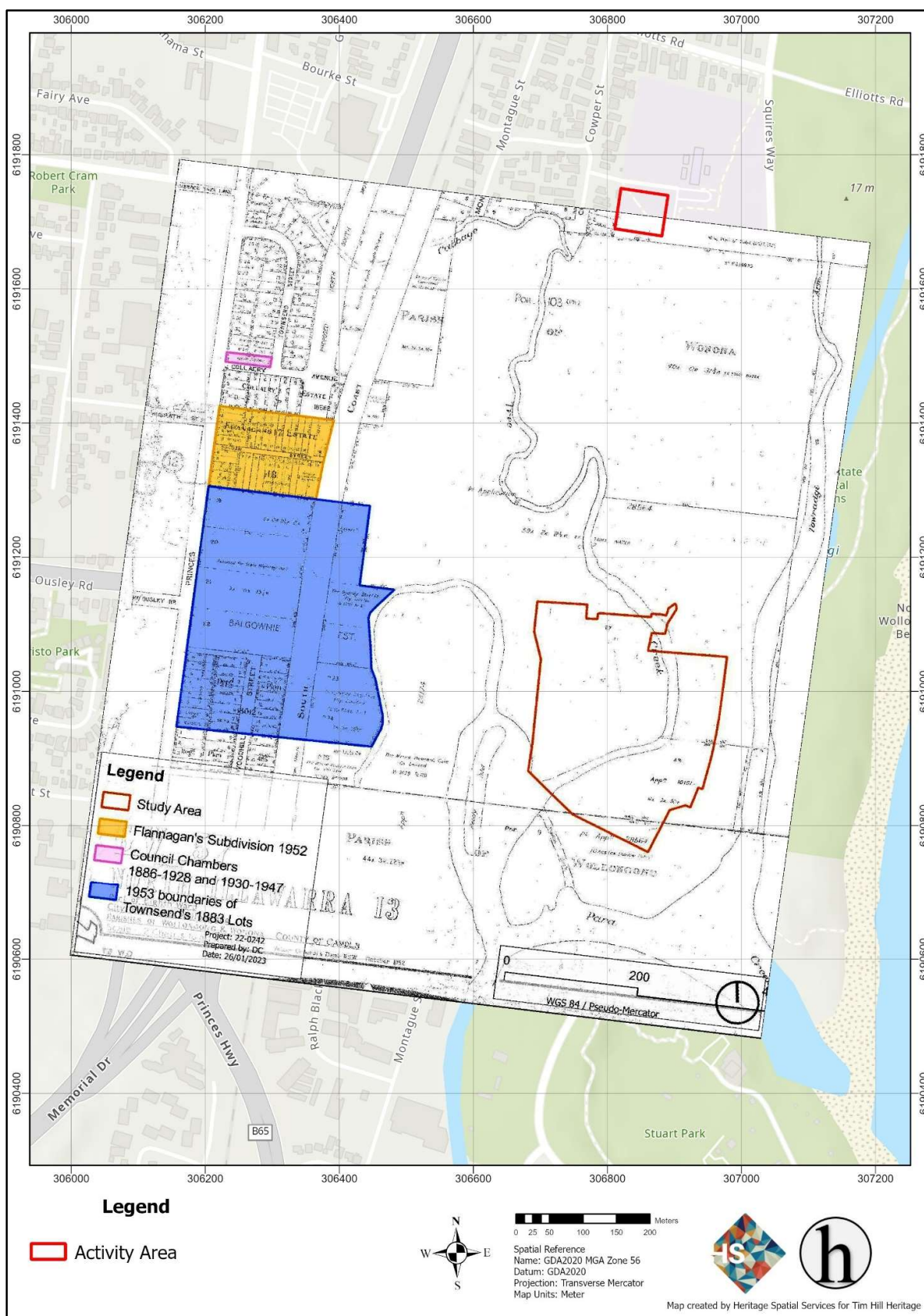


Figure 5: Location of key historical land parcels in relation to the Battle of Fairy Meadow (GML heritage 2023:28)

