



Aboriginal and Non Aboriginal Archaeological Assessment

Wyong Hospital, Hamlyn Terrace, NSW

Prepared by:

RPS AUSTRALIA EAST PTY LTD

Level 9, 17 York Street
SYDNEY NSW 2000

T: +61 2 8270 8300
F: +61 2 8270 8399
E: Deborah.farina@rpsgroup.com.au

Client Manager: Deborah Farina
Report Number: PR123120
Version / Date: Final, September 2014

Prepared for:

HEALTH INFRASTRUCTURE

PO Box 1060
NORTH SYDNEY NSW 2060

T: +61 2 9978 5402
F: +61 2 8904 1377

IMPORTANT NOTE

Apart from fair dealing for the purposes of private study, research, criticism, or review as permitted under the Copyright Act, no part of this report, its attachments or appendices may be reproduced by any process without the written consent of RPS Australia East Pty Ltd. All enquiries should be directed to RPS Australia East Pty Ltd.

We have prepared this report for the sole purposes of Health Infrastructure ("**Client**") for the specific purpose of only for which it is supplied ("**Purpose**"). This report is strictly limited to the purpose and the facts and matters stated in it; it does not apply directly or indirectly and will not be used for any other application, purpose, use or matter.

In preparing this report we have made certain assumptions. We have assumed that all information and documents provided to us by the Client or as a result of a specific request or enquiry were complete, accurate and up-to-date. Where we have obtained information from a government register or database, we have assumed that the information is accurate. Where an assumption has been made, we have not made any independent investigations with respect to the matters the subject of that assumption. We are not aware of any reason why any of the assumptions are incorrect.

This report is presented without the assumption of a duty of care to any other person (other than the Client) ("**Third Party**"). The report may not contain sufficient information for the purposes of a Third Party or for other uses. Without the prior written consent of RPS Australia East Pty Ltd:

- (a) this report may not be relied on by a Third Party; and
- (b) RPS Australia East Pty Ltd will not be liable to a Third Party for any loss, damage, liability or claim arising out of or incidental to a Third Party publishing, using or relying on the facts, content, opinions or subject matter contained in this report.


If a Third Party uses or relies on the facts, content, opinions or subject matter contained in this report with or without the consent of RPS Australia East Pty Ltd, RPS Australia East Pty Ltd disclaims all risk and the Third Party assumes all risk and releases and indemnifies and agrees to keep indemnified RPS Australia East Pty Ltd from any loss, damage, claim or liability arising directly or indirectly from the use of or reliance on this report.

In this note, a reference to loss and damage includes past and prospective economic loss, loss of profits, damage to property, injury to any person (including death) costs and expenses incurred in taking measures to prevent, mitigate or rectify any harm, loss of opportunity, legal costs, compensation, interest and any other direct, indirect, consequential or financial or other loss.

Document Status

Version	Purpose of Document	Orig	Review	Review Date
1.0	Draft for client review	D. Farina	J. Ruhl	26 August 2014
2.0	Final following client review	D. Farina	E. Williams	9 September 2014

Approval for Issue

Name	Signature	Date
Erin Williams		9 September 2014

Contents

EXECUTIVE SUMMARY	1
1.0 INTRODUCTION	4
1.1 The Project Area.....	4
1.2 The Proposed Activity	4
1.3 Authorship and Acknowledgements.....	4
2.0 LEGISLATIVE CONTEXT	6
2.1 <i>National Parks & Wildlife Act 1974</i>	6
2.2 <i>National Parks and Wildlife Regulation 2009</i>	7
2.3 Due Diligence and Codes of Practice	7
2.3.1 <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010)</i>	7
2.4 Aboriginal Community Consultation	8
2.5 <i>Heritage Act 1977</i>	8
2.6 Environment Protection and Biodiversity Conservation Act 1999	8
2.7 Environmental Planning and Assessment Act 1979	9
3.0 ENVIRONMENTAL CONTEXT	10
3.1 Geology and Soils	10
3.2 Topography and Hydrology	10
3.3 Flora and Fauna	10
3.4 Synthesis of Environmental Context	11
4.0 HERITAGE CONTEXT	12
4.1 Aboriginal heritage and archaeology.....	12
4.1.1 Aboriginal historical.....	12
4.1.2 Aboriginal Heritage Information Management System (AHIMS)	14
4.1.3 Aboriginal Places	14
4.2 Non Aboriginal heritage and archaeology.....	16
4.2.1 Non Aboriginal historical context of Wyong area.....	16
4.2.2 Historical Development of Project Area	18
4.2.3 Heritage databases.....	19
4.3 Review of previous archaeological investigations.....	21
4.4 Synthesis of Heritage Context	22
5.0 VISUAL INSPECTION AND FIELD RESULTS	23
5.1 Visual Inspection.....	23
5.2 Visual Inspection Field Results and Summary	26
6.0 IMPACT ASSESSMENT	27
7.0 CONCLUSIONS AND RECOMMENDATIONS	28
8.0 REFERENCES	29

Tables

Table 1 : Acknowledgements	4
Table 2 Summary of AHIMS Sites within the searched coordinates	14
Table 3 Items in Wyong LEP 2013 within or in the vicinity of the project area.....	20

Figures

Figure 1 Project Area.....	5
Figure 2 Project Area and AHIMS	15

Plates

Plate 1 : Grey ironbark near Wyong, undated (Courtesy State Library of NSW).	16
Plate 2 : Township of Wyong, looking south from Wyong Lookout, c. 1927 (Courtesy State Library of NSW)..	17
Plate 3 : Detail of Parish of Munmorah map, c.1940 (Courtesy Land & Property Information NSW).	18
Plate 4 : “Hakone”, Warner’s home at 31 Boyce Street, Wyong (Courtesy, NSW State Heritage Inventory)..	19
Plate 5 : Hospital precinct, looking south. Hospital buildings are to the left of frame, bushland to the right (RPS, 2014).	23
Plate 6 : Northern portion of bushland (RPS, 2014).....	24
Plate 7 : Southern portion of bushland (RPS, 2014).	25
Plate 8 Mulch pile in southern portion of bushland (RPS, 2014).....	25
Plate 9 : Looking south toward Conservation Area. Note dense undergrowth in Conservation Area (RPS, 2014).....	26

Appendices

Appendix 1	Legislative Requirements
Appendix 2	AHIMS

Executive Summary

RPS has been engaged by Health Infrastructure to prepare an Aboriginal and non Aboriginal Assessment for proposed expansion works at Wyong Hospital, Hamlyn Terrace in the Wyong Local Government Area (LGA).

The Aboriginal heritage portion of this assessment has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects* (DECCW 2010) which requires reasonable and practicable steps be taken to: identify whether or not Aboriginal objects are, or are likely to be, present in an area; determine whether or not their activities are likely to harm Aboriginal objects (if present); and determine if an Aboriginal Heritage Impact Permit is required (DECCW 2010:2).

The non Aboriginal heritage portion of this assessment has been undertaken in accordance with the *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (Burra Charter)* (Australia ICOMOS 2013) and associated Guidelines as well as best practice standards set by the Office of Environment and Heritage.

Review of heritage databases showed that there are no Aboriginal or historic sites recorded within the vicinity of the proposed works. The nearest Aboriginal site is located a scarred tree approximately 1.5 kilometres south west of the Project Area, whilst the nearest historic site is located 340 m north east of the Project Area.

A visual inspection was conducted on 14 August 2014 by RPS Heritage Consultant, Deborah Farina. No Aboriginal or historic items were identified as a result of that visual inspection. The extensive disturbance of past land uses was observed during that inspection.

It is concluded that as a result of the frequent inundation and past land uses it is unlikely that any Aboriginal or historic site will be harmed as a result of the proposed works. The following general management recommendations are made in relation to the proposed activity:

Recommendation 1

All relevant staff and contractors should be made aware of their statutory obligations for heritage under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, which may be implemented as a heritage induction.

Recommendation 2

This due diligence assessment must be kept by Health Infrastructure so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the *National Parks and Wildlife Act 1974*.

Recommendation 3

If unrecorded Aboriginal object/s are identified in the Project Area during works, then all works in the immediate area must cease and the area should be cordoned off. OEH must be notified by ringing the Enviroline 131 555 so that the site can be adequately assessed and managed.

Recommendation 4

In the unlikely event that skeletal remains are identified, work must cease immediately in the vicinity of the remains and the area must be cordoned off. The proponent must contact the local NSW Police who will make an initial assessment as to whether the remains are part of a crime scene or possible Aboriginal remains. If the remains are thought to be Aboriginal, OEH must be contacted by ringing the Enviroline 131 555. An OEH officer will determine if the remains are Aboriginal or not; and a management plan must be developed in consultation with the relevant Aboriginal stakeholders before works recommence.

Recommendation 5

If, during the course of development works, suspected historic cultural heritage material is uncovered, work should cease in that area immediately. The Heritage Division, Office of Environment and Heritage (Enviroline 131 555) should be notified and works only recommence when an approved management strategy has been developed.