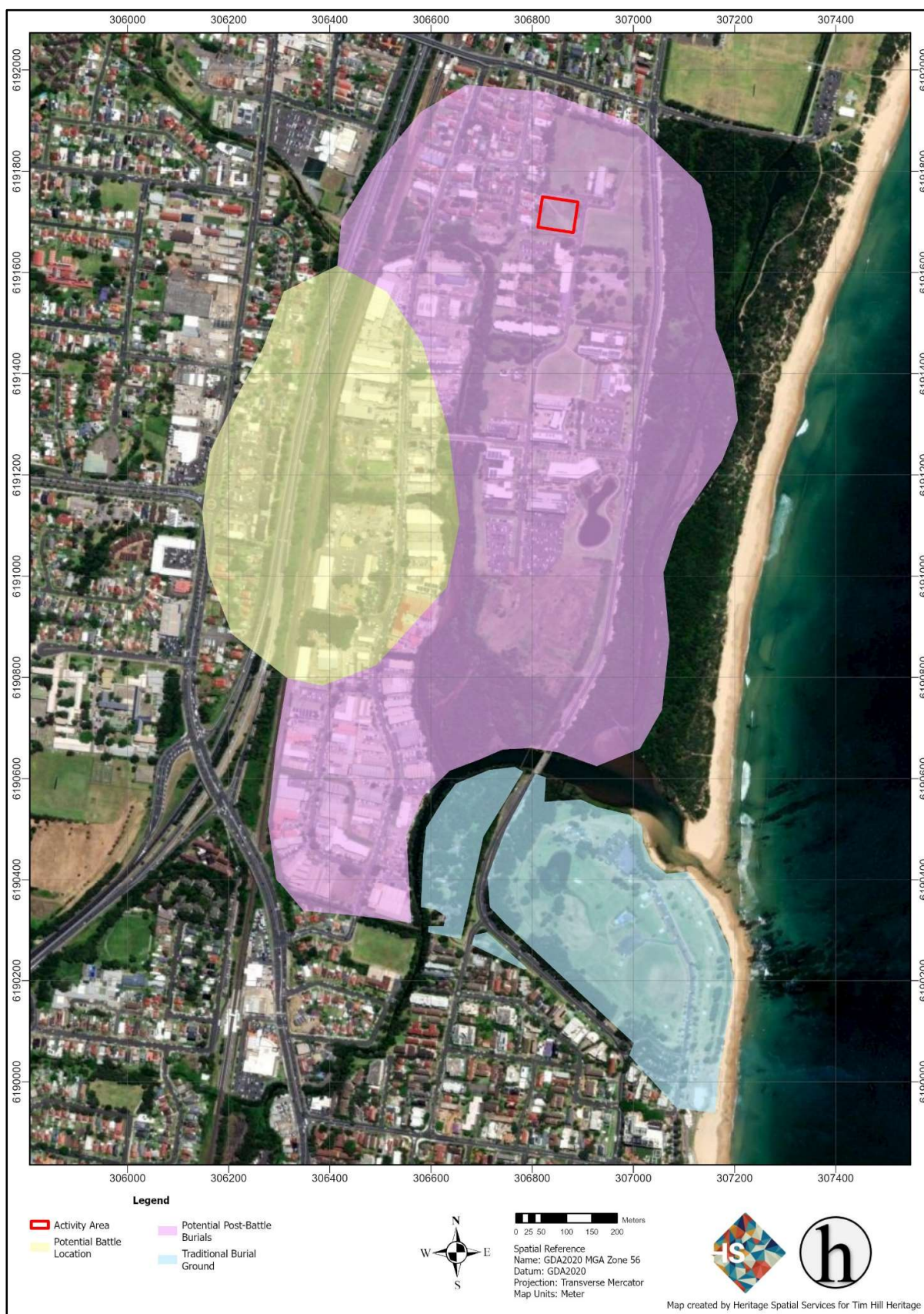


Figure 6: The indicative burial area associated with the Battle of Fairy Meadow (GML heritage 2023:49)

3.5.2 Kate Waters Consultancy Aboriginal Cultural Values Assessment Report (2023)

The Innovation campus assessment included a Aboriginal Cultural Values Assessment Report completed by Kate Waters Consultancy as part of the Aboriginal Cultural Heritage Assessment Report for the project (Kelleher Nightingale 2023). A copy of the Aboriginal Cultural Values Assessment Report is not available, however a summary of the findings has been provided by the University of Wollongong/ LendLease via email (June 19 2023). The following tables are provided to inform the Due Diligence assessment, however maps have not been provided to located these landscape areas in relation to the proposed Fairy Meadow Ambulance Station:

Table 4: Summary of Significant Cultural Values

Item	Description
Cultural Site A: Cultural Resource and Meeting Area	A cultural resource and meeting area associated with men's business (this is not a ceremonial area and women are not restricted from entering). This area was associated with preparations for the ritual battle that occurred at Fairy Meadow.
Cultural Site B: Waterways (Cabbage Tree Creek, Para (Fairy) Creek, Towradji Arm)	Cabbage Tree Creek, Para (Fairy) Creek and Towradji Arm are all culturally valued waterways. The presence of these waterways along with the adjacent Sea Country provide a culturally rich resource area. This waterway and the associated riparian corridor are of cultural significance as a Dreaming Track running from the escarpment to the ocean, it also holds cultural value as a resource place.
Cultural Site C: View Line to Djeera (Mt Keira)	This is a view line that that extends across the Project site and links Cultural Site A: Cultural Resource and Meeting Area to the significant cultural site of Djeera (Mt. Keira) to the immediate west. This view line also holds cultural significance as it supports cultural connection between the escarpment Country and Sea Country.

The following comments are provided on the three sites:

Cultural Site A- It is not possible to identify the location of the preparation area for the battle, however as the location of the Battle was near the Old Wollongong Road/ Princes Highway (i.e. west of Cabbage Tree Creek) the preparation area is reasonably likely to be within the location of the actually battle identified by the GML Heritage report, i.e. to the west of the proposed Ambulance Station and Cabbage Tree Creek. The Aboriginal Cultural Values Assessment Report summary does not identify or discuss the post battle burial ground.

Cultural Site B- The cultural values for coastal waterways are noted and this is common for developments within coastal landscapes. The proposed Ambulance Station is more than 100 metres from Cabbage Tree Creek and will not impact on waterways, water quality of access to Cabbage Tree Creek for cultural practices.

Cultural Site C- Views to the cultural site 'Djeera' (Mt. Keira) are noted as this is a significant topographic feature west of Wollongong. Having consideration for views to Djeera / Mt. Keira a review of the proposed

Ambulance Station from GoogleMaps street view demonstrates that Djeera/ Mt. Keira is visible from the Activity Area (see **Figure 7**). Views to or from cultural landscape features do not necessarily increase the potential that a activity will impact on Aboriginal objects and as such this is not a consideration under the Due Diligence Code of Practice.



Figure 7: View of Djeera/ Mt. Keira from the Activity Area (source GoolgeMaps)

The Aboriginal Cultural Heritage Assessment Report includes a number of recommendations to mitigate impacts to the Aboriginal cultural landscape- however these are not relevant in the context of the Due Diligence assessment which is primarily focused on Aboriginal objects. This includes specific recommendations for Aboriginal burials- however in the event of an unexpected find of Aboriginal burials all additional works would be subject to a comprehensive assessment which would include mitigation and management measures to engage the local Aboriginal community. The engagement of the Aboriginal community through the Illawarra Aboriginal Land Council is a standard response for projects approved under a Review of Environmental Factors.

Table 5: Recommendations

No.	Recommendation	Explanatory note	Timing
1	Ensure there is no construction impact on <i>Cultural Site B: Waterways (Cabbage Tree Creek, Para (Fairy) Creek, Towradji Arm)</i> including riparian zones.	All First Nations stakeholders have strongly expressed the importance of protecting the waterways from construction impact and of ensuring rehabilitation and ongoing care of the waterways and their riparian corridors.	Pre-construction, construction, Post-construction.
2	Ensure that <i>Cultural Site C: View Line to Djeera (Mt Keira)</i> is maintained from the Project site.	<p>Masterplanning should ensure the maintenance of the view line to Djeera (Mt Keira) from multiple locations within the Project site.</p> <p>Masterplanning should provide opportunities to celebrate and educate through incorporation of viewpoints within the First Nations cultural trail in Recommendation 7.</p>	Pre-construction, construction.
3	<p>Ensure rehabilitation and revegetation of waterways and riparian corridor:</p> <ul style="list-style-type: none"> Local native plant species to be <u>utilised</u> in rehabilitation and revegetation. Local plant species <u>utilised</u> for cultural activities should be incorporated, including riparian plant species for waterway rehabilitation. 	<p>All First Nations stakeholders have strongly expressed the importance of protecting the waterways from construction impact and of ensuring rehabilitation and ongoing care of the waterways and their riparian corridors.</p> <p>Further engagement with First Nations stakeholders should occur through the design phase.</p>	Post-construction.