Terms, Definitions, and Abbreviations

Abbreviation/ Term	Meaning
Aboriginal Object	“any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains” (DECCW 2010:18).
Aboriginal Place	“a place declared under s.84 of the NPW Act that, in the opinion of the Minister, is or was of special significance to Aboriginal culture” (DECCW 2010:18). Aboriginal places have been gazetted by the minister.
Aboriginal Culturally Modified Tree	“means a tree that, before or concurrent with (or both) the occupation of the area in which the tree is located by persons of non-Aboriginal extraction, has been scarred, carved or modified by an Aboriginal person by: (a) the deliberate removal, by traditional methods, of bark or wood from the tree, or (b) the deliberate modification, by traditional methods, of the wood of the tree” NPW Regulation 80B (3). Culturally Modified trees are sometimes referred to as scarred trees
Activity	A project, development, or work (this term is used in its ordinary meaning and is not restricted to an activity as defined by Part 5 EP&A Act 1979).
Activity Area	Activity Area is the area subject to the proposed activity
AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit
DECCW	Department of Environment, Climate Change and Water (is now the Office of Environment and Heritage – OEH)
Disturbed Land	“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.” (DECCW 2010:18).
Due Diligence	“taking reasonable and practical steps to determine whether a person's actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm” (DECCW 2010:18)
EP&A Act	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
GDA	Geodetic Datum Australia
Harm	“destroy, deface, damage an object, move an object from the land on which it is situated, cause or permit an object to be harmed.” (DECCW 2010:18)
LGA	Local Government Area
NPWS	National Parks and Wildlife Service
NPW Act	<i>National Parks and Wildlife Act 1974 (NSW)</i>
NPW Regulation	<i>National Parks and Wildlife Regulation 2009 (NSW)</i>
OEH	Office of Environment and Heritage (formerly DECCW)
PAD	Potential Archaeological Deposit
Project Area	Project Area is the area subject to the desktop study in this report

1.0 Introduction

RPS has been engaged by the NSW government department, Health Infrastructure (the proponent) to prepare an Aboriginal and non Aboriginal Archaeological Assessment. The purpose of the archaeological assessment is to demonstrate that reasonable and practicable measures were taken to prevent harm to Aboriginal objects or places or non Aboriginal heritage items resulting from the proposed work to redevelop the hospital. The non Aboriginal portion of the archaeological assessment has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010) ("Due Diligence Code"). The non Aboriginal portion of the archaeological assessment has been undertaken in accordance with *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (Burra Charter)* (Australia ICOMOS 2013) and associated Guidelines as well as best practice standards set by the Office of Environment and Heritage.

This report has outlined the relevant environmental and archaeological context, landforms, landscape features, disturbances, legislative context and the nature of the proposed activity. This information has been considered in formulating the recommendations.

1.1 The Project Area

This assessment has been prepared for the area subject to the proposed activity and herein is referred to as the "Project Area." The Project Area is located at Wyong Hospital in the Wyong Local Government Area (LGA). The Project Area approximately five kilometres north east of Wyong and comprises approximately fourteen hectares. Most of the Wyong Hospital campus has already been developed and is not likely to impact upon any heritage however a vacant block to the west of the hospital car park, an area of approximately two hectares, is of particular interest (Figure 1).

1.2 The Proposed Activity

The proposed activity is to redevelop and expand the existing hospital facilities and services. At this stage, the precise nature of the works is unclear and to this end the entire hospital precinct has been assessed. As the scope of works has not yet been finalised, it has been assumed that earthworks will be conducted in any area that has not been previously disturbed..

As it is likely that ground disturbance works will be part of the proposed works, including earthworks, a due diligence assessment for Aboriginal heritage is therefore required under ss1 and 2a of the Due Diligence Code (DECCW 2010:11). It is also within 200m of waters, and is proposed on land that is not disturbed; as such, a due diligence assessment is required under the Due Diligence Code (DECCW 2010:11-12).

1.3 Authorship and Acknowledgements

This report was prepared by RPS Heritage Consultant, Deborah Farina. The report was reviewed by Senior Heritage Consultant, Jakob Ruhl. The fieldwork was undertaken by Deborah Farina.

RPS would like to acknowledge the assistance of the following people and organisations in the preparation of this assessment:

Table 1 : Acknowledgements

Name	Organisation
Melissa Evans/Matthew Curnow	Appian Group
Michael Wallis	Wyong Hospital

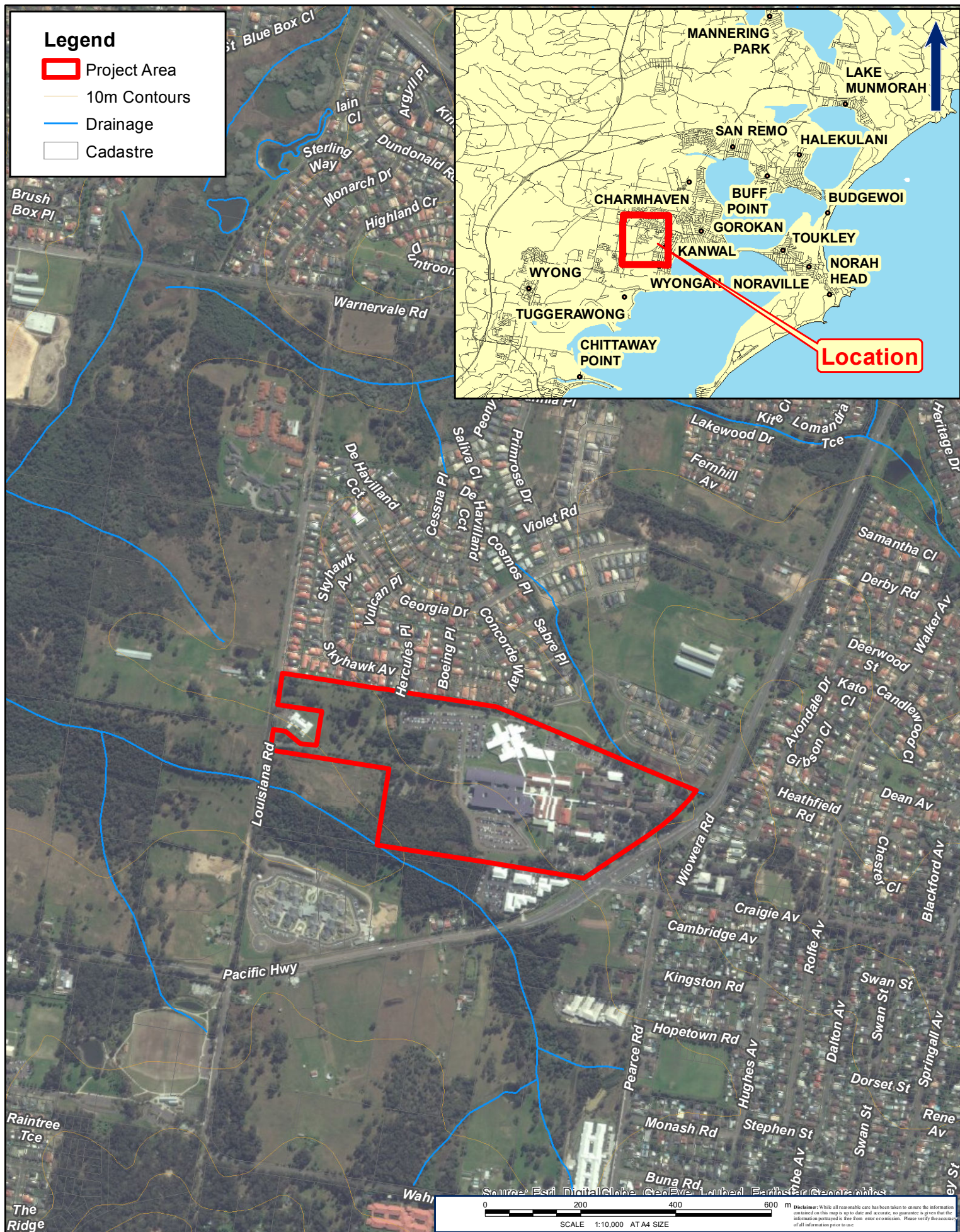


Figure 1: Project Area

CLIENT: HEALTH INFRASTRUCTURE

LOCATION: Wyong Hospital,
Hamlyn Terrace

DATUM: GDA94
PROJECTION: MGA Zone 56

JOB NO.: PR123120

Data Sources:
RPS
OEH

PURPOSE: HERITAGE

Technician: Natalie Wood Date: 20/08/2014

Copyright: "This document and the information shown shall remain the property of RPS Australia East Pty. Ltd. The document may only be used for the purpose for which it was supplied and in accordance with the terms of engagement for the commission. Unauthorised use of this document in any way is prohibited"

RPS AUSTRALIA EAST PTY LTD (ABN 44 140 292 762)
241 DENISON STREET BROADMEADOW PO BOX 428 HAMILTON NSW 2303
T: 02 4940 4200 F: 02 4961 6794 www.rpsgroup.com.au

RPS

2.0 Legislative Context

The following overview of the legal framework is provided solely for information purposes for the client, it should not be interpreted as legal advice. RPS will not be liable for any actions taken by any person, body or group as a result of this general overview, and recommend that specific legal advice be obtained from a qualified legal practitioner prior to any action being taken as a result of the summary below.

Although there are a number of Acts protecting and managing cultural heritage in New South Wales (Appendix 1); the primary ones which apply to this report include:

- *National Parks & Wildlife Act 1974.*
- *National Parks & Wildlife Regulation 2009.*

In brief, the *National Parks & Wildlife Act 1974* protects Aboriginal heritage (places, sites and objects) within NSW; the National Parks and Wildlife Regulation 2009 provides a framework for undertaking activities and exercising due diligence.

2.1 *National Parks & Wildlife Act 1974*

The *National Parks & Wildlife Act 1974* (NPW Act) protects Aboriginal heritage (places, sites and objects) within NSW. Protection of Aboriginal heritage is outlined in section 86 of the Act, as follows:

- "A person must not harm or desecrate an object that the person knows is an Aboriginal object" s86(1).
- "A person must not harm an Aboriginal object" s86(2).
- "A person must not harm or desecrate an Aboriginal place" s86(4).

Penalties apply for harming an Aboriginal object or place. The penalty for knowingly harming an Aboriginal object (s86[1]) and/or an Aboriginal place (s86[4]) is up to \$550,000 for an individual and/or imprisonment for 2 years; and in the case of a corporation the penalty is up to \$1.1 million. The penalty for a strict liability offence (s86[2]) is up to \$110,000 for an individual and \$200,000 for a corporation.

Harm under the NPW Act is defined as any act that; destroys defaces or damages the object, moves the object from the land on which it has been situated, causes or permits the object to be harmed. However, it is a defence from prosecution if the proponent can demonstrate 1) that harm was authorised under an Aboriginal Heritage Impact Permit (AHIP) (and the permit was properly followed), or 2) that the proponent exercised due diligence in respect to Aboriginal heritage. The '**due diligence**' defence (s87[2]), states that if a person or company has exercised due diligence to ascertain that no Aboriginal object was likely to be harmed as a result of the activities proposed for the Activity Area (subject area of the proposed activity, referred herein as the Activity Area); then liability from prosecution under the NPW Act will be removed or mitigated if it later transpires that an Aboriginal object was harmed.

Notification of Aboriginal Objects

Under section 89A of the NPW Act Aboriginal objects (and sites) must be reported to the Director-General (now Chief Executive) of OEH within a reasonable time (unless it has previously been recorded and submitted to AHIMS). Penalties of \$11,000 for an individual and \$22,000 for a corporation may apply for each object not reported.

2.2 National Parks and Wildlife Regulation 2009

The *National Parks and Wildlife Regulation 2009* (NPW Regulation) provides a framework for undertaking activities and exercising due diligence in respect to Aboriginal heritage. The NPW Regulation 2009 outlines the recognised due diligence codes of practice which are relevant to this report, but it also outlines procedures for AHIP applications and Aboriginal Cultural Heritage Consultation Requirements (ACHCRs); amongst other regulatory processes.

2.3 Due Diligence and Codes of Practice

The aims of a due diligence assessments are to:

- Assist in avoiding unintended harm to Aboriginal objects.
- Provide certainty to land managers and developers about appropriate measures for them to take.
- Encourages a precautionary approach.
- Provides a defence against prosecution if the process is followed.
- Results in more effective conservation outcomes for Aboriginal cultural heritage.

One of the advantages of the due diligence provisions are that they provide a simplified process of investigating the Aboriginal archaeological context of an area to determine if an AHIP is required.

Under the section 80A NPW Regulation a number of due diligence codes are recognised.

The Aboriginal heritage portion of this report has been written to meet the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010) (Due Diligence Code).

2.3.1 Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010)

This publication sets out a minimum benchmark for acceptable due diligence investigations to be followed. The purpose of the code is set out reasonable and practical steps in order to:

- (1) Identify whether or not Aboriginal objects (and places) 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. (DECCW 2010:2)

Investigations under the code include the following:

- A search of the AHIMS to identify if there are previously recorded Aboriginal objects or places in the Activity Area.
- Identification of landscape features including, land within 200 metres of water, dune systems, ridge tops, headlands, land immediately above or below cliff faces and/or rock shelters/caves.
- Desktop assessment including a review of previous archaeological and heritage studies and any other relevant material.
- Visual inspection of the Activity Area to identify if there are Aboriginal objects present.
- Assessment as to whether an AHIP is required.

This report has complied with the requirements of the code listed above. Other requirements under the code are outlined below.

Aboriginal consultation is not required for an investigation under the Due Diligence Code (DECCW 2010:3). However, if the due diligence investigation shows that the activities proposed for the area are likely to harm objects or likely objects within the landscape, then an Aboriginal Heritage Impact Permit will be required with full consultation.

A record of the due diligence procedure followed must be kept to ensure it can be used as a defence from prosecution (DECCW 2010:15).

Following a due diligence assessment (where an AHIP application was not required), an activity must proceed with caution. If any Aboriginal objects are identified during the activity, then works should cease in that area and OEH notified (DECCW 2010:13). The due diligence defence does not authorise continuing harm.

2.4 Aboriginal Community Consultation

Aboriginal community consultation is not a formal requirement of the due diligence process (DECCW 2010:3) therefore the proponent is not obliged to undertake Aboriginal community consultation.

Aboriginal community consultation was not undertaken for this due diligence assessment.

2.5 Heritage Act 1977

Historical archaeological relics, buildings, structures, archaeological deposits and features are protected under the *Heritage Act 1977* (and subsequent amendments) and may be identified on the State Heritage Register (SHR) or by an active Interim Heritage Order.

The Heritage Council of NSW, constituted under the *Heritage Act 1977*, is appointed by the Minister and is responsible for heritage in NSW. The Council reflects a cross-section of community, government and conservation expertise with the NSW Heritage Division being the operational arm of the Council. The work of the NSW Heritage Division includes:

- Working with communities to help them identify their important places and objects.
- Providing guidance on how to look after heritage items.
- Supporting community heritage projects through funding and advice.
- Maintaining the NSW Heritage Database, an online list of all statutory heritage items in NSW.

2.6 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the primary Commonwealth environmental and heritage legislation. The EPBC Act provides a legislative framework for the protection and management of places of national environmental significance. The EPBC addresses the National Heritage List (NHL) and Commonwealth Heritage List (CHL). The NHL includes natural, historic and Indigenous places that are of outstanding national heritage value to the Australian nation. The CHL protects natural, Indigenous and historic heritage places on land owned or leased by the Commonwealth or a Commonwealth Authority. To reach the threshold for the NHL, a place must have 'outstanding' heritage value to the nation whereas to be entered on the CHL, a place must have 'significant' heritage value.

The Commonwealth Department of the Environment is responsible for the implementation of national policy, programs and legislation to protect and conserve Australia's environment and heritage and to promote Australian arts and culture. Approval from the Minister is required for controlled actions which will have a significant impact on items and places included on the NHL or CHL.

2.7 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) regulates a system of environmental planning and assessment for NSW. Land use planning requires that environmental impacts are considered, including the impact on cultural heritage. Assessment documents prepared to meet the requirements of the EP&A Act including Reviews of Environmental Factors, Environmental Impact Statements and Environmental Impact Assessments, should address cultural heritage where relevant. Statutory planning documents such as Local Environment Plans and State Environmental Planning Policies typically contain provisions for heritage.

3.0 Environmental Context

The purpose of reviewing the relevant environmental information is to assist in identifying whether Aboriginal objects or places are present within the Project Area. The environmental context forms part of the desktop assessment required under the Due Diligence Code (DECCW 2010:12-13).

3.1 Geology and Soils

The geology of the Project Area is located at the interface of the Quaternary geological formation and the Gosford Formation. The Quaternary formation chiefly comprises alluvium, gravel, sand, silt and clay, whilst the Tuggerah formation is predominantly made up of claystone, sandstone and shale.

The soils of the project area are on the interface of the Gorokan and Wyong soil landscapes, with the Gorokan soil landscape mainly on the higher ground, with the Wyong soil landscape in the lower areas. The Gorokan soil landscape is generally found on undulating low hills and rises of the Tuggerah formation and is characterised by moderately deep soils with a high erosion hazard, foundation hazard, seasonal waterlogging with low fertility (Murphy 1993:56).

The Wyong soil landscape is generally found on broad, poorly drained deltaic floodplains and alluvial flats of Quaternary sediments of the Central Coast Lowlands and is characterised by deep, poorly drained, impermeable soils of very low fertility with saline subsoils, with localised permanent waterlogging, flooding, stream bank erosion, localised acid sulphate potential and strongly acidic. Meander scrolls, oxbows and swamps are common as are extensively cleared open-forest (Murphy 1993:81).

Sandstone was an important raw material for Aboriginal people. Sandstone outcrops were often used for shelters and to sharpen stone implements. Rock engravings are also found on sandstone outcrops. The presence of sandstone indicates the potential for axe grinding grooves and other sandstone based evidence.

The soils profiles are an important indicator of the type of supportable native vegetation and past land use, as well as important in determining the type and depth of any archaeological deposits that could be expected on the site.

3.2 Topography and Hydrology

The Project Area is located approximately 1.1 kilometres from the western shore of Tuggerah Lake, providing ample food resources. There are numerous permanent and ephemeral water sources in the area, including an unnamed creek approximately 200 m west from the main hospital entrance. Local and ephemeral sources of water could have been sourced by Aboriginal people from minor streams. The Project Area is located on a mid slope and at its highest is less than 30 m above sea level.