	<ul style="list-style-type: none"> The identification of appropriate cultural plant species should occur through engagement with local First Peoples community members and identified cultural knowledge holders. 		
4	Existing native vegetation within the Project site should be retained as a priority wherever possible. In particular, healthy individuals from culturally significant tree species should be retained.		Pre-construction, construction.
5	Support the movement of fauna through provision of green corridor connectivity to other green spaces including providing wildlife crossings on Squires Way to maintain connectivity between Cabbage Tree Creek and Towradji Arm.		Pre-construction, construction.
6	<p>Ensure the inclusion of a culturally welcoming informal gathering space that supports everyday use and community events for First Nations people on Country.</p> <p>Design must occur through engagement with First Nations stakeholders (including cultural knowledge holders, RAPs, and community representatives) to ensure cultural appropriateness.</p>	It is noted that the First Nations cultural knowledge holders recommended that this cultural space have a focus on men's business. Further engagement with First Nations stakeholders should occur through the design phase.	Pre-construction, construction, post-construction.
7	Develop a First Nations cultural trail within the built environment and open green space of the Project site incorporating:	It is noted that the male First Nations cultural knowledge holders stated that the interpretative and educational materials should not reference the Fairy Meadow ritual battle.	Pre-construction, construction, post-construction.

	<ul style="list-style-type: none"> culturally significant plants utilised by First Nations people for foods, medicines, and resources. interpretative and educational signage on Country, plants, cultural values, and First Peoples history. and artwork reflecting Country and cultural narratives. <p>Design and interpretation content must be developed through engagement with First Nations stakeholders (including cultural knowledge holders, RAPs, and community representatives) to ensure cultural appropriateness.</p>	<p>It is noted that the female First Nations cultural knowledge holders recommended that a focus be given to plants, naming and artwork associated with men's business.</p> <p>Further engagement with First Nations stakeholders should occur through the design phase.</p>	
8	<p>Use local Dharawal language in the naming of infrastructure including parks, buildings, and streets, and applied within design and interpretative elements.</p> <p>Identification of appropriate language names must occur through engagement with First Nations stakeholders (including cultural knowledge holders, RAPs, and community representatives) to ensure cultural appropriateness.</p>	<p>Note that proposed street names must be approved by the Geographic Names Board.</p>	<p>Construction, post-construction.</p>
9	<p>Incorporate First Nations people's art and design in public spaces to reflect and celebrate Country.</p> <p>Development of designs and placement must occur through engagement with First Nations stakeholders (including cultural</p>	<p>Consider elements such as motifs in footpaths, wayfinding, and public spaces/built design to reflect Country through use of culturally meaningful shapes, colours, and materials.</p>	<p>Pre-construction, construction, post-construction.</p>

	<p>knowledge holders, RAPs, and community representatives) to ensure cultural appropriateness.</p>	<p>Further engagement with First Nations stakeholders should occur through the design phase.</p>	
10	<p>Preference to be given to local First Nations organisations (that meet contract requirements) for engagement for revegetation and landscaping works.</p>		<p>Construction, post-construction.</p>
11	<p>Develop and implement a project wide First Nations Participation Strategy that includes procurement and employment participation requirements for works packages in the construction and maintenance phases.</p>		<p>Pre-construction, construction, post-construction.</p>
12	<p>Deliver a First Nations cultural heritage awareness training package as part of the site induction for all contractor(s) and maintenance personnel involved in construction works in the Project. The training package should at a minimum ensure awareness of the cultural significance of the project area, the requirements of the AHMP and relevant statutory responsibilities, and the identification of unexpected heritage items and appropriate management procedures. The cultural knowledge holders that the potential for ancestral Aboriginal human remains within this cultural landscape is high and must be considered in the training package.</p> <p>The package must be:</p> <ul style="list-style-type: none"> specific to the Country that the project is located within, and 		<p>Pre-construction</p>

	<ul style="list-style-type: none"> developed by a cultural heritage specialist in consultation with First Nations stakeholders with connection to Country, cultural knowledge holders and RAPS. 		
13	<p>Prepare and implement an Aboriginal Heritage Management Plan (AHMP). The AHMP should provide specific guidance on legislative requirements alongside measures and controls to be undertaken to avoid and mitigate impacts on First Nations cultural heritage during construction. This should include protection measures to be applied during construction and including but not limited to the recommendations set out in this table, as well as contractor training in general Aboriginal cultural heritage awareness and management of Aboriginal cultural heritage values.</p> <p>The cultural knowledge holders that the potential for ancestral Aboriginal human remains within this cultural landscape is high and must be considered in the AHMP.</p>		Pre-construction, construction.
14	The AHMP should provide specific guidance on legislative requirements alongside measures for the notification of the RAPS and identified Aboriginal cultural knowledge holders within 48 hours of any discovery of potential ancestral Aboriginal human remains during the proposed works.		As required.
15	If there is a confirmed discovery of ancestral Aboriginal human remains it is recommended that consultation occur with the RAPS and identified cultural knowledge holders in relation to the development of a Management Plan for proposed works in		As required.

HISTORY • CULTURE • HERITAGE

	the relevant area, cultural ceremonies in relation to the human remains and the site of their occurrence, and repatriation of the human remains.		
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4 ENVIRONMENTAL REVIEW

4.1 Topography, Hydrology and Geology

The Activity Area is located between Cabbage Tree Creek (west) and Towradgi Arm (East) which flows into Fairy Creek to the south of the Activity Area. Contours across the Activity Area vary from 4-6 metres above sea level (**Figure 8**). It is noted that there are two small dunes or rises to the south of the proposed Ambulance Station would have an elevated potential for use as campsites or burial areas, however the flat coastal plain is relatively uniform and there are no specific landform features which would increase the likelihood of Aboriginal campsites within the Activity Area.

The Activity Area is mapped as part of the Fairy Meadow soil landscape (espade.nsw.gov.au) and includes the following descriptions relevant to the study (**Figure 9** and **Figure 10**):

Topography- Gently undulating alluvial plains including floodplains and valley flats with minor terraces; slope >5% and relief >20 m.

Landscape—alluvial plains, floodplains, valley flats and terraces below the Illawarra Escarpment. Slope >5%; local relief >20 m. Almost completely cleared low forest and woodland.

Soils—friable Alluvial loams (Um5.2) and Siliceous Sands (Uc1.22) on the upper floodplains with dark brown sands and heavy clays Prairie Soils (Gn2.41) and Yellow Podzolic Soils (Dy5.41) on lower alluvial flats.

Geology- Quaternary sediments—quartz sand, lithic fluvial sand, silt and clay.

The siliceous sands identified on higher areas of the floodplain are considered the most likely to contain Aboriginal burials and would generally correlate with the description of the burial area and the typical practice of traditional burials in softer sand deposits. Based on the topography mapping available this would be in south of the Activity Area and along the bank of the creek to the west of the Activity Area.

4.2 Vegetation model

The following vegetation model is provided for the Fairy Meadow soil landscape:

Almost completely cleared except for some isolated stands of low open-forest (dry sclerophyll forest) and woodland. Examples include decorative paperbark, prickly-leaved paperbark and northern boobialla (Fuller, 1981).