The topography and hydrology of the area comprising the Project Area indicates that the landscape was gentle and contained sufficient food and water resources within an easy distance to sustain habitation.

3.3 Flora and Fauna

The purpose of this section is to provide an indication of the types of flora and fauna resources which were likely to have been available to Aboriginal people in the past. It is based on broad scale vegetation mapping for NSW (Keith 2006) and does not replace more detailed studies undertaken for the Project Area.

The vegetation in the Project Area consists of Coastal Floodplain Wetlands. Soils were frequently inundated vegetation largely comprise trees such as paperbarks and swamp oaks. Reeds, rushes and other swamp-tolerant plants formed much of the ground cover (Keith:226-227).

Generally swamp areas were not ideal living spaces for past Aboriginal communities, however there were vitally important for resource gathering. Aside from small fish and other amphibians, snakes, lizards and water fowl were procured from these areas. Root vegetables, such as yam daisies, reeds, sedges, native flax and water vines were also used by Aboriginal women for food sources and to make fibre, which was in turn used for numerous purposes, such as nets for trapping game, as well as baskets, traps and bags.

3.4 Synthesis of Environmental Context

The geology landscapes indicate that raw materials were present for tool manufacturing. Whilst the topography was gentle enough to support Aboriginal habitation, native vegetation indicates that the area was quite swampy. However, the area would still have been an attractive resource collection place and evidence of this may still be present. The Wyong soil landscape indicates the propensity for flooding, which in turn would preclude the site from being an attractive habitation area. However, the swampy nature of the site would make it an attractive resource collection area.

4.0 Heritage Context

The purpose of reviewing the relevant heritage information is to assist in identifying whether Aboriginal objects or places are present within the Project Area. The heritage context forms part of the desktop assessment required under the Due Diligence Code (DECCW 2010:12-13).

4.1 Aboriginal heritage and archaeology

4.1.1 Aboriginal historical

The project area is the traditional land of the Darkinjung people, whose country ranged from the northern shores of Broken Bay, north up to the bridge of land between Tuggerah Lake and Lake Macquarie and west to the Great Dividing Range (Tindale 1974). According to the Darkinjung Local Aboriginal Land Council, the Darkinjung or “Darkinyung Territory embraces the Country watered by Colo, MacDonald and Wollombi Rivers” (Darkinjung Local Aboriginal Land Council Online). Occupying both coastal and hinterland areas, each would have had different movement patterns and lifestyles.

Little is known about the Darkinjung people prior to settlement of non Aboriginal people. It is believed that the Darkinjung Nation was divided into twelve clans, coming from the Kincumber Peninsula, The Patonga area, Erina Wamberal and Terrigal, Gosford, Somersby, Ourimbah Creek Valley, Lower Wyong River and Jiliby Creek valleys, Upper Wyong River valley, Tuggerah Beach and Norah Head, Cooranbong, Mangrove Kulnurra (David Scobie Architects & Nicole Secomb 2010:8-9). All available information has been received from the writings and observations of early settlers, many of whom had various reasons for reporting on Aboriginal culture. The received information must therefore be viewed through that prism.

The language of the Darkinjung has not survived, however some individual words have, particularly in the form of place names in the Wyong Shire, including the name “Wyong”, or “*wai-yong*”, meaning “edible yam”. Others include:

Budgewoi - young grass

Gwandalan – peace

Jiliby – Where two creeks meet

Kanwal – Snakes indeed

Ourimbah – Sacred circle of the initiation for investing the “ourn” or belt of manhood

Terrigal – Place of little birds

Toukley – Many brambles

Tuggerah – Savannah grasslands

(David Scobie Architects & Nicole Secomb 2010:11)

Captain Cook noted the presence of smoke from fires in the area of the present Tuggerah Lakes Golf Links, approximately 11 km to the south east of the current project area.

In 1789, shortly after the colonists arrived in Sydney, a smallpox epidemic spread through the Aboriginal population, causing inestimable deaths. There are no direct reports regarding fatalities in the Wyong Shire, however skeletons were reported in the Broken Bay area, suggesting that it did reach the Darkinjung population. In 1827, Police Magistrate Willoughby Bean stated:

“There are Five Tribes – the Mial or Broken Bay Tribe – the Tuggera Beach Tribe – the Wyong Tribe and the Narara and “Erina” Tribes – The three first, as well as I am able to judge, consist of about Fifteen each and the two last about Ten each – being in all about Sixty-five men women and children”
(David Scobie Architects & Nicole Secomb 2010:11)

This outlook tallies with information reported in Sydney, where the smallpox epidemic caused previously separate clans to band together for survival (Attenbrow 2010:27). However, the numbers given by Bean do not tally with separate advice given by Newcastle Magistrates Allman and Brooks in 1826, wherein they state that there were 200 members of the “Tugrah Beech Tribe” (David Scobie Architects & Nicole Secomb 2010:12).

Competition for land and resources across Australia, including the Wyong district, often led to violent confrontations. One incident was recorded in 1828 between William Cape and the local people. The local people having lost their traditional hunting grounds and food resources to the settlers took advantage of the crops, stealing them for food:

“The district has within the last five or six months been greatly disturbed by the inroads of several tribes of aborigines... These tribes have frequently during this period assembled in great numbers... and, in the parts most retired, they have destroyed settlers crops and on one occasion beat a settler and his man who made some resistance... The District Constable... deemed it prudent to arm fifteen men and to go in pursuit of them... They confessed that it was their intention... to capture and burn the gentleman of the name of Cape who had formerly fired on them during the night when stealing his corn” (Thorpe 1994:H7-H8).

However, Magistrate Bean commented on the matter that Cape had:

“...provoked the aborigines to many acts of violence by his conduct, menacing them almost on all occasions with a loaded musket... many of the blacks in this district have conducted themselves very well.” (David Scobie Architects & Nicole Secomb 2010:14).

Reverend Lawrence Threkeld, who operated an Aboriginal mission at Lake Macquarie, also noted that in his area:

“There are now two government stockmen, that are every night annoying the Blacks by taking their little Girls, and I am now waiting to be informed, when they are in the native camp to get them apprehended, but then, as was the case once before, the evidence of the Black cannot be admitted, and indeed they are really terrified to speak. My wonder is, that more Whites are not speared than there are considering the gross provocation given.” (David Scobie Architects & Nicole Secomb 2010:15).

The 1830s and 1840s led to heightened conflict between Aboriginal communities and European settlers. Records relate one raid by a group of Aboriginals began at “Kurinbong” (Cooranbong) demanding tea and bread before moving to Cape’s farm at Wyong, where they took food and clothing then went back to Cooranbong and stole milk from a dairy. Poultry and livestock were routinely attacked and eaten. One man was robbed five times in two months and threatened with death when they discovered he had a musket.

By 1834 the Aboriginal groups were armed with guns, spears and waddies and despite the raids resulting in few spearing and no deaths, Magistrate Warner requested and was granted a troop of mounted police to come to the area and capture the ringleaders. Relative peace returned to the area for the month that the mounted police were in the area, however once they left, raids began again. Warner drew up a list of eighteen Aboriginal men who came from Wyong, Brisbane Water and Tuggerah Beach and offered a reward. By the middle of 1835 sixteen men had been arrested with eight of those having a sentence of death recorded against them. They were sent to Goat Island and as an act of clemency, the sentence was reduced to two years’ hard labour (David Scobie Architects & Nicole Secomb 2010:17-18).

Following those events, peace between the two groups of inhabitants began to settle. The population of Aboriginal people began to dwindle over the ensuing decades, with the last known person of the original

tribes dying in 1875. "Old Billy Fawcner" was known as "the last of the Brisbane Water Blackfellows" and drowned in Tuggerah Lake. However, as many of the current Aboriginal population can trace their lineage back to known Darkinjung, it is likely that Old Billy Fawcner was the last *known* Darkinjung.

4.1.2 Aboriginal Heritage Information Management System (AHIMS)

A search was undertaken of the Aboriginal Heritage Information Management System (AHIMS) on 15 August 2014. The coordinates searched for the Project Area were GDA Zone 56, Eastings 353509 to 363509 and Northings 6313900 to 6323900 and revealed that there are 36 previously recorded Aboriginal sites within these coordinates (Table 2 and Figure 2).

The search revealed that no Aboriginal objects or places were present in the Project Area.

Table 2 Summary of AHIMS Sites within the searched coordinates

Sites	Frequency	Percent
Isolated find	12	33%
Artefact scatter	12	33%
Non specified artefact site	4	11%
Axe grinding groove	3	8%
Ochre quarry	1	3%
Modified/carved tree	1	3%
Artefact scatter/Potential archaeological deposit	1	3%
Artefact scatter/Axe grinding groove	1	3%
Bora/ceremonial site	1	3%
TOTAL	36	100%

Source: Office of Environment & Heritage AHIMS database (see Appendix for results).

4.1.3 Aboriginal Places

Included in the AHIMS search results above is the Tuggerah Lakes Resting Place, an Aboriginal place within the meaning of the *National Parks & Wildlife Act 1974*. The Aboriginal Place comprises the repatriated burials of former Darkinjung ancestors, one of whom was repatriated from the Australian Museum, and the skull of another individual found in the channel entrance to Tuggerah Lake.

The Aboriginal Place is wholly within the Tuggerah Lakes Nature Reserve approximately 3.5 km to the south west of the current Project Area and will therefore not be affected by the proposed works.



Figure 2: Project Area with AHIMS

4.2 Non Aboriginal heritage and archaeology

4.2.1 Non Aboriginal historical context of Wyong area

The area now comprising the Wyong Shire was first visited by non Aboriginal people in the early 19th century. Explorers sent by Governor Phillip reached the Brisbane Water by 1788, but owing to the difficult terrain it wasn't until the following year that the future site of Gosford was reached. The proliferation of cedar in the area drew timber-getters in the 1820s and for the first half of the 19th century settlement was sporadic and mostly confined to temporary camps (Thorpe 1994:H10).



Plate 1 : Grey ironbark near Wyong, undated (Courtesy State Library of NSW).

Two Government decisions of the time allowed for the expansion into the current Wyong Shire. The first decision was to move the convict settlement at Newcastle further north to Port Macquarie in 1821, providing a greater land buffer between the convict farms and the general population. The second decision was in 1825 to relax the prohibition of land grants outside of the Sydney area. Concentrating settlement within a relatively small area allowed the fledgling Government strict control over the population before expanding (David Scobie Architects & Nicole Secomb 2010:22).

Grants of land commenced in the Wyong Shire from the 1820s. The first land holders included William Cape, who settled on 1,000 acres near Jilliby Creek in 1825, Jeremiah Walters, who selected 1,920 acres at Upper Tuggerah Lakes in the same year, Frederick Hely, who went on to be one of the largest land holders on the Central Coast, received his grant in the same year, Percy Simpson at Cooranbong, Jeremy Slade at Budgewoi and Tomas McQuoid at Ourimbah. In 1827 *The Australian* newspaper reported:

"Wyong, a district so-called by the natives, about twelve miles from Brisbane Water, is destined for small fifty acre farms." (The Australian 1827:3)

From this, it can be seen that from its early settlement the area was already called "Wyong" after the Darkinjung name for the area.

Despite the land grants in the 1820s, the area still remained relatively unexplored until December 1830, when Felton Matthew, Assistant Surveyor, was sent to chart the land on behalf of Major Mitchell. His journal notes the ruggedness of the topography, but also the difficulty of the exploration because of the thick vegetation. He notes in his journal on 30 December 1830:

“Endeavoured to ascend Tuggerah Creek but after wandering about for several hours scarcely able to proceed for the brush – found myself close to last night’s camping place – ascended another Range which I traversed with great difficulty, but at length got on the first one marked and which separates the waters of Tuggerah Creek from the sea.” (Mathew 1830)

Farms in the Wyong area at the time were typical of other farms throughout the colony at that time. They raised either cattle or sheep, or grew corn or wheat. Convicts were assigned to assist in land clearance and buildings were constructed for both residential and farming purposes.

As noted in Section 4.1.1 above, frequent clashes with local Aboriginal people meant that there was a certain lawlessness about the area, as well as bushrangers and other criminals preying on the remote farms. It wasn’t until the 1850s when the police force was tripled that the area became more stable (David Scobie Architects & Nicole Secomb 2010:24).

After a Depression in the 1840s and the increase in judicial bodies a further influx of settlers began. Following disastrous floods on the Hawkesbury and Hunter Rivers, “country lots” were offered in the Tuggerah Lakes and Wyong Creek areas up to Jilliby Creek. Most of the new settlers came from the Hunter and Hawkesbury areas, although some new settlers were from Sydney. This was also a time where larger holdings either changed owners or were subdivided.

By the 1920s, much of the timber had been removed leading to a decline in that industry on the Central Coast. With the now-cleared fields, agriculture became the dominant land use in the area. Dairying became an important business, with a butter factory opening at Wyong in 1925 and from the 1930s milk was supplied to the Sydney market. By 1964, two million gallons of milk were processed at the factory (Wilkinson 2012:3-4).



Plate 2 : Township of Wyong, looking south from Wyong Lookout, c. 1927 (Courtesy State Library of NSW).

The 1920s also saw the beginnings of the orchard industry, with oranges, lemons and passionfruit dominating the market. By 1964 there were approximately 1,000 farmers growing on 10,000 acres. In

Kanwal and Warnervale, poultry farming was the dominant industry, with it becoming the largest egg producing districts in the State (Wilkinson 2012:4).

4.2.2 Historical Development of Project Area

The land comprising the Wyong Hospital was once part of a 320 acre holding bought by William Alison from William Cape in 1875. By buying up larger grants and holdings, Alison amassed a total of 1,900 acres ranging from Wyong River in the south to Jilliby Creek in the west and Wallarah Creek in the north, to Budgewoi in the east. William Alison's son, Charles, built "Alison Homestead" on Cape's "Wyong Place" shortly after the purchase, which survived until 2011 when it was burnt down.



Plate 3 : Detail of Parish of Munmorah map, c.1940 (Courtesy Land & Property Information NSW).

In 1893, Albert Hamlyn Warner bought approximately 12,000 acres of land, including Alison's property. Warner was a developer and subdivided most of his land, however in 1912 he built his own residence, known as "Hakone" at nearby Wyong. Warner's house is still standing and is listed on the Wyong Shire Council's heritage register.



Plate 4 : “Hakone”, Warner’s home at 31 Boyce Street, Wyong (Courtesy, NSW State Heritage Inventory).

Warner had travelled to Japan and the United States, and these travels are remembered in some of the street names such as Louisiana, Minnesota, Haiawatha and Nikko. Warner himself is remembered in Warnervale, with his middle name remembered in Hamlyn Terrace (Wyong Shire Council Library Service 2008:10).

Following subdivision, the land was mainly used for agricultural purposes, evidence of which remains today in the form of fencing and sheds. An article in the Sydney Morning Herald in 1908 describes Warner’s Estate as:

“...about 7000 acres and lends itself admirably for intensive cultivation. All kinds of stone fruit, vegetables, barley, maise (sic) and other cereals grow luxuriantly in the district. One man this year cultivated two acres of tomatoes and realised a net return of £95... The estate on subdivision would be an ideal one for the man of small means, and it is considered that it would provide comfortable homes for more than 100 families.” (Sydney Morning Herald 1908:4)

By the 1970s, it was clear that with the increase in housing subdivisions in the Gosford-Wyong area that the existing Gosford Hospital was not equipped to care for the increase in population on the Central Coast and a new hospital was needed to cope with overflow of patients. The hospital at Wyong opened in 1979 and was expanded with new facilities in 2005.

4.2.3 Heritage databases

Acknowledged heritage items and places are recorded in statutory and non-statutory registers held at the Federal, State and local level depending on their level of significance. Internationally significant sites of ‘outstanding universal value’ are inscribed in the World Heritage List (WHL) and in turn, such sites are usually recognised through their inclusion on Federal and state-level registers.

Federal designations include the National Heritage List (NHL) and the Commonwealth Heritage List (CHL) created by the *Environment Protection and Biodiversity Conservation Act 1999*. Both registers are

maintained by the Commonwealth Department of the Environment and are available to view on an online database, the Australian Heritage Database. The NHL includes natural, historic and Indigenous places that are of outstanding national heritage value to the Australian nation. The CHL protects natural, Indigenous and historic heritage places on land owned or leased by the Commonwealth or a Commonwealth Authority. To reach the threshold for the NHL, a place must have 'outstanding' heritage value to the nation whereas to be entered on the CHL, a place must have 'significant' heritage value.

Heritage places of state significance are included on the State Heritage Register (SHR) maintained by the Heritage Branch. Places included on the SHR are available on an online database, the NSW State Heritage Inventory database; however, it should be noted that the inventory includes items of state and local significance in NSW, it may not necessarily be comprehensive and inclusion on the inventory does not carry statutory weight in its own right. In order to reach the threshold for inclusion in the SHR, a place needs to meet one of more of the heritage criteria identified by the Heritage Council of NSW. The ultimate decision on whether a place is included on the State Heritage Register is made by the Minister.

Places of local significance are included in heritage schedules in Local Environmental Plans (LEPs).

World heritage

There are no World Heritage Sites located in the vicinity of the project area.

National and Commonwealth heritage

A search of the Australian Heritage Database was undertaken on 15 August 2014 which indicates that there are no **National Heritage items** in or in the vicinity of the project area and no items listed within or in the vicinity of the project area included on the Commonwealth Heritage List.

State heritage

A search of the State Heritage Register on 15 August 2014 identified **no items of State Significance** on the State Heritage Register (SHR) in or within the vicinity of the project area (Table 5).

Section 170 heritage and conservation registers

Section 170 of the *Heritage Act 1977* requires each State Government Agency to keep records of heritage items owned or operated by it. These registers can be found on the NSW Heritage Inventory. A search of this inventory was carried out on 15 August 2014. **No s170 heritage and conservation register items** were identified within or in the vicinity of the project area.

Local heritage

A search of Schedule 5 of Wyong Local Environmental Plan 2013 identified **no heritage items within the project area** and **one item in the vicinity of the project area**.