Paperbark forests are not typically considered to have an elevated potential for Aboriginal sites as they are relatively resource poor when compared to nearby marine and estuarine environments which contain fish and shellfish.

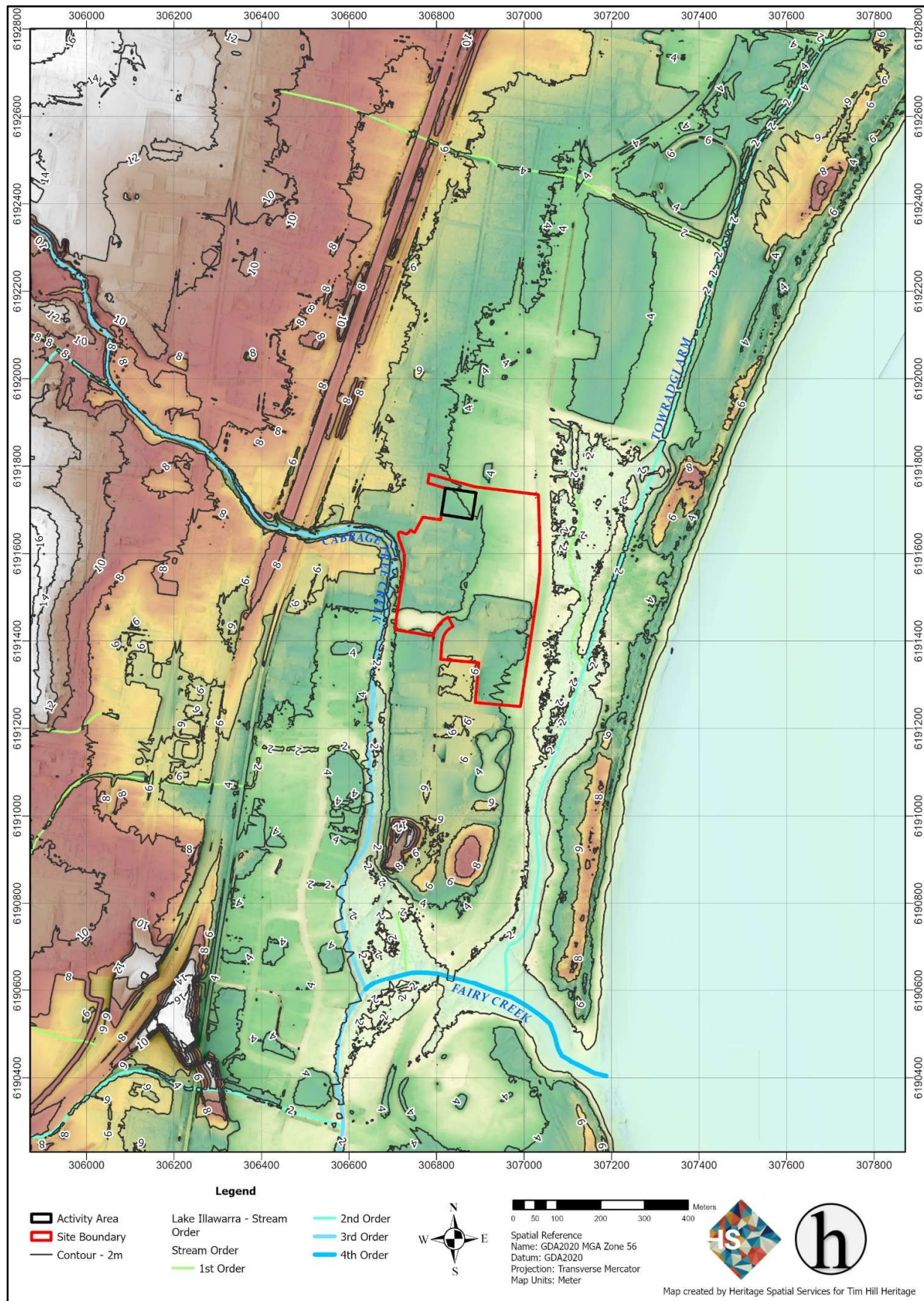


Figure 8: Hydrology and topography

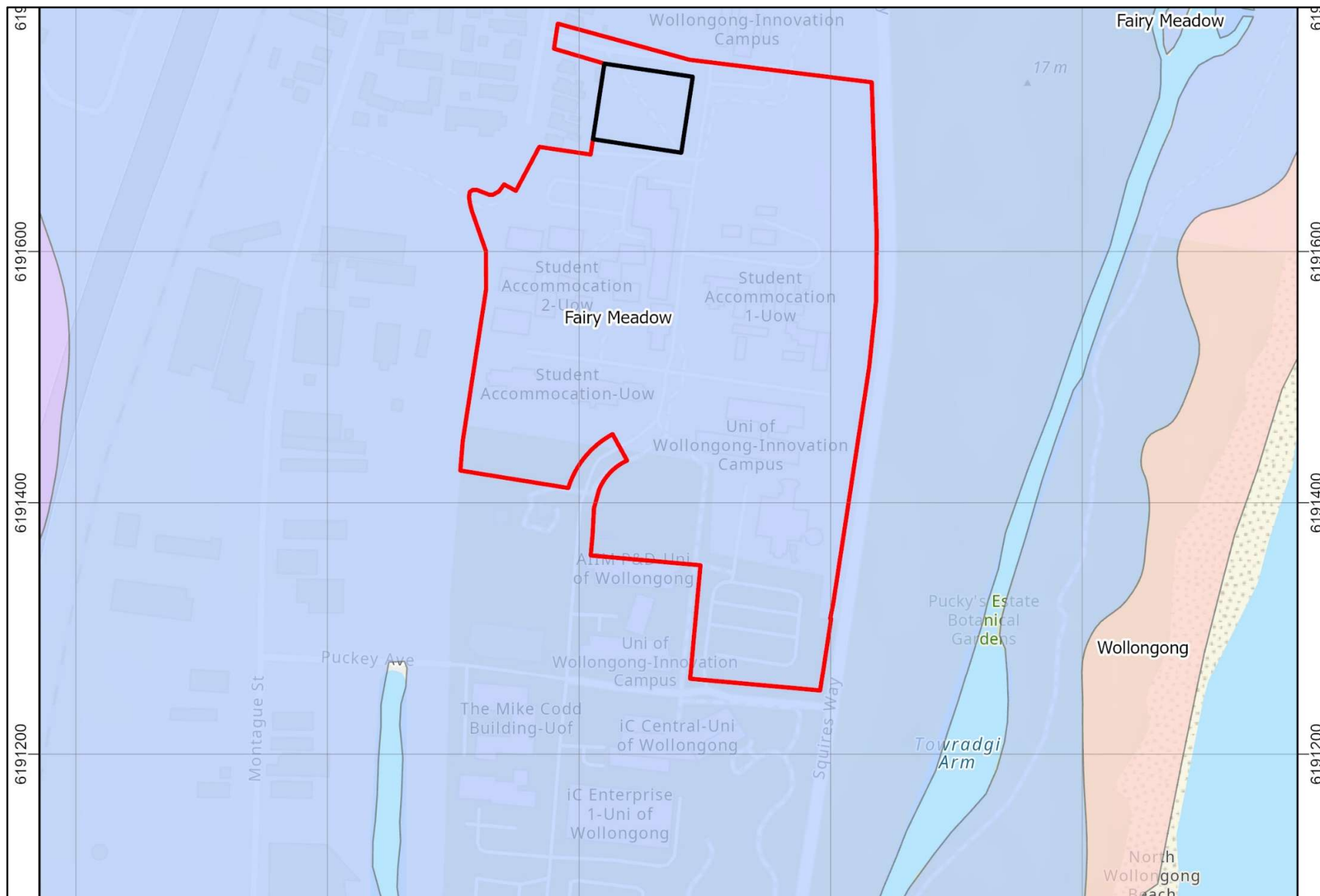


Figure 9: Soil landscape model (eSpade.nsw.gov.au)

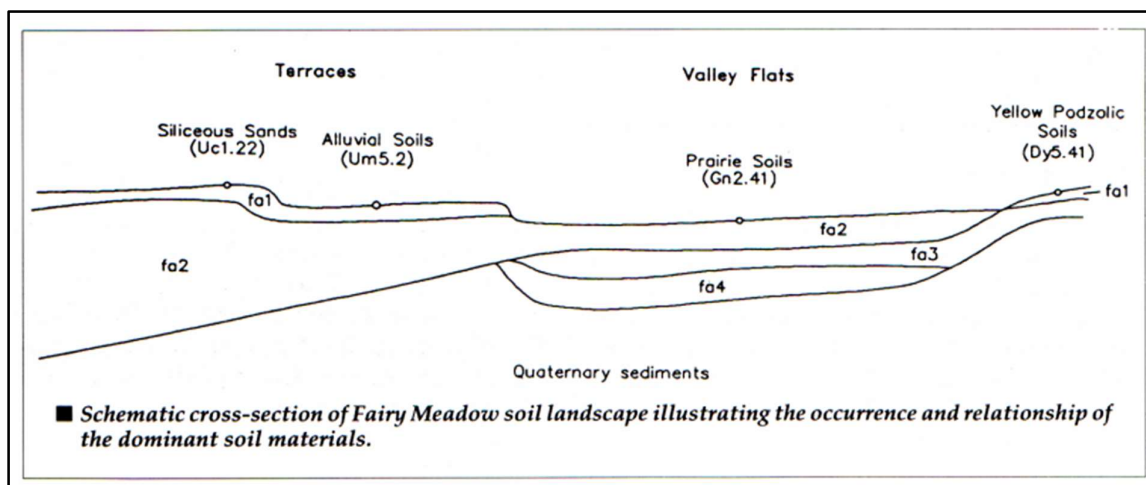


Figure 10: Cross section of the Fairy Meadow soil landscape (eSpade.nsw.gov.au)

4.3 Disturbance History

4.3.1 Historic aerial photos

A review of historic aerial photos available from the NSW Spatial Collaboration portal has been undertaken to understand the disturbance history of the Activity Area. The following summarises key disturbance events that would affect the likelihood that the Activity Area would contain 'in-situ' Aboriginal archaeological deposits.

1950- the Activity Area comprises an open paddock with no visible disturbance of the ground surface other than removal of native vegetation (**Figure 11**).

1960- the Migrant Camp has been constructed and the Activity Area is used as a sports ground/ square with three buildings on the eastern boundary of the Activity Area (**Figure 12**)

1969- no significant change, the three buildings are replaced with a single elongated structure (**Figure 13**)

1989- the migrant camp has been removed, however the sports facilities have been retained (**Figure 14**)

2001- the former sports courts have been removed and the Activity Area has been converted back to grass with the current pedestrian footpath (NW-SE) visible as an informal track (**Figure 15**).



Figure 11: 1950 aerial photo (NSW Spatial Collaboration Portal)



Figure 12: 1960 aerial photo (NSW Spatial Collaboration Portal)



Figure 13: 1969 Aerial Photo (NSW Spatial Collaboration Portal)



Figure 14: 1989 Aerial Photo (NSW Spatial Collaboration Portal)



Figure 15: 2001 Aerial Photo (NSW Spatial Collaboration Portal)

4.3.2 Geotechnical Report

The following summary of the geotechnical report for the Activity Area is provided to inform the disturbance assessment (Alliance Geotechnical & Environmental Solutions 2022A) (**Table 2**):