Table 3 Items in Wyong LEP 2013 within or in the vicinity of the project area

Item	Place ID	Address	Significance	Distance from project area
Church (former) - dwelling	I21	685 Pacific Highway, Kanwal	Local	340 m NE

4.3 Review of previous archaeological investigations

A number of archaeological investigations have been undertaken in the Wyong Shire ahead of development projects, however few have been conducted in the vicinity of the project area. A review of two previous archaeological and heritage reports that were performed in the area has been undertaken to inform this due diligence assessment.

Helen Brayshaw Heritage Consultants, 1999. Archaeological Survey for Aboriginal Sites, Warnervale Road and Pacific Highway, Warnervale

This investigation was over a strip of land running from the Pacific Highway west then north to Warnervale Road. The Pacific Highway frontage is approximately 350 m north of the northern boundary of Wyong Hospital. The assessment was conducted ahead of the proposed development of the vacant land for a 150 lot residential subdivision.

The total area surveyed was 16.4 hectares and notes that no sites were identified. Brayshaw notes the presence of the swamp forest noted in Section 3.3 above, and the drainage of depressions toward the wetlands in the west. In her analysis of previous archaeological reports in the area, Brayshaw notes that none of the studies in the immediate study area showed the presence of any sites. This included a survey by Bonhomme and Koettig (1984) of an area at Kanawal, Dean-Jones in 1990 of land adjoining Wyong golf course approximately 4 km to the south east and Pearson in 1996 on land between Warnervale Road and Mataram Road. Brayshaw notes Dallas' comments in 1984 regarding Aboriginal occupation near Tuggerah Lake, which seemed to consist of large and repeatedly occupied sites along the coast and foreshore, with small hunting or foraging expeditions into marshy areas. Dallas' assessment explains the paucity of this investigation, as well as Brayshaw's and those mentioned above.

Archaeological Surveys & Reports Pty Ltd (John Appleton), 2009. Archaeological investigation for Sites of cultural significance in Precinct 7A, Warnervale, NSW.

This investigation was conducted on behalf of Wyong Shire Council ahead of the proposed development of Precinct 7A of the Warnervale Subdivision. The precinct measured approximately 540 hectares with its eastern most point located near the western intersection of Warnervale Road and Louisiana Road, approximately 900 m to the north-west of Wyong Hospital. The investigation was conducted in consultation with the Aboriginal community.

Appleton notes in his report that a survey of the land east of Louisiana Road and west of Wyong hospital was surveyed as part of proposed development in 2003, with no evidence identified. Appleton believed that the swampy nature and frequently flooding of the surveyed area was not conducive to retention of Aboriginal archaeological evidence.

A total of eighteen artefact sites were identified as part of this survey. Of these, ten sites were isolated finds (single artefacts), with the remaining eight sites being artefact scatters ranging between two artefacts and 40+. All of the artefacts were identified in three discrete groups; six around a dam, remaining five on an elevated area near the first group, and the remaining sites along a track on the western side of the Main Northern Railway. They comprised flakes and flaked pieces, of varying materials including silcrete, quartz, mudstone, tuff, igneous and metasedimentary. Appleton notes his surprise at the high number of sites identified given the paucity of sites previously identified in the vicinity. However, Appleton notes that most of these sites were identified in elevated areas, which may have been attractive temporary habitation sites during the foraging expeditions noted in Brayshaw above.

4.4 Synthesis of Heritage Context

A review of the heritage databases and previous archaeological work in the area demonstrate that the dominant site types identified in the area are artefact sites, either on their own or in combination with other site types making up 30 of the 36 site types (83%). This, however, could be a survey bias, i.e., that only areas suitable for development have been surveyed and that given the hydrology, topography and other environmental factors that these areas are also suited to only artefact sites, or it could be that other sites have not survived early development and land clearing, for example, modified trees and rock engravings.

However, given that the much of the higher ground of the project area has been extensively developed and that the lower ground near the drainage line is mainly made up of swampy, poorly drained soil, it is likely that the only evidence of past Aboriginal occupation would be artefact sites, either isolated or in scatters.

5.0 Visual Inspection and Field Results

A visual inspection of the Project Area was undertaken to identify whether Aboriginal objects are present on the ground surface or are likely to be present below the ground surface. In accordance with the Due Diligence Code a qualified archaeologist undertook the visual inspection (DECCW 2010:12-13).

5.1 Visual Inspection

The visual inspection of the Project Area was conducted and undertaken on 14 August 2014 by RPS Heritage Consultant, Deborah Farina. The visual inspection was conducted on foot (pedestrian).

Wyong Hospital is located near the suburb of Wyong along the Pacific Highway. The complex measures approximately fourteen hectares, twelve hectares of which is made up of the existing hospital buildings and amenities and approximately two hectares made up of vacant land. The visual inspection was focused on this vacant land that may be subject to future development.

The hospital precinct is located on an extensively modified mid slope, with an unnamed creek/drainage line located approximately 200 m from the main entrance to the hospital, and outside the hospital grounds. The Hospital is spread over a number of blocks and also have separate smaller buildings for treatments such as mental health and hydrotherapy, as well as wings for maintenance and administration. Numerous parking areas surround the hospital and appears to be at a premium. An aged care facility is located to the west of the hospital precinct and a medical centre to the south, fronting the Pacific Highway. Even the bushland separating the aged care facility and the hospital precinct has been heavily disturbed, with a gravel road, pipes, excavation, embankments and refuse disposal all noted.



Plate 5 : Hospital precinct, looking south. Hospital buildings are to the left of frame, bushland to the right (RPS, 2014).

The northern portion of the bushland was made up largely of exotic species. A dense understory prevented observation of the ground surface in most areas. Rabbits, which can cause extensive disturbance to subsurface archaeological deposits, were observed in this portion of the project area, as well as evidence of earthworks.



Plate 6 : Northern portion of bushland (RPS, 2014).

The southern portion of the bushland was separated from the northern section by a gravel road leading west and out of the project area. This portion is made up of sparse eucalypt species, with a grass understory. The natural ground surface was observable in places here, but appeared to either be deposited soil or exposed clay in most observable areas. It appears to be used as a maintenance area with evidence of soil dumps and other refuse.



Plate 7 : Southern portion of bushland (RPS, 2014).



Plate 8 Mulch pile in southern portion of bushland (RPS, 2014).

To the south of this portion was a fenced off area of bushland which appeared denser than the southern portion and is apparently a conservation area for a threatened species of a small flowering plant. As it was fenced, this area was not surveyed. It should be noted that as the conservation area was fenced, the undergrowth and leaf litter obscured the ground surface and therefore visibility was zero. It was also closer to the drainage line and therefore subject to flooding. Trees were noted to be largely regenerated eucalypts.

It is therefore considered that this area would have a low potential for retaining any evidence of Aboriginal or non Aboriginal occupation or use.



Plate 9 : Looking south toward Conservation Area. Note dense undergrowth in Conservation Area (RPS, 2014).

No Aboriginal objects were observed. Native trees examined were all regenerated and not of a sufficient age to contain cultural modification scars. Whilst artefacts may be present in any landscape, there is copious fill on site and soil brought from other areas that it would not be possible to establish whether any identified artefact was primarily or secondarily deposited.

5.2 Visual Inspection Field Results and Summary

The hill slope has been extensively modified through bulk excavations, presumably during construction of either the hospital or associated amenities, such as parking areas. There has also been extensive clearing of native vegetation, resulting in very little remaining.

As noted in the environmental context above, the vacant land proposed to be redeveloped is located in a former wetland. As Aboriginal people were known to have used these areas for resource gathering, there is a low potential that some evidence may remain, particularly subsurface. However, the previous disturbances noted above may have removed any material.

It is therefore assessed that it is unlikely that any Aboriginal sites will be harmed as a result of the proposed works and an AHIP will therefore not be necessary.

6.0 Impact Assessment

The purpose of a due diligence assessment is to identify whether Aboriginal objects are present, or likely to be present, in the Project Area; to determine whether proposed activities are likely to harm Aboriginal objects (if present) and to determine whether an Aboriginal Heritage Impact Permit (AHIP) is required.

The proposed activity is to undertake extensions to the existing hospital precinct. This will involve the construction of buildings and amenities. The activity will involve ground disturbing works.

(I) NO SITES PRESENT

The results of the AHIMS search and the visual inspection indicate that there are no identified Aboriginal objects in the Project Area. As there are no identified Aboriginal objects in the Project Area it is assessed that there is no identified risk of harm to Aboriginal objects and an AHIP is not required for the proposed activity.

7.0 Conclusions and Recommendations

This report has considered the available environmental and archaeological information for the Project Area, the land condition, as well as, the nature of the proposed activities.

No Aboriginal objects or places have been identified within the Project Area and therefore an Aboriginal Heritage Impact Permit (AHIP) is not required for the proposed activity.

The following recommendations are made in relation to the proposed activity:

Recommendation 1

All relevant staff and contractors should be made aware of their statutory obligations for heritage under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, which may be implemented as a heritage induction.

Recommendation 2

This due diligence assessment must be kept by Health Infrastructure so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the *National Parks and Wildlife Act 1974*.

Recommendation 3

If unrecorded Aboriginal object/s are identified in the Project Area during works, then all works in the immediate area must cease and the area should be cordoned off. OEH must be notified by ringing the Enviroline 131 555 so that the site can be adequately assessed and managed.