The site is underlain by uncontrolled fill (up to 0.6m thick), which is underlain by firm to stiff alluvial clay (up to 4.7m thick). Medium dense to dense clayey sands underlay the alluvial clays and were encountered at deeper depths (5.0 - 5.3mbgl)

The silty clays are consistent with the Prairie Soils and Alluvial Soils described in the soil landscape model (see **Figure 10**). It is not considered that the soil description below the layer of recent fill is consistent with the description of the burial locations- being the 'sandy bush land'- and is inconsistent with the typical practice of burials in sandy environments which were much easier to dig gravesites than heavier clay rich alluvial soils.

The soil descriptions for Bore Holes 3 and 4 indicate that the silty clays are acid in nature (Borehole 3 = pH5.6@1.3-1.4m and Borehole 4 = pH5.5 at 1.8-1.9m). Both these samples are within the zone of a traditional burial, being approximately 600-900mm below the original ground surface. Acid and waterlogged soils are not conducive to the preservation of organic matter which typically survive in dry and alkaline/ neutral soils. An additional consideration is that the clay soils continually expand and contract with waterlogging and the study notes that "Footings may experience high ground movement

from moisture changes with an estimated surface movement, ..., between 40mm and 60mm". This degree of soil movement would physically compress and break bone material should it occur in the soil.

Table 2: Summary of geotechnical investigation (Alliance Geotechnical & Environmental Solutions 2022A)

Ground Profile	Consistency/ Density	Depth to top of unit (m)	Thickness (m)
Fill (uncontrolled) Silty CLAY	-	0.0	0.3 – 0.6
Alluvial Silty CLAY	Firm	0.3 – 0.6	0.15 – 0.6
Alluvial Silty CLAY	Stiff	0.75 – 0.9	4.1 – 4.4
Alluvial Clayey SAND	Medium Dense to Dense	5.0 – 5.3	Not penetrated

4.3.3 Contamination report

The following summary of results is provided by the contamination report for the Activity Area (Alliance Geotechnical & Environmental Solutions 2022B) (see **Table 3**):

A number of areas of environmental concern (AEC) and contaminants of potential concern (COPC) associated with potential land contaminating activities undertaken at the site, have been identified as part of this project.