Recommendation 4

In the unlikely event that skeletal remains are identified, work must cease immediately in the vicinity of the remains and the area must be cordoned off. The proponent must contact the local NSW Police who will make an initial assessment as to whether the remains are part of a crime scene or possible Aboriginal remains. If the remains are thought to be Aboriginal, OEH must be contacted by ringing the Enviroline 131 555. An OEH officer will determine if the remains are Aboriginal or not; and a management plan must be developed in consultation with the relevant Aboriginal stakeholders before works recommence.

Recommendation 5

If, during the course of development works, suspected historic cultural heritage material is uncovered, work should cease in that area immediately. The Heritage Division, Office of Environment and Heritage (Enviroline 131 555) should be notified and works only recommence when an approved management strategy has been developed.

8.0 References

- Attenbrow, V. 2010. *Sydney's Aboriginal Past: Investigating the archaeological and historical records*. Sydney: UNSW Press.
- Australia ICOMOS. 2013. "The Burra Charter, The Australia ICOMOS Charter for Places of Cultural Significance."
- Darkinjung Local Aboriginal Land Council. Online. "Community & Culture: The Darkinyung People". Online.
- David Scobie Architects & Nicole Secomb. 2010. "Wyong Shire-wide Heritage Review." Unpublished report to Wyong Shire Council.
- DECCW. 2010. "Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales." in *Part 6 National Parks and Wildlife Act 1974*, edited by Department of Environment Climate Change & Water.
- Keith, D. 2006. *Ocean Shores to Desert Dunes: The Native Vegetation of New South Wales and the ACT*. Sydney: Department of Environment and Conservation NSW.
- Mathew, Felton. 1830. "Journal." Online translation by Bruce Jones.
- Murphy, C L. 1993. *Soil Landscapes of the Gosford-Lake Macquarie 1:100 000 Report*. Sydney: Department of Conservation and Land Management.
- Sydney Morning Herald. 1908. "' Closer Settlement: Warner's Estate, Wyong'." Pp. 1 in *Sydney Morning Herald*. Sydney.
- The Australian. 1827. "'1 August 1827'." in *The Australian*. Sydney.
- Thorpe, W. 1994. "Wyong Shire Thematic History." Unpublished report to Wyong Shire Council.
- Tindale, N. 1974. "Tribal Boundaries in Aboriginal Australia." Online: Museum of South Australia.
- Wilkinson, John. 2012. "E-Brief - The Central Coast Region: An Economic Profile." Sydney: Parliament of New South Wales.
- Wyong Shire Council Library Service. 2008. "'Wyong Shire Place Names'." Wyong, NSW: Wyong Shire Council.

Appendix I

Legislative Requirements

Summary of Statutory Controls

The following overview of the legal framework is provided solely for information purposes for the client, it should not be interpreted as legal advice. RPS will not be liable for any actions taken by any person, body or group as a result of this general overview, and recommend that specific legal advice be obtained from a qualified legal practitioner prior to any action being taken as a result of the summary below.

COMMONWEALTH

Aboriginal & Torres Strait Islander Heritage Protection Act 1984 (ATSIHIP Act)

The purpose of this Act is to preserve and protect all heritage places of particular significance to Aboriginal and Torres Strait Islander people. This Act applies to all sites and objects across Australia and in Australian waters (s4).

It would appear that the intention of this Act is to provide national baseline protection for Aboriginal places and objects where State legislation is absent. It is not to exclude or limit State laws (s7(1)). Should State legislation cover a matter already covered in the Commonwealth legislation, and a person contravenes that matter, that person may be prosecuted under either Act, but not both (s7(3)).

The Act provides for the preservation and protection of all Aboriginal objects and places from injury and/or desecration. A place is construed to be injured or desecrated if it is not treated consistently with the manner of Aboriginal tradition or is or likely to be adversely affected (s3).

Australian Heritage Commission Act 1975

The *Australian Heritage Commission Act (1975)* established the Australian Heritage Commission which assesses places to be included in the National Estate and maintains a register of those places. Places maintained in the register are those which are significant in terms of their association with particular community or social groups and they may be included for social, cultural or spiritual reasons. The Act does not include specific protective clauses.

The *Australian Heritage Council Act 2003*, together with the *Environment Protection & Biodiversity Conservation Act 1999*, includes a National Heritage List of places of National heritage significance, maintains a Commonwealth Heritage List of heritage places owned or managed by the Commonwealth and ongoing management of the Register of the National Estate.

STATE

It is incumbent on any land manager to adhere to state legislative requirements that protect Aboriginal Cultural heritage. The relevant legislation in NSW includes but is not limited to the summary below.

National Parks and Wildlife Act 1974 (NPW Act)

The NPW Act provides statutory protection for all Aboriginal heritage, places and objects (not being a handicraft made for sale), with penalties levied for breaches of the Act. This legislation is overseen by the Office of Environment and Heritage (OEH), and specifically the Chief Executive (formerly the Director-General) of OEH. Part 6 of this Act is the relevant part concerned with Aboriginal objects and places, with Section 86 and Section 90 being the most pertinent. In 2010, this Act was substantially amended, particularly with respect to Aboriginal cultural heritage requirements. Relevant sections include:

Section 86

This section now lists four major offences:

- (4) A person must not harm an object that the person knows is an Aboriginal object;
- (5) A person must not harm an Aboriginal object;
- (6) For the purposes of s86, “circumstances of aggravation” include:
 - (a) The offence being committed during the course of a commercial activity; or
 - (b) That the offence was the second or subsequent offence committed by the person;
- (7) A person must not harm or desecrate an Aboriginal place.

Offences under s86 (2) and (4) are now strict liability offences, i.e., knowledge that the object or place harmed was an Aboriginal object or place needs to be proven. Penalties for all offences under Part 6 of this Act have also been substantially increased, depending on the nature and severity of the offence.

Section 87

This section now provides defences to the offences of s86. These offences chiefly consist of having an appropriate Aboriginal Heritage Impact Permit (AHIP), not contravening the conditions of the AHIP or demonstrating that due diligence was exercised prior to the alleged offence.

Section 87A & 87B

These sections provide exemptions from the operation of s86; Section 87A for authorities such as the Rural Fire Service, State Emergency Services and officers of the National Parks & Wildlife Service in the performance of their duties, and s87B for Aboriginal people performing traditional activities.

Section 89A

If a person knows of the location of an Aboriginal object or place that has not been previously registered and does not advise the Director-General (now Chief Executive) of that object or place within a reasonable period of time, then that person is guilty of an offence under this Section of the Act.

Section 90

This section authorises the Director-General (now Chief Executive) to issue an AHIP.

Section 90A-90R

These sections govern the requirements relating to applying for an AHIP. In addition to the amendments to the Act, OEHS have issued three new policy documents clarifying OEHS's requirements with regards to Aboriginal archaeological investigations: *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*, *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* and *Code of Practice for Archaeological Investigations in NSW*. The Consultation Requirements formalise the consultation with Aboriginal community groups into four main stages, and includes details regarding the parties required to be consulted, advertisements inviting Aboriginal community groups to participate in the consultation process, requirements regarding the provision of methodologies, draft and final reports to the Aboriginal stakeholders and timetables for the four stages. The Due Diligence Code of Practice sets out the minimum requirements for investigation, with particular regard as to whether an AHIP is required. The Code of Practice for Archaeological Investigation sets out the minimum requirements for archaeological investigation of Aboriginal sites.

Aboriginal Heritage Impact Permits (AHIP)

OEH encourages consultation with relevant Aboriginal stakeholders for all Aboriginal Heritage Assessments. However, if an Aboriginal Heritage Impact Permit (AHIP) is required for an Aboriginal site, then specific OEH guidelines are triggered for Aboriginal consultation.

Aboriginal Cultural Heritage Consultation Requirements for Proponents

In 2010, the Aboriginal Cultural Heritage Consultation Requirements for Proponents (ACHCRs) were issued by OEH (12 April 2010). These consultation requirements replace the previously issued Interim Community Consultation Requirements (ICCR) for Applicants (Dec 2004). These guidelines apply to all AHIP applications prepared after 12th April 2010; for projects commenced prior to 12th April 2010, transitional arrangements have been stipulated in a supporting document, Questions and Answers 2: Transitional Arrangements.

The ACHCRs 2010 include a four stage Aboriginal consultation process and stipulate specific timeframes for each stage. Stage 1 requires that Aboriginal people who hold cultural information are identified, notified and invited to register an expression of interest in the assessment. Stage 1 includes the identification of Aboriginal people who may have an interest in the project area and hold information relevant to determining the cultural significance of Aboriginal objects or places. This identification process should draw on reasonable sources of information including: the relevant OEH EPRG regional office, the relevant Local Aboriginal Land Council(s), the Registrar of Aboriginal Owners, Aboriginal Land Rights Act (1983), the Native Title Tribunal, Native Title Services Corporation Limited, the relevant local council(s), and the relevant catchment management authority. The identification process should also include an advertisement placed in a local newspaper circulating in the general location of the project area. Aboriginal organisations and/or individuals identified should be notified of the project and invited to register an expression of interest (EoI) for Aboriginal consultation. Once a list of Aboriginal stakeholders has been compiled from the EoI's, they need to be consulted in accordance with ACHCR's Stages 2, 3 and 4.