Table 3: Summary of contamination results (Alliance Geotechnical & Environmental Solutions 2022B)

ID	AEC	Land Contaminating Activity (Source)	COPC
AEC01	Site footprint (3,271m ² to ~0.5m depth)	Uncontrolled filling	Petroleum hydrocarbons, polycyclic aromatic hydrocarbons, pesticides, polychlorinated biphenyl, BTEX, heavy metals, asbestos, anthropogenic materials.
AEC02	Former sports courts (945m ² to ~0.5m depth)	Uncontrolled filling	Petroleum hydrocarbons, polycyclic aromatic hydrocarbons, pesticides, polychlorinated biphenyl, BTEX, heavy metals, asbestos, anthropogenic materials.
AEC03	Concrete walkway (200m ² to ~0.5m depth)	Uncontrolled filling	Petroleum hydrocarbons, polycyclic aromatic hydrocarbons, pesticides, polychlorinated biphenyl, BTEX, heavy metals, asbestos, anthropogenic materials.
AEC04	Demolished structures (570m ²)	Uncontrolled filling, hazardous building materials and termite treatment	Petroleum hydrocarbons, polycyclic aromatic hydrocarbons, pesticides, polychlorinated biphenyl, BTEX, heavy metals, asbestos, anthropogenic materials.

4.3.4 *Summary of disturbance history*

Based on a review of the available site history it is reasonable to proceed with the assessment on the basis that the Activity Area has been disturbed within the meaning of the Due Diligence Code of Practice, being disturbance which is 'clear and observable'. The history of ground disturbance includes:

- Removal of original vegetation
- Increase alluvial flooding as a result of forest clearing and urbanisation
- Tilling, cropping and pasture improvement
- Introduction of fill as part of the migrant camp construction,
- Construction of a sports facility (concrete courts), and
- Accumulation of topsoil during the use of the area as a park/ open space.

5 CONCLUSIONS AND MANAGEMENT RECOMMENDATIONS

5.1 Due Diligence Statements

The desktop Due Diligence assessment has concluded that the proposed Fairy Meadow Ambulance Station will not 'likely' result in harm to Aboriginal archaeological sites. This is based on the following:

5.1.1 Proximity to known Aboriginal sites:

No Aboriginal sites have been recorded within or immediately adjacent to the Activity Area on the AHIMS database. The AHIMS site records are located in relatively undisturbed environments along the coastline or in the reserve near Fairy Creek to the south of the Activity Area. The Activity Area is located in the northern portion of a possible burial area associated with the Battle of Fairy Meadow (GML Heritage 2023) (see **Figure 6** above), however the GML Heritage study does not provide definitive information that burials occurred in the local area- stating only that the post-battle burials occurred on the eastern side of the creek which is nearby to the Activity Area but also includes the University of Wollongong campus.

5.1.2 Potential of landform to contain Aboriginal sites:

The Activity Area comprises alluvial deposits between two small coastal creeks, being Fairy Creek/Cabbage Tree Creek (west) and Towardgi Arm (east). The southwestern corner of the Activity Area is approximately 110 metres north-east of the bend in Cabbage Tree Creek. Where elevated dunes and estuaries are located nearby, coastal creek flats are not typically selected as campsites as the marine and aquatic environments provide substantially more food resources than swamps and forests. In coastal environments this includes extensive shell middens fringing the mangroves/mudflats or the inter-tidal zone. Additionally, elevated ground was sought after as it provided visual access to the surrounding landscape and moved campsites away from the forest environments which were set aside for hunting and gathering, particularly where freshwater was available for larger marsupial and macropods.

The account of the Battle of Fairy Meadow indicates that the post-battle burials were located on the creekbank- however it is not possible to verify the exact location of burials as the historical account was not specific on this matter and the extent of change and modification of the coastal plain and creek systems makes interpretation of the historic environment difficult.

An additional consideration is that the soil qualities of the Activity Area below the recent fill is not conducive to the digging of traditional burials or the preservation of bone material.

5.1.3 Previous disturbance history

For the purposes of the assessment the Activity Area has been disturbed within the meaning of Due Diligence Code of Practice (DECCW 2010A:18), being:

Land is disturbed if it has been the subject of a human activity that has changed the land's surface, being changes that remain clear and observable.

In the context of the Due Diligence Code of Practice the geotechnical investigation and soil contamination report demonstrate that the Activity Area has been subject to ground disturbance, being the fill for the construction of the sports courts and temporary houses.

The analysis of historical aerial photos show that the Activity Area has been subject to historical disturbance that would significantly disturb or remove the upper soil profile with the greatest potential to contain Aboriginal archaeological deposits. Given the disturbance history of the Activity Area, which includes a number of more recent works such as the upgrade of the footpath, installation of lights and construction of verges and drains associated with Squire Way it is reasonable to conclude that if an archaeological site was present, it would have become visible or would have been identified within exposed ground during these construction works.

5.1.4 Requirement investigation in accordance with the Guide to investigating, assessing and reporting on Aboriginal heritage in NSW (OEH 2011)

Completion of an Aboriginal Cultural Heritage Assessment Report (ACHAR) is the minimum requirement for activities which either require an AHIP or may likely impact on Aboriginal objects or places in NSW. The *Guide to investigating, assessing and reporting on Aboriginal heritage in NSW* (OEH 2011) makes the following comment on the requirement for an ACHAR:

An Aboriginal cultural heritage assessment report is a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment.

The desktop Due Diligence assessment has demonstrated that it is not 'likely' that the construction of the Fairy Meadow Ambulance Station will impact on Aboriginal archaeological sites. The GML Heritage (2023) identifies the Activity Area within a region where it is 'possible' that the post-battle burials took place, however this is qualified throughout the report by the accuracy of the original historic account and the degree of change in the physical landscape subsequent to the original battle in the 1830's. As such, the threshold for obtaining an AHIP or proceeding to a higher level of assessment as required by the Due Diligence Code of Practice (DECCW 2010), is not met in this instance.

The Due Diligence Code of Practice makes the following statements for works that proceed without an AHIP:

If you have followed this code and at any point have reasonably decided that an AHIP application is not necessary either because Aboriginal objects are not present or, if they are present, harm to those objects can be avoided, you can proceed with caution.

If, however, while undertaking your activity you find an Aboriginal object you must stop work and notify DECCW and you may need to apply for an AHIP. Some works may not be able to resume until

you have been granted an AHIP and you follow the conditions of the AHIP. Further investigation may be required depending on the type of Aboriginal object that is found.

If human skeletal remains are found during the activity, you must stop work immediately, secure the area to prevent unauthorised access and contact NSW Police and DECCW.

A project specific Unexpected Finds Procedure is provided below (see **Section 6**).

5.1.5 Requirement for Archaeological Investigation

The *Code of practice for the archaeological investigation of Aboriginal objects in NSW* (DECCW 2010B) requires that archaeological excavation should be undertaken under the following circumstances:

“sub-surface Aboriginal objects with potential conservation value have a high probability of being present in an area, and the area cannot be substantially avoided by the proposed activity”

When applied across coastal NSW, archaeological sites of conservation value would include those types of archaeological sites which are either rare or of deeper significance to the Aboriginal community, including burials, ceremonial sites such as stone arrangements and birthing places, rock art sites, shell middens, scarred or carved trees and historic sites associated with Aboriginal reserves or “fringe” camps.

Having consideration for the desktop assessment it is possible to make the following statements on the requirement for additional cultural heritage investigation:

- The GML Heritage (2023) historic assessment identifies an area where there is a ‘possibility’ of burials but does not make any definitive statements that there is a ‘high probability’ that burials will occur in the vicinity of Cabbage Tree Creek/ Fairy Creek
- it is not likely that burials will be retained within the Activity Area due to the disturbed nature of the soils within the Activity Area which are not conducive to the preservation of organic material
- it is not considered that there is a “high probability” that other Aboriginal objects will be located within the Activity Area due to the low probability of finding campsites in low-lying swamps and forests behind the coastal dune system
- Aboriginal stone artefacts are common throughout the region and should they occur in the area would likely have limited conservation value due to disturbed setting and pattern of residential development in the surrounding landscape, and
- there are no known ceremonial or spiritual sites recorded on AHIMS nearby to the Activity Area.

An additional consideration is that there are no non-invasive archaeological methods that would be able to definitively identify burials within the Activity Area. Ground Penetrating Radar has limited effectiveness in waterlogged soils near the water table as moisture reduces the radars penetration into the soil. While Ground Penetrating Radar is useful for historical Aboriginal cemeteries where gravesites are known but unmarked, they are limited when working in disturbed environments as the background signals of ground disturbance make the identification of gravesites problematic. The application of invasive archaeological excavation is not considered a viable method to investigate the potential of the Activity Area to contain

Aboriginal burials as a sampling strategy for the area would be more likely to miss a burial than to locate a burial. Excavation by hand of up to 25% of the site would be required to make a qualified statement on the potential to identify burials, however this would still leave 75% of the Activity Area untested.

5.1.6 Consideration of the Wollongong Development Control Plan -Aboriginal Heritage (2009)

The following comments are provided in response to the requirements for assessment under the Wollongong Development Control Plan- Aboriginal Heritage (2009)

(a) Any beach or coastal foredune area (ie both primary and secondary dunal areas) (excluding any portion of land subject to past development disturbance). ***The Subject Site is not located on a sand dune.***

(b) Land within 40 metres from top of bank of any watercourse / riparian land (excluding any portion of land subject to past development disturbance). ***The Subject Site is more than 40 metres from a watercourse / riparian land***

(c) Land within 40 metres from the mean high water mark (MHW) of any estuary or tidal inlet (excluding any portion of land subject to past development disturbance). ***The Subject Site is more than 40 metres from a watercourse / riparian land***

(d) Any land zoned Environmental Protection zone within the Illawarra Escarpment (excluding any portion of land which has been subject to past development disturbance). ***The Subject Site is not located on the Illawarra escarpment***

(e) Lands zoned Rural / Non-urban (excluding any portion of land which has been subject to past development disturbance). ***The Subject Site has been subject to past development disturbance***

(f) Land within new 'greenfield' release areas (excluding any portion of land where a detailed Aboriginal archaeological / cultural heritage impact assessment has been undertaken at the rezoning stage or where Development Consent has been previously granted for subdivision or development of that portion of the land). ***The Subject Site is not a 'greenfield' release area***

(g) All known sites containing either Aboriginal objects and / or places of Aboriginal cultural heritage significance. ***No known Aboriginal sites or places of Aboriginal cultural heritage significance are recorded on AHIMS or the Wollongong LEP (2009).***

5.1.7 Response to Wollongong City Council advice on Aboriginal Cultural Heritage Assessment requirements (2 May 2023).

Matter 1: Council's Heritage Officer has advised that there are ongoing investigations at Innovation Campus in relation to a potential burial ground associated with the Battle of Fairy Meadow. The broader site has documented cultural significance and the potential for Aboriginal Sites to be present is also being considered as part of other proposals on the site.

Response: The desktop Due Diligence assessment has reviewed the GML Heritage (2023) historical heritage study for the Innovation Campus which has concluded that the Activity Area is within a broad landscape area

where there is the ‘possibility’ of Aboriginal burials associated with the Battle of Fairy Meadow (see **Figure 6** above). The desktop assessment has concluded that burials sites are not ‘likely’ to be harmed by works associated with the Ambulance Station. Should Aboriginal sites be present in this area it is reasonable to consider that they would have been identified during historic construction along Squires Way, including any underground utilises or stormwater works that included trenching.

The geotechnical investigations demonstrate that the Activity Area has been filled to a depth of approximately 60cm and the underlying natural soil comprises clay/alluvial sediments which are not conducive to the preservation of bone material and are not consistent with the written description of the burials, which were on sand soil near the creek banks.

The potential that the Activity Area forms part of a broader cultural landscape has been considered, however the Activity Area is not a gazetted Aboriginal place or an Aboriginal place of cultural significance on the Wollongong LEP (2009) and there is no regulatory requirement for additional consideration of impacts to the cultural landscape.

Matter 2: If required to address this matter in order to satisfy requirements under Part 5 of the EPA Act 1979 and the SEPP (Transport and Infrastructure) 2021, an Aboriginal Cultural Heritage Assessment Report should be prepared to support the proposal. This should consider the Kelleher Nightingale work on the broader site and include consultation with the local Aboriginal Community.

Response: Completion of a Due Diligence desktop assessment is a standard requirement for activities approved by a REF under the SEPP (Transport and Infrastructure) 2021. The Due Diligence assessment has concluded that the proposed Fairy Meadow Ambulance Station will not ‘likely’ impact on Aboriginal objects or burials and as such an AHIP is not required. In accordance with the *Due Diligence Code of Practice* (DEECW 2010) there is no requirement for an ACHAR in accordance with the *Guide to investigation, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH 2011). The consideration of intangible heritage values and the impacts of a proposal on the cultural landscape are requirements of an ACHAR, however this is for the purpose of understanding the significance of Aboriginal objects and/or places and informing an impact assessment to determine whether an AHIP is an appropriate management response for works that would result in harm to Aboriginal objects of places or whether avoidance or other measures are required.