Environmental Planning & Assessment Act 1979 (EP&A Act)

This Act regulates a system of environmental planning and assessment for New South Wales. Land use planning requires that environmental impacts are considered, including the impact on cultural heritage and specifically Aboriginal heritage. Within the EP&A Act, Parts 3, 4 and 5 relate to Aboriginal heritage.

Part 3 regulates the preparation of planning policies and plans. Part 4 governs the manner in which consent authorities determine development applications and outlines those that require an environmental impact statement. Part 5 regulates government agencies that act as determining authorities for activities conducted by that agency or by authority from the agency. The National Parks & Wildlife Service is a Part 5 authority under the EP&A Act.

In brief, the NPW Act provides protection for Aboriginal objects or places, while the EP&A Act ensures that Aboriginal cultural heritage is properly assessed in land use planning and development.

Heritage Act 1977

This Act protects the natural and cultural history of NSW with emphasis on non-indigenous cultural heritage through protection provisions and the establishment of a Heritage Council. Although Aboriginal heritage sites and objects are primarily protected by the *National Parks & Wildlife Act 1974*, if an Aboriginal site, object or place is of great significance, it may be protected by a heritage order issued by the Minister subject to advice by the Heritage Council.

Other legislation of relevance to Aboriginal cultural heritage in NSW includes the *NSW Local Government Act 1993*. Local planning instruments also contain provisions relating to indigenous heritage and development conditions of consent.

Appendix 2

AHIMS

AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref Number : PR123120

Client Service ID : 144866

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status	SiteFeatures	SiteTypes	Reports
45-7-0121	Toukley	AGD	56	363300	6318200	Open site	Valid	Ochre Quarry : -	Ochre Quarry	98461,100541, 100863,10109 3
	Contact									
	Recorders			ASRSYS						
45-3-3222	Kooindah Resort 1	AGD	56	354832	6315900	Open site	Destroyed	Artefact : -		100541,10086 3
	Contact			Doctor.Julie Dibden						
	Recorders			Doctor.Julie Dibden					1742	
45-3-3223	Kooindah Resort 2	AGD	56	354579	6315544	Open site	Destroyed	Artefact : -		100541,10086 3
	Contact			Doctor.Julie Dibden						
	Recorders			Doctor.Julie Dibden					1742	
45-3-1312	Hue Hue Road;	AGD	56	353671	6322552	Open site	Valid	Artefact : -	Open Camp Site	101093,10264 7
	Contact			Unknown Author						
	Recorders			Unknown Author						
45-3-3369	Wadalba Hill Grooves 1	AGD	56	357107	6317252	Open site	Valid	Grinding Groove : 50		101367,10264 7
	Contact			Mr.Roger Mehr						
	Recorders			Mr.Roger Mehr						
45-3-3370	Wadalba Hill Grooves 2	AGD	56	357225	6317446	Open site	Valid	Grinding Groove : 2		101367,10264 7
	Contact			Mr.Roger Mehr						
	Recorders			Mr.Roger Mehr						
45-3-3371	Wadalba Hill Scar 1	AGD	56	357150	6317468	Open site	Valid	Modified Tree (Carved or Scarred) : 1		101367,10264 7
	Contact			Mr.Roger Mehr						
	Recorders			Mr.Roger Mehr						
45-3-3387	KK04 (Wyong)	GDA	56	359742	6317171	Open site	Valid	Artefact : 103, Potential Archaeological Deposit (PAD) : -		
	Contact			Australian Museum Consulting (AM Consulting),Ms.Tessa Boer-Mah						
	Recorders			Australian Museum Consulting (AM Consulting),Ms.Tessa Boer-Mah					3151,3203	
45-3-1141	Tacoma South;Tacoma;	AGD	56	355300	6314900	Open site	Valid	Artefact : -, Grinding Groove : -	Axe Grinding Groove,Open Camp Site	308,98461
	Contact			Len Dyall						
	Recorders			Len Dyall						
45-3-1142	Tacoma South;Tacoma;	AGD	56	355836	6314547	Open site	Valid	Artefact : -	Open Camp Site	308,98461
	Contact			Len Dyall						
	Recorders			Len Dyall						
45-3-1145	Rocky Knob;Tacoma South;	AGD	56	355836	6314547	Open site	Valid	Grinding Groove : -	Axe Grinding Groove	308,98461
	Contact			Len Dyall						
	Recorders			Len Dyall						
45-3-1274	Rocky Point;Tacoma;	AGD	56	357580	6314740	Open site	Valid	Ceremonial Ring (Stone or Earth) : -	Bora/Ceremonial	98461
	Contact			Len Dyall						
	Recorders			Len Dyall						

Report generated by AHIMS Web Service on 15/08/2014 for Deborah Farina for the following area at Datum :GDA, Zone : 56, Eastings : 353509 - 363509, Northings : 6313900 - 6323900 with a Buffer of 50 meters. Additional Info : As part of a due diligence assessment. Number of Aboriginal sites and Aboriginal objects found is 36

This information is not guaranteed to be free from error omission. Office of Environment and Heritage (NSW) and its employees disclaim liability for any act done or omission made on the information and consequences of such acts or omission.

AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref Number : PR123120

Client Service ID : 144866

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status	SiteFeatures	SiteTypes	Reports
45-3-1275	Tacoma;	AGD	56	357200	6314340	Open site	Valid	Ceremonial Ring (Stone or Earth) :-	Bora/Ceremonial	98461
	<u>Contact</u>							<u>Permits</u>		
45-3-3169	J 1	AGD	56	356049	6317397	Open site	Valid	Artefact : -		97583,100541, 100863,10109 3,102647
	<u>Contact</u>							<u>Permits</u>		
45-3-3276	IF 1, Wyong	AGD	56	354770	6319410	Open site	Valid	Artefact : 1		
	<u>Contact</u> T Russell							<u>Permits</u>		
45-3-3277	WS20/A	AGD	56	354320	6318780	Open site	Valid	Artefact : 2		102647
	<u>Contact</u> T Russell							<u>Permits</u>		
45-3-3278	WS20/B	AGD	56	354400	6319010	Open site	Valid	Artefact : 1		102647
	<u>Contact</u> T Russell							<u>Permits</u>		
45-3-3304	Halloran ISO 1	AGD	56	355000	6322650	Open site	Valid	Artefact : -		102647
	<u>Contact</u> T Russell							<u>Permits</u>		
45-3-3404	Bitova ISO 1	GDA	56	355488	6319239	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3405	Bitova OS 2	GDA	56	355482	6319264	Open site	Valid	Artefact : 4		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3406	Bitova ISO 3	GDA	56	355830	6319481	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3407	Bitova OS 4	GDA	56	355761	6319510	Open site	Valid	Artefact : 40		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3408	Bitova ISO 5	GDA	56	355490	6319291	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3409	Bitova OS 6	GDA	56	355489	6319301	Open site	Valid	Artefact : 2		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3410	Bitova OS 7	GDA	56	355509	6319327	Open site	Valid	Artefact : 11		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3411	Bitova ISO 8	GDA	56	355687	6319543	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3412	Bitova OS 9	GDA	56	355745	6319429	Open site	Valid	Artefact : 4		101823
	<u>Contact</u>							<u>Permits</u>		
45-3-3413	Bitova OS 10	GDA	56	355767	6319460	Open site	Valid	Artefact : 18		101823
	<u>Contact</u>							<u>Permits</u>		

Report generated by AHIMS Web Service on 15/08/2014 for Deborah Farina for the following area at Datum :GDA, Zone : 56, Eastings : 353509 - 363509, Northings : 6313900 - 6323900 with a Buffer of 50 meters. Additional Info : As part of a due diligence assessment. Number of Aboriginal sites and Aboriginal objects found is 36

This information is not guaranteed to be free from error omission. Office of Environment and Heritage (NSW) and its employees disclaim liability for any act done or omission made on the information and consequences of such acts or omission.

AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref Number : PR123120

Client Service ID : 144866

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status	SiteFeatures	SiteTypes	Reports
45-3-3414	Bitova ISO 11	GDA	56	355485	6319224	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3415	Lakes G ISO 12	GDA	56	354815	6320059	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3416	Lakes G OS 13	GDA	56	354570	6319567	Open site	Valid	Artefact : 14		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3417	Lakes G ISO 14	GDA	56	354578	6319306	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3418	Lakes G OS 15	GDA	56	354568	6319518	Open site	Valid	Artefact : 12		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3419	Lakes G ISO 16	GDA	56	354817	6319736	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3420	OWP ISO 17	GDA	56	356182	6320002	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3421	OWP ISO 18	GDA	56	355427	6320658	Open site	Valid	Artefact : 1		101823
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							

Report generated by AHIMS Web Service on 15/08/2014 for Deborah Farina for the following area at Datum :GDA, Zone : 56, Eastings : 353509 - 363509, Northings : 6313900 - 6323900 with a Buffer of 50 meters. Additional Info : As part of a due diligence assessment. Number of Aboriginal sites and Aboriginal objects found is 36

This information is not guaranteed to be free from error omission. Office of Environment and Heritage (NSW) and its employees disclaim liability for any act done or omission made on the information and consequences of such acts or omission.