Matter 3: You may need to review the implications of this matter regarding the provisions of the SEPP (Transport and Infrastructure) 2021 for Emergency services facilities and any requirements under the National Parks and Wildlife Act 1974 and whether they’re applicable. Unfortunately, due to the status of the matter it the implications are not explicitly clear.

Response: Completion of a desktop Due Diligence assessment is an appropriate level assessment to comply with the requirements of Part 6 of the NPW Act, specifically Section 87(2) which provides for:

It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged

offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.

The Activity Area is not located in an area with a high potential to contain Aboriginal objects and the available historical assessment indicates that there is only 'possible' that Aboriginal burials associated with the Battle of Fairy Meadow extend into the Activity Area (GML Heritage 2023).

5.1.8 Response to Wollongong City Council comments (30 May 2023)

Following the review of the preliminary desktop Due Diligence assessment by Wollongong City Council the following comments were provided on 30 May 2023 via email. Responses to these matters are included below to inform the Review of Environmental Factors:

Comment 1- A Kate Waters Draft Cultural Values Assessment Report has now been prepared which identifies cultural values associated with existing waterways (including modified alignments), such as the waterway that runs along the boundary of the site as well as visual connections through the broader site to Mt Keira and the Escarpment. This Report and its potential impacts on cultural values have not been considered in the Due Diligence Assessment or any consultation undertaken with the Registered Aboriginal Parties or knowledge holders identified for the site.

Response- Cultural landscape values are relevant to the extent to which they increase the likelihood that an area will contain Aboriginal objects or that an activity will harm Aboriginal objects. The presence of culturally significant waterways and topographic features is common along the NSW coastline and there is no specific information provided in the Aboriginal Cultural Values Assessment Report summary that demonstrates the Activity Area is a unique or significant part of the cultural landscape or that an additional building will have a cumulative impact on the cultural landscape. The proposed Ambulance Station will not result in changes to the waterways, a decrease in water quality or in any way reduce the Aboriginal communities use of Cabbage tree Creek.

Comment 2- The Draft Waters Report has also indicated there is no consensus on the potential for burials to be present on the site.

Response- The primary record of the Battle of Fairy Meadow has been the subject of an extensive review by GML Heritage (2023) which has indicated that the Activity Area is within the northern portion of an area which is mapped as a 'possible' post-battle burial ground. Based on the available information it is not considered 'likely' that the proposed Ambulance Station will impact on Aboriginal burials and there is no requirement under the Due Diligence Code of Practice to undertake additional community consultation or archaeological investigation with respect to potential impacts on burials. An appropriate mitigation measure for potential

burials is the engagement of spotters to assist the construction teams during excavation of soil below the historic fill that has the residual potential to contain burials.

Comment 3- Council remains of the view that due to these risks, a full ACHAR that considers the previous work undertaken for the Innovation Campus, both in terms of the Kelleher Nightingale ACHAR and Draft Water Cultural Values assessment should be prepared. This would allow for formal engagement with the local Aboriginal Community and Heritage NSW and consider cumulative impacts to the broader cultural values of the site.

Response- A full ACHAR is designed to understand the cultural context and significance of Aboriginal objects and is required to ensure that the Aboriginal community have an opportunity to comment on proposals which would reasonably result in the harm to Aboriginal objects. As the Due Diligence assessment has concluded that harm to Aboriginal object is not likely a application for a Aboriginal Heritage Impact Permit, and therefore a comprehensive cultural heritage assessment, is not required. In this instance documentation of the Due Diligence assessment is sufficient to comply with the requirements of the NSW National Parks and Wildlife Act (1974) and Regulations (2019).

Comment 4- Relates to historic heritage.

Comment 5- Relates to historic heritage.

Comment 6- Relates to historic heritage.

Comment 7- Comment from Heritage NSW should be sought in relation to both potential impacts to Aboriginal Cultural values, requirements under the National Parks and Wildlife Act 1974 and use of Due Diligence in this location and impacts on the setting of the SHR item under the NSW Heritage Act 1977.

Response- There is no requirement to refer the Due Diligence desktop report to Heritage NSW prior to determination of the Review of Environmental Factors. Documentation of the Due Diligence assessment is a minimum requirement and is typically provided to Heritage NSW only if the Unexpected Find Procedure is triggered by a find (see **6.1.1 e.** and **f.** below).

6 CONCLUSIONS AND RECOMMENDATIONS

The Due Diligence assessment has concluded that the proposed construction of the Fairy Meadow Ambulance Station will not likely result in harm to Aboriginal objects or burials associated with the Battle of Fairy Meadow. As such an AHIP or additional archaeological excavation is not required, and the works can proceed under the Due Diligence approval pathway (NPW Act 1974 Section 87(2)). However, it is recommended that an Aboriginal Objects Find Procedure is put in place as a precautionary measure.

6.1.1 Recommendation 1: Aboriginal Objects Find Procedure

It is recommended that if it is suspected that Aboriginal objects have been uncovered as a result of development activities within the Project Area:

- a) work in the surrounding area is to stop immediately and records are made of the finds via project reporting procedures
- b) a temporary fence is to be erected around the site and appropriate controls put in place to ensure that no additional ground disturbance happens in the vicinity of the find
- c) an appropriately qualified archaeological consultant and a representative of the Illawarra Local Aboriginal Land Council are to be engaged to identify the material and provide an initial assessment of the significance of the object and the likely nature and extent of any associated archaeological sites
- d) if the material is found to be of Aboriginal origin, the find must be reported on the AHIMS database
- e) In the event that the Aboriginal objects are considered to have been damaged or disturbed, the incident must be reported through the NSW Enviro Hotline, and
- f) works may only recommence after advice from Heritage NSW on the requirement for an AHIP or where design, engineering or construction measures are identified to mitigate further damage to the Aboriginal site (i.e. site avoidance).

As a precautionary measure, a qualified archaeologist should be employed to observe ground works below the layer of construction fill to determine if the soils have the potential to contain Aboriginal burials (i.e. dry sandy soils) or are waterlogged alluvial clays with a low potential to preserve organic material (see section 4.3.2 above).

6.1.2 Recommendation 2: Aboriginal Human Remains

It is unlikely that Human Remains will be located at any stage during ground works within the Project Area. However, should this event arise, all works must halt in the immediate area to prevent any further impacts to the remains. The burial site should be cordoned off and the remains themselves should be left untouched. The nearest police station (Wollongong), Illawarra Local Aboriginal Land Council and Heritage NSW (Parramatta) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the site for criminal activities, the Aboriginal community and the



Heritage NSW should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all parties, provided it is in accordance with all parties' statutory obligations.

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